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CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 300, S. 552, S. 580, S. 674, S. 675, S. 678, S. 824, S. 916, S. 917, S. 992, S. 1007, S. 1194, S. 1333, and S. 2050

RING TO CRIME SYNDICATES, WIRETAPPING, TY IN EVIDENCE OF CONFESSIONS, ASSIST- AND LOCAL GOVERNMENTS IN COMBATING RELATED AREAS OF CRIMINAL LAWS AND PROCEDURES

9; APRIL 18, 19, AND 20; MAY 9; JULY 10, 11, AND 12, 1967

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BILLS RELATING TO CRIME SYNDICATES, WIRETAPPING, ADMISSIBILITY IN EVIDENCE OF CONFESSIONS, ASSISTING STATE AND LOCAL GOVERNMENTS IN COMBATING CRIME AND RELATED AREAS OF CRIMINAL LAWS AND PROCEDURES

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CONTENTS

	Page
Text of—	
S. 300	72
S. 552	72
S. 580	73
S. 674	74
S. 675	75
S. 678	79
S. 798	83
S. 824	86
S. 911	92
S. 916	92
S. 917	96
S. 992	102
S. 1007	104
S. 1094	106
S. 1194	107
S. 1333	108
S. 2050	1001
Reports of—	
Administrative Office of the U.S. Courts on—	
S. 300	72
Department of Justice on—	
S. 552	72
S. 674	81
S. 675	82
S. 678	82
S. 798	84, 85
S. 824	91
S. 916	95
S. 917	101
S. 992	104
S. 1194	107
S. 1333	109
Statement of—	
Bennett, Hon. Wallace F., a U.S. Senator from the State of Utah, in support of S. 911	117
Bible, Hon. Alan, a U.S. Senator from the State of Nevada, re S. 674	126
Blakey, G. Robert, professor of law, Notre Dame, on wiretapping	932
Blumstein, Dr. Alfred, Institute for Defense Analyses	1066
Broderick, Vincent L., on behalf of the American Civil Liberties Union	1159
Burdick, Hon. Quentin N., a U.S. Senator from the State of North Dakota, re S. 552	155
Cahn, William, district attorney, Nassau County, N.Y., re S. 674 and S. 675	595
Clark, Hon. Ramsey, the Attorney General of the United States, accompanied by Fred M. Vinson, Jr., Assistant Attorney General	147, 356, 809
Damiani, Louis R., Police Department, Philadelphia, Pa., on behalf of the Fraternal Order of Police, in support of S. 798	647
Dillon, Michael, district attorney, Erie County, Buffalo, N.Y., re S. 917	864
Eilberg, Hon. Joshua, a Representative from the Fourth Congressional District of the State of Pennsylvania	1132
Ervin, Hon. Sam J., Jr., a U.S. Senator from the State of North Carolina, re S. 674, S. 675, S. 916, S. 917, and S. 1194	4

Statement of—Continued Page
Fannin, Hon. Paul J., a U.S. Senator from the State of Arizona 124
Girardin, Ray, police commissioner, Detroit, Mich., on behalf of U.S. Conference of Mayors, accompanied by Mr. John Gunther, executive director, and John F. Nichols, deputy superintendent, Detroit Police Department 300
Greenhalgh, William W., professor of law, Georgetown University, on behalf of the Council of Governments, Washington, D.C., re S. 917 586
Grumet, Hon. Jacob, chairman, New York State Commission on Investigation, accompanied by Myles J. Lane and John W. Ryan, Jr., commissioners, re S. 674 and S. 675 505
Hastings, J. L., manager of special services, the Atchison, Topeka & Santa Fe Railway System 1010
Hegarty, Cecil, Police Department, Anoka, Minn., re S. 674 552
Hogan, Frank S., New York County district attorney, re S. 674, S. 675 1092
Holtzoff, Hon. Alexander, U.S. district judge, Washington, D.C., re S. 674 259
Hornig, Dr. Donald F., Director, Office of Science and Technology 1061
Hruska, Hon. Roman L., a U.S. Senator from the State of Nebraska, re S. 674, S. 675, S. 676, S. 677, S. 917 9
Johnson, Robert W., county attorney, Anoka, Minn., re S. 674 537
Keating, T. W., senior vice chairman, Pennsylvania Lines East of the Brotherhood of Locomotive Firemen and Enginemen, re S. 552 1126
Kelly, Capt. John, Police Department, New Orleans, La., re S. 798 645
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts, re S. 992 1049
Koota, Aaron E., district attorney, Brooklyn, N.Y., re S. 674 and S. 675 219
Kreider, Hon. Homer L., president judge, Court of Common Pleas, Harrisburg, Pa., re S. 674 268
Lausche, Hon. Frank J., a U.S. Senator from the State of Ohio, re S. 674 and S. 675 139
Lumbard, Hon. J. Edward, chief judge, U.S. Court of Appeals, Second Circuit, New York, N.Y., re S. 674 and S. 675 170
Martin, John, chairman, Michigan Crime Commission, re S. 675 and S. 917 637
McCulloch, Edward L., national legislative representative, Brotherhood of Locomotive Engineers, re S. 552 1030
McDermott, Thomas F., first vice president, Police Chiefs Association of Southeastern Pennsylvania 1133
Meeker, W. F., inspector of police, Pennsylvania Railroad Co., re S. 552 1031
Moylan, Charles E., Jr., state's attorney for the city of Baltimore, Md., re S. 674 and S. 675 619
Musmanno, Justice Michael A., Supreme Court of Pennsylvania, re S. 674 572
Nickerson, Eugene H., county executive, Nassau County, N.Y., accompanied by Francis B. Looney, police commissioner, Nassau County, N.Y., re S. 917 1024
Piggins, Hon. Edward S., judge of the circuit court, Third Judicial Circuit of Michigan, Detroit, Mich., effect of recent court decisions, organized crime, wiretapping et cetera 885
Rector, Milton G., director, National Council on Crime and Delinquency, New York, N.Y., accompanied by Mark Furstenberg, associate, Washington, D.C., re S. 917 1154
Scheuer, Hon. James H., a Member of Congress from the 21st District of New York, re S. 992 1052
Schulingkamp, Hon. Oliver P., judge, District Court, New Orleans, La., re effects of recent Supreme Court decisions 842
Sennett, Hon. William C., attorney general, Commonwealth of Pennsylvania, re S. 675 and organized crime 911
Sensing, Thurman, executive vice president, Southern States Industrial Council, Nashville, Tenn., re S. 784 878
Sloan, E. C., district claim agent, Pennsylvania Railroad Co., re S. 552 1033
Specter, Arlen, district attorney, Philadelphia, Pa., re S. 674 and S. 917 199
Speiser, Lawrence, director, Washington office, American Civil Liberties Union, re S. 674, S. 675, S. 1194 and S. 1333 1173

Statement of—Continued
Stennis, Hon. John, a U.S. Senator from the State of Mississippi, re S. 674 — Page 110
Tamm, Quinn, executive director, International Association of Chiefs of Police, Washington, D.C., re S. 674 and S. 917 — 326
Tydings, Hon. Joseph D., a U.S. Senator from the State of Maryland, re S. 824 — 854
Walsh, William F., Attorney, Houston, Tex., re S. 992 — 1064
Wilkinson, Hon. James B., commonwealth attorney, Richmond, Va., re S. 674 — 243
Wilson, Orlando W., superintendent of police, Chicago, Ill., re S. 674, S. 675 and S. 917 — 564, 582
Wood, D. L., chief special agent, Illinois Central Railroad, re S. 552 — 1014
Wren, Hon. Laurance T., judge, Superior Court, Flagstaff, Ariz., re retrial of Miranda — 526
Yarborough, Hon. Ralph, a U.S. Senator from the State of Texas, re S. 917 — 1043
Statement submitted by—
Bell, Hon. John C., Jr., chief justice of the Supreme Court of Pennsylvania, re S. 674 — 580
Bowman, Hon. James S., Court of Common Pleas, 12th Judicial District, Dauphin County, Pa., on habeas corpus procedures — 289
Briley, Hon. C. Beverly, mayor, Nashville, Tenn., re S. 917 — 657
Brown, Robert M., author of "The Electronic Invasion," on wiretapping — 1198
Crown, Robert W., Assemblyman, State of California, re S. 917 — 1038
Curry, Hon. Charles, President Judge, Jackson, Mo., on behalf of the National Association of Counties, re S. 917 — 587
Duling, Maj. Frank S., Bureau of Police, Richmond, Va. — 651
Gorman, James D., president, Hyacinth Control Society, Inc., Fort Lauderdale, Fla., re S. 580 — 146
Holland, Hon. Spessard L., a U.S. Senator from the State of Fla., re S. 580 — 145
Inbau, Fred E., professor of law, Northwestern Univ., Chicago, Ill. — 676
Knox, John T., Assemblyman, State of Calif., re S. 917 — 1038
Long, Hon. Edward V., a U.S. Senator from the State of Missouri, relative to testimony of Judge Edward S. Piggins — 910
Lynch, Hon. Thomas C., attorney general, State of California, re S. 674, S. 1194, S.J. Res. 22 and S. 675 — 924
Mondale, Hon. Walter F., a U.S. Senator from the State of Minnesota, introducing Mr. Robert Johnson and Mr. Cecil Hegarty — 537
Montoya, Hon. Joseph M., a U.S. Senator from the State of New Mexico, re S. 824 — 143
Polanco-Abreu, Hon. Santiago, Resident Commissioner, Commonwealth of Puerto Rico, re S. 798 — 651
Pritchard, Allen E., assistant executive director, National League of Cities, re S. 917 — 653
Rector, Milton G., director, National Council on Crime and Delinquency, re S. 992 — 1073
Shake, Randel, director, National Chief Welfare Commission, The American Legion, re S. 917 — 662
Skoler, Daniel, Office of Law Enforcement Assistance, "Federal Assistance in Developing the Technology of Criminal Justice" — 1075
Tamm, Quinn, executive director, International Association of Chiefs of Police, re S. 992 — 1074
Exhibits—
Escobedo v. *Illinois*, 378 U.S. 478 (1964) — 14
Miranda v. *State of Arizona*, 384 U.S. 436 (1966) — 23
Johnson v. *State of New Jersey*, 384 U.S. 719 (1966) — 65
FBI interrogation practices, excerpts from *Miranda* v. *State of Arizona* — 332
Judicial Conference of Virginia, resolution of May 12, 1967, re S. 1194 and S.J. Res. 22 — 651
Office of Law Enforcement Assistance, excerpts from report and data on programs — 388
Title VI of Civil Rights Act of 1964 (title 42, sec. 2000d, U.S. Code) — 488
"In Aid of Judges," address by the Hon. W. Walter Braham, president, Pennsylvania Bar Association, Jan. 19, 1967 — 278
Message from the Director of the FBI, Law Enforcement Bulletin, September 1, 1966 — 334

Exhibits—Continued
Page
Message from the Director of the FBI, Law Enforcement Bulletin, March 1, 1967 334
Younger, Evelle, district attorney, Los Angeles, Calif., survey and letter re *Miranda* v. *Arizona* 341
Resolution re *Miranda* v. *Arizona* by National District Attorneys' Association 619
Police-Community Relations in Detroit, Experience Report No. 106, Community Relations Service, U.S. Conference of Mayors 322
Zimmerman, B. M., Lancaster, Pa., letter re benefits payable to slain policeman 650
Letter signed by all former U.S. attorneys for the Southern District of New York supporting court-approved wiretapping and electronic eavesdropping 511
Memorandum to Heads of Executive Departments and Agencies, re wiretapping and electronic eavesdropping, from the U.S. Attorney General, June 16, 1967 922
Answers to questions submitted to the Attorney General on S. 917 829
Anticrime program, excerpts from hearings before Subcommittee No. 5 of the Committee on the Judiciary, U.S. House of Representatives, 90th Congress, first session 978
The Federal Effort Against Organized Crime, excerpts from hearing before Committee on Government Operations, U.S. House of Representatives, 90th Congress, first session 959, 960
Resolution adopted by International Narcotic Enforcement Officers Association, Washington, D.C., May 24, 1967 807
Senate Joint Memo. No. 10 of the State of Washington, Feb. 1, 1967 693
Resolution re *use of electronic surveillance devices* by National District Attorneys' Association 615
Letter from—
Canale, Hon. Phil M., Jr., district attorney, Memphis, Tenn 667
Carter, Hon. James M., chief judge, Southern District of California, San Diego, Calif 664
Clark, Hon. Edwin M., president judge, 40th Judicial District, Indiana, Pa 665
Corbin, Robert K., county attorney, Maricopa County, Phoenix, Ariz 674
Crosland, David, district attorney, Montgomery, Ala 669
Edwards, Hon. George, judge, U.S. Court of Appeals, Sixth Circuit, Detroit, Mich 677
Gernert, Paul J., chairman, Board of Parole, Commonwealth of Pennsylvania 684
Gillespie, S. Hazard, attorney at law, New York, N.Y., enclosing a letter from all the former U.S. Attorneys for the Southern District of New York supporting court-approved wiretapping and electronic eavesdropping 511
Greene, Hon. Douglas W., judge, Division 2, Circuit Court, Springfield, Mo 667
Harris, Curtis P., district attorney, District No. 7, Oklahoma City, Okla 675
Hening, Hon. Edmund W., Jr., judge, 10th Judicial Circuit, Richmond, Va 670
Hopf, William V., state's attorney, Du Page County, Wheaton, Ill 694, 782, 930
Hughes, Hon. Richard J., Governor of the State of New Jersey 683
Jenkins, Ray H., attorney at law, Knoxville, Tenn 685
Johnson, W. H., Jr., district attorney, Eighth Circuit Court District, Decatur, Miss 686
Kearney, Hon. G. Ross, judge, Division B, 18th Judicial District, of Louisiana, Port Allen, La 678
Keller, James Don, district attorney, County of San Diego, San Diego, Calif 675
Kimball, Hon. Daniel P., judge, Division A., 18th Judicial District of Louisiana, Port Allen, La 678
Knowles, Hon. Warren P., Governor of the State of Wisconsin 931
Kreider, Hon. Homer L., president judge, Court of Common Pleas, Harrisburg, Pa 683
Kunzel, Hon. Fred, U.S. district judge, Southern District of California, San Diego, Calif 664

Letter from—Continued Page
McDonald, Miles F., justice, Supreme Court of New York State 687
Mitchell, Hon. John A., judge, Criminal Court, Fifth Circuit, Cookville, Tenn 671
Mondale, Hon. Walter F., a U.S. Senator from the State of Minn
Moylan, Charles E., Jr., State's attorney for city of Baltimore, Md 623
Mullen, Hon. John E., presiding judge, Superior Court of Rhode Island, Providence, R.I 686
Noonan, Roy T., superintendent, Bureau of Criminal Apprehension State of Minn 671
Osborne, Clyde W., prosecuting attorney, Mahoning Co., Youngstown, Ohio 666
Polanco-Abreu, Santiago, Resident Commissioner, Commonwealth of Puerto Rico 650
Raggio, William, executive vice president, National District Attorneys' Association 615
Rueger, Melvin G., prosecuting attorney, Cincinnati, Ohio 673
Sanborn, Keith, county attorney, Wichita, Kans 678
Sennett, Hon. William C., attorney general, Commonwealth of Pennsylvania 663, 911
Schroering, Hon. Edwin A., Jr., Commonwealth's attorney, Louisville, Ky 674
Schulingkamp, Hon. Olive P., judge, Criminal District Court, New Orleans, La 668, 852
Shafer, Hon. Raymond P., Governor of Pennsylvania 664
Stagner, Morris, district attorney, Ninth Judicial Circuit, Clovis, N.Mex 787
Sykes, Hon. Bernard F., assistant attorney general, State of Alabama 665
Van Hoomissen, Georgia, district attorney, Multnomah County, Portland, Ore 666
Walker, Charles M., prosecuting attorney, Kanawha Co., Charleston, W. Va 686

Adkins, Willie H., chief of police, Draper, N.C 746
Alverez, K. C., chief of police, Ocala, Fla 719
Anderson, C. H., chief of police, Austin, Tex 724
Armour, Claude A., commissioner of fire and police, Memphis, Tenn 704
Barceline, Fred D., chief of police, Carlstadt, N.J 743
Barker, H. T., chief of police, Conway, S.C 760
Barloga, Joseph, superintendent of police, Cicero, Ill 770
Baugh, R. O., cheif of police, Brea, Calif 735
Bear, W. J., captain of police, Minneapolis, Minn 743
Biaggi, Lt. Mario, national president, National Police Officers Association of America 929
Black, J. M., captain, Long Beach Police Department, Calif 715
Brower, Robert W., chief of police, The Dalles, Oreg 746
Budd, John W., chief of police, Phillipsburg, N.J 780
Burbank, Thomas D., director, Department of Public Safety, Baton Rouge, La 753
Burke, Edward F., chief of county detectives, Morristown, N.J 744
Campbell, L. J., chief of police, Columbia, S.C 689
Carlson, E. A., chief of police, Antioch, Calif 723
Carrel, Col. G. R., chief, Colorado State Patrol, Denver, Colo 701
Casey, Col. Dan J., superintendent, Law Enforcement and Safety Patrol, Lincoln, Nebr 771
Caylor, L. H., chief of police, Dayton, Ohio 734
Chambers, James L., chief of police, Concord, Calif 732
Clark, Lester D., chief of police, Menasha, Wis 752
Clark, Lester F., chief of police, Avon, Conn 739
Crandell, Everett M., chief of police, River Edge, N.J 756
Danigan, P. V., chief of police, Casper, Wyo 751
Davis, Tom, chief of police, Raleigh, N.C 779
Degenhart, Ralph V., chief of detectives, Buffalo, N.Y 781
Diekmeyer, John H., chief of police, Indian Hill, Ohio 697
Donald, Malcolm, chief of police, Westfield, Mass 693
Durbin, Max A., chief of police, Kirkwood, Mo 779
Ellison, Richard, chief of police, International Falls, Minn 745

Letter from—Continued Page
Ellsworth, H. A., chief of police, Eugene, Oreg 709
Felicetta, Frank N., commissioner, Department of Police, Buffalo, N.Y 705
Fetzer, Dix R. M., chief of police, Somerville, N.J 737
Forni, Fred, chief of police, Saugus, Mass 773
Fox, Robert C., chief of police, Mountlake Terrace, Wash 691
Franklin, Howard A., chief of police, Providence, R.I 707
Funk, Maj. F. M., chief of police, Winchester, Va 767
Gannon, Peter J., chief, Bureau of Navigation, Trenton, N.J 729
Geary, David Patrick, chief of police, San Buenaventura, Calif 720
Geer, Hilton, chief of police, Oklahoma City, Okla 721
Gillen, John V., chief of police, Binghamton, N.Y 751
Givens, Royce L., executive director, International Conference of Police Associations, Washington, D.C 699
Gleason, Everett, chief of police, Wausau, Wis 754
Gray, Charles W., chief of police, Upper Southhampton Township, Pa 757
Grieco, Theodore E., chief of police, Fort Lee, N.J 695, 781
Gunn, C. L., chief of police, Meridian, Miss 745
Hagy, R. G., chief of police, Tazewell, Va 715
Hale, E. C., chief of police, Lexington, Ky 741
Harris, R. A., chief of police, Portola, Calif 733
Hird, Harry W., chief of police, North Olmsted, Ohio 775
Hohman, Arthur C., Mariposa, Calif 720
Hopf, William V., legal counsel, Du Page County Chiefs of Police Association, Woodridge, Ill 694, 782
Howard, John P., chief of police, Wauwatosa, Wis 758
Hummer, Dana L., chief of police, Topeka, Kans 711
Huskisson, Harry C., chief of police, Knoxville, Tenn 751
Imes, Russell, chief of police, New Boston, Ohio 779
Ingersoll, John E., chief of police, Charlotte, N.C 700
Ivey, W. T., director of law enforcement, Spartanburg, S.C 769
Jenkins, Harry P., Chief of police, Elk Grove Village, Ill 769
Johnstone, Carlisle, chief of police, Orlando, Fla 780
Keene, Forrest E., chief of police, University Park, Dallas, Tex 776
Kelly, Oliver, chief of police, Newark, N.J 709
Kemerait, Edward G., chief of police, Geneva-on-the-Lake, Ohio 698
Kennedy, J. J., Jr., chief of police, Ringtown, Pa 778
Klaumann, Clyde P., chief of police, Carmel-by-the-Sea, Calif 714
Knutson, S. D., chief of police, Grand Forks, N. Dak 747
Kochanek, chief of police, Port Angeles, Wash 740
Koenig, Walter R., chief of police, Torrance, Calif 712
Kolesar, Andrew, chief of police, Streator, Ill 777
Konetsky, E. J., chief of police, Oil City, Pa 762
Kulig, Henry A., chief of police, Chicopee, Mass 762
Kummerle, George F., commissioner of public safety, Mount Vernon, N.Y 749
Livengood, William S., Jr., chief counsel, Pennsylvania Chiefs of Police Association, Harrisburg, Pa 703
Liddle, Howard C., chief of police, Lyndhurst, N.J 775
Lucas, Ferris E., executive director, National Sheriff's Association, Washington, D.C 874
Loveman, Robert B., Bogota Police Department, Bogota, N.J 768
McAuliffe, L. E., chief of police, St. Paul, Minn 690
McGoldrick, J. Howard, chief of police, Danbury, Conn 779
McGranaghan, Francis P., chief of police, Manchester, N.H 775
McMahon, Daniel F., commissioner of public safety, Yonkers, N.Y 696
McNamara, Donald I., Chief of police, Portland, Oreg 697
McWilliams, Sheldon T., chief of police, Saddle River Borough, N.J 755
Main, Charles V., chief of police, Frederick, Md 768
Marlowe, Harry H., sheriff, Eugene, Oreg 753
Matias, George J., chief of police, Cedar Rapids, Iowa 764
Matthews, Millard T., chief deputy, Police Department, Crown Point, Ind 714
Meyer, William C., chief of police, Cape Charles, Va 781
Michaelson, Morris, chief of police, Pierre, S. Dak 700
Miles, R. A., chief of police, Austin, Tex 725
Milke, Robert L., chief of police, Mequon, Wis 774

Letter from—Continued Page
Miller, D. L., chief of police, Grandview Heights, Ohio 771
Miller, Harold W., chief of police, Zenia, Ohio 722
Moline, James J., Police Department, St. Cloud, Minn 749
Moore, James E., chief of police, Virginia Beach, Va 759
Morton, H. R., chief of police, Fresno, Calif 695, 783
Mulcahy, James F., chief of police, Newport, Vt 759
Murray, Clifford G., chief of police, San Clemente, Calif 723
Nester, F. P., chief of police, Oak Park, Ill 766
O'Malley, Patrick J., chief of police, East Cleveland, Ohio 761
Pembridge, Delbert E., chief of police, Endicott, N.Y 741
Perkins, Lyle C., chief of police, Lake Oswego, Oreg 734
Peterson, Delbert E., chief of police, Grand Forks, N. Dak 748
Pollard, James, chief of police, Hermiston, Oreg 724
Pond, E. M., chief of police, Wichita, Kans 679
Ramon, F. C., chief of police, Seattle, Wash 740
Rayburn, K. O., director, Southwest Center for Law Enforcement Education, University of Oklahoma, Norman, Okla 709
Reynolds, William F., president, Maryland Chiefs of Police Association, Baltimore, Md 704
Riempp, William F., Jr., chief of police, Cornwells Heights, Pa 746
Robards, Sam L., chief of police, Springfield, Mo 739
Robinson, I. A., chief of police, Downey, Calif., letter to Hon. Del Clawson 784
Rodney, Henry W., New York, N.Y 765
Rosenau, Louis D., captain of police, Westport, Conn 733
Sayre, John B., chief of police, Summit, N.J 759
Scally, Francis M., chief of police, Allenhurst, N.J 747
Schaller, R. W., chief of police, Maplewood, Minn 699
Scott, Edgar E., Hyattsville, Md 688
Shananhan, James J., chief of police, Groveland, Mass 762
Shaver, Paul A., chief of police, Albuquerque, N. Mex 754
Sill, Allen W., president, California Police Chiefs Association, Inc., West Covina, Calif 704
Smith, Harold C., chief of police, St. Petersburg, Fla 770
Smith, P. R., captain, Police Department, Beverly Hills, Calif 736
Sorensen, Clyde A., chief of police, St. Louis Park, Minn 764
Stegan, Norman R., chief of police, Ramsey, N.J 761
Stone, Walter E., superintendent, division of State Police, North Scituate, R.I 723
Stottlemire, Howard, chief of police, Eaton, Ohio 702
Stover, John W., chief of police, Bristol, Va 765
Sweeney, Earl M., chief of police, Belmont, N.H 763
Van Wagoner, Robert L., executive secretary, Maryland Police Training Commission, Pikesville, Md 761
Walsh, David, chief of police, Manteca, Calif 753
Watkins, Sam, Police Department, Huntington, W. Va 717
Wehr, Alfred, chief of police, Seekonk, Mass 760
Wilkinson, Hugh H., chief of police, Tigard, Oreg 717
Wise, Anthony M., chief of police, Cudahy, Wis 777
Woodson, C. W., Jr., colonel, superintendent, Department of State Police, Richmond, Va 760
Yarbrough, E. Ed, director, Florida Sheriffs' Bureau, Tallahassee, Fla 714

Alexander, Donald, Nat'l. League of Cities re S. 917 1204
Barrow, Samuel W., trustee, Southern Ave. Shopping Center, Washington, D.C 592
Bennett, Richard O., McLean, Va 802
Decker, Herbert, attorney at law, Chicago, Ill 789
Dibble, Hon. Daniel F., mayor, Holyoke, Mass 791
Eacho, C. L., director of property protection, Seaboard Air Line Railroad Co., Richmond, Va 801
Fletcher, Donald K., manager, Distribution Protection, Smith Kline & French Laboratories, Philadelphia, Pa 798
Frisk, John, deputy director, Economic Opportunity Agency, State of West Virginia, Charleston, W. Va 804
Fritz, Mrs. Leonard S., Boulder, Colo 788

Letter from—Continued Page
Ginsberg, David, Washington, D.C. 786
Golden, Eithne, New York, N.Y. 802
Guthrie, C. Robert, Department of Criminology, California State College, Long Beach, Calif. 803
Hickman, John C., president, Rockville Chamber of Commerce, Rockville, Md. 790
Hutchison, J. Ralph, commissioner, State Tax Commission, Jefferson City, Mo. 798
Jacoppi, J. J., New York, N.Y. 800
Kanagawa, Wayne Y., president, Hawaii Probation, Parole and Corrections Association, Honolulu, Hawaii. 806
Langlois, Harold V., warden, Adult Correctional Institutions, State of Rhode Island, Providence, R.I. 785
Lansing, Robert E., instructor-coordinator, Police Science, College of San Mateo, San Mateo, Calif. 795
McKee, John, president, Dallas Crime Commission, Dallas, Tex. 952
Manning, Philip V., attorney at law, Brooklyn, N.Y. 800
Mason, Norman, clerk, Mecosta County Board of Supervisors, Big Rapids, Mich. 804
Mullins, James D., coordinator, police science program, Clatsop Community College, Astoria, Oreg. 794
National Guard Association of Wisconsin, resolution of. 806
Oldham, Charles Carlton, chairman, Citizens Advisory Committee for Community Improvements, Louisville, Ky. 797
O'Leary, William J., East Norwich, N.Y. 788
Petworth Citizens' Association, Inc., Washington, D.C., resolution. 805
Political Study Club, Washington, D.C., resolution. 805
Potter, Anthony N., Jr., security manager, Bamberger's, Morristown, N.J. 795
Rotroff, Robert W., president, Alexandria Chamber of Commerce, Alexandria, Va. 792
Russell, Hon. Richard, enclosing a resolution from City Commission of Quincy, Fla. 784
Shuman, Charles B., president, American Farm Bureau Federation, Washington, D.C. 786
Sinopoli, Joseph A., attorney at law, Yonkers, N.Y. 791
Sivertsen, Elmer T., director, National Association of Credit Management, New York, N.Y. 793
Smith, William T., director of probation, State of New York, Albany, N.Y. 804
Stoddard, Hon. Robert L., mayor, Spartanburg, S.C. 799
Tyree, Norman L., Philadelphia, Pa. 778
Willey, George W., Fort Stockton, Tex. 789
Wong, Mrs. Kee Soon, Honolulu, Hawaii. 796
Editorials, newspaper and magazine articles—
"Wiretapping Justified," editorial, Progress Bulletin, Pomona, Calif., March 14, 1967. 524
"Ammunition for the 'War on Crime,'" editorial, the Evening Star, Washington, D.C., Feb. 20, 1967. 1182
"Our Crime-Ridden City," editorial, the Evening Star, Washington, D.C., March 1, 1967. 1183
"Court Decisions Hurt Crime Fight," McLellan Smith, Washington correspondent, Delaware State News, Dover, Del., March 20, 1967. 1184
"Imbalance in Favor of the Criminal," editorial, American, Austin, Tex., March 21, 1967. 1184
"The Court and the People," editorial, Star, Indianapolis, Ind., March 22, 1967. 1185
"Crime is Encouraged by Lenient Courts," editorial, Post-Herald, Beckley, W. Va., March 28, 1967. 1185
"Why Not Fight Crime?", editorial, Independent Record, Helena, Mont., March 30, 1967. 1186
"Crime—What's That?", editorial the Evening Star, Washington, D.C., May 22, 1967. 1186
"Crime-Law Shift Urged in Britain," the New York Times, June 2, 1967. 1187

Editorials, newspaper and magazine articles—Continued
Page
"Message from Britain," editorial, the Evening Star, Washington, D.C., June 10, 1967 1188
"Government by Judges," James J. Kilpatrick, the Sunday Star, Washington, D.C., June 4, 1967 1189
Excerpts from editorial, Chicago Tribune, Chicago, Ill., June 11, 1967 1190
"Very Wrong," editorial, Washington (D.C.) Daily News, June 13, 1967 1190
"Rhode Island versus the Supreme Court," editorial, Chicago (Ill.) Tribune, June 24, 1967 1191
"Crime in the District Rises 41.1 Percent During May," Washington (D.C.) Post, June 21, 1967 1191
"Crime Statistics," editorial, the Evening Star, Washington, D.C., June 27, 1967 1192
"Eavesdropping Decision," editorial, the Evening Star, Washington, D.C., June 13, 1967 1192
"Bugging Advocate," editorial, the Evening Star, Washington, D.C., July 4, 1967 1193
"The Case for Wiretapping," the Washington (D.C.) Daily News, editorial, February 21, 1967 1194
"Wiretapping a Potent Weapon," editorial, Tribune-Democrat, Johnstown, Pa., February 27, 1967 1194
"Wiretapping Has a Place," editorial, Times, Asheville, N.C., March 11, 1967 1195
"Why the Horror of Police Wiretapping?", editorial, Times-Delta, Visalia, Calif., March 13, 1967 1195
"No Wiretaps Wanted?", editorial, the Evening Star, Washington, D.C., March 17, 1967 1196
"Crime Is Everybody's Business," editorial, Police, May–June 1967 1139
"Much Ado About Nothing," editorial, Police, July–August 1966 1139
"Sheltering Justice," editorial, Police, November–December 1966 1140
"Who's Being Protected," editorial, Times Newspapers, April 1, 1965 1141
"Bring Them to Trial," Philadelphia Inquirer, editorial, January 17, 1965 1142
"Is There No Protection Under the Law?", editorial, Times Newspapers, August 4, 1966 1142
"The Legality of Confessions," editorial, Philadelphia Inquirer, Philadelphia, Pa 1143
"Murder at the Corner Grocery," editorial, Philadelphia Inquirer, Philadelphia, Pa 1144
"When the Police Are Handcuffed," editorial, Philadelphia Inquirer, Philadelphia, Pa 1144
"Police and Suspects: New Rules," editorial, Philadelphia Inquirer, Philadelphia, Pa 1146
"Advising the Supreme Court," editorial, Evening Bulletin, Philadelphia, Pa 1146
"Speed Required for True Justice," editorial, Times Newspapers, October 7, 1965 1145
"Confessed Slayer of Wife and Five Children Freed," the New York Times, February 21, 1967 8
"Gangs in the Street," editorial, Philadelphia (Pa.) Evening Bulletin, July 24, 1966 1148
"A Mental Patient and His Gun," editorial, Philadelphia (Pa.) Inquirer 1148
"The Decline of Morality," editorial, Philadelphia (Pa.) Inquirer, August 14, 1966 1147
"Police and the People," editorial, Philadelphia (Pa.) Inquirer, October 28, 1963 1147
"Weinrott Invites U.S. Justices Here to See Impact of Free Counsel Rule," article 1149
"Terrorism Making Business Unsafe," the Evening Star, Washington, D.C., June 15, 1967 881
WMAL/am/fm/tv editorial broadcast July 6, 1967 1197

Editorials, newspaper and magazine articles—Continued
Page
"What the Bug Told at 168 Atwells Avenue," Providence Journal, Providence R.I., May 20, 1967 942
"Clark Says Rise in Crime Is Small," the New York Times, New York, N.Y., May 19, 1967 941
The New York Times, July 2, 1967, article 962
FBI Law Enforcement Bulletin, October 1966, excerpt 965
The New York Post, July 6, 1966, article 966
Article from New York Times, Nov. 23, 1966, re wiretapping 982
Article from the New York Times, January 30, 1967, re wiretapping 983
Article from the New York Times, March 30, 1967, re organized crime 985
Article from the New York Times, June 26, 1967, re Wm. O. Bittman 986
Article from South Bend Tribune, Nov. 16, 1966, re wiretapping 987
Articles from Chicago Sun-Times, re Las Vegas "Skimming Operations" 988
"The Doors Are Open, The Enemy Can Walk In," Dr. Max Rafferty 692
"Ramsey Clark, and Crime," Washington, D.C., Daily News, July 12, 1967 1124
"Phony War on Crime," The Evening Star, Washington, D.C., July 12, 1667 1124

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

TUESDAY, MARCH 7, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan, Ervin, Hart, Kennedy of Massachusetts, Hruska, and Thurmond.

Also present: Wiliam A. Paisley, chief counsel; James C. Wood, assistant counsel; Paul L. Woodard, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order. The Chair wishes to make a brief statement. First I wish to welcome to the committee the new members, the distinguished Senator from Mississippi, the senior Senator from Massachusetts, and the senior Senator from South Carolina. These three members of the Judiciary Committee have recently been appointed to this subcommittee, to strengthen it and to enlarge its membership because of the importance of the work that the committee will have to do at this session of the Congress, and in the future.

There have already been, I believe, some 13 bills referred to this subcommittee concerning crime and related problems. It is anticipated that other bills will be introduced and referred to the committee, and therefore there appears to be a rather heavy workload ahead of us at this session of the Congress.

In view of the gravity of the crime problem in this country, of which I think we are all becoming cognizant, we will have to give serious and constant study to the difficulties that confront us in trying to find ways, methods, and the means legislatively speaking to bring about a reduction in crime or at least arrest the rate of increase in order to bring the amount of crime in this country down to tolerable proportions, to where society can be reasonably safe.

This committee has a tremendous task. It is a great burden, I think, upon the Congress of the United States to diligently search for legislative remedies, and that burden, that challenge, is also to the administrative branch of the Government, and in my judgment, to the judicial as well, because there must be a change. The rate of increase in crime cannot continue if our society is to remain safe and secure and our people protected against the ravages of crime.

Today this subcommittee begins a series of hearings to consider important legislative proposals dealing with crime and law enforcement. It is altogether fitting and proper, I believe, that these hearings begin during Law Enforcement Week when we join in offering a well-earned bow to the hard-working police departments of the Nation.

The recurring incidence of violent crimes and the mounting crime rate, of which the American people are now fully cognizant, has been brought into sharp focus in recent months, notably by the reports of the President's District of Columbia Crime Commission and the President's National Crime Commission. The extent to which crime and the fear of crime have narrowed the scope and freedom of activities of law-abiding citizens, and affected their safety and the security of their property, was illustrated by a recent survey conducted by the National Crime Commission in high crime areas of two of our largest cities. As reported by the President in his message on crime in America on February 6, the survey indicated that 43 percent of the people interviewed said they stayed off the streets at night, 35 percent were afraid to speak to strangers, 21 percent used only cabs and cars at night, and 20 percent would like to move to a safer neighborhood. All because of their fear of crime.

The President also cited some astonishing findings of the National Crime Commission which illustrates the pervasive nature of crime in the country. Over 7 million people each year come into contact with some agency of criminal justice. Over 400,000 persons are confined on any given day in corrective institutions, at a cost of $1 billion a year. This despite the fact that most crimes are never reported; it is estimated that from two to 10 times as many crimes are actually committed as are reported.

These facts dramatically underline the critical crime problem in America. As the President so aptly stated, the existence of the public malady of crime is not open to question. Neither is there any doubt that it is our duty to cure it with every means at our command. We have the comprehensive recommendations of the most expert people in the field as to how our vast available resources of knowledge, money, and initiative can best be utilized in a concerted nationwide war against crime.

I am hopeful that concerted efforts and the laws that we enact at this session of the Congress will contribute materially toward reducing crime in our county to tolerable proportions. It is quite probable that these hearings and the bills we will be considering will mark the turning point in the struggle against lawlessness in this Nation. I sincerely hope that will be so.

Three bills that the subcommittee will consider are of particular significance. They are S. 674, which concerns the admissibility in evidence of voluntary confessions; S. 675, which would prohibit wiretapping except on authority of the President to protect the Nation from attack or hostile action by foreign powers, and except in investigations of organized crime, and certain specified heinous crimes, under court order and after a finding of probable cause; and S. 678, which would outlaw the Mafia and other organized crime syndicates. Another of the bills to be considered is S. 917, the Safe Streets and Crime Control Act of 1967, which is the administration bill, a long-range at-

tack upon the crime problem, which would provide planning and program grants to States and local governments to assist them in modernizing their law enforcement agencies and techniques and would focus further research on the causes, prevention, and control of crime.

In addition to the bills I have described, other bills relating to crime and law enforcement have been referred to the subcommittee. I think it would be helpful to have the list of bills, with their titles and sponsors, inserted in the record immediately following my remarks and those of other members of the subcommittee. That will be so ordered without objection.

Although it is not our intention to consider all of these bills in detail at these opening hearings, I included them in the official announcement of the hearings so that any witness who wishes to comment on any of them may do so.

Many witnesses have come here from distant cities and States, and I feel that it is only fair while they were here, to give them the opportunity to make their comment about any bill pending before the committee in which they have an interest, or in which they feel they could make some contribution.

In preparing for hearings on the three bills I first mentioned—S. 674, on confessions; S. 675, on wiretapping; and S. 678, outlawing the Mafia—I directed the staff early this year to send copies of the measures to the prosecuting attorneys of all the large cities and metropolitan areas in the country. The purpose was to acquaint them with these proposals, to seek their views with respect to them, and to solicit their suggestions and recommendations regarding other aspects of law enforcement where legislaiton may be needed. Many of them have responded and some of them will testify at these or later hearings. Statements from others will be inserted in the record.

I should like to point out that the sponsors of these measures are not irrevocably committed to support them in their present form. I shall be glad to support any amendments that may be offered which, in my judgment, improve upon any of the bills. Likewise, if alternative proposals are offered which, in my opinion, have greater merit, I shall support them. This is particularly true in the case of S. 674, relating to the admissibility in evidence of voluntary confessions. As unequivocably convinced as I am that something must be done to alleviate the baleful effects of the Supreme Court's 5-to-4 *Miranda* decision, I recognize that the problem of how to balance the rights of the individual against those of society is a particularly sensitive one requiring careful study and reflection before remedial legislation can be formulated. As I recently stated on the floor of the Senate, Congress can do one of four things with reference to the problem created by the *Miranda* and other similar 5-to-4 decisions: It can pass S. 674, or some similar measure; it can limit appellate jurisdiction of the Supreme Court and jurisdiction of other Federal courts under article III of the Constitution; it can submit a proposed constitutional amendment; or it can do nothing. But S. 674, will serve as a basis for a careful study of the problem and for the gathering of information that will enable us to determine what legislation is needed to secure the rights of the individual without unduly hampering the legitimate activities of our law enforcement officials.

The responsibility for the enactment of adequate laws to protect society against crime today presents one of the greatest domestic challenges we have faced in recent years. Congress must act forcefully to meet that challenge. The subcommittee intends to proceed expeditiously to formulate and report legislation in this area, insofar as we can, in the hope that it will receive prompt and favorable action in the Senate and ultimately be enacted into law.

In closing, I should note that the importance attached to the mounting crime problem by the Senate Judiciary Committee is illustrated by the recent expansion in the membership of this subcommittee on Criminal Laws and Procedures to which I have already referred. The subcommittee is pleased to welcome Senators Eastland, Edward Kennedy, and Thurmond. Each has indicated a particular concern for the issues facing the subcommittee and I am sure each of them will make significant contributions to the work we are doing.

Senator Ervin, do you have any statement?

Senator ERVIN. Mr. Chairman, you are to be commended for calling these hearings on legislative proposals to combat crime. I strongly agree with you that the Congress has a pressing duty to respond to the challenge of the crime crisis, and these hearings and the proposals to be considered here offer a fine opportunity for a strong start in discharging this duty.

I shall confine my brief remarks to four of the proposals that I consider to be of particular significance: S. 674, concerning the admissibility in evidence of confessions, S. 675 on wiretapping, S. 916, a bill to consolidate Federal correction functions, and S. 917, the proposed Safe Streets and Crime Control Act.

S. 674, providing for the admissibility of voluntarily given confessions in criminal prosecutions in Federal courts, is directed at the unjustified handicaps placed upon law enforcement officers and trial courts by recent decisions of the U.S. Supreme Court. Two of those decisions, *Escobedo* v. *Illinois* and *Miranda* v. *Arizona*, both products of a Court split, 5 Justices to 4, have stretched the fifth and sixth amendments far beyond their true meaning and, in effect, have made it virtually impossible to secure the conviction of self-confessed criminals in cases where the prosecution must rely upon their confessions of guilt or incriminating statements. There is no question that these decisions have resulted in the freeing of multitudes of criminals of undoubted guilt and have unduly hampered legitimate law enforcement activities. The situation must be rectified and the duty to do so devolves rightly upon the Congress.

Although I favor the substance of S. 674 and strongly feel it is preferable to the present situation, I do not believe the problem can be rectified by such a simple legislative enactment. It is true that the *Miranda* opinion invites legislative action on the subject of police interrogation practices. However, the restrictions set forth in that decision and the *Escobedo* decision are said to be required by the Constitution, and hence any legislative enactment might be deemed by the Supreme Court to be unconstitutional to the extent that it failed to embody rules of police conduct at least as restrictive as those in the *Miranda* and *Escobedo* decisions.

I have, therefore, expressed the opinion that it will require either some judicial repentance, which I consider to be unlikely, or a constitu-

tional amendment to protect the American people from the consequences of those rulings. For that reason, I introduced some days ago a joint resolution, Senate Joint Resolution 22, proposing a constitutional amendment providing that confessions shall be admissible in evidence in State and Federal criminal prosecutions if found by the trial court to have been given voluntarily, and restricting the jurisdiction of the Supreme Court and other Federal courts to reverse or otherwise disturb a ruling by a State or Federal trial court admitting a confession in evidence as voluntary if the ruling is supported by competent evidence.

However, since introducing the proposed constitutional amendment I have come to the conclusion that Congress has a more direct route by which it can rectify the problem. It is provided in article III, section 2 of the Constitution that the Supreme Court "shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." It seems clear that under article III of the Constitution, Congress has the constitutional power to define the appellate jurisdiction of the Supreme Court and to define the jurisdiction of all inferior courts created by it under this article of the Constitution. I am, therefore, introducing today a bill which would remove the jurisdiction of the Supreme Court and inferior Federal appellate courts to reverse or otherwise disturb a ruling by a Federal trial court admitting a confession as voluntarily made if such ruling is supported by any competent evidence. The bill would also similarly limit the jurisdiction of Federal courts to review, reverse or otherwise disturb a ruling by a State trial court that a confession is voluntary and admissible if such ruling has been upheld by the highest appellate court of that State.

It is my understanding that some of the witnesses have been given copies of my proposed constitutional amendment and the bill I have just described. Thus, although neither is officially before this subcommittee, I hope we will have the benefit of the testimony of these witnesses as to which of the three avenues open to the Congress would be the most advisable method of dealing with the problems raised by the *Escobedo* and *Miranda* decisions. I shall look forward particularly to the testimony on this point.

The second bill in which I have a particular interest is S. 675, on the subject of wiretapping. The bill would prohibit all wiretapping except pursuant to Prsidential order for national security purposes and except where authorized by court order, under strict procedural safeguards, for the purpose of the investigation or prosecution of certain crimes. I fully agree that legislation to define the legal limits of wiretapping is urgently needed. However, I am not convinced of the advisability of allowing an exception to the wiretapping ban in investigations and prosecutions of organized crime. For this reason, I recently joined in sponsoring S. 928, the administration's proposed Right to Privacy Act of 1967, which would ban all wiretapping and eavesdropping except for national security purposes. I am aware, however, of the insidious menace of organized crime in America and of the urgent need to bring all legitimate law enforcement resources to bear against this national enemy. Any legislation on this subject will necessarily have to strike an extremely delicate balance between the rights

78-433—67——2

of the individual to personal privacy and the requirements of public security. I shall therefore listen with great interest to the testimony on the subject of the need for wiretapping authority for law enforcement purposes in the area of organized crime. Should such authority prove necessary, I shall certainly hope that it will be strictly limited and surrounded with every conceivable procedural safeguard to protect against abuse.

The third bill of particular interest to me is S. 917, the Safe Streets and Crime Control Act of 1967, proposed by the President to implement some of the recommendations of the National Crime Commission. The bill would provide for grants to State and local governments to assist them in improving the techniques, education, and facilities of their law enforcement personnel. Although there would be no Federal effort to interfere unduly with State and local law enforcement efforts, the grant program could be used effectively to encourage and assist improvement and modernization throughout the entire national system of law enforcement and criminal justice. This is a highly laudable goal and deserves the full support of the Congress. As the report of the President's National Crime Commission points out, the many specific needs of the criminal justice system are interlocking. The need for manpower, for better equipment, for more modern facilities and techniques, for programs, for research—each of these needs is dependent upon the other. The proposed Safe Streets Act would provide the means for injecting Federal assistance into the criminal justice system in such a way as to do the most possible overall good, having in mind the specific needs and priorities of the States, cities, and regions affected.

Finally, I would like to refer briefly to S. 916 which would consolidate all Federal corrections functions in a unified U.S. Corrections Service under the supervision of the Attorney General. A similar proposal before the 89th Congress, S. 3065, incurred the opposition of the Judicial Conference of the United States and of many individual Federal judges and probation officials. The opposition was based on general misgivings about the advisability or feasibility of establishing a unified correctional service and on particular objections to transferring the Probation Service from the courts to the Justice Department. S. 916 purports to meet those objections by continuing the probation service as a part of the court system with the responsibility for preparing presentence reports for the use of district judges. Supervision of probationers and parolees would be transferred from the Probation Service to the Justice Department.

Although the Judicial Conference has not yet taken an official position on the bill, indications are that the Federal judiciary and probation officials consider S. 916 to be fully as objectionable as S. 3065. Clearly, the bill raises many serious questions which I hope will be resolved by the testimony of the Attorney General and other witnesses testifying on the bill.

I have a statement that I intend to make on the floor of the Senate today in introducing the bill, limiting the jurisdiction of the Federal courts; and I also have a copy of the bill. I would like to put them in the record, Mr. Chairman, with the request that the committee consider this bill along with the other bills mentioned by you, because in the next day or so I am sure this bill will be referred to the subcommittee.

Senator McCLELLAN. Let the statement of the Senator be printed in the record at this point, and let the bill, to which he refers, be printed in the record with the other bills to which I have referred this morning.

(The statement referred to follows:)

PROPOSED BILL RELATING TO THE ADMISSION OF VOLUNTARY CONFESSIONS OF GUILT IN CRIMINAL TRIALS

Senator ERVIN. Mr. President, on behalf of myself and Mr. Jordan of North Carolina, Mr. Thurmond, Mr. Fannin, Mr. Hickenlooper, Mr. Talmadge, Mr. Hollings, Mr. Byrd of Virginia, Mr. Bennett, Mr. Hansen, Mr. Long of Louisiana, Mr. Eastland, Mr. McClellan, Mr. Stennis, Mr. Byrd of West Virginia, Mr. Hill, Mr. Hayden and Mr. Ellender, and Mr. Dodd, I introduce for appropriate reference a bill which would have the effect of re-establishing the very sensible and sound rule that the voluntary confession of an accused in a criminal case shall be admissible in evidence against him on his trial.

Some days ago I introduced a constitutional amendment, S. J. Res. 22, to rectify the recent Supreme Court decisions in the *Escobedo* and *Miranda* Cases. These two decisions stretch the words of the Fifth and Sixth Amendments far beyond their true meaning and virtually make it impossible to secure the conviction of self-confessed criminals in cases where the prosecution has to rely upon their voluntary confessions of guilt. Since introducing the constitutional amendment I have come to the conclusion that Congress has a more direct route by which it can afford protection to the law-abiding citizens against the consequences of these two decisions.

It is to be remembered that these two decisions, *Miranda* and *Escobedo*, were decisions in which four of the nine Justices filed vigorous dissents. Justice Harlan appraised the majority decision in the *Miranda* Case aright when he declared in his dissenting opinion that "the decision of the court represents poor constitutional law and entails harmful consequences for the country at large."

It is provided in Article III Section 2 of the Constitution that the Supreme Court "shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." It seems clear that under Article III of the Constitution, Congress has the constitutional power to define the appellate jurisdiction of the Supreme Court and to define the jurisdiction of all inferior courts created by it under this article of the Constitution.

For this reason, I have decided to take a direct approach rather than to rely solely upon the constitutional amendment route. My bill would curtail the jurisdiction of the federal court in cases involving the admission of voluntary confessions, and I can see no other practical way by which we an afford protection to the law-abiding citizens against the present tendency of five of the nine Justices to render decisions which free self-confessed criminals from the consequences of their acts.

I think my bill protects the rights of the accused as far as they ought to be protected. Under Section 1 involving confessions in the Federal Court, the accused has at least two days in court, one in the Federal District Court and the other in either the United States Court of Appeals or the Supreme Court. Of course, this section puts a necessary limit on the power of the Court of Appeals of the Supreme Court to review the case by stating that they cannot review the ruling admitting a confession if the trial court finds it to have been voluntarily made. Surely, the trial judge who sees the witnesses and can observe their demeanor upon the stand has a far better opportunity to reach a correct decision than the ivory-towered judges who read a cold printed record.

The second section of my bill allows the accused at least two days in court, one in the trial court and the other in the highest appellate court of the State having jurisdiction to review the case. It provides, in effect, that the decision of the highest court of the State affirming the ruling of the state trial court admitting a confession as voluntary cannot be reviewed by either the Supreme Court or any other Federal Court. This will put an end to the endless number of habeas corpus writs by Federal District Courts in cases where the Supreme Court of the State has affirmed the ruling of the state trial court admitting confessions in evidence in criminal cases.

The reason which prompted my introduction of this bill, the rising crime rate and the unrealistic rules which the Supreme Court has placed on our police, are the same as those which prompted my introduction of S. J. Res. 22 dealing with

the *Miranda* case. When I introduced this amendment I made several statements which detailed my objections to the *Miranda* case and gave my reason for the urgent need to rectify this decision. These statements are found on Pages S635–S639 of the Congressional Record for January 23, 1967.

Already, the effects of the *Miranda* case are being felt around the country. Reports from many district attorneys from all over our nation indicate that the percentage of criminal suspects who now refuse to make confessions or statements is greater than before the *Miranda* case.

Recently, in New York a man who admitted killing his wife and five children was set free because the New York Court could not use his confession because of the *Miranda* decision. I would like to associate myself with New York District Attorney Aaron A. Koota's comments on this case. He said:

"The United States Supreme Court has weighted the scales of justice heavily in favor of the criminal suspect. I am not a prophet, but the handwriting on the wall indicates a trend on the part of the court to outlaw all confessions made to police. If and when that melancholy day comes, the death knell of effective criminal law enforcement will have been sounded."

In conclusion, Mr. President, I would like to repeat my final remarks when I introduced S. J. Res. 22: I urgently appeal to you to join me in supporting this bill. Our thousands of dedicated and honorable law enforcement officers deserve this vote of confidence; and the people of America, sick and tired of criminals going unpunished and crime increasing, demand it.

I ask unanimous consent that a copy of my proposed bill and a news story from the New York Times of February 21, 1967, be printed at this point in the record.

(The article follows:)

[From the New York Times, Feb. 21, 1967]

CONFESSED SLAYER OF WIFE AND FIVE CHILDREN FREED—JUDGE IN BROOKLYN CONFORMS RELUCTANTLY WITH HIGH COURT PROTECTION OF DEFENDANTS

(By F. David Anderson)

A man who admitted slaying his wife and five small children walked out of a Brooklyn courtroom yesterday, free, because the only available evidence against him was his own confession.

The defendant, Jose Suarez, 22 years, a factory worker, was arrested on April 27, 1966. Questioned by the police, he signed a statement, acknowledging having killed his common-law wife, Maria Torres, 24; their children, Yvette, 4; Nancy, 3; and Jose 11 months, and also Harry Santiago, 5, and Maria Antonio, 2.

Suarez said in the confession that after his wife had cut his leg with a knife during an argument, he seized the weapon and stabbed her and the children more than 100 times. That was on April 23 in their home at 301 Hooper Street.

THREE KEY RIGHTS AT ISSUE

On June 13 the United States Supreme Court ruled in the landmark *Miranda* case that a defendant in custody must be informed of his rights. These include the right to remain silent if he wishes to, the right to consult a lawyer and the right to a warning that anything he says may be used against him at trial.

Suarez was advised on none of these points, since New York State law at the time did not require it. However, the *Miranda* decision applied to him, inasmuch as it was made retroactive to cover all defendants who had not yet been tried.

Last month, three men were freed in murder trials here by State Supreme Court justices after rulings that they had not been informed of their right to counsel before they confessed.

On Jan. 20 Charles Wright of 554 West 150th Street won dismissal of homicide charges, but he was sentenced to 30 to 40 years in prison on a plea of guilty to first-degree rape.

Ten days later, Marvin Fitzgerald of 620 Lexington Avenue and Billy Bunche, no known address, were released in a similar case. Bunche was freed, but Fitzgerald was held on a charge of violating probation.

SEVEN-MONTH SEARCH IN VAIN

For seven months the office of District Attorney Aaron A. Koota and the police sought, without success, to obtain evidence other than the confession against

Suarez. A grand jury finally indicted him on Nov. 4. One week later, with a lawyer, Suarez retracted the confession and pleaded not guilty.

"I daresay that if his questioning had conformed with the requirements of *Miranda,* this defendant would be in Sing Sing prison serving several life sentences," Assistant District Attorney Nathan R. Schor told the court yesterday. "I am now constrained to ask for dismissal of the indictment."

Suarez stood at the defense table, his head bowed. At no time did he speak or even look up. Frank Ortiz, his lawyer, was beside him.

State Supreme Court Justice Michael Kern then spoke.

"Unfortunately the general public doesn't understand the law. Even an animal such as this one, and I believe this is insulting the animal kingdom, must be protected with all the legal safeguards.

"This is a very sad thing. It is so repulsive it makes one's blood run cold and any decent human being's stomach turn to let a thing like this out on the street."

Leaning forward, Justice Kern addressed the prosecutor. "Are you sure, I ask you most seriously, whether his [confession] is all you have in this case?"

Mr. Schor replied: "I say reluctantly, with a heavy heart, that we simply have no alternative. There is no other evidence."

Suarez was led away in handcuffs for routine processing before his release. An hour later he was a free man.

Mr. Ortiz spoke briefly outside the court. "He's absolutely not going to stay here," he said of his client. "Someone might kill him. His father is coming from Puerto Rico to take him home. This is terrible, I agree, but what can you do under the circumstances?"

Last night Mr. Koota issued the following statement:

"The United States Supreme Court has weighted the scales of justice heavily in favor of the criminal suspect. I am not a prophet, but the handwriting on the wall indicates a trend on the part of the court to outlaw all confessions made to police. If and when that melancholy day comes, the death knell of effective criminal law enforcement will have been sounded."

Senator McCLELLAN. I am assuming, Senator, this bill will be referred to this subcommittee. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I want to add my welcome to that which you expressed to the three newly assigned members of this subcommittee, and also to the newly confirmed Attorney General, who will testify shortly before this Judiciary Committee for the first time since his confirmation.

Senator McClellan has detailed the painful and hard facts, the burgeoning crime menace in this country, and I shall not repeat those figures. We know that crime is a truly national problem.

We have some 14 or 15 bills before us. Five of them were introduced as a package by the chairman of this subcommittee, Mr. Chairman. Mr. Chairman, I would be especially eager to go ahead with the bill in which you treat with the *Miranda* decision. The Supreme Court itself had said in the course of their opinion that:

> 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.

In view of the experience we have had under the *Escobedo* and *Miranda* cases, I do believe that your bill, S. 674, is a considered and effective response to this cause.

The wiretapping bill ought to get very serious and vigorous action on our part. Last year Attorney General Katzenbach said, among other things, about the present state of the law:

> The present law gives us the worst of all possible solutions. The time has long since passed for Congress to take action to curtail continuing abuses in this field.

The safe-streets measure, S. 917, would establish a major Federal program of financial assistance to the States to build up their law enforcement and criminal justice system. It is my understanding that if this bill will be enacted in the general fashion and style in which it was introduced, that it will replace the act of 1965 known as the Law Enforcement Assistance Act.

Mr. Chairman, there are other bills, of course, which will have to be and will be accorded very serious and thorough consideration by the subcommittee, and I want to pledge to the chairman every assistance I can render in this effort, and at the same time I wish to congratulate and commend him for launching this very fine effort.

(The prepared statement submitted by Senator Hruska follows:)

REMARKS OF SENATOR ROMAN L. HRUSKA

Mr. Chairman, at the outset, I wish to extend a sincere welcome not only to the three new members of this subcommittee, the distinguished Senator from Mississippi (Mr. Eastland), the distinguished Senator from South Carolina (Mr. Thurmond), the distinguished Senator from Massachusetts (Mr. Kennedy); but also to our good friend and newly confirmed Attorney General, Mr. Ramsey Clark.

I feel certain that these new members will make substantial and constructive contributions to the work which is ahead of us. Based on his past record and his demonstrated ability, I know that we will receive the full cooperation of the new Attorney General.

This subcommittee, under the leadership of the distinguished Senator from Arkansas (Mr. McClellan), is engaged in a most serious effort. We are attempting to bring the available resources and talents to bear on the critical problems of crime. In this effort there is no room for partisan politics. In the deliberations of the subcommittee since its inception more than a year ago, we have worked together without partisan bickering. I feel confident that we will continue to do so in the future.

It is particularly fitting that we begin the current series of hearings during National Law Enforcement Week. In my view, there could be no better tribute to the hundreds of thousands of selfless men and women who make up our law enforcement community than to translate our deliberations here into workable and effective laws.

Senator McClellan has detailed the painful and hard facts of the burgeoning crime menace in this country. They are well known to everyone in this room. I shall not repeat them. I can only say that they serve to remind us of the urgency of our tasks.

We are here today to do something about crime.

We know that crime is a truly national problem. Three Presidential Messages in the past three years attest to this fact. The studies and findings of two Presidential Commissions have detailed its scope and given us insight into the nature of the multitude of problems we face.

The first order of business before the subcommittee is to gather the evidence and take action on several pending measures of top priority. Chairman McClellan has introduced a package of five bills which must necessarily command our immediate attention. Two of these, S. 676 and S. 677, are identical to bills which passed the Senate last year, but were not acted upon by the House. They have to do with the obstruction of federal criminal investigations and the extension of witness immunity provisions to four more federal criminal statutes. They are in the process of being reported from the subcommittee.

The three other bills will receive prime attention at these hearings.

The first, S. 674, would make a major step in removing the crisis of confusion which now surrounds the central issue of admissibility in evidence of confessions.

S. 675 would prohibit wiretapping except in national security and specified criminal cases.

The third bill, S. 678, would outlaw the Mafia and other organized crime machines.

Also under consideration will be S. 917, the proposed Safe Streets and Crime Control act of 1967. The bill would direct federal financial resources to assist states and local governments in streamlining law enforcement and criminal justice systems to respond more effectively to the crime menace. It would also establish a broad based federal research program.

Several other pending bills are also under consideration and will receive serious attention.

Mr. Chairman, I am particularly eager that we move ahead with your bill to provide for the admissibility of certain confessions in the federal system. The Supreme Court in its controversial *Miranda* Decision invited legislative action when it stated:

"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."

In my view the bill before us, S. 674, is a considered and an effective response to this call. It is a common sense approach. It rests the question of admissibility on the test of voluntariness and leaves to those most able to ascertain the true facts—the trial judge and the jury—whether constitutional safeguards have been met in the circumstances surrounding the obtaining of the confession. While the bill before us applies only to the federal system, I feel confident it will withstand any challenge to its constitutionality and will provide a model for similar action at the state level.

Your wiretapping bill, S. 675, gets at the difficult problem of wiretapping. I have co-sponsored it and generally support it. However I feel the ban contained in this bill should also apply to eavesdropping. I now feel it should be prohibited generally with well defined exceptions with adequate and effective controls on its authorization and use at state and local levels.

The need for federal legislation in the wiretapping area is clear. Last year, in testimony before this subcommittee, Attorney General Katzenbach described the present situation most accurately when he said:

"I agree with my predecessor that the present law regarding wiretapping is intolerable. In fact, I would go so far as to state that it would be difficult to devise a law more totally unsatisfactory in its consequences than that which has evolved from section 605 (of the Federal Communications act of 1934).

". . . The present law gives us the worst of all possible solutions. The time has long since passed for Congress to take action to curtail continuing abuses in this field."

Highly publicized events occurring since that time have reinforced Mr. Katzenbach's view.

The safe streets measure would establish a major federal program of financial assistance to the states to build up their law enforcement and criminal justice systems. It is based on the experience in the administration of the Law Enforcement Assistance act of 1965 and on the findings of the President's Commission on Law Enforcement and the Administration of Justice. If enacted in suitable substance and form, it would replace the Act of 1965 referred to. Although I am in general sympathy with the bill and have co-sponsored it, I feel it can be strengthened and improved in several respects.

Mr. Chairman, the hearings which we begin this week, in my opinion, should be the first of several this year directed at major crime problems. Particular emphasis should be placed on the threat of organized crime. We should examine the nature and extent of crimes of violence and crimes against property, not only as to their nature but to ascertain what role, if any, the federal government can properly play in combating them.

For example, bank robberies and burglaries often are successful because of inadequate security and protective systems. Many times the federal government must stand the loss through its various insurance programs. My information is that with no standards or requirements to adhere to, there is often a wide discrepancy as to effort taken to prevent, deter or detect criminal assaults on banking institutions. Perhaps there is a need for federal action in this area. In any event, it is a question which is worthy of serious study.

Again, Mr. Chairman, I want to congratulate you on outstanding work. I will do what I can to assist in your efforts.

Senator McCLELLAN. Thank you very much, Senator.

Senator Hart.

Senator HART. Mr. Chairman, I have no statement. I think the opening sentence in the *Miranda* opinion underscores the responsibility that this committee faces.

Chief Justice Warren in opening that opinion said:

> The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence, the restraints society must observe consistent with the Federal Constitution in the prosecuting of individuals for crime.

Whatever the statistics show today, whatever alarms the editorial writer's voice, we ought not be confused to think that this is unique in our experience as a society. People seeking to organize themselves have always been confronted with the problems that are raised currently by these opinions. The extraordinary difficulty is of balancing freedom and security, and I am not sure where I will wind up, but I sense I will not end up on Senator Ervin's bill.

Senator ERVIN. I might state that my bill is quite in harmony with the opinion of four of the Justices, because Justice Harlan said in the dissent something as strong as I say it. He said that the *Miranda* case is poor constitutional law, and no truer statement has ever been made.

Senator MCCLELLAN. I am sure we will hear a lot of testimony concerning this. Senator Kennedy.

Senator KENNEDY. I would just like to make a brief comment, Mr. Chairman. First of all, to express my appreciation to the chairman of the Judiciary Committee and to the chairman of this subcommittee for the appointment to this subcommittee, and each of us in the Congress, mindful of the observations made by the distinguished chairman of this subcommittee, are deeply interested and concerned about the problems of crime that exist in our country.

I think that the President's message to the Congress outlined quite dramatically the course of action for the Congress in this session of the Congress. I think that this message was supplemented by, extraordinarily, the President's Crime Commission, which examined in crucial detail the problems of crime, and I think made an extraordinary contribution.

I think in that outline that was presented by the President's Commission, there are some areas of great priority, where we as a subcommittee and I believe as a full committee and the Congress can act expeditiously without prolonged action and prolonged deliberation. Obviously there are some additional areas where they will have to be given very careful consideration, and I would look forward, as I know the members of the committee will, to the testimony that will come before this subcommittee.

I might say that on a different occasion, Mr. Chairman, I have had an opportunity to propose my thoughts on crime and also to introduce three bills which I consider, although alone, far from sufficient for an effective national program of crime control, at least to be useful and helpful, S. 992, the bill to establish a National Institute of Criminal Justice, S. 993, a bill to authorize grants for the establishment of regional academies of criminal justice, and S. 991, a bill to provide assistance to localities for installation of street lighting to combat crime.

Only S. 992 as I understand it, Mr. Chairman, the National Institute of Criminal Justice, would come before this committee in a later

session of these hearings. I shall request that witnesses appear to testify on this proposal. I appreciate the chance to join with the chairman of this subcommittee and other members of the committee who are interested and concerned about the cause of crime, have been for many, many years, and I look forward to service on this committee.

Senator McClellan. Senator, thank you very much. I don't believe S. 992 has yet been referred to the subcommittee. In all probability it will be. As I stated earlier, we anticipate other measures will be introduced and a number of them no doubt will be referred to the subcommittee.

Senator Thurmond.

Senator Thurmond. Thank you, Mr. Chairman. I would like to express my appreciation to the chairman of the Judiciary Committee, Senator Eastland, and the chairman of this subcommittee, Senator McClellan, for assigning me to this important subcommittee. I feel that the work of this subcommittee will be as important as possibly any subcommittee of the Congress this year.

In my judgment, the No. 1 problem from a domestic standpoint in this country is big spending and the crime problem, and if we can assist in solving this crime problem, then I feel that this subcommittee will have rendered a very important service.

Last year, when this matter of voluntary confessions came up, Senator Ervin introduced a bill in which I joined him, and again this year I am joining him. I stated then that I did not know of any piece of legislation which would do more to curb crime than to pass legislation of this nature.

I am convinced that voluntary confessions must be admitted. They must be admitted, whether there is a lawyer present or not. They must be admitted, if a man has been held several hours or maybe a little longer than usual, so long as the confessions are voluntary, so long as they constitute the truth.

I have frequently heard it said that more men are convicted out of their own mouths than are convicted out of the mouths of other people, and that has been my experience in practicing law. That when an officer chases a man and he makes a confession, it ought to be admitted if it is the truth, and the trial judge and the jury can judge the demeanor of the witnesses. They observe them at the trial, and they are in a position to determine whether or not such confessions should be admitted. So I am very interested in this bill that Senator Ervin has introduced, of which I am a cosponsor, to reduce the appellate power of the Supreme Court in this respect.

I think today we have got to remember too, in this day when we think of individual rights, and no one is stronger for individual rights than I am, we have got to realize that society's rights are paramount to the individual rights.

It seems to me that some of the courts today are willing to turn loose many criminals for fear they might convict someone who is innocent. No one wants an innocent man convicted. But today society is suffering.

No country has ever incurred as much crime as America is enduring today. In no country has there been as many serious crimes committed, murders, robberies, rapes, arson and other crimes of a very serious

nature as America is enduring today, and I feel that this subcommittee can play a major role in helping to curb crime in America today, one of the major problems.

Thank you, Mr. Chairman.

(Listing of the bills previously referred to by Senator McClellan follow:)

S. 300, to amend section 401 of title 18 of the United States Code, dealing with the power of the courts of the United States to punish for contempts of its authority. (Senator Thurmond.)

S. 552, to amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense. (Senator Burdick.)

S. 580, to amend chapter 18, United States Code, to prohibit the importation into the United States of certain noxious aquatic plants. (Senator Holland.)

S. 674, to amend title 18, United States Code, with respect to the admissibility in evidence of confessions. (Senator McClellan for himself and Senators Byrd of West Virginia, Ervin, Hollings and Hruska.)

S. 675, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and other purposes. (Senator McClellan for himself and Senator Hruska.)

S. 678, to outlaw the Mafia and other organized crime syndicates. (Senator McClellan.)

S. 798, to provide compensation to survivors of local law enforcement officers killed while apprehending persons for committing Federal crimes. (Senator McClellan, for himself and Senator Scott.)

S. 824, to provide assistance for the improvement of State and local law enforcement agencies through acquisition of equipment of those agencies and provision of educational opportunities to their personnel, and for other purposes. (Senator Tydings, for himself and Senators Burdick, Inouye, Kennedy of New York, Long of Missouri, Magnuson, Metcalf, Mondale, Montoya, Moss, Pell, Randolph, Smathers, and Yarborough.)

S. 916, to assist in combating crime by creating the U.S. Correction Service, and for other purposes. Senator McClellan, by request.)

S. 917, to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes. (Senator McClellan, by request, for himself and Senators Byrd of West Virginia, Ervin, Harris, Hart, Hruska, Javits, Mundt, Scott, Tydings, and Yarborough.)

Senator McCLELLAN. In order that our record of these hearings may be more complete, without objection I direct that the following Supreme Court decisions be printed in their entirety:

Escobedo v. Illinois, 378 U.S. 478 (1964).

Miranda v. *Arizona*, 384 U.S. 436.

Johnson v. *State of New Jersey*, 384 U.S. 719.

(Decisions referred to follow:)

ESCOBEDO v. ILLINOIS (378 U.S. 478 (1964))

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

(No. 615. Argued April 29, 1964.—Decided June 22, 1964)

Petitioner, a 22-year-old of Mexican extraction, was arrested with his sister and taken to police headquarters for interrogation in connection with the fatal shooting, about 11 days before, of his brother-in-law. He had been arrested shortly after the shooting, but had made no statement, and was released after his lawyer obtained a writ of habeas corpus from a state court. Petitioner made several requests to see his lawyer, who, though present in the building, and despite persistent efforts, was refused access to his client. Petitioner was

not advised by the police of his right to remain silent and, after persistent questioning by the police, made a damaging statement to an Assistant State's Attorney which was admitted at the trial. Convicted of murder, he appealed to the State Supreme Court, which affrmed the conviction. *Held:* Under the circumstances of this case, where a police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect in police custody who has been refused an opportunity to consult with his counsel and who has not been warned of his constitutional right to keep silent, the accused has been denied the assistance of counsel in violation of the Sixth and Fourteenth Amendments; and no statement extracted by the police during the interrogation may be used against him at a trial. *Crooker* v. *California*, 357 U.S. 433, and *Cicenia* v. *Lagay*, 357 U.S. 504, distinguished, and to the extent that they may be inconsistent with the instant case, they are not controlling. Pp. 479–492

28 Ill. 2d 41, 190 N.E. 2d 825, reversed and remanded.

Barry L. Kroll argued the cause for petitioner. With him on the brief was *Donald M. Haskell.*

James R. Thompson argued the cause for respondent. With him on the brief were *Daniel P. Ward* and *Elmer C. Kissane.*

Bernard Weisberg argued the cause for the American Civil Liberties Union, as *amicus curiae*, urging reversal. With him on the brief was *Walter T. Fisher.*

OPINION OF THE COURT

MR. JUSTICE GOLDBERG delivered the opinion of the Court.

The critical question in this case is whether, under the circumstances, the refusal by the police to honor petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," *Gideon* v. *Wainwright*, 372 U. S. 335, 342, and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation.

On the night of January 19, 1960, petitioner's brother-in-law was fatally shot. In the early hours of the next morning, at 2:30 a.m., petitioner was arrested without a warrant and interrogated. Petitioner made no statement to the police and was released at 5 that afternoon pursuant to a state court writ of habeas corpus obtained by Mr. Warren Wolfson, a lawyer who had been retained by petitioner.

On January 30, Benedict DiGerlando, who was then in police custody and who was later indicted for the murder along with petitioner, told the police that petitioner had fired the fatal shots. Between 8 and 9 that evening, petitioner and his sister, the widow of the deceased, were arrested and taken to police headquarters. En route to the police station, the police "had handcuffed the defendant behind his back," and "one of the arresting officers told defendant that DiGerlando had named him as the one who shot" the deceased. Petitioner testified, without contradiction, that the "detectives said they had us pretty well, up pretty tight, and we might as well admit to this crime," and that he replied, "I am sorry but I would like to have advice from my lawyer." A police officer testified that although petitioner was not formally charged "he was in custody" and "couldn't walk out the door."

Shortly after petitioner reached police headquarters, his retained lawyer arrived. The lawyer described the ensuing events in the following terms:

> "On that day I received a phone call [from "the mother of another defendant"] and pursuant to that phone call I went to the Detective Bureau at 11th and State. The first person I talked to was the Sergeant on duty at the Bureau Desk, Sergeant Pidgeon. I asked Sergeant Pidgeon for permission to speak to my client, Danny Escobedo. . . . Sergeant Pidgeon made a call to the Bureau lockup and informed me that the boy had been taken from the lockup to the Homicide Bureau. This was between 9:30 and 10:00 in the evening. Before I went anywhere, he called the Homicide Bureau and told them there was an attorney waiting to see Escobedo. He told me I could not see him. Then I went upstairs to the Homicide Bureau. There were several Homicide Detectives around and I talked to them. I identified myself as Escobedo's attorney and asked permission to see him. They said I could not. . . . The police officer told me to see Chief Flynn who was

> on duty. I identified myself to Chief Flynn and asked permission to see my client. He said I could not. . . . I think it was approximately 11:00 o'clock. He said I couldn't see him because they hadn't completed questioning. . . . [F]or a second or two I spotted him in an office in the Homicide Bureau. The door was open and I could see through the office. . . . I waved to him and he waved back and then the door was closed, by one of the officers at Homicide.[1] There were four of five officers milling around the Homicide Detail that night. As to whether I talked to Captain Flynn any later that day, I waited around for another hour or two and went back again and renewed my [*sic*] request to see my client. He again told me I could not. . . . I filed an official complaint with Commisioner Phelan of the Chicago Police Department. I had a conversation with every police officer I could find. I was told at Homicide that I couldn't see him and I would have to get a writ of habeas corpus. I left the Homicide Bureau and from the Detective Bureau at 11th and State at approximately 1:00 A.M. [Sunday morning] I had no opportunity to talk to my client that night. I quoted to Captain Flynn the Section of the Criminal Code which allows an attorney the right to see his client." [2]

Petitioner testified that during the course of the interrogation he repeatedly asked to speak to his lawyer and that the police said that his lawyer "didn't want to see" him. The testimony of the police officers confirmed these accounts in substantial detail.

Notwithstanding repeated requests by each, petitioner and his retained lawyer were afforded no opportunity to consult during the course of the entire interrogation. At one point, as previously noted, petitioner and his attorney came into each other's view for a few moments but the attorney was quickly ushered away. Petitioner testified "that he heard a detective telling the attorney the latter would not be allowed to talk to [him] 'until they were done'" and that he heard the attorney being refused permission to remain in the adjoining room. A police officer testified that he had told the lawyer that he could not see petitioner until "we were through interrogating" him.

There is testimony by the police that during the interrogation, petitioner, a 22-year-old of Mexican extraction with no record of previous experience with the police, "was handcuffed" [3] in a standing position and that he "was nervous, he had circles under his eyes and was upset" and was "agitated" because "he had not slept well in over a week."

It is undisputed that during the course of the interrogation Officer Montejano, who "grew up" in petitioner's neighborhood, who knew his family, and who uses "Spanish language in [his] police work," conferred alone with petitioner "for about a quarter of an hour. . . ." Petitioner testified that the officer said to him "in Spanish that my sister and I could go home if I pinned it on Benedict DiGerlando," that "he would see to it that we would go home and be held only as witnesses, if anything, if we had made a statement against DiGerlando . . ., that we would be able to go home that night." Petitioner testified that he made the statement in issue because of this assurance. Officer Montejano denied offering any such assurance.

A police officer testified that during the interrogation the following occurred:

> "I informed him of what DiGerlando told me and when I did, he told me that DiGerlando was [lying] and I said, 'Would you care to tell DiGerlando that?' and he said, 'Yes, I will.' So, I brought . . . Escobedo in and he confronted DiGerlando and he told him that he was lying and said, 'I didn't shoot Manuel, you did it.'"

In this way, petitioner, for the first time, admitted to some knowledge of the crime. After that he made additional statements further implicating himself in the murder plot. At this point an Assistant State's Attorney, Theodore J. Cooper, was summoned "to take" a statement. Mr. Cooper, an experienced lawyer who was assigned to the Homicide Division to take "statements from some defendants

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[1] Petitioner testified that this ambiguous gesture "could have meant most anything," but that he "took it upon [his] own to think that [the lawyer was telling him] not to say anything," and that the lawyer "wanted to talk" to him.

[2] The statute then in effect provided in pertinent part that: "All public officers . . . having the custody of any person . . . restrained of his liberty for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney . . . whom such person . . . may desire to see or consult . . . ." Ill. Rev. Stat. (1959), c. 38, § 477. Repealed as of Jan. 1, 1964, by Act approved Aug. 14, 1963, H.B. No. 851.

[3] The trial judge justified the handcuffing on the ground that it "is ordinary police procedure."

and some prisoners that they had in custody," "took" petitioner's statement by asking carefully framed questions apparently designed to assure the admissibility into evidence of the resulting answers. Mr. Cooper testified that he did not advise petitioner of his constitutional rights, and it is undisputed that no one during the course of the interrogation so advised him.

Petitioner moved both before and during trial to suppress the incriminating statement, but the motions were denied. Petitioner was convicted of murder and he appealed the conviction.

The Supreme Court of Illinois, in its original opinion of February 1, 1963, held the statement inadmissible and reversed the conviction. The court said:

> "[I]t seems manifest to us, from the undisputed evidence and the circumstances surrounding defendant at the time of his statement and shortly prior thereto, that the defendant understood he would be permitted to go home if he gave the statement and would be granted an immunity from prosecution."

Compare *Lynumn* v. *Illinois*, 372 U.S. 528.

The State petitioned for, and the court granted, rehearing. The court then affirmed the conviction. It said: "[T]he officer denied making the promise and the trier of fact believe him. We find no reason for disturbing the trial court's finding that the confession was voluntary."[4] 28 Ill. 2d 41, 45–46, 190 N. E. 2d 825, 827. The court also held, on the authority of this Court's decisions in *Crooker* v. *California*, 357 U.S. 433, and *Cicenia* v. *Lagay*, 357 U.S. 504, that the confession was admissible even though "it was obtained after he had requested the assistance of counsel, which request was denied." 28 Ill. 2d, at 46, 190 N. E. 2d, at 827. We granted a writ of certiorari to consider whether the petitioner's statement was constitutionally admissible at his trial. 375 U.S. 902. We conclude, for the reasons stated below, that it was not and, accordingly, we reverse the judgment of conviction.

In *Massiah* v. *United States*, 377 U.S. 201, this 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.'" *Id.*, at 204, quoting DOUGLAS, J., concurring in *Spano* v. *New York*, 360 U.S. 315, 326.

The interrogation here was conducted before petitioner was formally indicted. But in the context of this case, that fact should make no difference. When petitioner requested, and was denied, an opportunity to consult with his lawyer, the investigation had ceased to be a general investigation of "an unsolved crime." *Spano* v. *New York*, 360 U.S. 315, 327 (STEWART, J., concurring). Petitioner had become the accused, and the purpose of the interrogation was to "get him" to confess his guilt despite his constitutional right not to do so. At the time of his arrest and throughout the course of the interrogation, the police told petitioner that they had convincing evidence that he had fired the fatal shots. Without informing him of his absolute right to remain silent in the face of this accusation, the police urged him to make a statement.[5] As this Court observed many years ago:

> "It cannot be doubted that, placed in the position in which the accused was when the statement was made to him that the other suspected person had charged him with crime, the result was to produce upon his mind the fear that if he remained silent it would be considered an admission of guilt, and therefore render certain his being committed for trial as the guilty person,

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[4] Compare *Haynes* v. *Washington*, 373 U.S. 503, 515 (decided on the same day as the decision of the Illinois Supreme Court here), where we said:

"Our conclusion is in no way foreclosed, as the State contends, by the fact that the state trial judge or the jury may have reached a different result on this issue.

"It is well settled that the duty of constitutional adjudication resting upon this Court requires that the question whether the Due Process Clause of the Fourteenth Amendment has been violated by admission into evidence of a coerced confession be the subject of an *independent* determination here, see, *e.g.*, *Ashcraft* v. *Tennessee*, 322 U.S. 143, 147–148; 'we cannot escape the responsibility of making our own examination of the record,' *Spano* v. *New York*, 360 U.S. 315, 316." (Emphasis in original.)

[5] Although there is testimony in the record that petitioner and his lawyer had previously discussed what petitioner should do in the event of interrogation, there is no evidence that they discussed what petitioner should, or could, do in the face of a false accusation that he had fired the fatal bullets.

and it cannot be conceived that the converse impression would not also have naturally arisen, that by denying there was hope of removing the suspicion from himself" *Bram* v. *United States*, 168 U.S. 532, 652.

Petitioner, a layman, was undoubtedly unaware that under Illinois law an admission of "mere" complicity in the murder plot was legally as damaging as an admission of firing of the fatal shots. *Illinois* v. *Escobedo*, 28 Ill. 2d 41, 190 N.E. 2d 825. The "guiding hand of counsel" was essential to advise petitioner of his rights in this delicate situation. *Powell* v. *Alabama*, 287 U.S. 45, 69. This was the "stage when legal aid and advice" were most critical to petitioner. *Massiah* v. *United States, supra*, at 204. It was a stage surely as critical as was the arraignment in *Hamilton* v. *Alabama*, 368 U.S. 52, and the preliminary hearing in *White* v. *Maryland*, 373 U.S. 59. What happened at this interrogation could certainly "affect the whole trial," *Hamilton* v. *Alabama, supra*, at 54, since rights "may be as irretrievably lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes." *Ibid.* It would exalt form over substance to make the right to counsel, under these circumstances, depend on whether at the time of the interrogation, the authorities had secured a formal indictment. Petitioner had, for all practical purposes, already been charged with murder.

The New York Court of Appeals, whose decisions this Court cited with approval in *Massiah*, 377 U.S. 201, at 205, has recently recognized that, under circumstances such as those here, no meaningful distinction can be drawn between interrogation of an accused before and after formal indictment. In *People* v. *Donovan*, 13 N.Y. 2d 148, 193 N.E. 2d 628, that court, in an opinion by Judge Fuld, held that a "confession taken from a defendant, during a period of detention [prior to indictment], after his attorney had requested and been denied acess to him" could not be used against him in a criminal trial[6] *Id.*, at 151, 193 N.E. 2d, at 629. The court observed that it "would be highly incongruous if our system of justice permitted the district attorney, the lawyer representing the State, to extract a confession from the accused while his own lawyer, seeking to speak with him, was kept from him by the police." *Id.*, at 152, 193 N.E. 2d, at 629.[7]

In *Gideon* v. *Wainwright*, 372 U.S. 335, we held that every person accused of a crime, whether state or federal, is entitled to a lawyer at trial.[8] The rule sought by the State here, however, would make the trial no more than an appeal from the interrogation; and the "right to use counsel at the formal trial [would be] a very hollow thing [if], for all practical purposes, the conviction is already assured by pretrail examination." *In re Groban*, 352 U.S. 330, 344 (BLACK, J., dissenting).[9] "One can imagine a cynical prosecutor saying: 'Let them have the most illustrious counsel, now. They can't escape the noose. There is nothing that counsel can do for them at the trial.'" *Ex parte Sullivan*, 107 F. Supp. 514, 517–518.

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,[10] 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*,

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[6] The English Judges' Rules also recognize that a functional rather than a formal test must be applied and that, under circumstances such as those here, no special significance should be attached to formal indictment. The applicable Rule does not permit the police to question an accused, except in certain extremely limited situations not relevant here, at any time after the defendant "has been charged *or informed that he may be prosecuted.*" [1964] Crim. L. Rev. 166–170 (emphasis supplied). Although voluntary statements obtained in violation of these rules are not automatically excluded from evidence the judge may, in the exercise of his discretion, exclude them. "Recent cases suggest that perhaps the judges have been tightening up [and almost] inevitably, the effect of the new Rules will be to stimulate this tendency." *Id.*, at 182.

[7] Canon 9 of the American Bar Association's Canon of Professional Ethics provides that: "A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law." See Broeder, *Wong Sun* v. *United States*: A Study in Faith and Hope, 42 Neb. L. Rev. 483, 599–604.

[8] Twenty-two States, including Illinois, urged us so to hold.

[9] The Soviet criminal code does not permit a lawyer to be present during the investigation. The Soviet trial has thus been aptly described as "an appeal from the pretrial investigation." Feifer, Justice in Moscow (1964), 86.

[10] See Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Cal. L. Rev. 11, 43 (1962).

338 U.S. 49, 50 (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 204; *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. See Note, 73 Yale L. J. 1000, 1048–1051 (1964).

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[11] and more subject to abuses[12] than a system which depends on extrinsic evidence independently secured through skillful investigation. As Dean Wigmore so wisely said:

> "[*A*]*n 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 (3d ed. 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.[13] 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.[14]

We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements,

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[11] See Committee Print, Subcommittee to Investigate Administration of the Internal Security Act, Senate Committee on the Judiciary, 85th Cong., 1st Sess., reporting and analyzing the proceedings at the XXth Congress of the Communist party of the Soviet Union, February 25, 1956, exposing the false confessions obtained during the Stalin purges of the 1930's. See also *Miller* v *United States*, 320 F. 2d 767, 772–773 (opinion of Chief Judge Bazelon); Lifton, Thought Reform and the Psychology of Totalism (1961); Rogge, Why Men Confess (1959); Schein, Coercion Pursuasion (1961).

[12] See Stephen, History of the Criminal Law, quoted in 8 Wigmore, Evidence (3d ed. 1940), 312; Report and Recommendations of the Commissioners' Committee on Police Arrests for Investigation, District of Columbia (1962).

[13] Cf. Report of Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice (1963), 10–11: "The survival of our system of criminal justice and the values which it advances depends upon a constant, searching, and creative questioning of official decisions and assertios of authority at all stages of the process. . . . Persons [denied access to counsel] are incapable of providing the challenges that are indispensable to satisfactory operation of the system. The loss to the interests of accused individuals, occasioned by these failures, are great and apparent. It is also clear that a situation in which persons are required to contest a serious accusation but are denied access to the tools of contest is offensive to fairness and equity. Beyond these considerations, however, is the fact that [this situation is] detrimental to the proper functioning of the system of justice and that the loss in vitality of the adversary system, thereby occasioned, significantly endangers the basic interests of a free community."

[14] The accused may, of course, intelligently and knowingly waive his privilege against self-incrimination and his right to counsel either at a pretrial stage or at the trial. See *Johnson* v. *Zerbst*, 304 U.S. 458. But no knowing and intelligent waiver of any constitutional right can be said to have occurred under the circumstances of this case..

the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," *Gideon* v. *Wainwright*, 372 U.S., at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial.

Crooker v. California, 357 U.S. 433, does not compel a contrary result. In that case the Court merely rejected the absolute rule sought by petitioner, that "every state denial of a request to contact counsel [is] an infringement of the constitutional right *without regard to the circumstances of the case.*" *Id.*, at 440. (Emphasis in original.) In its place, the following rule was announced:

> "[S]tate refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits, . . . *but also if he is deprived of counsel for any part of the pretrial proceedings*, provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice. . . .' The latter determination necessarily depends upon all the circumstances of the case." 357 U.S., at 439–440. (Emphasis added.)

The Court, applying "these principles" to "the sum total of the circumstances [there] during the time petitioner was without counsel," *id.*, at 440, concluded that he had not been fundamentally prejudiced by the denial of his request for counsel. Among the critical circumstances which distinguish that case from this one are that the petitioner there, but not here, was explicitly advised by the police of his constitutional right to remain silent and not to "say anything" in response to the questions, *id.*, at 437, and that petitioner there, but not here, was a well-educated man who had studied criminal law while attending law school for a year. The Court's opinion in *Cicenia* v. *Lagay*, 357 U.S. 504, decided the same day, merely said that the "contention that petitioner had a constitutional right to confer with counsel is disposed of by *Crooker* v. *California* . . ." That case adds nothing, therefore, to *Crooker*. In any event, to the extent that *Cicenia* or *Crooker* may be inconsistent with the principles announced today, they are not to be regarded as controlling.[15]

Nothing we have said today affects the powers of the police to investigate "an unsolved crime," *Spano* v. *New York*, 360 U.S. 315, 327 (STEWART, J., concurring), by gathering information from witnesses and by other "proper investigative efforts." *Haynes* v. *Washington*, 373 U.S. 503, 519. We hold only that when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer.

The judgment of the Illinois Supreme Court is reversed and the case remanded for proceedings not inconsistent with this opinion.

Reversed and remanded.

MR. JUSTICE HARLAN, dissenting.

I would affirm the judgment of the Supreme Court of Illinois on the basis of *Cicenia* v. *Lagay*, 357 U.S. 504, decided by this Court only six years ago. Like my Brother WHITE, *post*, p. 495, I think the rule announced today is most ill-conceived and that it seriously and unjustifiably fetters perfectly legitimate methods of criminal law enforcement.

MR. JUSTICE STEWART, dissenting.

I think this case is directly controlled by *Cicenia* v. *Lagay*, 357 U.S. 504, and I would therefore affirm the judgment.

Massiah v. *United States*, 377 U.S. 201, is not in point here. In that case a federal grand jury had indicted Massiah. He had retained a lawyer and entered a formal plea of not guilty. Under our system of federal justice an indictment and arraignment are followed by a trial, at which the Sixth Amendment guarantees the defendant the assistance of counsel.* But Massiah was released on bail, and thereafter agents of the Federal Government deliberately elicited incriminating statements from him in the absence of his lawyer. We held that the use of these statements against him at his trial denied him the basic protection of the

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[15] The authority of *Cicenia* v. *Lagay*, 357 U.S. 504, and *Crooker* v. *California*, 357 U.S. 433, was weakened by the subsequent decisions of this Court in *Hamilton* v. *Alabama*, 368 U.S. 52, *White* v. *Maryland*, 373 U.S. 59, and *Massiah* v. *United States*, 377 U.S. 201 (as the dissenting opinion in the last-cited case recognized).

*"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

Sixth Amendment guarantee. Putting to one side the fact that the case now before us is not a federal case, the vital fact remains that this case does not involve the deliberate interrogation of a defendant after the initiation of judicial proceedings against him. The Court disregards this basic difference between the present case and Massiah's, with the bland assertion that "that fact should make no difference." *Ante*, p. 485.

It is "that fact," I submit, which makes all the difference. Under our system of criminal justice the institution of formal, meaningful judicial proceedings, by way of indictment, information, or arraignment, marks the point at which a criminal investigation has ended and adversary proceedings have commenced. It is at this point that the constitutional guarantees attach which pertain to a criminal trial. Among those guarantees are the right to a speedy trial, the right of confrontation, and the right to trial by jury. Another is the guarantee of the assistance of counsel. *Gideon* v. *Wainwright*, 372 U.S. 335; *Hamilton* v. *Alabama*, 368 U.S. 52; *White* v. *Maryland*, 373 U.S. 59.

The confession which the Court today holds inadmissible was a voluntary one. It was given during the course of a perfectly legitimate police investigation of an unsolved murder. The Court says that what happened during this investigation "affected" the trial. I had always supposed that the whole purpose of a police investigation of a murder was to "affect" the trial of the murderer, and that it would be only an incompetent, unsuccessful, or corrupt investigation which would not do so. The Court further says that the Illinois police officers did not advise the petitioner of his "constitutional rights" before he confessed to the murder. This Court has never held that the Constitution requires the police to give any "advice" under circumstances such as these.

Supported by no stronger authority than its own rhetoric, the Court today converts a routine police investigation of an unsolved murder into a distorted analogue of a judicial trial. It imports into this investigation constitutional concepts historically applicable only after the onset of formal prosecutorial proceedings. By doing so, I think the Court perverts those precious constitutional guarantees, and frustrates the vital interests of society in preserving the legitimate and proper function of honest and purposeful police investigation.

Like my Brother CLARK, I cannot escape the logic of my Brother WHITE's conclusions as to the extraordinary implications which emanate from the Court's opinion in this case, and I share their views as to the untold and highly unfortunate impact today's decision may have upon the fair administration of criminal justice. I can only hope we have completely misunderstood what the Court has said.

MR. JUSTICE WHITE with whom MR. JUSTICE CLARK and MR. JUSTICE STEWART join, dissenting.

In *Massiah* v. *United States*, 377 U.S. 201, the Court held that as of the date of the indictment the prosecution is disentitled to secure admissions from the accused. The Court now moves that date back to the time when the prosecution begins to "focus" on the accused. 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, cf. *Gideon* v. *Wainwright*, 372 U.S. 335; *Griffin* v. *Illinois*, 351 U.S. 12; *Douglas* v. *California*, 372 U.S. 353, or has asked to consult with counsel in the course of interrogation. Cf. *Carnley* v. *Cochran*, 369 U.S. 506. At the very least the Court holds that once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel. The decision is thus another major step in the direction of the goal which the Court seemingly has in mind—to bar from evidence all admissions obtained from an individual suspected of crime, whether involuntarily made or not. It does of course put us one step "ahead" of the English judges who have had the good sense to leave the matter a discretionary one with the trial court. ** I reject this step and the invitation to go farther which the Court has now issued.

**"[I]t seems from reported cases that the judges have given up enforcing their own rules, for it is no longer the practice to exclude evidence obtained by questioning in custody. . . . A traditional principle of 'fairness' to criminals, which has quite possibly lost some of the reason for its existence, is maintained in words while it is disregarded in fact. . . .

"The reader may be expecting at this point a vigorous denunciation of the police and of the judges, and a plea for a return to the Judges' Rules as interpreted in 1939. What has to be considered, however, is whether these Rules are a workable part of the machinery of justice. Perhaps the truth is that the Rules have been abandoned, by tacit consent, just because they are an unreasonable restriction upon the activities of the police in bringing criminals to book." Williams, Questioning by the Police: Some Practical Considerations, [1960] Crim. L. Rev. 325, 331–332. See also [1964] Crim. L. Rev. 161–182.

By abandoning the voluntary-involuntary test for admissibility of confessions, the Court seems driven by the notion that it is uncivilized law enforcement to use an accused's own admissions against him at his trial. It attempts to find a home for this new and nebulous rule of due process by attaching it to the right to counsel guaranteed in the federal system by the Sixth Amendment and binding upon the States by virtue of the due process guarantee of the Fourteenth Amendment. *Gideon* v. *Wainwright, supra.* The right to cousel now not only entitles the accused to counsel's advice and aid in preparing for trials but stands as an impenetrable barrier to any interrogation once the accused has become a suspect. From that very moment apparently his right to counsel attaches, a rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side. I would not abandon the Court's prior cases defining with some care and analysis the circumstances requiring the presence or aid of counsel and substitute the amorphous and wholly unworkable principle that counsel is constitutionally required whenever he would or could be helpful. *Hamilton* v. *Alabama,* 368 U.S. 52; *White* v. *Maryland,* 373 U.S. 59; *Gideon* v. *Wainwright, supra.* These cases dealt with the requirement of counsel at proceedings in which definable rights could be won or lost, not with stages where probative evidence might be obtained. Under this new approach one might just as well argue that a potential defendant is constitutionally entitled to a lawyer before, not after, he commits a crime, since it is then that crucial incriminating evidence is put within the reach of the Government by the would-be accused. Until now there simply has been no right guaranteed by the Federal Constitution to be free from the use at trail of a voluntary admission made prior to indictment.

It is incongruous to assume that the provision for counsel in the Sixth Amendment was meant to amend or supersede the self-incrimination provision of the Fifth Amendment, which is now applicable to the States. *Malloy* v. *Hogan,* 378 U.S. 1. That amendment addresses itself to the very issue of incriminating admissions of an accused and resolves it by proscribing only compelled statements. Neither the Framers, the constitutional language, a century of decisions of this Court nor Professor Wigmore provides an iota of support for the idea that an accused has an absolute constitutional right not to answer even in the absence of compulsion—the constitutional right not to incriminate himself by making voluntary disclosures.

Today's decision cannot be squared with other provisions of the Constitution which, in my view, define the system of criminal justice this Court is empowered to administer. The Fourth Amendment permits upon probable cause even compulsory searches of the suspect and his possessions and the use of the fruits of the search at trial, all in the absence of counsel. The Fifth Amendment and state constitutional provisions authorize, indeed require, inquisitorial grand jury proceedings at which a potential defendant, in the absence of counsel, is shielded against no more than compulsory incrimination. *Mulloney* v. *United States,* 79 F. 2d 566, 578 (C.A. 1st Cir.); *United States* v. *Benjamin,* 120 F. 2d 521, 522 (C.A. 2d Cir.); *United States* v. *Scully,* 225 F. 2d 113, 115 (C. A. 2d Cir.); *United States* v. *Gilboy,* 160 F. Supp. 442 (D. C. M. D. Pa.). A grand jury witness, who may be a suspect, is interrogated and his answers, at least until today, are admissible in evidence at trial. And these provisions have been thought of as constitutional safeguards to persons suspected of an offense. Furthermore, until now, the Constitution has permitted the accused to be fingerprinted and to be identified in a line-up or in the courtroom itself.

The Court chooses to ignore these matters and to rely on the virtues and morality of a system of criminal law enforcement which does not depend on the "confession." No such judgment is to be found in the Constitution. It might be appropriate for a legislature to provide that a suspect should not be consulted during a criminal investigation; that an accused should never be called before a grand jury to answer, even if he wants to, what may well be incriminating questions; and that no person, whether he be a suspect, guilty criminal or innocent bystander, should be put to the ordeal of responding to orderly non-compulsory inquiry by the State. But this is not the system our Constitution requires. The only "inquisitions" the Constitution forbids are those which compel incrimination. Escobedo's statements were not compelled and the Court does not hold that they were.

This new American judges' rule, which is to be applied in both federal and state courts, is perhaps thought to be a necessary safeguard against the possibility of extorted confessions. To this extent it reflects a deep-seated distrust of law en-

forcement officers everywhere, unsupported by relevant data or current material based upon our own experience. Obviously law enforcement officers can make mistakes and exceed their authority, as today's decision shows that even judges can do, but I have somewhat more faith than the Court evidently has in the ability and desire of prosecutors and of the power of the appellate courts to discern and correct such violations of the law.

The Court may be concerned with a narrower matter: the unknown defendant who responds to police questioning because he mistakenly believes that he must and that his admissions will not be used against him. But this worry hardly calls for the broadside the Court has now fired. The failure to inform an accused that he need not answer and that his answers may be used against him is very relevant indeed to whether the disclosures are compelled. Cases in this Court, to say the least, have never placed a premium on ignorance of constitutional rights. If an accused is told he must answer and does not know better, it would be very doubtful that the resulting admissions could be used against him. When the accused has not been informed of his rights at all the Court characteristically and properly looks very closely at the surrounding circumstances. See *Ward* v. *Texas*, 316 U.S. 547; *Haley* v. *Ohio*, 332 U.S. 596; *Payne* v. *Arkansas*, 356 U.S. 560. I would continue to do so. But in this case Danny Escobedo knew full well that he did not have to answer and knew full well that his lawyer had advised him not to answer.

I do not suggest for a moment that law enforcement will be destroyed by the rule announced today. The need for peace and order is too insistent for that. But it will be crippled and its task made a great deal more difficult, all in my opinion, for unsound, unstated reasons, which can find no home in any of the provisions of the Constitution.

SUPREME COURT OF THE UNITED STATES

NOS. 759, 760, 761 AND 584.—OCTOBER TERM 1967

(384 U.S. 436 (1966))

Ernesto A. Miranda, petitioner, 759, *v.* State of Arizona, on Writ of Certiorari to the Supreme Court of the State of Arizona

Michael Vignera, petitioner, 760, *v.* State of New York, on Writ of Certiorari to the Court of Appeals of the State of New York

Carl Calvin Westover, petitioner 761, *v.* United States, on Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

State of California, petitioner, 584, *v.* Roy Allen Stewart, on Writ of Certiorari to the Supreme Court of the State of California

[June 13, 1966]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.

Miranda v. *Arizona.*

We dealt with certain phases of this problem recently in *Escobedo* v. *Illinois*, 378 U.S. 478 (1964). There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. Rather, they confronted him with an alleged accomplice who accused him of having perpetrated a murder. When the defendant denied the accusation and said "I didn't shoot Manuel, you did it," they handcuffed him and took him to an

interrogation room. There, while handcuffed and standing, he was questioned for four hours until he confessed. During this interrogation, the police denied his request to speak to his attorney, and they prevented his retained attorney, who had come to the police station, from consulting with him. At his trial, the State, over his objection, introduced the confession against him. We held that the statements thus made were constitutionally inadmissible.

This case has been the subject of judicial interpretation and spirited legal debate since it was decided two years ago. Both state and federal courts, in assessing its implications, have arrived at varying conclusions.[1] A wealth of scholarly material has been written tracing its ramifications and underpinnings.[2] Police and prosecutor have speculated on its range and desirability.[3] We granted certiorari in these cases, 382 U.S. 924, 925, 937, in order further to explore some facets of the problems, thus exposed, of applying the privilege against self-incrimination to in-custody interrogation, and to give concrete constitutional guidelines for law enforcement agencies and courts to follow.

We start here, as we did in *Escobedo*, with the premise that our holding is not an innovation in our jurisprudence, but is an application of priuciples long recognized and applied in other settings. We have undertaken a thorough reexamination of the *Escobedo* decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution—that "No person . . . shall be compelled in any criminal case to be a witness against himself," and that "the accused shall . . . have the Assistance of Counsel"—rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured "for ages to come and . . . designed to approach immortality as nearly as human institutions can approach it," *Cohens* v. *Virginia*, 6 Wheat. 264, 387 (1821).

Over 70 years ago, our predecessors on this Court eloquently stated:

"The maxim *nemo tenetur seipsum accusare* had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which has long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, was not uncommon even in England. While the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to

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[1] Compare *United States* v. *Childress*, 347 F. 2d 448 (C. A. 7th Cir. 1965) with *Collins* v. *Beto*, 348 F. 2d 823 (C. A. 5th Cir. 1965). Compare *People* v. *Dorado*, 62 Cal. 2d 350, 398 P. 2d 361, 42 Cal. Rptr. 169 (1964) with *People* v. *Hartgraves*, 31 Ill. 2d 375, 202 N. E. 2d 33 (1964).

[2] See, *e. g.*, Enker and Elsen, Counsel for the Suspect: *Massiah* v. *United States* and *Escobedo* v. *Illinois*, 49 Minn. L. Rev. 47 (1964); Herman, The Supreme Court and Restrictions on Police Interrogations, 25 Ohio St. L. J. 449 (1964); Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time (1965); Dowling, Escobedo and Beyond: The Need for a Fourteenth Amendment Code of Criminal Procedure, 56 J. Crim. L., C. & P. S. 156 (1965).

The complex problems also prompted discussions by jurists. Compare Bazelon, Law, Morality and Civil Liberties, 12 U. C. L. A. L. Rev. 13 (1964), with Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif. L. Rev. 929 (1965).

[3] For example, the Los Angeles Police Chief stated that "If the police are required . . . to . . . establish that the defendant was apprised of his constitutional guarantees of silence and legal counsel prior to the uttering of any admission or confession, and that he intelligently waived these guarantees . . . a whole Pandora's box is opened as to under what circumstances . . . can a defendant intelligently waive these rights. . . . Allegations that modern criminal investigation can compensate for the lack of a confession or admission in every criminal case is totally absurd!" Parker, 40 L. A. Bar. Bull. 603, 607, 642 (1965). His prosecutorial counterpart, District Attorney Younger, stated that "[I]t begins to appear that many of these seemingly restrictive decisions are going to contribute directly to a more effective, efficient and professional level of law enforcement." L. A. Times, Oct. 2, 1965, p. 1. The former Police Commissioner of New York, Michael J. Murphy, stated of *Escobedo:* "What the Court is doing is akin to requiring one boxer to fight by Marquis of Queensbury rules while permitting the other to butt, gouge and bite." N. Y. Times, May 14, 1965, p. 39. The former United States Attorney for the District of Columbia, David C. Acheson, who is presently Special Assistant to the Secretary of the Treasury (for Enforcement), and directly in charge of the Secret Service and the Bureau of Narcotics, observed that "Prosecution procedure has, at most, only the most remote casual connection with crime. Changes in court decisions and prosecution procedure would have about the same effect on the crime rate as an aspirit would have on a tumor of the brain." Quoted in Herman, *supra*, n. 2, at 500, n. 270. Other views on the subject in general are collected in Weisberg, Police Interrogation of Arrested Persons: A Skeptical View, 52 J. Crim. L., C. & P. S., 21 (1961).

explain his apparent connection with a crime under investigation, the ease with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evidenced in many of these earlier state trials, notably in those of Sir Nicholas Throckmorton, and Udal, the Puritan minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become firmly embedded in English, as well as in American jurisprudence. So deeply did the inequities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment." *Brown* v. *Walker*, 161 U.S. 591, 596–597 (1896).

In stating the obligation of the judiciary to apply these constitutional rights, this Court declared in *Weems* v. *United States*, 217 U.S. 349, 373 (1910):

> ". . . our contemplation cannot be only what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning and vitality of the Constitution have developed against narrow and restrictive construction."

This was the spirit in which we delineated, in meaningful language, the manner in which the constitutional rights of the individual could be enforced against overzealous police practices. It was necessary in *Escobedo*, as here, to insure that what was proclaimed in the Constitution had not become but a "form of words," *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385, 392 (1920), in the hands of government officials. And it is in this spirit, consistent with our role as judges, that we adhere to the principles of *Escobedo* today.

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[4] As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned 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 presence of an attorney, either retained or appointed. The defendant may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

I

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective

[4] This is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused.

warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact that in this country they have largely taken place incommunicado. From extensive factual studies undertaken in the early 1930's, including the famous Wickersham Report to Congress by a Presidential Commission, it is clear that police violence and the "third degree" flourished at that time.[5] In a series of cases decided by this Court long after these studies, the police resorted to physical brutality—beatings, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions.[6] The 1961 Commission on Civil Rights found much evidence to indicate that "some policemen still resort to physical force to obtain confessions," 1961 Comm'n on Civil Rights Rep., Justice, pt. 5, 17. The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party. *People* v. *Portelli*, 15 N.Y. 2d 235, 205 N. E. 2d 857, 257 N. Y. S. 2d 931 (1965).[7]

The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved—such as these decisions will advance—there can be no assurance that practices of this nature will be eradicated in the foreseeable future. The conclusion of the Wickersham Commission Report, made over 30 years ago, is still pertinent:

> "To the contention that the third degree is necessary to get the facts, the reporters aptly reply in the language of the present Lord Chancellor of England (Lord Sankey): 'It is not admissible to do a great right by doing a little wrong. . . . It is not sufficient to do justice by obtaining a proper result by irregular or improper means.' Not only does the use of the third degree involve a flagrant violation of law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence. As the New York prosecutor quoted in the report said, 'It is a short cut and makes the police lazy and unenterprising.' Or, as another official quoted remarked: 'If you use your fists, you are not so likely to use your wits.' We agree with the conclusion expressed in the report, that 'The third degree brutalizes the

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[5] See, for example, IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement (1931) [Wickersham Report]; Booth, Confessions and Methods Employed in Procuring Them, 4 So. Calif. L. Rev. 83 (1930); Kauper, Judicial Examination of the Accused—A Remedy for the Third Degree, 30 Mich. L. Rev. 1224 (1932). It is significant that instances of third-degree treatment of prisoners almost invariably took place during the period between arrest and preliminary examination. Wickersham Report, at 109; Hall, The Law of Arrest in Relation to Contemporary Social Problems, 3 U. Chi. L. Rev. 345, 357 (1936). See also Foote, Law and Police Practice: Safeguards in the Law of Arrest, 52 Nw. U. L. Rev. 16 (1957).

[6] *Brown* v. *Mississippi*, 297 U.S. 278 (1936); *Chambers* v. *Florida*, 309 U.S. 227 (1940); *Canty* v. *Alabama*, 309 U.S. 629 (1940); *White* v. *Texas*, 310 U.S. 530 (1940); *Vernon* v. *Alabama*, 313 U.S. 547 (1941); *Ward* v. *Texas*, 316 U.S. 547 (1942); *Ashcraft* v. *Tennessee*, 322 U.S. 143 (1944); *Malinski* v. *New York*, 324 U.S. 401 (1945); *Leyra* v. *Denno*, 347 U.S. 556 (1954). See also *Williams* v. *United States*, 341 U.S. 97 (1951).

[7] In addition, see *People* v. *Wakat*, 415 Ill. 610, 114 N.E. 2d 706 (1953); *Wakat* v. *Harlib*, 253 F. 2d 59 (C. A. 7th Cir. 1958) (defendant suffering from broken bones, multiple bruises and injuries sufficiently serious to require eight months' medical treatment after being manhandled by five policemen); *Kier* v. *State*, 213 Md. 556, 132 A. 2d 494 (1957) (police doctor told accused, who was strapped to a chair completely nude, that he proposed to take hair and skin scrapings from anything that looked like blood or sperm from various parts of his body); *Bruner* v. *People*, 113 Col. 194, 156 P. 2d 111 (1945) (defendant held in custody over two months, deprived of food for 15 hours, forced to submit to a lie detector test when he wanted to go to the toilet); *People* v. *Matlock*, 51 Cal. 2d 682, 336 P. 2d 505 (1959) (defendant questioned incessantly over an evening's time, made to lie on cold board and to answer questions whenever it appeared he was getting sleepy). Other cases are documented in American Civil Liberties Union, Illinois Division, Secret Detention by the Chicago Police (1959); Pott, The Preliminary Examination and "The Third Degree." 2 Baylor L. Rev. 131 (1950); Sterling, Police Interrogation and the Psychology of Confession, 14 J. Pub. L. 25 (1965).

police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.'" IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement (1931), 5.

Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before. "Since *Chambers* v. *Florida*, 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn* v. *Alabama*, 361 U.S. 199, 206 (1960). Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics.[8] These texts are used by law enforcement agencies themselves as guides.[9] It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrigation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country.

The officers are told by the manuals that the "principal psychological factor contributing to a successful interrogation is *privavy*—being alone with the person under interrogation." [10] The efficacy of this tactic has been explained as follows:

> "If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions of criminal behavior within the walls of his own home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law." [11]

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act, rather than to court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited attraction to women. The officers are instructed to minimize the moral seriousness of the offense,[12] to cast blame on the victim or on society.[13] These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.

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[8] The manuals quoted in the text following are the most recent and representative of the texts currently available. Material of the same nature appears in Kidd, Police Interrogation (1940); Mulbar, Interrogation (1951); Dienstein, Technics for the Crime Investigator (1952), 97–115. Studies concerning the observed practices of the police appear in LaFave, Arrest: The Decision To Take a Suspect Into Custody (1965), 244–437, 490–521; LaFave, Detention for Investigation by the Police: An Analysis of Current Practices, 1962 Wash. U. L. Q. 331; Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif. L. Rev. 11 (1962); Sterling, *supra*, n. 7, at 47–65.

[9] The methods described in Inbau and Reid, Criminal Interrogation and Confessions (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, Lie Detection and Criminal Interrogation (3d ed. 1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, Fundamentals of Criminal Investigation (1959), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.

[10] Inbau and Reid, *supra*, at 1.

[11] O'Hara, *supra*, at 99.

[12] Inbau and Reid, *supra*, at 34–43, 87. For example, in *Leyra* v. *Denno*, 347 U.S. 556 (1954), the interrogator-psychiatrist told the accused, "We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things we aren't really responsible for," *id.*, at 562, and again, "We know that morally you were just in anger. Morally, you are not to be condemned," *id.*, at 582.

[13] Inbau and Reid, *supra*, at 43–55.

The texts thus stress that the major qualities an interrogator should possess are patience and perseverance. One writer describes the efficacy of these characteristics in this manner:

> "In the preceding paragraphs emphasis has been placed on kindness and stratagems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. This method should be used only when the guilt of the subject appears highly probable." [14]

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge-killing, for example, the interrogator may say:

> "Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him and that's why you carried a gun—for your own protection. You knew him for what he was, no good. Then when you met him he probably started using foul, abusive language and he gave some indication that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe?" [15]

Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that "Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense 'out' at the time of trial." [16]

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the "friendly-unfriendly" or the "Mutt and Jeff" act:

> ". . . In this technique, two agents are employed, Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kind-hearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room." [17]

The interrogators sometimes are instructed to induce a confession out of trickery. The technique here is quite effective in crimes which require identification or which run in series. In the identification situation, the interrogator may take a break in his questioning to place the subject among a group of men in a line-up. "The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party." [18] Then

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[14] O'Hara, *supra*, at 112.
[15] Inbau and Reid, *supra*, at 40.
[16] *Ibid.*
[17] O'Hara, *supra*, at 104, Inbau and Reid, *supra*, at 58–59. See *Spano* v. *New York*, 360 U.S. 315 (1959). A variant on the technique of creating hostility is one of engendering fear. This is perhaps best described by the prosecuting attorney in *Malinski* v. *New York*, 324 U.S. 401, 407 (1945): "Why all this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology—let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking."
[18] O'Hara, *supra*, at 105–106.

the questioning resumes "as though there were now no doubt about the guilt of the subject." A variation on this technique is called the "reverse line-up":

> "The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with different offenses. It is expected that the subject will become desperate and confess to the offense under investigation in order to escape from the false accusations." [19]

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain silent. "This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain silent impresses the subject with the apparent fairness of his interrogator." [20] After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect's refusal to talk:

> "Joe, you have a right to remain silent. That's your privilege and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O.K. But let me ask you this. Suppose you were in my shoes and I were in yours and you called me in to ask me about this and I told you, 'I don't want to answer any of your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over." [21]

Few will persist in their initial refusals to talk, it is said, if this monologue is employed correctly.

In the event that the subject wishes to speak to a relative or an attorney, the following advice is tendered:

> "[T]he interrogator should respond by suggesting the subject first tell the truth to the interrogator himself rather than get anyone else involved in the matter. If the request is for an attorney, the interrogator may suggest that the subject save himself or his family the expense of any such professional service, particularly if he is innocent of the offense under investigation. The interrogator may also add, 'Joe, I'm looking for the truth, and if you're telling the truth, that's it. You can handle this by yourself.'" [22]

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is esseential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired object may be obtained." [23] When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.[24] This fact may be illustrated simply by referring to three confession cases decided by this Court in the Term immediately preceding our *Escobedo* decision. In *Townsend* v. *Sain*,

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[19] *Id.*, at 106.
[20] Inbau and Reid, *supra*, at 111.
[21] *Ibid.*
[22] Inbau and Reid, *supra*, at 112.
[23] Inbau and Reid, Lie Detection and Criminal Interrogation (3d ed. 1953), 185.
[24] Interrogation procedures may even give rise to a false confession. The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was discovered, the prosecutor was reported as saying: "Call it what you want—brain-washing, hypnosis, fright. They made him give an untrue confession. The only thing I don't believe is that Whitmore was beaten." N.Y. Times, Jan. 28, 1965, p. 1, col. 5. In two other instances, similar events had occurred. N.Y. Times, Oct. 20, 1964, p. 22, col. 1; N.Y. Times, Aug. 24, 1965, p. 1, col. 1. In general, see Borchard, Convicting the Innocent (1932); Frank and Frank, Not Guilty (1957).

372 U.S. 293 (1963), the defendant was a 19-year-old heroin addict, described as a "near mental defective," *id.*, at 307–310. The defendant in *Lynumn* v. *Illinois*, 372 U.S. 528 (1963), was a woman who confessed to the arresting officer after being importuned to "cooperate' 'in order to prevent her children from being taken by relief authorities. This Court similarly reversed the conviction of a defendant in *Haynes* v. *Washington*, 373 U.S. 503 (1963), whose persistent request during his interrogation was to phone his wife or attorney.[25] In other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed.

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In No. 759, *Miranda* v. *Arizona*, the police arrested the defendant and took him to a special interrogation room where they secured a confession. In No. 760, *Vignera* v. *New York*, the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district atorney later the same evening. In No. 761, *Westover* v. *United States*, the defendant was handed over to the Federal Bureau of Investigation by local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in No. 584, *California* v. *Stewart*, the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in *Miranda*, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in *Stewart*, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patented psychological policy. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truthly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity.[26] The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

From the foregoing, we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. It is fitting to turn to history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation.

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[25] In the fourth confession case decided by the Court in the 1963 Term, *Fay* v. *Noia*, 372 U.S. 391 (1963), our disposition made it unnecessary to delve at length into the facts. The facts of the defendant's case there, however, paralleled those of his co-defendants, whose confessions were found to have resulted from continuous and coercive interrogation for 27 hours, with denial of requests for friends or attorney. See *United States* v. *Murphy*, 222 F. 2d 698 (C.A. 2d Cir., 1955) (Frank, J.); *People* v. *Bonino*, 1 N.Y. 2d 752, 135 N.E. 2d 51 (1956).

[26] The absurdity of denying that a confession obtained under these circumstances is compelled is aptly portrayed by an example in Professor Sutherland's recent article, Crime and Confession, 79 Harv. L. Rev. 21, 37 (1965):

"Suppose a well-to-do testatrix says she intends to will her property to Elizabeth. John and James want her to bequeath it to them instead. They capture the testatrix, put her in a carefully designed room, out of touch with everyone but themselves and their convenient 'witnesses,' keep her secluded there for hours while they make insistent demands, weary her with contradictions and finally induce her to execute the will in their favor. Assume that John and James are deeply and correctly convinced that Elizabeth is unworthy and will make base use of the property if she gets her hands on it, whereas John and James have the noblest and most righteous intentions. Would any judge of probate accept the will so procured as the 'voluntary' act of the testatrix?"

II

We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came and the fervor with which it was defended. Its roots go back into ancient times.[27] Perhaps the critical historical event shedding light on its origins and evolution was the trial of one John Lilburn, a vocal anti-Stuart Leveller, who was made to take the Star Chamber Oath in 1637. The oath would have bound him to answer to all questions posed to him on any subject. The Trial of John Lilburn and John Wharton, 3 How. St. Tr. 1315 (1637–1645). He resisted the oath and declaimed the proceedings, stating:

> "Another fundamental right I then contended for, was, that no man's conscience ought to be racked by oaths imposed, to answer to questions concerning himself in matters criminal, or pretended to be so." Heller and Davies, The Leveller Tracts 1647–1653 (1944), 454.

On account of the Lilburn Trial, Parliament abolished the inquisitorial Court of Star Chamber and went further in giving him generous reparation. The lofty principles to which Lilburn had appealed during his trial gained popular acceptance in England.[28] These sentiments worked their way over to the Colonies and were implanted after great struggle into the Bill of Rights.[29] Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that "illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure." *Boyd* v. *United States*, 116 U.S. 616, 635 (1886). The privilege was elevated to constitutional status and has always been "as broad as the mischief against which it seeks to guard." *Counselman* v. *Hitchcock*, 142 U.S. 547, 562 (1892). We cannot depart from this noble heritage.

Thus we may view the historical development of the privilege as one which groped for the proper scope of governmental power over the citizens. As a "noble principle often transcends its origins," the privilege has come rightfully to be recognized in part as an individual's substantive right, a "right to a private enclave where he may lead a private life. That right is the hallmark of our democracy." *United States* v. *Grunewald*, 233 F. 2d 556, 579, 581–582 (Frank J., dissenting), rev'd. 353 U.S. 391 (1957). We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values, *Murphy* v. *Waterfront Comm'n*, 378 U.S. 52, 55–57, n. 5 (1964); *Tehan* v. *Shott*, 382 U.S. 406, 414–415, n. 12 (1966). All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a "fair state-individual balance," to require the government "to shoulder the entire load," 8 Wigmore, Evidence (McNaughton rev., 1961), 317, to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. *Chambers* v. *Florida*, 309 U.S. 227, 235–238 (1940). In sum, the privilege is fulfilled only when the person is guaranteed the right "to remain silent unless he chooses to speak in the unfettered exercise of his own will." *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964).

The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation. In this Court, the privilege has consistently been accorded a liberal construction. *Albertson* v. *SACB*, 382 U.S. 70, 81 (1965); *Hoffman* v. *United States*, 341 U.S. 479, 486 (1951); *Arndstein* v. *McCarthy*, 254 U.S. 71, 72–73 (1920); *Counselman* v. *Hitchcock*, 142 U.S. 547, 562 (1892). We are satisfied that all the principles embodied in the privilege apply to informal

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[27] Thirteenth century commentators found an analogue to the privilege grounded in the Bible. "To sum up the matter, the principle that no man is to be declared guilty on his own admission is a divine decree." Maimonides, Mishneh Torah (Code of Jewish Law), Book of Judges, Laws of the Sanhedrin, c. 18, ¶ 6, 3 Yale Judaica Series 52–53. See also Lamm, The Fifth Amendment and Its Equivalent in the Halakha, 5 Judaism 53 (Winter 1956).

[28] See Morgan, The Privilege Against Self-Incrimination, 34 Minn. L. Rev. 1, 9–11 (1949); 8 Wigmore, Evidence (McNaughton rev., 1961), 289–295. See also Lowell, The Judicial Use of Torture, 11 Harv. L. Rev. 220, 290 (1897).

[29] See Pittman, The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America, 21 Va. L. Rev. 763 (1935); *Ullmann* v. *United States*, 350 U.S. 422, 445–449 (1956) (DOUGLAS, J., dissenting).

compulsion exerted by law-enforcement officers during in-custody questioning. An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery.[30]

This question, in fact, could have been taken as settled in federal courts almost 70 years ago, when, in *Bram* v. *United States*, 168 U.S. 532, 542 (1897), this Court held:

> "In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment . . . commanding that no person 'shall be compeled in any criminal case to be a witness against himself.' "

In *Bram*, the Court reviewed the British and American history and case law and set down the Fifth Amendment standard for compulsion which we implement today:

> "Much of the confusion which has resulted from the effort to deduce from the adjudged cases what would be a sufficient quantum of proof to show that a confession was or was not voluntary, has arisen from a misconception of the subject to which the proof must address itself. The rule is not that in order to render a statement admissable the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say, that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, when but for the improper influences he would have remained silent. . . ." 168 U.S. at 549. And see, *id.*, at 542.

The Court has adhered to this reasoning. In 1924, Mr. Justice Brandeis wrote for a unanimous Court in reversing a conviction resting on a compelled confession, *Wan* v. *United States*, 266 U.S. 1. He stated:

> "In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. *Bram* v. *United States*, 168 U.S. 532." 266 U.S., at 14–15.

In addition to the expansive historical development of the privilege and the sound policies which have nurtured its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation. In fact, the Government concedes this point as well established in No. 761, *Westover* v. *United States*, stating: "We have no doubt . . . that it is possible for a suspect's Fifth Amendment right to be violated during in-custody questioning by a law-enforcement officer."[31]

Because of the adoption by Congress of Rule 5(a) of the Federal Rules of Criminal Procedure, and this Courts effectuation of that Rule in *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957), we have had little occasion in the past quarter century to reach the constitutional issues in dealing with federal interrogations. These supervisory rules, requiring production of an arrested person before a commissioner "without unnecessary delay" and excluding evidence obtained in default of that statutory obligation, were nonetheless responsive to the same considerations of Fifth Amendment policy that unavoidably face us now as to the States. In *McNabb*, 318 U.S., at 343–344, and in *Mallory*, 354 U.S., at 455–456, we recognized both the dangers of

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[30] Compare *Brown* v. *Walker*, 161 U.S. 596 (1896); *Quinn* v. *United States*, 349 U.S. 155 (1955).

[31] Brief for the United States, p. 28. To the same effect, see Brief for the United States, pp. 40–49, n. 44, *Anderson* v. *United States*, 318 U.S. 350 (1943); Brief for the United States, pp. 17–18, *McNabb* v. *United States*, 318 U.S. 332 (1943).

interrogation and the appropriateness of prophylaxis stemming from the very fact of interrogation itself.[32]

Our decision in *Malloy* v. *Hogan*, 378 U.S. 1 (1964), necessitates an examination of the scope of the privilege in state cases as well. In *Malloy*, we squarely held the privilege applicable to the States, and held that the substantive standards underlying the privilege applied with full force to state court proceedings. There, as in *Murphy* v. *Waterfront Comm'n*, 378 U. S. 52 (1964), and *Griffin* v. *California*, 380 U. S. 609 (1965), we applied the existing Fifth Amendment standards to the case before us. Aside from the holding itself, the reasoning in *Malloy* made clear what had already become apparent—that the substantive and procedural safeguards surrounding admissibility of confessions in state cases had become exceedingly exacting, reflecting all the policies embedded in the privilege, 378 U. S. at 7–8.[33] The voluntariness doctrine in the state cases, as *Malloy* indicates, encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice.[34] The implications of this proposition were elaborated in our decision in *Escobedo* v. *Illinois*, 378 U. S. 478, decided one week after *Malloy* applied the privilege to the States.

Our holding there stressed the fact that the police had not advised the defendant of his constitutional privilege to remain silent at the outset of the interrogation, and we drew attention to that fact at several points in the decision, 378 U. S., at 483, 485, 491. This was no isolated factor, but an essential ingredient in our decision. The entire thrust of police interrogation there, as in all the cases today, was to put the defendant in such an emotional state as to impair his capacity for rational judgment. The abdication of the constitutional privilege—the choice on his part to speak to the police—was not made knowingly or competently because of the failure to apprise him of his rights; the compelling atmosphere of the in-custody interrogation, and not an independent decision on his part, caused the defendant to speak.

A different phase of the *Escobedo* decision was significant in its attention to the absence of counsel during the questioning. There, as in the cases today, we sought a protective device to dispel the compelling atmosphere of the interrogation. In *Escobedo*, however, the police did not relieve the defendant of the anxieties which they had created in the interrogation rooms. Rather, they denied his request for the assistance of counsel, 378 U. S., at 481, 488, 491.[35] This heightened his dilemma, and made his later statements the product of this compulsion. Cf. *Haynes* v. *Washington*, 373 U. S. 503, 513 (1963). The denial of the defendant's request for his attorney thus undermined his ability to exercise the privilege—to remain silent if he chose or to speak without any intimidation, blatant or subtle. The presence of counsel, in all the cases before us today, would be the adequate protective device necessary to make the process of police interrogation

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[32] Our decision today does not indicate in any manner, of course, that these rules can be disregarded. When federal officials arrest an individual, they must as always comply with the dictates of the congressional legislation and cases thereunder. See generally, Hogan and Snee, The McNabb-Mallory Rule: Its Rise, Rationale and Rescue, 47 Geo. L.J. 1 (1958).

[33] The decisions of this Court have guaranteed the same procedural protection for the defendant whether his confession was used in a federal or state court. It is now axiomatic that the defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. *Rogers* v. *Richmond*, 365 U.S. 534, 544 (1961); *Wan* v. *United States*, 266 U.S. 1 (1924). This is so even if there is ample evidence aside from the confession to support the conviction, *e.g.*, *Malinski* v. *New York*, 324 U. S. 401, 404 (1945); *Bram* v. *United States*, 168 U.S. 532, 540–542 (1897). Both state and federal courts now adhere to trial procedures which seek to assure a reliable and clear-cut determination of the voluntariness of the confession offered at trial, *Jackson* v. *Denno*, 378 U.S. 368 (1964); *United States* v. *Carignan*, 342 U.S. 36, 38 (1951); see also *Wilson* v. *United States*, 162 U.S. 613, 624 (1896). Appellate review is exacting, see *Haynes* v. *Washington*, 373 U.S. 503 (1963); *Blackburn* v. *Alabama*, 361 U.S. 199 (1960). Whether his conviction was in a federal or state court, the defendant may secure a post-conviction hearing based on the alleged involuntary character of his confession, provided he meets the procedural requirements, *Fay* v. *Noia*, 372 U.S. 391 (1963); *Townsend* v. *Sain*, 372 U.S. 293 (1963). In addition, see *Murphy* v. *Waterfront Comm'n*, 378 U.S. 52 (1964).

[34] See *Lisenba* v. *California*, 314 U.S. 219, 241 (1941); *Ashcraft* v. *Tennessee*, 322 U.S. 143 (1944); *Malinski* v. *New York*, 324 U.S. 401 (1945); *Spano* v. *New York*, 360 U.S. 315 (1959); *Lynumn* v. *Illinois*, 372 U.S. 528 (1963); *Haynes* v. *Washington*, 373 U.S. 503 (1963).

[35] The police also prevented the attorney from consulting with his client. Independent of any other constitutional proscription, this action constitutes a violation of the Sixth Amendment right to the assistance of counsel and excludes any statement obtained in its wake. See *People* v. *Donovan*, 13 N. Y. 2d 148, 193 N. E. 2d 628, 243 N. Y. S. 2d 841 (1964) (Fuld, J.).

conform to the dictates of the privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.

It was in this manner that *Escobedo* explicated another facet of the pre-trial privilege, noted in many of the Court's prior decisions: the protection of rights at trial.[36] That counsel is present when statements are taken from an individual during interrogation obviously enhances the integrity of the fact-finding processes in court. The presence of an attorney, and the warnings delivered to the individual, enable the defendant under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process. Without the protections flowing from adequate warnings and the rights of counsel, "all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police." *Mapp* v. *Ohio*, 367 U.S. 643, 685 (1961) (HARLAN J., dissenting). Cf. *Pointer* v. *Texas*, 380 U.S. 400 (1965).

III

Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves. We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

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 adherance 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 is it 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 appraising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury.[37] Further, the

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[36] *In re Groban*, 352 U. S. 330, 340–352 (1957) (BLACK, J., dissenting); Note, 73 Yale L. J. 1000, 1048–1051 (1964); Comment, 31 U. Chi. L. Rev. 313, 320 (1964) and authorities cited.

[37] See p. 16, *supra*. Lord Devlin has commented:

"It is probable that even today, when there is much less ignorance about these matters than formerly, there is still a general belief that you must answer all questions put to you by a policeman, or at least that it will be the worst for you if you do not." Devlin, The Criminal Prosecution in England (1958), 32.

In accord with this decision, it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation. Cf. *Griffin* v. *California*, 380 U.S. 609 (1965); *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964); Comment, 31 U. Chi. L. Rev. 556 (1964); Developments in the Law—Confessions, 79 Harv. L. Rev. 935, 1041–1044 (1966). See also *Braum* v. *United States*, 168 U.S. 532, 562 (1897).

warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation;[38] a warning is a clearcut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent without more "will benefit only the recidivist and the professional." Brief for the National District Attorneys Association as *amicus curiae*, p. 14. Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Cf. *Escobedo* v. *Illinois*, 378 U.S. 478, 485, n. 5. Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

The presence of counsel at the interrogation may serve several significant subsidiary functions as well. If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness. With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police and that the statement is rightly reported by the prosecution at trial. See *Crooker* v. *California*, 357 U.S. 433, 443–448 (1958) (DOUGLAS, J., dissenting).

An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel. As the California Supreme Court has aptly put it:

> "Finally, we must recognize that the imposition of the requirement for the request would discriminate against the defendant who does not know his rights. The defendant who does not ask for counsel is the very defendant who most needs counsel. We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request and by such failure demonstrates his helplessness. To require the request would be

[38] Cf. *Betts* v. *Brady*, 316 U.S. 455 (1942), and the recurrent inquiry into special circumstances it necessitated. See generally, Kamisar, *Betts* v. *Brady* Twenty Years Later: The Right to Counsel and Due Process Values, 61 Mich. L. Rev. 219 (1962).

to favor the defendant whose sophistication or status has fortuitously prompted him to make it." *People* v. *Dorado*, 62 Cal. 2d 338, 351, 398 P. 2d 361, 369–370, 42 Cal. Rptr. 169, 177–178 (1965) (Tobriner, J.).

In *Carnley* v. *Cochran*, 369 U.S. 506, 513 (1962), we stated: "[I]t is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request." This proposition applies with equal force in the context of providing counsel to protect an accused's Fifth Amendment privilege in the face of interrogation.[39] Although the role of counsel at trial differs from the role during interrogation, the differences are not relevant to the question whether a request is a prerequisite.

Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us as well as the vast majority of confession cases with which we have dealt in the past involve those unable to retain counsel.[40] While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice.[41] Denial of counsel to the indigent at the time of interrogation while allowing an attorney to those who can afford one would be no more supportable by reason or logic than the similar situation at trial and on appeal struck down in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), and *Douglas* v. *California*, 372 U.S. 353 (1963).

In order to fully apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present.[42]

As with the warnings of the right to remain silent and of the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it.[43]

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[39] See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St. L. J. 449, 480 (1964).

[40] Estimates of 50–90% indigency among felony defendants have been reported. Pollock, Equal Justice in Practice, 45 Minn. L. Rev. 737, 738–739 (1961); Birzon, Kasanof and Forma, The Right to Counsel and the Indigent Accused in Courts of Criminal Jurisdiction in New York State, 14 Buff. L. Rev. 428, 433 (1965).

[41] See Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time (1965), 64–81. As we stated in the Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice (1963), p. 9:

"When government chooses to exert its powers in the criminal area, its obligation is surely no less than that of taking reasonable measures to eliminate those factors that are irrelevant to just administration of the law but which, nevertheless, may occasionally affect determinations of the accused's liability or penalty. While government may not be required to relieve the accused of his poverty, it may properly be required to minimize the influence of poverty on its administration of justice."

[42] Cf. *United States ex rel. Brown* v. *Fay*, 242 F. Supp. 273, 277 (D.C.S.D.N.Y. 1965); *People* v. *Witenski*, 15 N.Y. 2d 392, 207 N.E. 2d 358, 259 N.Y.S. 2d 413 (1965).

[43] While a warning that the indigent may have counsel appointed need not be given to the person who is known to have an attorney or is known to have ample funds to secure one, the expedient of giving a warning is too simple and the rights involved too important to engage in *ex post facto* inquiries into financial ability when there is any doubt at all on that score.

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.[44] At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

This does not mean, as some have suggested, that each police station must have a "station house lawyer" present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person they must make known to him that he is entitled to a lawyer and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may do so without violating the person's Fifth Amendment privilege so long as they do not question him during that time.

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. *Escobedo* v. *Illinois*, 378 U.S. 478, 490, n. 14. This Court has always set high standards of proof for the waiver of constitutional rights, *Johnson* v. *Zerbst*, 304 U.S. 458 (1938), and we re-assert these standards as applied to in-custody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.

An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. A statement we made in *Carnley* v. *Cochran*, 369 U.S. 506, 516 (1962), is applicable here:

> "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver."

See also *Glasser* v. *United States*, 315 U.S. 60 (1942). Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives some information on his own prior to invoking his right to remain silent when interrogated.[45]

Whatever the testimony of the authorities as to 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. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege. Moreover, any evidence that the

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[44] If an individual indicates his desire to remain silent, but has an attorney present, there may be some circumstances in which further questioning would be permissible. In the absence of evidence of overbearing, statements then made in the presence of counsel might be free of the compelling influence of the interrogation process and might fairly be construed as a waiver of the privilege for purposes of these statements.

[45] Although this Court held in *Rogers* v. *United States*, 340 U.S. 367 (1951), over strong dissent, that a witness before a grand jury may not in certain circumstances decide to answer some questions and then refuse to answer others, that decision has no application to the interrogation situation we deal with today. No legislative or judicial factfinding authority is involved here, nor is there a possibility that the individual might make self-serving statements of which he could make use at trial while refusing to answer incriminating statements.

accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.

The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements which are direct confessions and statements which amount to "admissions" for part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incrimnate himself in any manner; it does not distinguish degrees of incrimination. Similarly, for precisely the same reason, no distinction may be drawn between inculpatory." If a statement made were in fact truly exculpatory it would, of course, never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement. In *Escobedo* itself, the defendant fully intended his accusation of another as the slayer to be exculpatory as to himself.

The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries. Under the system of warnings we delineate today or under any other system which may be devised and found effective, the safeguards to be erected about the privilege must come into play at this point.

Our decision is not intended to hamper the traditional function of police officers in investigating crime. See *Escobedo* v. *Illinois*, 378 U.S. 478, 492. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.[46]

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime,[47] or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.

To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the

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[46] The distinction and its significance has been aptly described in the opinion of a Scottish court:
"In former times such questioning, if undertaken, would be conducted by police officers visiting the house or place of business of the suspect and there questioning him, probably in the presence of a relation or friend. However convenient the modern practice may be, it must normally create a situation very unfavourable to the suspect." *Chalmers* v. *H. M. Advocate*, [1954] Sess. Cas. 66, 78 (J. C.).

[47] See *People* v. *Dorado*, 62 Cal. 2d 338, 354, 398 P. 2d 361, 371, 42 Cal. Rptr. 169, 179 (1965).

right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.[48]

IV

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. See, *e.g.*, *Chambers* v. *Florida*, 309 U.S. 227, 240–241 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged. As Mr. Justice Brandeis once observed:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Olmstead* v. *United States*, 277 U.S. 438, 485 (1928) (dissenting opinion).[49]

In this connection, one of our country's distinguished jurists has pointed out: "The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal law." [50]

If he individual desires to exercise his privilege, he has the right to do so. This is not for the authorities to decide. An attorney may advise his client not to talk to police until he has had an opportunity to investigate the case, or he may wish to be present with his client during any police questioning. In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement. He is merely carrying out what he is sworn to do under his oath—to protect to the extent of his ability the right of his client. In fulfilling this responsibility the attorney plays a vital role in the adminisration of criminal justice under our Constitution.

In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions. Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the "need" for confessions. In each case authorities conducted interrogations ranging up to five days in duration despite the presence, through standard investigating practices, of considerable evidence against each defendant.[51] Further examples are chronicled in our prior cases.

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[48] In accordance with our holdings today and in *Escobedo* v. *Illinois*, 378 U.S. 478, 492, *Crooker* v. *California*, 357 U.S. 433 (1958) and *Cicenia* v. *Lagay*, 357 U.S. 504 (1958) are not to be followed.

[49] In quoting the above from the dissenting opinion of Mr. Justice Brandeis we, of course, do not intend to pass on the constitutional questions involved in the *Olmstead* case.

[50] Schaefer, Federalism and State Criminal Procedure, 70 Harv. L. Rev. 1, 26 (1956).

[51] Miranda, Vignera, and Westover were identified by eyewitnesses. Marked bills from the bank robbed were found in Westover's car. Articles stolen from the victim as well as from several other robbery victims were found in Stewart's home at the outset of the investigation.

See, *e.g., Haynes* v. *Washington*, 373 U.S. 503, 518–519 (1963); *Rogers* v. *Richmond*, 365 U.S. 534, 541 (1961); *Malinski* v. *New York*, 324 U.S. 401, 402 (1945).[52]

It is also urged that an unfettered right to detention for interrogation should be allowed because it will often redound to the benefit of the person questioned. When police inquiry determines that there is no reason to believe that the person has committed any crime, it is said, he will be released without need for further formal procedures. The person who has committed no offense, however, will be better able to clear himself after warnings, with counsel present than without. It can be assumed that in such circumstances a lawyer would advise his client to talk freely to police in order to clear himself.

Custodial interrogation, by contrast, does not necessarily afford the innocent an opportunity to clear themselves. A serious consequence of the present practice of the interrogation alleged to be beneficial for the innocent is that many arrests "for investigation" subject large numbers of innocent persons to detention and interrogation. In one of the cases before us, No. 584, *California* v. *Stewart*, police held four persons, who were in the defendant's house at the time of the arrest, in jail for five days until defendant confessed. At that time they were finally released. Police stated that there was "no evidence to connect them with any crime." Available statistics on the extent of this practice where it is condoned indicate that these four are far from alone in being subjected to arrest, prolonged detention, and interrogation without the requisite probable cause.[53]

Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay.[54] A letter received from the Solictor General in response to a question from the Bench makes it clear that the present pattern of warnings and respect for the rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. It states:

> "At the oral argument of the above cause, MR. JUSTICE FORTAS asked whether I could provide certain information as to the practices followed by the Federal Bureau of Investigation. I have directed these questions to the attention of the Director of the Federal Bureau of Investigation and am submitting herewith a statement of the questions and of the answers which we have received.
>
> "'(1) When an individual is interviewed by agents of the Bureau, what warning is given to him?

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[52] Dealing as we do here with constitutional standards in relation to statements made, the existence of independent corroborating evidence produced at trial is, of course, irrelevant to our decisions. *Haynes* v. *Washington*, 373 U.S. 503, 518–519 (1963); *Lynumn* v. *Illinois*, 372 U.S. 528, 537–538 (1963); *Rogers* v. *Richmond*, 365 U.S. 534, 541 (1961); *Blackburn* v. *Alabama*, 361 U.S. 199, 206 (1960).

[53] See, *e. g.*, Report and Recommendations of the Commissioner's Committee on Police Arrests for Investigation (1962); American Civil Liberties Union, Secret Detention by the Chicago Police (1959). An extreme example of this practice occurred in the District of Columbia in 1958. Seeking three "stocky" young Negroes who had robbed a restaurant, police rounded up 90 persons of that general description. Sixty-three were held overnight before being released for lack of evidence. A man not among the 90 arrested was ultimately charged with the crime. Washington Daily News, January 21, 1958, p. 5, col. 1; Hearings before a Subcommittee of the Senate Judiciary Committee on H.R. 11477, S. 2970, S. 3325, and S. 3355 (July 1958), pp. 40, 78.

[54] In 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated:

"Law enforcement, however, in defeating the criminal, must maintain inviolate the historic liberties of the individual. To turn back the criminal, yet, by so doing, destroy the dignity of the individual, would be a hollow victory.

"We can have the Constitution, the best laws in the land, and the most honest reviews by courts—but unless the law enforcement profession is steeped in the democratic tradition, maintains the highest in ethics, and makes its work a career of honor, civil liberties will continually—and without end—be violated. . . . The best protection of civil liberties is *an alert, intelligent and honest law enforcement agency. There can be no alternative.*

". . . Special Agents are taught that any suspect or arrested person, at the outset of an interview, must be advised that he is not required to make a statement and that any statement given can be used against him in court. Moreover, the individual must be informed that, if he desires, he may obtain the services of an attorney of his own choice."

Hoover, Civil Liberties and Law Enforcement: The Role of the FBI, 37 Iowa L. Rev. 175, 177–182 (1952).

" 'The standard warning long given by Special Agents of the FBI to both suspects and persons under arrest is that the person has a right to say nothing and a right to counsel, and that any statement he does make may be used against him in court. Examples of this warning are to be found in the *Westover* case at 342 F. 2d 685 (1965), and *Jackson* v. *U.S.*, 337 F. 2d 136 (1964), cert. den. 380 U.S. 985.

" 'After passage of the Criminal Justice Act of 1964, which provides free counsel for Federal defendants unable to pay, we added to our instructions to Special Agents the requirement that any person who is under arrest for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, must also be advised of his right to free counsel if he is unable to pay, and the fact that such counsel will be asigned by the Judge. At the same time, we broadened the right to counsel warning to read counsel of his own choice, or anyone else with whom he might wish to speak.

" '(2) When is the warning given?

" 'The FBI warning is given to a suspect at the very outset of the interview, as shown in the *Westover* case, cited above. The warning may be given to a person arrested as soon as practicable after the arrest, as shown in the *Jackson* case, also cited above, and in *U.S.* v. *Konigsberg*, 336 F. 2d 844 (1964), cert. den. 379 U.S. 930, 933, but in any event it must precede the interview with the person for a confession or admission of his own guilt.

" '(3) What is the Bureau's practice in the event that (a) the individual requests counsel and (b) counsel appears?

" 'When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, *Shultz* v. *U.S.*, 351 F. 2d 287 (1965), It may be continued, however, as to all matters *other* than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent. For example, in *Hiram* v. *U.S.*, 354 F. 2d 4 (1965), the Agent's conclusion that the person arrested had waived his right to cousel was upheld by the courts.

" 'A person being interviewed and desiring to consult counsel by telephone must be permitted to do so, as shown in *Caldwell* v. *U.S.*, 351 F. 2d 459 (1965). When counsel appears in person, he is permitted to confer with his client in private.

" '(4) What is the Bureau's practice if the individual requests counsel, but cannot afford to retain an attorney?

" 'If any person being interviewed after warning of counsel decides that he wishes to consult with counsel before proceeding further the interview is terminated, as shown above. FBI Agents do not pass judgment on the ability of the person to pay for counsel. They do, however, advise those who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, of a right to free counsel *if* they are unable to pay, and the availability of such counsel from the Judge.' " [55]

The practice of the FBI can readily be emulated by state and local enforcement agencies. The argument that the FBI deals with different crimes than are dealt with by state authorities does not mitigate the significance of the FBI experience.[56]

The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. The English procedure since 1912 under the Judge's Rules is significant. As recently strengthened, the Rules require that a cautionary warning be given an accused by a police officer as soon as he has evidence that affords reasonable grounds for suspicion; they also

[55] We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver is necessarily high. And, of course, the ultimate responsibility for resolving this constitutional question lies with the courts.

[56] Among the crimes within the enforcement jurisdiction of the FBI are kidnaping, 18 U.S.C. § 1201 (1964 ed.), white slavery, 18 U.S.C. §§ 2421–2423 (1964 ed.), bank robbery, 18 U.S.C. § 2113 (1964 ed.), interstate transportation and sale of stolen property, 18 U.S.C. §§ 2311–2317 (1964 ed.), all manner of conspiracies, 18 U.S.C. § 371 (1964 ed.), and violations of civil rights, 18 U.S.C. §§ 241–242 (1964 ed.). See also 18 U.S.C. § 1114 (1964 ed.) (murder of officer or employee of the United States).

require that any statement made be given by the accused without questioning by police.[57] The right of the individual to consult with an attorney during this period is expressly recognized.[58]

The safeguards present under Scottish law may be even greater than in England. Scottish judicial decisions bar use in evidence of most confessions obtained through police interrogation.[59] In India, confessions made to police not in the presence of a magistrate have been excluded by rule of evidence since 1872, at a time when it operated under British law.[60] Identical provisions appear in the Evidence Ordinance of Ceylon, enacted in 1895.[61] Similarly, in our country the Uniform Code of Military Justice has long provided that no suspect may be interrogated without first being warned of his right not to make a statement and that any statement he makes may be used against him.[62] Denial of the right to consult counsel during interrogation has also been proscribed by military tribunals.[63] There appears to have been no marked detrimental effect on criminal law enforcement in these jurisdictions as a result of these rules. Conditions of

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[57] [1964] Crim. L. Rev. 166–170. These Rules provide in part:

"II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

"The caution shall be in the following terms:

" 'You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.'

"When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

* * * * * * *

"(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted.

* * * * * * *

"IV. All written statements made after caution shall be taken in the following manner:

"(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says.

"He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him . . . .

"(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

* * * * * * *

"(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him."

The prior Rules appear in Devlin, The Criminal Prosecution in England (1958), 137–141.

Despite suggestions of some laxity in enforcement of the Rules and despite the fact some discretion as to admissibility is invested in the trial judge, the Rules are a significant influence in the English criminal law enforcement system. See, *e. g.*, [1964] Crim. L. Rev., at 182; and articles collected in [1960] Crim. L. Rev., at 298–356.

[58] The introduction to the Judge's Rules states in part:

"These Rules do not affect the principles

"(c) That every person at any stage of an investigation should be able to communicate and consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so . . . ." [1964] Crim. L. Rev., at 166–167.

[59] As stated by the Lord Justice General in *Chalmers* v. *H. M. Advocate,* [1954] Sess. Cas. 66, 78 (J. C.):

"The theory of our law is that at the stage of initial investigation the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centred upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, *e. g.*, to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. Once the accused has been apprehended and charged he has the statutory right to a private interview with a solicitor and to be brought before a magistrate with all convenient speed so that he may, if so advised, emit a declaration in presence of his solicitor under conditions which safeguard him against prejudice."

[60] "No confession made to a police officer shall be proved as against a person accused of any offence." Indian Evidence Act § 25

"No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person." Indian Evidence Act, § 26. See 1 Ramaswami & Rajagopalan, Law of Evidence in India (1962), 553–569. To avoid any continuing effect of police pressure or inducement, the Indian Supreme Court has invalidated a confession made shortly after police brought a suspect before a magistrate, suggesting: "[I]t would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not to make a confession." *Sarwan Singh* v. *State of Punjab,* 44 All India Rep. 1957, Sup. Ct. 637, 644.

[61] 1 Legislative Enactments of Ceylon (1958), 211.

[62] 10 U. S. C. § 831 (b) (1964 ed.).

[63] *United States* v. *Rose,* 24 Court-Martial Reports 251 (1957); *United States* v. *Gunnels,* 23 Court-Martial Reports 354 (1957).

law enforcement in our country are sufficiently similar to permit reference to this experience as assurance that lawlessness will not result from warning an individual of his rights or allowing him to exercise them. Moreover, it is consistent with our legal system that we give at least as much protection to these rights as is given in the jurisdictions described. We deal in our country with rights grounded in a specific requirement of the Fifth Amendment of the Constitution, whereas other jurisdictions arrived at their conclusions on the basis of principles of justice not so specifically defined.[64]

It is also urged upon us that we withhold decision on this issue until state legislative bodies and advisory groups have had an opportunity to deal with these problems by rule making.[65] We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions and must be determined by the courts. The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. See *Hopt* v. *Utah*, 110 U.S. 574 (1884). Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when *Escobedo* was before us and it is our responsibility today. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

V

Because of the nature of the problem and because of its recurrent significance in numerous cases, we have to this point discussed the relationship of the Fifth Amendment privilege to police interrogation without specific concentration on the facts of the cases before us. We turn now to these facts to consider the application to these cases of the constitutional principles discussed above. In each instance, we have concluded that statements were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.

No. 759. *Miranda* v. *Arizona*.

On March 13, 1963, petitioner, Ernesto Miranda, was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to "Interrogation Room No. 2" of the detective bureau. There he was questioned by two police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present.[66] Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda. At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me." [67]

At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each

[64] Although no constitution existed at the time confessions were excluded by rule of evidence in 1872, India now has a written constitution which includes the provision that "No person accused of any offence shall be compelled to be a witness against himself." Constitution of India, Article 20(3). See Tope, The Constitution of India (1960), 63–67.

[65] Brief for United States in No. 761, *Westover* v. *United States*, pp. 44–47; Brief for the State of New York as *amicus curiae*, pp. 35–39. See also Brief for the National District Attorneys Association as *amicus curiae*, pp. 23–26.

[66] Miranda was also convicted in a separate trial on an unrelated robbery charge not presented here for review. A statement introduced at that trial was obtained from Miranda during the same interrogation which resulted in the confession involved here. At the robbery trial, one officer testified that during the interrogation he did not tell Miranda that anything he said would be held against him or that he could consult with an attorney. The other officer stated that they had both told Miranda that anything he said would be used against him and that he was not required by law to tell them anything.

[67] One of the officers testified that he read this paragraph to Miranda. Apparently, however, he did not do so until after Miranda had confessed orally.

count, the sentences to run concurrently. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession and affirmed the conviction. 98 Ariz. 18, 401 P. 2d 721. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

We reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights. Cf. *Haynes* v. *Washington*, 373 U.S. 503, 512–513 (1963); *Haley* v. *Ohio*, 332 U.S. 596, 601 (1948) (opinion of MR. JUSTICE DOUGLAS).

No. 760. *Vignera* v. *New York*.

Petitioner, Michael Vignera, was picked up by New York police on October 14, 1960, in connection with th robbery three days earlier of a Brooklyn dress shop. They took him to the 17th Detective Squad headquarters in Manhattan. Sometime thereafter he was taken to the 66th Detective Squad. There a detective questioned Vignera with respect to the robbery. Vignera orally admitted the robbery to the detective. The detective was asked on cross-examination at trial by defense counsel whether Vignera was warned of his right to counsel before being interrogated. The prosecution objected to the question and the trial judge sustained the objection. Thus, the defense was precluded from making any showning that warnings had not been given. While at the 66th Detective Squad, Vignera was identified by the store owner and a saleslady as the man who robbed the dress shop. At about 3:00 p.m. he was formally arrested. The police then transported him to still another station, the 70th Precinct in Brooklyn, "for detention." At 11:00 p.m. Vignera was questioned by an assistant district attorney in the presence of a hearing reporter who transcribed the questions and Vignera's answers. This verbatim account of these proceedings contains no statement of any warnings given by the assistant district attorney. At Vignera's trial on a charge of first degree robbery, the detective testified as to the oral confession. The transcription of the statement taken was also introduced in evidence. At the conclusion of the testimony, the trial judge charged the jury in part as follows:

> "The law doesn't say that the confession is void or invalidated because the police officer didn't advise the defendant as to his rights. Did you hear what I said? I am telling you what the law of the State of New York is."

Vignera was found guilty of first degree robbery. He was subsequently adjudged a third-felony offender and sentenced to 30 to 60 years' imprisonment.[68] The conviction was affirmed without opinion by the Appellate Division, Second Department, 21 A. D. 2d 752, 252 N. Y. S. 2d 19, and by the Court of Appeals, also without opinion, 15 N. Y. 2d 970, 207 N. E. 2d 527, 259 N. Y. S. 2d 857, remittitur amended, 16 N. Y. 2d 614, 209 N.E. 2d 110, 261 N. Y. S. 2d 65. In argument to the Court of Appeals, the State contended that Vignera had no constitutional right to be advised of his right to counsel or his privilege against self-incrimination.

We reverse. The foregoing indicates that Vignera was not warned of any of his rights before the questioning by the detective and by the assistant district attorney. No other steps were taken to protect these rights. Thus he was not effectively apprised of his Fifth Amendment privilege or of his right to have counsel present and his statements are inadmissible.

No. 761. *Westover* v. *United States*.

At approximately 9:45 p.m. on March 20, 1963, petitioner, Carl Calvin Westover, was arrested by local police in Kansas City as a suspect in two Kansas City robberies. A report was also received from the FBI that he was wanted on a felony charge in California. The local authorities took him to a police station and placed him in a line-up on the local charges, and at about 11:45 p.m. he was booked. Kansas City police interrogated Westover on the night of his arrest. He denied any knowledge of criminal activities. The next day local officers

[68] Vignera thereafter successfully attacked the validity of one of the prior convictions, *Vignera* v. *Wilkins*, Civ. 9901 (D. C. W. D. N. Y. Dec. 31, 1961) (unreported), but was then resentenced as a second-felony offender to the same term of imprisonment as the original sentence. R. 31–33.

interrogated him again throughout the morning. Shortly before noon they informed the FBI that they were through interrogating Westover and that the FBI could proceed to interrogate him. There is nothing in the record to indicate that Westover was ever given any warning as to his rights by local police. At noon, three special agents of the FBI continued the interrogation in a private interview room of the Kansas City Police Department, this time with respect to the robbery of a savings and loan association and a bank in Sacramento, California. After two or two and one-half hours, Westover signed separate confessions to each of these two robberies which had been prepared by one of the agents during the interrogation. At trial one of the agents testified, and a paragraph on each of the statements states, that the agents advised Westover that he did not have to make a statement, that any statement he made could be used against him, and that he had the right to see an attorney.

Westover was tried by a jury in federal court and convicted of the California robberies. His statements were introduced at trial. He was sentenced to 15 years' imprisonment on each count, the sentences to run consecutively. On appeal, the conviction was affirmed by the Court of Appeals for the Ninth Circuit. 342 F. 2d 684.

We reverse. On the facts of this case we cannot find that Westover knowingly and intelligently waived his right to remain silent and his right to consult with counsel prior to the time he made the statement.[69] At the time the FBI agents began questioning Westover, he had been in custody for over 14 hours and had been interrogated at length during that period. The FBI interrogation began immediately upon the conclusion of the interrogation by Kansas City police and was conducted in local police headquarters. Although the two law enforcement authorities are legally distinct and the crimes for which they interrogated Westover were different, the impact on him was that of a continuous period of questioning. There is no evidence of any warning given prior to the FBI interrogation nor is there any evidence of an articulated waiver of rights after the FBI commenced their interrogation. The record simply shows that the defendant did in fact confess a short time after being turned over to the FBI following interrogation by local police. Despite the fact that the FBI agents gave warnings at the outset of their interview, from Westover's point of view the warnings came at the end of the interrogation process. In these circumstances an intelligent waiver of constitutional rights cannot be assumed.

We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them. But here the FBI interrogation was conducted immediately following the state interrogation in the same police station—in the same compelling surroundings. Thus, in obtaining a confession from Westover the federal authorities were the beneficiaries of the pressure applied by the local in-custody interrogation. In these circumstances the giving of warnings alone was not sufficient to protect the privilege.

No. 584. *California* v. *Stewart.*

In the course of investigating a series of purse-snatch robberies in which one of the victims had died of injuries inflicted by her assailant, respondent, Roy Allen Stewart, was pointed out to Los Angeles police as the endorser of dividend checks taken in one of the robberies. At about 7:15 p.m., January 31, 1963, police officers went to Stewart's house and arrested him. One of the officers asked Stewart if they could search the house, to which he replied, "Go ahead." The search turned up various items taken from the five robbery victims. At the time of Stewart's arrest, police also arrested Stewart's wife and three other persons who were visiting him. These four were jailed along with Stewart and were interrogated. Stewart was taken to the University Station of the Los Angeles Police Department where he was placed in a cell. During the next five days,

[69] The failure of defense counsel to object to the introduction of the confession at trial, noted by the Court of Appeals and emphasized by the Solicitor General, does not preclude our consideration of the issue. Since the trial was held prior to our decision in *Escobedo* and, of course, prior to our decision today making the objection available, the failure to object at trial does not constitute a waiver of the claim. See, *e. g., United States ex rel. Anglet* v. *Fay,* 333 F. 2d 12, 16 (C. A. 2d Cir. 1964), aff'd, 381 U.S. 654 (1965). Cf. *Ziffrin, Inc.* v. *United States,* 318 U. S. 73, 78 (1943).

police interrogated Stewart on nine different occasions. Except during the first interrogation session, when he was confronted with an accussing witness, Stewart was isolated with his interrogators.

During the ninth interrogation session, Stewart admitted that he had robbed the deceased and stated that he had not mean to hurt her. Police then brought Stewart before a magistrate for the first time. Since there was no evidence to connect them with any crime, the police then released the other four persons arrested with him.

Nothing in the record specifically indicates whether Stewart was or was not advised of his right to remain silent or his right to counsel. In a number of instances, however, the interrogating officers were asked to recount everything that was said during the interrogations. None indicated that Stewart was ever advised of his rights.

Stewart was charged with kidnapping to commit robbery, rape, and murder. At his trial, transcripts of the first interrogation and the confession at the last interrogation were introduced in evidence. The jury found Stewart guilty of robbery and first dgree murder and fixed the penalty as death. On appeal, the Supreme Court of California reversed. 62 Cal. 2d 571, 400 P. 2d 97, 43 Cal. Rptr. 201. It held that under this Court's decision in *Escobedo*, Stewart should have been advised of his right to remain silent and of his right to counsel and that it would not presume in the face of a silent record that the police advised Stewart of his rights.[70]

We affirm.[71] In dealing with custodial interrogation, we will not presume that a defendant has been effectively apprised of his rights and that his privilege againts self-incrimination has been adequately safeguarded on a record that does not show that any warnings have been given or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of these rights be assumed on a silent record. Furthermore, Stewart's steadfast denial of the alleged offenses through eight of the nine interrogations over a period of five days is subject to no other construction than that he was compelled by persistent interrogation to forgo his Fifth Amendment privilege.

Therefore, in accordance with the foregoing, the judgments of the Supreme Court of Arizona in No. 759, or the New York Court of Appeals in No. 760, and of the Court of Appeals for the Ninth Circuit in No. 761 are reversed. The judgment of the Supreme Court of California in No. 584 is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

NOS. 759, 760, 761 AND 584.—OCTOBER TERM, 1965

Ernesto A. Miranda, petitioner, 759, v. State of Arizona, on writ of certiorari to the Supreme Court of the State of Arizona

Michael Vignera, petitioner, 760 v. State of New York on writ of certiorari to the Court of Appeals of the State of New York

Carl Calvin Westover, petitioner, 761, v. United States, on writ of certiorari to the United States Court of Appeals for the Ninth Circuit

State of California, petitioner, 584, v. Roy Allen Stewart, on writ of certiorari to the Supreme Court of the State of California

[June 13, 1966]

MR. JUSTICE CLARK, dissenting in Nos. 759, 760, and 761, and concurring in result No. 584.

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[70] Because of this disposition of the case, the California Supreme Court did not reach the claims that the confession was coerced by police threats to hold his ailing wife in custody until he confessed, that there was no hearing as required by *Jackson* v. *Denno*, 378 U. S. 368 (1964), and that the trial judge gave an instruction condemned by the California Supreme Court's decision in *People* v. *Morse*, 60 Cal. 2d 631, 388 P. 2d 33, 36 Cal. Rptr. 201 (1964).

[71] After certiorari was granted in this case, respondent moved to dismiss on the ground that there was no final judgment from which the State could appeal since the judgment below directed that he be retried. In the event respondent was successful in obtaining an acquittal on retrial, however, under California law the State would have no appeal. Satisfied that in these circumstances the decision below constituted a final judgment under 28 U. S. C. § 1257(3) (1964 ed.), we denied the motion. 383 U. S. 903.

It is with regret that I find it necessary to write in these cases. However, I am unable to join the majority because its opinion goes too far on too little, while my dissenting brethren do not go quite far enough. Nor can I agree with the Court's criticism of the present practices of police and investigatory agencies as to custodial interrogation. The materials it refers to as "police manuals" [1] are, as I read them, merely writings in this field by professors and some police officers. Not one is shown by the record here to be the official manual of any police department, much less in universal use in crime detection. Moreover, the examples of police brutality mentioned by the Court are rare exceptions to the thousands of cases that appear every year in the law reports.[2] The police agencies—all the way from municipal and state forces to the federal bureaus—are responsible for law enforcement and public safety in this country. I am proud of their efforts, which in my view are not fairly characterized by the Court's opinion.

I

The *ipse dixit* of the majority has no support in our cases. Indeed, the Court admits that "we might not find the defendants' statements [here] to have been involuntary in traditional terms." *Ante*, p. ——. In short, the Court has added more to the requirements that the accused is entitled to consult with his lawyer and that he must be given the traditional warning that he may remain silent and that anything that he says may be used against him. *Escobedo* v. *Illinois*, 378 U.S. 478, 490–491 (1964). Now, the Court fashions a constitutional rule that the police may engage in no custodial interrogation without additionally advising the accused that he has a right under the Fifth Amendment to the presence of counsel during interrogation and that, if he is without funds, that counsel will be furnished him. When at any point during an interrogation the accused seeks affirmatively or impliedly to invoke his rights to silence or counsel, interrogation must be forgone or postponed. The Court further holds that failure to follow the new procedures requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof. Such a strict constitutional specific inserted at the nerve center of crime detection may well kill the patient.[3] Since there is at this time a paucity of information and an almost total lack of empirical knowledge on the practical operation of requirements, truly comparable to those announced by the majority, I would be more restrained lest we go too far too fast.

Constitution has prescribed" its holding and where the light of our past cases, from *Hopt* v. *Utah*, 110 U.S. 574, (1884), down to *Haynes* v. *Washington*, *supra*,

II

Custodial interrogation has long been recognized as "undoubtedly an essential tool in effective law enforcement." *Haynes* v. *Washington*, 373 U.S. 503, 515

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[1] *E. g.*, Inbau and Reid, Criminal Interrogation and Confessions (1962); O'Hara, Fundamentals of Criminal Interrogation (1956); Dienstein, Technics for the Crime Investigator (1952); Mulbar, Interrogation (1951); Kidd, Police Interrogation (1940).

[2] As developed by my Brother HARLAN, *post*, pp. ——, ——, such cases, with the exception of the long-discredited decision in *Brown* v. *United States*, 168 U.S. 532 (1897), were adequately treated in terms of due process.

[3] The Court points to England, Scotland, Ceylon and India as having equally rigid rules. As my Brother HARLAN points out, *post*, pp. ——, ——, the Court is mistaken in this regard, for it overlooks counterbalancing prosecutorial advantages. Moreover, the requirements of the Federal Bureau of Investigation do not appear from the Solicitor General's letter, *ante*, pp. ——, ——, to be as strict as those imposed today in at least two respects: (1) The offer of counsel is articulated only as "a right to counsel"; nothing is said about a right to have counsel present at the custodial interrogation. (See also the examples cited by the Solicitor General, *Westover* v. *United States*, 342 F. 2d 684, 685 (1965) ("right to consult counsel"); *Jackson* v. *United States*, 337 F. 2d 136, 138 (1964) (accused "entitled to an attorney").) Indeed, the practice is that whenever the suspect "decides that he wishes to consult counsel before making a statement, the interview is terminated at that point . . . . When counsel appears in person, he is permitted to confer with his client in private." This clearly indicates that the FBI does not warn that counsel may be present during custodial interrogation. (2) The Solicitor General's letter states: "[T]hose who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, [are advised] of a right to free counsel *if* they are unable to pay, and the availability of such counsel from the Judge." So phrased, this morning does not indicate that the agent will secure counsel. Rather, the statement may well be interpreted by the suspect to mean that the burden is placed upon himself and that he may have counsel appointed only when brought before the judge or at trial—but not at custodial interrogation. As I view the FBI practice, it is not as broad as the one laid down today by the Court.

(1963). Recognition of this fact should put us on guard against the promulgation of doctrine rules. Especially is this true where the Court finds that "the are to the contrary. Indeed, even in *Escobedo* the Court never hinted that an affirmative "waiver" was a prerequisite to questioning; that the burden of proof as to waiver was on the prosecution; that the presence of counsel—absent a waiver—during interrogation was required; that a waiver can be withdrawn at the will of the accused; that counsel must be furnished during an accusatory stage to those unable to pay; nor that admissions and exculpatory statements are "confessions." To require all those things at one gulp should cause the Court to choke over more cases than *Crooker* v. *California*, 357 U.S. 433 (1958) and *Ciccrnia* v. *Lagay*, 357 U.S. 504 (1958), which it expressly overrules today.

The rule prior to today—as Mr. Justice Goldberg, the author of the Court's opinion in *Escobedo*, stated it in *Haynes* v. *Washington*—depended upon "a totality of circumstances evidencing an involuntary . . . admission of guilt." 373 U.S., at 514. And he concluded:

> "Of course, detection and solution of crime is, at best, a difficult and arduous task requiring determination and persistence on the part of all responsible officers charged with the duty of law enforcement. And, certainly, we do not mean to suggest that all interrogation of witnesses and suspects is impermissible. Such questioning is undoubtedly an essential tool in effective law enforcement. The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw, particularly in cases such as this where it is necessary to make fine judgments as to the effect of psychological coercive pressures and inducement on the mind and will of an accused . . . . We are here impelled to the conclusion, from all of the facts presented, that the bounds of due process have been exceeded." *Id.*, at 515.

III

I would continue to follow that rule. Under the "totality of circumstances" rule of which my Brother Goldberg spoke in *Haynes*, I would consider in each case whether the police officer prior to custodial interrogation added the warning that the suspect might have counsel present at the interrogation and, further, that a court would appoint one at his request if he was too poor to employ counsel. In the absence of warnings, the burden would be on the State to prove that counsel was knowingly and intelligently waived or that in the totality of the circumstances, including the failure to give the necessary warnings, the confession was clearly voluntary.

Rather than employing the arbitrary Fifth Amendment rule[4] which the Court lays down I would follow the more pliable dictates of Due Process Clauses of the Fifth and Fourteenth Amendments which we are accustomed to administering and which we know from our cases are effective instruments in protecting persons in police custody. In this way we would not be acting in the dark nor in one full sweep changing the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society. It will be soon enough to go further when we are able to appraise with somewhat better accuracy the effect of such a holding.

I would affirm the convictions in *Miranda* v. *Arizona*, No. 759; *Vignera* v. *New York*, No. 760; and *Westover* v. *United States*, No. 761. In each of those cases I find from the circumstances no warrant for reversal. In *California* v. *Stewart*, No. 584, I would dismiss the writ of certiorari for want of a final judgment, 28 U. S. C. § 1257 (3) (1964); but if the merits are to be reached I would affirm on the ground that the State failed to fulfill its burden, in the absence of a showing that appropriate warnings were given, of proving a waiver or a totality of circumstances showing voluntariness. Should there be a retrial, I would leave the State free to attempt to prove these elements.

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[4] In my view there is "no significant support" in our cases for the holding of the Court today that the Fifth Amendment privilege, in effect, forbids custodial interrogation. For a discussion of this point see the dissenting opinion by my Brother WHITE, *post*, pp ——, ——.

SUPREME COURT OF THE UNITED STATES

NOS. 759, 760, 761 AND 584.—OCTOBER TERM, 1965.

Ernesto A. Miranda, petitioner, 759, v. State of Arizona, on writ of certiorari to the Supreme Court of the State of Arizona

Michael Vignera, petitioner, 760, v. State of New York, on writ of certiorari to the Court of Appeals of the State of New York

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State of California, petitioner, 584, v. Roy Allen Stewart, on writ of certiorari to the Supreme Court of the State of California

[June 13, 1966]

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART and MR. JUSTICE WHITE join, dissenting.

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the Court's justification seem to me readily apparent now once all sides of the problem are considered.

I. INTRODUCTION

At the outset, it is well to note exactly what is required by the Court's new constitutional code of rules for confessions. The foremost requirement, upon which later admissibility of a confession depends, is that a fourfold warning be given to a person in custody before he is questioned: namely, that he has a right to remain silent, that anything he says may be used against him, that he has a right to have present an attorney during the questioning, and that if indignant he has a right to a lawyer without charge. To forgo these rights, some affirmative statement of rejection is seemingly required, and threats, tricks, or cajolings to obtain this waiver are forbidden. If before or during questioning the suspect seeks to invoke his right to remain silent, interrogation must be forgone or cease; a request for counsel brings about the same result until a lawyer is procured. Finally, there are a miscellany of minor directives, for example, the burden of proof of waiver is on the State, admissions and exculpatory statements are treated just like confessions, withdrawal of a waiver is always permitted, and so forth.[1]

While the fine points of this scheme are far less clear than the Court admits, the tenor is quite apparent. The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward "voluntariness" in a utopian sense, or to view it from a different angle, voluntariness with a vengeance.

To incorporate this notion into the Constitution requires a strained reading of history and precedent and a disregard of the very pragmatic concerns that alone may on occasion justify such strains. I believe that reasoned examination will show that the Due Process Clauses provide an adequate tool for coping with confessions and that, even if the Fifth Amendment privilege against self-incrimination be invoked, its precedents taken as a whole do not sustain the present rules. Viewed as a choice based on pure policy, these new rules prove to be a highly debatable if not one-sided appraisal of the competing interests, imposed over widespread objection, at the very time when judicial restraint is most called for by the circumstances.

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[1] My discussion in this opinion is directed to the main questions decided by the Court and necessary to its decision; in ignoring some of the collateral points, I do not mean to imply agreement.

II. CONSTITUTIONAL PREMISES

It is most fitting to begin an inquiry into the constitutional precedents by surveying the limits on confessions the Court has evolved under the Due Process Clause of the Fourteenth Amendment. This is so because these cases show that there exists a workable and effective means of dealing with confessions in a judicial manner; because the cases are the baseline from which the Court now departs and so serve to measure the actual as opposed to the professed distance it travels; and because examination of them helps reveal how the Court has coasted into its present position.

The earliest confession cases in this Court emerged from federal prosecutions and were settled on a nonconstitutional basis, the Court adopting the common-law rule that the absence of inducements, promises, and threats made a confession voluntary and admissible. *Hopt* v. *Utah*, 110 U.S. 574; *Pierce* v. *United States*, 160 U.S. 355. While a later case said the Fifth Amendment privilege controlled admissibility, this proposition was not itself developed in subsequent decisions.[2] The Court did, however, heighten the test of admissibility in federal trials to one of voluntariness "in fact," *Wan* v. *United States*, 266 U. S. 1, 14 (qoted, *ante*, p. 24), and then by and large left federal judges to apply the same standards the Court began to derive in a string of state court cases.

This new line of decisions, testing admissibility by the Due Process Clause, began in 1936 with *Brown* v. *Mississippi*, 297 U.S. 278, and must now embrace somewhat more than 30 full opinions of the Court.[3] While the voluntariness rubric was repeated in many instances, *e.g.*, *Lyons* v. *Oklahoma*, 322 U.S. 596, the Court never pinned it down to a single meaning but on the contrary infused it with a number of different values. To travel quickly over the main themes, there was an initial emphasis on reliability, *e.g.*, *Ward* v. *Texas*, 316 U.S. 547, supplemented by concern over the legality and fairness of the police practices, *e.g.*, *Ashcraft* v. *Tennessee*, 322 U.S. 143, in an "accusatorial" system of law enforcement, *Watts* v. *Indiana*, 338 U.S. 49, 54, and eventually by close attention to the individual's state of mind and capacity for effective choice, *e.g.*, *Gallegos* v. *Colorado*, 370 U.S. 49. The outcome was a continuing re-evaluation on the facts of each case of *how much* pressure on the suspect was permissible.[4]

Among the criteria often taken into account were threats or imminent danger, *e.g.*, *Payne* v. *Arkansas*, 356 U.S. 560, physical deprivations such as lack of sleep or food, *e.g.*, *Reck* v. *Pate*, 367 U.S. 433, repeated or extended interrogation, *e.g.*, *Chambers* v. *Florida*, 309 U.S. 227, limits on access to counsel or friends, *Crooker* v. *California*, 357 U.S. 433; *Cicenia* v. *Lagay*, 357 U.S. 504, length and illegality of detention under state law, *e.g.*, *Haynes* v. *Washington*, 373 U.S. 503, and individual weakness or incapacities, *Lynumn* v. *Illinois*, 372 U.S. 528. Apart from direct physical coercion, however, no single default or fixed combination of them guaranteed exclusion, and synopses of the cases would serve little use because the overall gauge has been steadily changing, usually in the direction of restricting admissibility. But to mark just what point had been reached before the Court jumped the rails in *Escobedo* v. *Illinois*, 378 U.S. 478, it is worth capsulizing the then-recent case of *Haynes* v. *Washington*, 373 U.S. 573. There, Haynes had been held some 16 or more hours in violation of state law before signing the disputed confession, had received no warnings of any kind, and despite requests had been refused access to his wife or to counsel, the police

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[2] The case was *Bram* v. *United States*, 168 U.S. 532 (quoted, *ante*, p. 23). Its historical premises were afterwards disproved by Wigmore, who concluded "that no assertions could be more unfounded." 3 Wigmore, Evidence § 823, at 250, n. 5 (3d ed. 1940). The Court in *United States* v. *Carignan*, 342 U.S. 36, 41, declined to choose between *Bram* and Wigmore, and *Stein* v. *New York*, 346 U.S. 156, 191, n. 35, cast further doubt on *Bram*. There are, however, several Court opinions which assume in dicta the relevance of the Fifth Amendment privilege to confessions. *Burdeau* v. *McDowell*, 256 U.S. 465, 475 see *Sotwell Mfg. Co.* v. *United States*, 371 U.S. 341, 347. On *Bram* and the federal confession cases generally, see Developments in the Law—Confessions, 79 Harv. L. Rev. 935, 959–961 (1966).

[3] Comment, 31 U. Chi. L. Rev. 313 & n. 1 (1964). states that by the 1963 Term 33 state coerced confession cases had been decided by this Court, apart from *per curiams*. *Spano* v. *New York*, 360 U.S. 315, 321, n. 2. collects 28 cases.

[4] Bator & Vorenberg, Arrest, Detention, Interrogation and the Right to Counsel. 66 Col. L. Rev. 62, 73 (1966): "In fact, the concept of involuntariness seems to be used by the courts as a shorthand to refer to practices which are repellent to civilized standards of decency or which, under the circumstances, are thought to apply a degree of pressure to an individual which unfairly impairs his capacity to make a rational choice." See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St. L. J. 449, 452–458 (1964); Developments, supra, n. 2, at 964–984.

indicating that access would be allowed after a confession. Emphasizing especially this last inducement and rejecting some contrary indicia of voluntariness, the Court in a 5-to-4 decision held the confession inadmissible.

There are several relevant lessons to be drawn from this constitutional history. The first is that with over 25 years of precedent the Court has developed an elaborate, sophisticated, and sensitive approach to admissibility of confessions. It is "judicial" in its treatment of one case at a time, see *Culombe* v. *Connecticut*, 367 U.S. 568, 635 (concurring opinion of THE CHIEF JUSTICE), flexible in its ability to respond to the endless mutations of fact presented, and ever more familiar to the lower courts. Of course, strict certainty is not obtained in this developing process, but this is often so with constitutional principles, and disagreement is usually confined to that borderland of close cases where it matters least.

The second point is that in practice and from time to time in principle, the Court has given ample recognition to society's interest in suspect questioning as an instrument of law enforcement. Cases countenancing quite significant pressures can be cited without difficulty,[5] and the lower courts may often have been yet more tolerant. Of course the limitations imposed today were rejected by necessary implication in case after case, the right to warning having been explicitly rebuffed in this Court many years ago. *Powers* v. *United States*, 223 U.S. 303; *Wilson* v. *United States*, 162 U.S. 613. As recently as *Haynes* v. *Washington*, 373 U.S. 503, 515, the Court openly acknowledged that questioning of witnesses and suspects "is undoubtedly an essential tool in effective law enforcement." Accord, *Crooker* v. *California*, 357 U.S. 433, 441.

Finally, the cases disclose that the language in many of the opinions overstates the actual course of decision. It has been said, for example, that an admissible confession must be made by the suspect "in the unfettered exercise of his own will," *Malloy* v. *Hogan*, 378 U.S. 1, 8, and that "a prisoner is not 'to be made the deluded instrument of his own conviction,'" *Culombe* v. *Connecticut*, 367 U.S. 568, 581 (Frankfurter, J., announcing the Court's judgment and an opinion). Though often repeated, such principles are rarely observed in full measure. Even the word "voluntary" may be deemed somewhat misleading, especially when one considers many of the confessions that have been brought under its umbrella. See, *e.g.*, *supra*, n. 5. The tendency to overstate may be laid in part to the flagrant facts often before the Court; but in all events one must recognize how it has tempered attitudes and lent some color of authority to the approach now taken by the Court.

I turn now to the Court's asserted reliance on the Fifth Amendment, an approach which I frankly regard as a *trompe l'oeil*. The Court's opinion in my view reveals no adequate basis for extending the Fifth Amendment privilege against self-incrimination to the police station. Far more important, it fails to show that the Court's new rules are well supported, let alone compelled, by Fifth Amendment precedents. Instead, the new rules actually derive from quotation and analogy drawn from precedents under the Sixth Amendment, which should properly have no bearing on police interrogation.

The Court's opening contention, that the Fifth Amendment governs police station confessions, is perhaps not an impermissible extension of the law but it has little to commend itself in the present circumstances. Historically, the privilege against self-incrimination did not bear at all on the use of extra-legal confessions, for which distinct standards evolved; indeed, "the *history* of the two principles is wide apart, differing by one hundred years in origin, and derived through separate lines of precedents . . . ." 8 Wigmore, Evidence § 2266, at 401 (McNaughton rev. 1961). Practice under the two doctrines has also differed in a number of important respects.[6] Even those who would readily enlarge the privilege must concede some linguistic difficulties since the Fifth Amendment in terms proscribes only compelling any person "in any criminal case to be a witness

[5] See the cases synopsized in Herman, *supra*, n. 4, at 456, nn. 36–39. One not too distant example is *Stroble* v. *California*, 343 U. S. 181, in which the suspect was kicked and threatened after his arrest, questioned a little later for two hours, and isolated from a lawyer trying to see him; the resulting confession was held admissible.

[6] Among the examples given in 8 Wigmore, Evidence § 2266, at 401 (McNaughton rev. 1961), are these: the privilege applies to any witness, civil or criminal, but the confession rule protects only criminal defendants; the privilege deals only with compulsion, while the confession rule may exclude statements obtained by trick or promise; and where the privilege has been nullified—as by the English Bankruptcy Act—the confession rule may still operate.

against himself." Cf. Kamisar, Equal Justice in The Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 25–26 (1965).

Though weighty, I do not say these points and similar ones are conclusive, for as the Court reiterates the privilege embodies basic principles always capable of expansion.[7] Certainly the privilege does represent a protective concern for the accused and an emphasis upon accusatorial rather than inquisitorial values in law enforcement, although this is similarly true of other limitations such as the grand jury requirement and the reasonable doubt standard. Accusatorial values, however, have openly been absorbed into the due process standard governing confessions; this indeed is why at present "the kinship of the two rules [governing confessions and self-incrimination] is too apparent for denial." McCormick, Evidence 155 (1954). Since extension of the general principle has already occurred, to insist that the privilege applies as such serves only to carry over inapposite historical details and engaging rhetoric and to obscure the policy choices to be made in regulating confessions.

Having decided that the Fifth Amendment privilege does apply in the police station, the Court reveals that the privilege imposes more exacting restrictions than does the Fourteenth Amendment's voluntariness test.[8] It then emerges from a discussion of *Escobedo* that the Fifth Amendment requires for an admissible confession that it be given by one distinctly aware of his right not to speak and shielded from "the compelling atmosphere" of interrogation. See *ante*, pp. 27–28. From these key premises, the Court finally develops the safeguards of warning, counsel, and so forth. I do not believe these premises are sustained by precedents under the Fifth Amendment.[9]

The more important premise is that pressure on the suspect must be eliminated though it be only the subtle influence of the atmosphere and surroundings. The Fifth Amendment, however, has never been thought to forbid *all* pressure to incriminate one's self in the situations covered by it. On the contrary, it has been held that failure to incriminate one's self can result in denial of removal of one's case from state to federal court, *Maryland* v. *Soper*, 270 U.S. 9; in refusal of a military commission, *Orloff* v. *Willoughby*, 345 U.S. 83; in denial of a discharge in bankruptcy, *Kaufman* v. *Hurwitz*, 176 F. 2d 210; and in numerous other adverse consequences. See 8 Wigmore, Evidence § 2272, at 440–444, n. 17 (McNaughton rev. 1961); Maguire, Evidence of Guilt § 2.062 (1959). This is not to say that short of jail or torture any sanction is permissible in any case; policy and history alike may impose sharp limits. See, *e.g.*, *Griffin* v. *California*, 380 U.S. 609. However, the Court's unspoken assumption that *any* pressure violates the privilege is not supported by the precedents and it has failed to show why the Fifth Amendment prohibits that relatively mild pressure the Due Process Clause permits.

The Court appears similarly wrong in thinking that precise knowledge of one's rights is a settled prerequisite under the Fifth Amendment to the loss of its protections. A number of lower federal court cases have held that grand jury witnesses need not always be warned of their privilege, *e.g.*, *United States* v. *Scully*, 225 F. 2d 113, 116, and Wigmore states this to be the better rule for trial witnesses. See 8 Wigmore, Evidence § 2269 (McNaughton rev. 1961). Cf. *Henry* v. *Mississippi*, 379 U.S. 443, 451–452 waiver of constitutional rights by counsel despite defendant's ignorance held allowable). No Fifth Amendment precedent is cited for the Court's contrary view. There might of course be reasons apart from Fifth Amendment precedent for requiring warning or any other safeguard on questioning but that is a different matter entirely. See *infra*, pp. 13–15.

A closing word must be said about the Assistance of Counsel Clause of the Sixth Amendment, which is never expressly relied on by the Court but whose

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[7] Additionally, there are precedents and even historical arguments that can be arrayed in favor of bringing extra-legal questioning within the privilege. See generally Maguire, Evidence of Guilt § 2.03, at 15–16 (1959).

[8] This, of course, is implicit in the Court's introductory announcement that "[o]ur decision in *Malloy* v. *Hogan*, 378 U.S. 1 (1964) [extending the Fifth Amendment privilege to the States] necessitates an examination of the scope of the privilege in state cases as well." *Ante*, p. 25. It is also inconsistent with *Malloy* itself, in which extension of the Fifth Amendment to the States rested in part on the view that the Due Process Clause restriction on state confessions has in recent years been "the same standard" as that imposed in federal prosecutions assertedly by the Fifth Amendment, 378 U.S., at 7.

[9] I lay aside *Escobedo* itself; it contains no reasoning or even general conclusions addressed to the Fifth Amendment and indeed its citation in this regard seems surprising in view of *Escobedo*'s primary reliance on the Sixth Amendment.

judicial precedents turn out to be linchpins of the confession rules announced today. To support its requirement of a knowing and intelligent waiver, the Court cites to *Johnson* v. *Zerbst*, 304 U.S. 458, *ante*, p. 37; appointment of counsel for the indigent suspect is tied to *Gideon* v. *Wainwright*, 372 U.S. 335, and *Douglas* v. *California*, 372 U.S. 353, *ante*, p. 35; the silent-record doctrine is borrowed from *Carnley* v. *Cochran*, 369 U.S. 506, *ante*, p. 37, as is the right to an express offer of counsel, *ante*, p. 33. All these cases imparting glosses to the Sixth Amendment concerned counsel at trial or on appeal. While the Court finds no pertinent difference between judicial proceedings and police interrogation, I believe the differences are so vast as to disqualify wholly the Sixth Amendment precedents as suitable analogies in the present cases.[10]

The only attempt in this Court to carry the right to counsel into the station house occurred in *Escobedo*, the Court repeating several times that that stage was no less "critical" than trial itself. See 378 U.S. 485–488. This is hardly persuasive when we consider that a grand jury inquiry, the filing of a certiorari petition, and certainly the purchase of narcotics by an undercover agent from a prospective defendant may all be equally "critical" yet provision of counsel and advice on that score have never been thought compelled by the Constitution in such cases. The sound reason why this right is so freely extended for a criminal trial is the severe injustice risked by confronting an untrained defendant with a range of technical points of law, evidence, and tactics familiar to the prosecutor but not to himself. This danger shrinks markedly in the police station where indeed the lawyer in fulfilling his professional responsibilities of necessity may become an obstacle to truthfinding. See *infra*, n. 12. The Court's summary citation of the Sixth Amendment cases here seems to me best described as "the domino method of constitutional adjudication . . . wherein every explanatory statement in a previous opinion is made the basis for extension to a wholly different situation." Friendly, *supra*, n. 10, at 950.

III. POLICY CONSIDERATIONS

Examined as an expression of public policy, the Court's new regime proves so dubious that there can be no due compensation for its weakness in constitutional law. Forgoing discussion has shown, I think, how misaken is the Court in implying that the Constitution has struck the balance in favor of the approach the Court takes. *Ante*, p. 41. Rather, precedent reveals that the Fourteenth Amendment in practice has been construed to strike a different balance, that the Fifth Amendment gives the Court little solid support in this context, and that the Sixth Amendment should have no bearing at all. Legal history has been stretched before to satisfy deep needs of society. In this instance, however, the Court has not and cannot make the powerful showing that its new rules are plainly desirable in the context of our society, something which is surely demanded before those rules are engrafted onto the Constitution and imposed on every State and county in the land.

Without at all subscribing to the generally black picture of police conduct painted by the Court, I think it must be frankly recognized at the outset that police questioning allowable under due process precedents may inherently entail some pressure on the suspect and may seek advantage in his ignorance or weaknesses. The atmosphere and questioning techniques, proper and fair though they be, can in themselves exert a tug on the suspect to confess, and in this light "[t]o speak of any confessions of crime made after arrest as being 'voluntary' or 'uncoerced" is somewhat inaccurate, although traditional. A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser." *Ashcraft* v. *Tennessee*, 322 U. S. 143, 161 (Jackson, J., dissenting). Until today, the role of the Constitution has been only to sift out *undue* pressure, not to assure spontaneous confessions.[11]

The Court's new rules aim to offset these minor pressures and disadvantages intrinsic to any kind of police interrogation. The rules do not serve due process

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[10] Since the Court conspicuously does not assert that the Sixth Amendment itself warrants its new police-interrogation rules, there is no reason now to draw out the extremely powerful historical and precedential evidence that the Amendment will bear no such meaning. See generally Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif. L. Rev. 929, 943–948 (1965).

[11] See *supra*, n. 4, and text. Of course, the use of terms like voluntariness involves questions of law and terminology quite as much as questions of fact. See *Collins* v. *Beto*, 348 F. 2d 823, 832 (concurring opinion); Bator & Vorenberg, *supra*, n. 4, at 72–73.

interests in preventing blatant coercion since, as I noted earlier, they do nothing to contain the policeman who is prepared to lie from the start. The rules work for reliability in confessions almost only in the Pickwickian sense that they can prevent some from being given at all.[12] In short, the benefit of this new regime is simply to lessen or wipe out the inherent compulsion and inequalities to which the Court devotes some nine pages of description. *Ante*, pp. 10–18.

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it.[13] There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation. See, *supra*, n. 12.

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. Evidence on the role of confessions is notoriously incomplete, see Developments, *supra*, n. 2, at 941–944, and little is added by the Court's reference to the FBI experience and the resources believed wasted in interrogation. See *infra*, n. 19, and text. We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control,[14] and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

While passing over the costs and risks of its experiment, the Court portrays the evils of normal police questioning in terms which I think are exaggerated. Albeit stringently confined by the due process standards interrogation is no doubt often inconvenient and unpleasant for the suspect. However, it is no less so for a man to be arrested and jailed, to have his house searched, or to stand trial in court, yet all this may properly happen to the most innocent given probable cause, a warrant, or an indictment. Society has always paid a stiff price for law and order, and peaceful interrogation is not one of the dark moments of the law.

This brief statement of the competing considerations seems to me ample proof that the Court's preference is highly debatable at best and therefore not to be read into the Constitution. However, it may make the analysis more graphic to consider the actual facts of one of the four cases reversed by the Court. *Miranda* v. *Arizona* serves best, being neither the hardest nor easiest of the four under the Court's standards.[15]

On March 3, 1963, an 18-year-old girl was kidnapped and forcibly raped near Phoenix, Arizona. Ten days later, on the morning of March 13, petitioner Miranda was arrested and taken to the police station. At this time Miranda was 23 years old, indigent, and educated to the extent of completing half the ninth grade. He had "an emotional illness" of the schizophrenic type, according to the doctor who eventually examined him; the doctor's report also stated that Miranda was "alert and oriented as to time, place, and person," intelligent within normal limits, competent to stand trial, and sane within the legal definition. At the police station, the victim picked Miranda out of a lineup, and two officers then took him into a separate room to interrogate him, starting about 11:30 a.m. Though at first

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[12] The Court's vision of a lawyer "mitigat[ing] the dangers of untrustworthiness" (*ante*, p. 32) by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession. *Watts* v. *Indiana*, 338 U.S. 49, 59 (separate opinion of Jackson, J.): "[A]ny lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances." See Enker & Elsen, Counsel for the Suspect, 49 Minn. L. Rev. 47–66–68 (1964).

[13] This need is, of course, what makes so misleading the Court's comparison of a probate judge readily setting aside as involuntary the will of an old lady badgered and beleaguered by the new heirs. *Ante*, pp. 19–20, n. 26. With wills, there is no public interest save in a totally free choice; with confessions, the solution of crime is a countervailing gain, however the balance is resolved.

[14] See, *e.g.*, the voluminous citations to congressional committee testimony and other sources collected in *Culombe* v. *Connecticut*, 367 U.S. 568, 578–579 (Frankfurter, J., announcing the Court's judgment and opinion).

[15] In *Westover*, a seasoned criminal was practically given the Court's full complement of warnings and did not heed them. The *Stewart* case, on the other hand, involves long detention and successive questioning. In *Vignera*, the facts are complicated and the record somewhat incomplete.

denying his guilt, within a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less without any force, threats or promises and—I will assume this though the record is uncertain, *ante*, 53–54 & nn. 66–67—without any effective warnings at all.

Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained during brief, daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country.[16]

The tenor of judicial opinion also falls well short of supporting the Court's new approach. Although *Escobedo* has widely been interpreted as an open invitation to lower courts to rewrite the law of confessions, a significant heavy majority of the state and federal decisions in point have sought quite narrow interpretations.[17] Of the courts that have accepted the invitation, it is hard to know how many have felt compelled by their best guess as to this Court's likely construction; but none of the state decisions saw fit to rely on the state privilege against self-incrimination, and no decision at all has gone as far as this Court goes today.[18]

It is also instructive to compare the attitude in this case of those responsible for law enforcement with the official views that existed when the Court undertook three major revisions of prosecutorial practice prior to this case, *Johnson* v. *Zerbst*, 304 U.S. 458, *Mapp* v. *Ohio*, 367 U.S. 643, and *Gideon* v. *Wainwright*, 372 U.S. 335. In *Johnson*, which established that appointed counsel must be offered the indigent in federal criminal trials, the Federal Government all but conceded the basic issue, which had in fact been recently fixed as Department of Justice policy. See Beany, Right to Counsel 29–30, 36–42 (1955). In *Mapp*, which imposed the exclusionary rule on the States for Fourth Amendment violations, more than half of the States had themselves already adopted some such rule. See 367 U.S., at 651. In *Gideon*, which extended *Johnson* v. *Zerbst* to the States an *amicus* brief was filed by 22 States and Commonwealths urging that course; only two States besides the respondent came forward to protest. See 372 U.S., at 345. By contrast, in this case new restrictions on police questioning have been opposed by the United States and in an *amicus* brief signed by 27 States and Commonwealths, not including the three other States who are parties. No State in the country has urged this Court to impose the newly announced rules, nor has any State chosen to go nearly so far on its own.

The Court in closing its general discussion invokes the practice in federal and foreign jurisdictions as lending weight to its new curbs on confessions for all the States. A brief résumé will suffice to show that none of these jurisdictions has struck so one-sided a balance as the Court does today. Heaviest reliance is

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[16] "[J]ustice, though due to 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." *Snyder* v. *Massachusetts*, 291 U.S. 97, 122 (Cardozo, J.).

[17] A narrow reading is given in: *United States* v. *Robinson*, 354 F. 2d 109 (C.A. 2d Cir.); *Davis* v. *North Carolina*, 339 F. 2d 770 (C.A. 4th Cir.); *Edwards* v. *Holman*, 342 F. 2d 679 (C.A. 5th Cir.); *United States ex rel. Townsend* v. *Ogilvie*, 334 F. 2d 837 (C.A. 7th Cir.); *People* v. *Hartgraves*, 31 Ill. 2d 375, 202 N.E. 2d 33; *State* v. *Fox*, 131 N.W. 2d 684 (Iowa); *Rowe* v. *Commonwealth*, 394 S. W. 2d 751 (Ky.); *Parker* v. *Warden*, 203 A. 2d 418 (Md.); *State* v. *Howard*, 383 S.W. 2d 701 (Mo.); *Bean* v. *State*, 398 P. 2d 251 (Nev.); *Hodgson* v. *New Jersey*, 44 N.J. 151, — A. 2d —; *People* v. *Gunner*, 15 N.Y. 2d 226, 205 N.E. 2d 852; *Commonwealth ex rel. Linde* v. *Maroney*, 416 Pa. 331, 206 A. 2d 283; *Browne* v. *State*, 24 Wis. 2d 491, 131 N.W. 2d 169.

An ample reading is given in: *United States ex rel. Russo* v. *New Jersey*, 351 F. 2d 429 (C.A. 3d Cir.); *Wright* v. *Dickson*, 336 F. 2d 878 (C.A. 9th Cir.); *People* v. *Dorado*, 62 Cal., 2d 338, 398 P. 2d 361; *State* v. *Dufour*, 206 A. 2d 82 (R.I.); *State* v. *Neely*, 229 Ore. 487, 395 P. 2d 557, modified, 398 P. 2d 482.

The cases in both categories are those readily available; there are certainly many others.

[18] For instance, compare the requirements of the catalytic case of *People* v. *Dorado*, 62 Cal. 2d 350, 398 P. 2d 361, with those laid down today. See also Traynor, The Devils of Due Process in Criminal Detection, Detention, and Trial, p. 26 (1966 Cardozo Lecture, N.Y. City Bar Ass'n, multilith copy).

placed on the FBI practice. Differing circumstances may make this comparison quite untrustworthy,[19] but in all events the FBI falls sensibly short of the Court's formalistic rules. For example, there is no indication that FBI agents must obtain an affirmative "waiver" before they pursue their questioning. Nor is it clear that one invoking his right to silence may not be prevailed upon to change his mind. And the warning as to appointed counsel apparently indicates only that one will be assigned by the judge when the suspect appears before him; the thrust of the Court's rules is to induce the suspect to obtain appointed counsel before continuing the interview. See *ante*, pp. 46–48. Apparently American military practice, briefly mentioned by the Court, has these same limits and is still less favorable to the suspect than the FBI warning, making no mention of appointed counsel. Developments, *supra*, n. 2, at 1084–1089.

The law of the foreign countries described by the Court also reflects a more moderate conception of the rights of the accused as against those of society when other data is considered. Concededly, the English experience is most relevant. In that country, a caution as to silence but not counsel has long been mandated by the "Judges' Rules," which also place other somewhat imprecise limits on police cross-examination of suspects. However, in the court's discretion confessions can be and apparently quite frequently are admitted in evidence despite disregard of the Judges' Rules, so long as they are found voluntary under the common-law test. Moreover the check that exists on the use of pretrial statements is counterbalanced by the evident admissibility of fruits of an illegal confession and by the judge's often-used authority to comment adversely on the defendant's failure to testify.[20]

India, Ceylon and Scotland are the other examples chosen by the Court. In India and Ceylon the general ban on police-adduced confessions cited by the Court is subject to a major exception: if evidence is uncovered by police questioning, it is fully admissible at trial along with the confession itself, so far as it relates to the evidence and is not blatantly coerced. See Developments, *supra*, n. 2, at 1106–1110; *Reg.* v. *Ramasamy* [1965] A.C. 1 (P.C.). Scotland's limits on interrogation do measure up to the Court's; however, restrained comment at trial on the defendent's failure totake the stand is allowed the judge, and in many other respects Scotch law redresses the prosecutor's disadvantage in ways not permitted in this country.[21] The Court ends its survey by imputing added strength to our privilege against self-incrimination since, by contrast to other countries, it is embodied in a written Constitution. Considering the liberties the Court has today taken with constitutional history and precedent, few will find this emphasis persuasive.

In closing this necessarily truncated discussion of policy considerations attending the new confession rules, some reference must be made to their ironic untimeliness. There is now in progress in this country a massive reexamination of criminal law enforcement procedures on a scale never before witnessed. Participants in this undertaking include a Special Committee of the American Bar Association, under the chairmanship of Chief Judge Lumbard of the Court of Appeals for the Second Circuit; a distinguished study group of the American Law Institute, headed by Professor Vorenberg of the Harvard Law School; and the President's Commission on Law Enforcement and Administration of Justice, under the leadership of the Attorney General of the United States.[22] Studies are also being conducted by the District of Columbia Crime Commission, the

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[19] The Court's *obiter dictum* notwithstanding, *ante*, p. 48, there is some basis for believing that the staple of FBI criminal work differs importantly from much crime within the ken of local police. The skill and resources of the FBI may also be unusual.

[20] For citations and discussion covering each of these points, see Developments, *supra*, n. 2, at 1091–1097, and Enker & Elsen, *supra*, n. 12, at 80 & n. 94.

[21] On comment, see Hardin, Other Answers: Search and Seizure, Coerced Confession, and Criminal Trial in Scotland, 113 U. Pa. L. Rev. 165, 181 and nn. 96–97 (1964). Other examples are less stringent search and seizure rules and no automatic exclusion for violation of them, *id.*, at 167–169; guilt based on majority jury verdicts, *id.*, at 185; and pre-trial discovery of evidence on both sides, *id.*, at 175.

[22] Of particular relevance is the ALI's drafting of a Model Code of Pre-Arraignment Procedure, now in its first tentative draft. While the ABA and National Commission studies have wider scope, the former is lending its advice to the ALI project and the executive director of the latter is one of the reporters for the Model Code.

Georgetown Law Center, and by others equipped to do practical research.[23] There are also signs that legislatures in some of the States may be preparing to reexamine the problem before us.[24]

It is no secret that concern has been expressed lest long-range and lasting reforms be frustrated by this Court's too rapid departure from existing constitutional standards. Despite the Court's disclaimer, the practical effect of the decision made today must inevitably be to handicap seriously sound efforts at reform, not least by removing options necessary to a just compromise of competing interests. Of course legislative reform is rarely speedy or unanimous, though this Court has been more patient in the past.[25] But the legislative reforms when they came would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs.

IV. CONCLUSIONS

All four of the cases involved here present express claims that confessions were inadmissible, not because of coercion in the traditional due process sense, but solely because of lack of counsel or lack of warnings concerning counsel and silence. For the reaasons stated in this opinion, I would adhere to the due process test and reject the new requirements inaugurated by the Court. On this premise my disposition of each of these cases can be stated briefly.

In two of the three cases coming from state courts, *Miranda* v. *Arizona* (No. 759) and *Vignera* v. *New York* (No. 760), the confessions were held admissible and no other errors worth comment are alleged by petitioners. I would affirm in these two cases. The other state case is *California* v. *Stewart* (No. 584), where the state supreme court held the confession inadmissible and reversed the conviction. In that case I would dismiss the writ of ceritorari on the ground that no final judgment is before us 28 U.S.C. § 1257 (1964ed.); putting aside the new trial open to the State in any event, the confession itself has not even been finally excluded since the California Supreme Court left the State free to show proof of a waiver. If the merits of the decision in *Stewart* be reached, then I believe it should be reversed and the case remanded so that state supreme court may pass on the other claims available to respondent.

In the federal case, *Westover* v. *United States* (No. 761), a number of issues are raised by petitioner apart from the one already dealt with in this dissent. None of these other claims appears to me tenable, nor in this context to warrant extended discussion. It is urged that the confession was also inadmissible because not voluntary even measured by due process standards and because federal-state cooperation brought the *McNabb-Mallory* rule into play under *Anderson* v. *United States*, 318 U.S. 350. However, the facts alleged fall well short of coercion in my view, and I believe the involvement of federal agents in petitioner's arrest and detention by the State too slight to invoke *Anderson*. I agree with the Government that the admission of the evidence now protested by petitioner was at most harmless error, and two final contentions—one involving weight of the evidence and another improper prosecutor comment—seem to me without merit. I would therefore affirm Westover's conviction.

In conclusion: Nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy handed and one-sided action that is so precipitously taken by the Court in the name of fulfilling its constitutional responsibilities. The foray which the Court takes today brings to mind the wise and farsighted words of Mr. Justice Jackson in *Douglas* v. *Jeannette*, 319 U.S. 157, 181 (separate opinion): "This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added."

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[23] See Brief for the United States in *Westover*, p. 45. The N.Y. Times, June 3, 1966, p. 33 (city ed.) reported that the Ford Foundation has awarded $1,100,000 for a five-year study of arrests and confessions in New York.

[24] The New York Assembly recently passed a bill to require certain warnings before an admissible confession is taken, though the rules are less strict than are the Court's. N.Y. Times, May 24, 1966, p. 35 (late city ed.).

[25] The Court waited 12 years after *Wolf* v. *Colorado*, 338 U.S. 25, declared privacy against improper state intrusions to be constitutionally safeguarded before it concluded in *Mapp* v. *Ohio*, 367 U. S. 643, that adequate state remedies had not been provided to protect this interest so the exclusionary rule was necessary.

SUPREME COURT OF THE UNITED STATES

NOS. 759, 760, 761, AND 584.—OCTOBER TERM, 1965.

Ernesto A. Miranda, petitioner, 759, *v.* State of Arizona, on writ of certiorari to the Supreme Court of the State of Arizona,

Michael Vignera, petitioner, 760, *v.* State of New York, on writ of certiorari to the Court of Appeals of the State of New York,

Carl Calvin Westover, petitioner, 761, *v.* United States, on writ of certiorari to the United States Court of Appeals for the Ninth Circuit,

State of California, petitioner, 584, *v.* Roy Allen Stewart, on writ of certiorari to the Supreme Court of the State of California

[June 13, 1966]

MR. JUSTICE WHITE, with whom MR. JUSTICE HARLAN and MR. JUSTICE STEWART join, dissenting.

I

The proposition that the privilege against self-incrimination forbids in-custody interrogation without the warning specified in the majority opinion and without a clear waiver of counsel has no significant support in the history of the privilege or in the language of the Fifth Amendment. As for the English authorities and the common-law history, the privilege, firmly established in the second half of the seventeenth century, was never applied except to prohibit compelled judicial interrogations. The rule excluding coerced confessions matured about 100 years later, "[b]ut there is nothing in the reports to suggest that the theory has its roots in the privilege against self-incrimination. And so far as the cases reveal, the privilege, as such, seems to have been given effect only in judicial proceedings including the preliminary examinations by authorized magistrates." Morgan, The Privilege Against Self-Incrimination, 34 Minn. L. Rev. 1, 18 (1949).

Our own constitutional provision provides that no person "shall be compelled in any criminal case to be a witness against himself." These words, when "[c]onsidered in the light to be shed by grammar and the dictionary . . . appear to signify simply that nobody shall be compelled to give oral testimony against himself in a criminal proceeding under way in which he is defendant." Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich. L. Rev. 1, 2. And there is very little in the surrounding circumstances of the adoption of the Fifth Amendment or in the provisions of the then existing state constitutions or in state practice which would give the constitutional provision any broader meaning. Mayers, The Federal Witness' Privilege Against Self Incrimination: Constitutional or Common-Law? 4 American Journal of Legal History 107 (1960). Such a construction, however, was considerably narrower than the privilege at common law, and when eventually faced with the issues, the Court extended the constitutional privilege to the compulsory production of books and papers, to the ordinary witness before the grand jury and to witnesses generally. *Boyd* v. *United States*, 116 U.S. 616, and *Counselman* v. *Hitchcock*, 142 U.S. 547. Both rules had solid support in common-law history, if not in the history of our own constitutional provision.

A few years later the Fifth Amendment privilege was similarly extended to encompass the then well-established rule against coerced confessions: "In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person 'shall be compelled in any criminal case to be a witness against himself.'" *Bram* v. *United States*, 168 U.S. 532, 542. Although this view has found approval in other cases, *Burdeau* v. *McDowell*, 256 U.S. 465, 475; *Powers* v. *United States*, 223 U.S. 303, 313; *Shotwell* v. *United States*, 371 U.S. 341, 347, it has also been questioned, see *Brown* v. *Mississippi*, 297 U.S. 278, 285;

United States v. *Carignan*, 342 U.S. 36, 41; *Stein* v. *New York*, 346 U.S. 156, 191, n. 35, and finds scant support in either the English or American authorities, see generally *Regina* v. *Scott*, I Dear. & Bell 47; III Wigmore, Evidence § 823, at 249 ("a confession is not rejected because of any connection with the *privilege against self-crimination*"), 250, n. 5 (particularly criticizing *Bram*) (3d ed. 1940), VIII Wigmore, Evidence § 2266, at 400–401 (McNaughton ed. 1961). Whatever the source of the rule excluding coerced confessions, it is clear that prior to the application of the privilege itself to state courts, *Malloy* v. *Hogan*, 378 U.S. 1, the admissibility of a confession in a state criminal prosecution was tested by the same standards as were applied in federal prosecutions. *Id.*, at 6–7, 10.

Bram, however, itself rejected the proposition which the Court now espouses. The question in *Bram* was whether a confession, obtained during custodial interrogation, had been compelled, and if such interrogation was to be deemed inherently vulnerable, the Court's inquiry could have ended there. After examining the English and American authorities, however, the Court declared that:

> "In this Court also it has been settled that the mere fact that the confession is made to a police officer, while the accused was under arrest in or out of prison, or was drawn out by his questions, does not necessarily render the confession involuntary, but, as one of the circumstances, such imprisonment or interrogation may be taken into account in determining whether or not statements of the prisoner were voluntary." 168 U.S., at 558.

In this respect the Court was wholly consistent with prior and subsequent pronouncements in this Court.

Thus prior to *Bram* the Court, in *Hopt* v. *Utah*, 110 U.S. 574, 583–587, had upheld the admissibility of a confession made to police officers following arrest, the record being silent concerning what conversation had occurred between the officers and the defendant in the short period preceding the confession. Relying on *Hopt*, the Court ruled squarely on the issue in *Sparf and Hansen* v. *United States*, 156 U.S. 51, 55:

> "Counsel for the accused insist that there cannot be a voluntary statement, a free open confession, while a defendant is confined and in irons under an accusation of having committed a capital offsense. We have not been referred to any authority in support of that position. It is true that the fact of a prisoner being in custody at the time he makes a confession is a circumstance not to be overlooked, because it bears upon the inquiry whether the confession was voluntarily made or was extorted by threats or violence or made under the influence of fear. But confinement or imprisonment is not in itself sufficient to justify the exclusion of a confession, if it appears to have been voluntary, and was not obtained by putting the prisoner in fear or by promises. Wharton's Cr. Ev. 9th ed. §§ 661, 663, and authorities cited."

Accord, *Pierce* v. *United States*, 160 U.S. 355, 357.

And in *Wilson* v. *United States*, 162 U.S. 613, 623, the Court had considered the significance of custodial interrogation without any antecedent warnings regarding the right to remain silent or the right to counsel. There the defendant had answered questions posed by a Commissioner, who had failed to advise him of his rights, and his answers were held admissible over his claim of involuntariness. "The fact that [a defendant] is in custody and manacled does not necessarily render his statement involuntary, nor is that necessarily the effect of popular excitement shortly preceding. . . . And it is laid down that it is not essential to the admissibility of a confession that it should appear that the person was warned that what he said would be used against him, but on the contrary, if the confession was voluntary, it is sufficient though it appear that he was not so warned."

Since *Bram*, the admissibility of statements made during custodial interrogation has been frequently reiterated. *Powers* v. *United States*, 223 U. S. 303, cited *Wilson* approvingly and held admissible as voluntary statements the accused's testimony at a preliminary hearing even though he was not warned that what he said might be used against him. Without any discussion of the presence or absence of warnings, presumably because such discussion was deemed unnecessary, numerous other cases have declared that "[t]he mere fact that a confession was made while in the custody of the police does not render it inadmissible," *McNabb* v. *United States*, 318 U. S. 332, 346; accord, *United States* v. *Mitchell*, 322 U. S. 65, despite its having been elicited by police examination, *Wan* v. *United States*, 266 U.S. 1, 14; *United States* v. *Carrignan*, 342 U.S. 36, 39. Likewise, in *Crooker* v. *California*, 357 U. S. 433, the Court said that "the mere fact of

police detention and police examination in private of one in official state custody does not render involuntary a confession by one so detained." And finally, in *Cicenia* v. *Lagay*, 357 U. S. 504, a confession obtained by police interrogation after arrest was held voluntary even though the authorities refused to permit the defendant to consult with his attorney. See generally *Culombe* v. *Connecticut*, 367 U. S. 568, 587–602 (opinion of Frankfurter, J.); III Wigmore, Evidence § 851, at 313 (3d ed. 1940); see also Joy, Confessions 38, 46 (1842).

Only a tiny minority of our judges who have dealt with the question, including today's majority, have considered in-custody interrogation, without more, to be a violation of the Fifth Amendment. And this Court, as every member knows, has left standing literally thousands of criminal convictions that rested at least in part on confessions taken in the course of interrogation by the police after arrest.

II

That the Court's holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent does not prove either that the Court has exceeded its powers or that the Court is wrong or unwise in its present reinterpretation of the Fifth Amendment. It does, however, underscore the obvious—that the Court has not discovered or found the law in making today's decision, nor has it derived it from some irrefutable sources; what it has done is to make new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution.[1] This is what the Court historically has done. Indeed, it is what it must do and will continue to do until and unless there is some fundamental change in the constitutional distribution of governmental powers.

But if the Court is here and now to announce new and fundamental policy to govern certain aspects of our affairs, it is wholly legitimate to examine the mode of this or any other constitutional decision in this Court and to inquire into the advisability of its end product in terms of the long-range interest of the country. At the very least the Court's text and reasoning should withstand analysis and be a fair exposition of the constitutional provision which its opinion interprets. Decisions like these cannot rest alone on syllogism, metaphysics or some ill-defined notions of natural justice, although each will perhaps play its part. In proceeding to such construction as it now announces, the Court should also duly consider all the factors and interests bearing upon the cases, at least insofar as the relevant materials are available; and if the necessary considerations are not treated in the record or obtainable from some other reliable source, the Court should not proceed to formulate fundamental policies based on speculation alone.

III

First, we may inquire what are the textual and factual bases of this new fundamental rule. To reach the result announced on the grounds it does, the Court must stay within the confines of the Fifth Amendment, which forbids self-incrimination only if *compelled*. Hence the core of the Court's opinion is that because of the "compulsion inherent in custodial surroundings, no statement obtained from [a] defendant [in custody] can truly be the product of his free choice," *ante*, at 20, absent the use of adequate protective devices as described by the Court. However, the Court does not point to any sudden inrush of new knowledge requiring the rejection of 70 years experience. Nor does it assert that its novel conclusion reflects a changing consensus among state courts, see *Mapp* v. *Ohio*, 367 U.S. 643, or that a succession of cases had steadily eroded the old rule and proved it unworkable, see *Gideon* v. *Wainwright*, 372 U.S. 335. Rather than asserting new knowledge, the Court concedes that it cannot truly know what occurs during custodial questioning, because of the innate secrecy of such proceedings. It extrapolates a picture of what it conceives to be the norm from police investigatorial manuals, published in 1959 and 1962 or earlier, without any attempt to allow for adjustments in police practices that may have occurred in the wake of more recent decisions of state appellate tribunals or this Court.

[1] Of course the Court does not deny that it is departing from prior precedent; it expressly overrules *Crooker* and *Cicenia*, *ante*, at 41, n. 47, and it acknowledges that "[i]n these cases . . . we might not find the statements to have been involuntary in traditional terms," *ante*, at 19.

But even if the relentless application of the described procedures could lead to involuntary confessions, it most assuredly does not follow that each and every case will disclose this kind of interrogation or this kind of consequence.[2] Insofar as it appears from the Court's opinion, it has not examined a single transcript of any police interrogation, let alone the interrogation that took place in any one of these cases which it decides today. Judged by any of the standards for empirical investigation utilized in the social sciences the factual basis for the Court's premise is patently inadequate.

Although in the Court's view in-custody interrogation is inherently coercive, it says that the spontaneous product of the coercion of arrest and detention is still to be deemed voluntary. An accused, arrested on probable cause, may blurt out a confession which will be admissible despite the fact that he is alone and in custody, without any showing that he had any notion of his right to remain silent or of the consequences of his admission. Yet, under the Court's rule, if the police ask him a single question such as "Do you have anything to say?" or "Did you kill your wife?" his response, if there is one, has somehow been compelled, even if the accused has been clearly warned of his right to remain silent. Common sense informs us to the contrary. While one may say that the response was "involuntary" in the sense the question provoked or was the occasion for the response and thus the defendant was induced to speak out when he might have remained silent if not arrested and not questioned, it is patently unsound to say the response is compelled.

Today's result would not follow even if it were agreed that to some extent custodial interrogation is inherently coercive. See *Ashcraft* v. *Tennessee*, 322 U.S. 143, 161 (Jackson, J., dissenting). The test has been whether the totality of circumstances deprived the defendant of a "free choice to admit, to deny, or to refuse to answer," *Lisenba* v. *California*, 314 U.S. 219, 241, and whether physical or psychological coercion was of such a degree that "the defendant's will was overborne at the time he confessed," *Haynes* v. *Washington*, 373 U.S. 503, 513; *Lynumn* v. *Illinois*, 372 U.S. 528, 534. The duration and nature of incommunicado custody, the presence or absence of advice concerning the defendant's constitutional rights, and the granting or refusal of requests to communicate with lawyers, relatives or friends have all been rightly regarded as important data bearing on the basic inquiry. See, *e. g.*, *Ashcraft* v. *Tennessee*, 322 U.S. 143; *Haynes* v. *Washington*, 373 U.S. 503.[3] But it has never been suggested, until today, that such questioning was so coercive and accused persons so lacking in hardihood that the very first response to the very first question following the commencement of custody must be conclusively presumed to be the product of an overborne will.

If the rule announced today were truly based on a conclusion that all confessions resulting from custodial interrogation are coerced, then it would simply have no rational foundation. Compare *Tot.* v. *United States*, 319 U.S. 463, 466; *United States* v. *Romano*, 382 U.S. 136. *A fortiori* that would be true of the extension of the rule to exculpatory statements, which the Court effects after a brief discussion of why, in the Court's view, they must be deemed incriminatory but without any discussion of why they must be deemed coerced. See *Wilson* v. *United States*, 162 U.S. 613, 624. Even if one were to postulate that the Court's concern is not that all confessions induced by police interrogation are coerced

[2] In fact, the type of sustained interrogation described by the Court appears to be the exception rather than the rule. A survey of 399 cases in one city found that in almost half of the cases the interrogation lasted less than 30 minutes. Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif. L. Rev. 11, 41–45 (1962). Questioning tends to be confused and sporadic and is usually concentrated on confrontations with witnesses or new items of evidence, as these are obtained by officers conducting the investigation. See generally LaFave, Arrest: The Decision to Take a Suspect into Custody 386 (1965); ALI, Model Pre-Arraignment Procedure Code, Commentary § 5.01, at 170, n. 4 (Tent. Draft No. 1, 1966).

[3] By contrast, the Court indicates that in applying this new rule it "will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given." *Ante*, at 31. The reason given is that assessment of the knowledge of the defendant based on information as to age, education, intelligence, or prior contact with authorities can never be more than speculation, while a warning is a clear-cut fact. But the officers' claim that they gave the requisite warnings may be disputed, and facts respecting the defendant's prior experience may be undisputed and be of such a nature as to virtually preclude any doubt that the defendant knew of his rights. See *United States* v. *Bolden*, 355 F. 2d 453 (C. A. 7th Cir. 1965), petition for cert. pending No. 1146 O. T. 1965 (secret service agent); *People* v. *DuBond*, 235 Cal. App. 2d 844, 45 Cal. Rptr. 717, pet. for cert. pending No. 1053 Misc. O. T. 1965 (former police officer).

but rather that some such confessions are coerced and present judicial procedures are believed to be inadequate to identify the confessions that are coerced and those that are not, it would still not be essential to impose the rule that the Court has now fashioned. Transcripts or observers could be required, specific time limits, tailored to fit the cause, could be imposed, or other devices could be utilized to reduce the chances that otherwise indiscernible coercion will produce an inadmissible confession.

On the other hand, even if one assumed that there was an adequate factual basis for the conclusion that all confessions obtained during in-custody interrogation are the product of compulsion, the rule propounded by the Court would still be irrational, for, apparently, it is only if the accused is also warned of his right to counsel and waives both that right and the right against self-incrimination that the inherent compulsiveness of interrogation disappears. But if the defendant may not answer without a warning a question such as "Where were you last night?" without having his answer be a compelled one, how can the court ever accept his negative answer to the question of whether he wants to consult his retained counsel or counsel whom the court will appoint? And why if counsel is present and the accused nevertheless confesses, or counsel tells the accused to tell the truth, and that is what the accused does, is the situation any less coercive insofar as the accused is concerned? The court apparently realizes its dilemma of foreclosing questioning without the necessary warnings but at the same time permitting the accused, sitting in the same chair in front of the same policemen, to waive his right to consult an attorney. It expects, however, that not too many will waive the right; and if it is claimed that he has, the State faces a severe, if not impossible burden of proof.

All of this makes very little sense in terms of the compulsion which the Fifth Amendment proscribes. That amendment deals with compelling the accused himself. It is his free will that is involved. Confessions and incriminating admissions, as such, are not forbidden evidence; only those which are compelled are banned. I doubt that the Court observes these distinctions today. By considering any answers to any interrogation to be compelled regardless of the content and course of examination and by escalating the requirements to prove waiver, the Court not only prevents the use of compelled confessions but for all practical purposes forbids interrogation except in the presence of counsel. That is, instead of confining itself to protection of the right against compelled self-incrimination the Court has created a limited Fifth Amendment right to counsel—or, as the Court expresses it, a "right to counsel to protect the Fifth Amendment privilege . . . ." *Ante*, at 32. The focus then is not on the will of the accused but on the will of counsel and how much influence he can have on the accused. Obviously there is no warrant in the Fifth Amendment for thus installing counsel as the arbiter of the privilege.

In sum, for all the Court's expounding on the menacing atmosphere of police interrogation procedures it has failed to supply any foundation for the conclusions it draws or the measures it adopts.

IV

Criticism of the Court's opinion, however, cannot stop at a demonstration that the factual and textual bases for the rule it propounds are, at best, less than compelling. Equally relevant is an assessment of the rule's consequences measured against community values. The Court's duty to assess the consequences of its action is not satisfied by the utterance of the truth that a value of our system of criminal justice is "to respect the inviolability of the human personality" and to require government to produce the evidence against the accused by its own independent labors. *Ante*, at 22. More than the human dignity of the accused is involved; the human personality of others in the society must also be preserved. Thus the values reflected by the privilege are not the sole desideratum; society's interest in the general security is of equal weight.

The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. As the Court declares that the accused may not be interrogated without counsel present, absent a waiver of the right to counsel, and as the Court all but admonishes the lawyer to advise the accused to remain silent, the result adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not. This is the not so subtle overtone of the opinion—that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub of this dissent. I see nothing wrong or immoral and certainly nothing unconstitutional,

with the police asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife or with confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent, see *Escobedo* v. *Illinios*, 378 U.S. 478, 499 (dissenting opinion). Until today, "the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence." *Brown* v. *Walker*, 161 U.S. 591, 596; see also *Hopt* v. *Utah*, 110 U.S. 574, 584–585. Particularly when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty. Moreover, it is by no means certain that the process of confessing is injurious to the accused. To the contrary it may provide psychological relief and enhance the prospects for rehabilitation.

This is not to say that the value of respect for the inviolability of the accused's individual personality should be accorded no weight or that all confessions should be indiscriminately admitted. This Court has long read the Constitution to proscribe compelled confessions, a salutory rule from which there should be no retreat. But I see no sound basis, factual or otherwise, and the Court gives none, for concluding that the present rule against the receipt of coerced confessions is inadequate for the task of sorting out inadmissible evidence and must be replaced by the *per se* rule which is now imposed. Even if the new concept can be said to have advantages of some sort over the present law, they are far outweighed by its likely undesirable impact on other very relevant and important interests.

The most basic function of any government is to provide for the security of the individual and of his property. *Lanzetta* v. *New Jersey*, 306 U.S. 451, 455. These ends of society are served by the criminal laws which for the most part are aimed at the prevention of crime. Without the reasonably effective performance of the task of preventing private violence and retaliation, it is idle to talk about human dignity and civilized values.

The modes by which the criminal laws serve the interest in general security are many. First the murderer who has taken the life of another is removed from the streets, deprived of his liberty and thereby prevented from repeating his offense. In view of the statistics on recidivism in this county [4] and of the number of instances in which apprehension occurs only after repeated offenses, no one can sensibly claim that this aspect of the criminal law does not prevent crime or contribute significantly to the personal security of the ordinary citizen.

Secondly, the swift and sure apprehension of those who refuse to respect the personal security and dignity of their neighbor unquestionably has its impact on others who might be similarly tempted. That the criminal law is wholly or partly ineffective with a segment of the population or with many of these who have been apprehended and convicted is a very faulty basis for concluding that

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[4] Precise statistics on the extent of recidivism are unavailable, in part because not all crimes are solved and in part because criminal records of convictions in different jurisdictions are not brought together by a central data collection agency. Beginning in 1963, however, the Federal Bureau of Investigation began collating data on "Careers in Crime," which it publishes in its Uniform Crime Reports. Of 192,869 offenders processed in 1963 and 1964, 76 % had a prior arrest record on some charge. Over a period of 10 years the group had accumulated 434,000 charges. FBI, Uniform Crime Reports—1964, 27–28. In 1963 and 1964 between 23% and 25% of all offenders sentenced in 88 federal district courts (excluding the District Court for the District of Columbia) whose criminal records were reported had previously been sentenced to a term of imprisonment of 13 months or more. Approximately an additional 40% had a prior record less than prison (juvenile record, probation record, etc.). Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1964, x, 36 (hereinafter cited as Federal Offenders: 1964); Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1963, 25–27 (hereinafter cited as Federal Offenders: 1963). During the same two years in the District Court for the District of Columbia between 28% and 35% of those sentenced had prior prison records and from 37% to 40% had a prior record less than prison. Federal Offenders: 1964, xii, 64, 66; Administrative Office of the United States Courts, Federal Offenders in the United States District Court for the District of Columbia: 1963, S, 10 (hereinafter cited as District of Columbia Offenders: 1963).

A similar picture is obtained if one looks at the subsequent records of those released from confinement. In 1964, 12.3% of persons on federal probation had their probation revoked because of the commission of major violations (defined as one in which the probationer has been committed to imprisonment for a period of 90 days or more, been placed on probation for over one year on a new offense, or has absconded with felony charges outstanding). Twenty-three and two-tenths percent of parolees and 16.9% of those who had been mandatorily released after service of a portion of their sentence likewise committed major violations. Reports of the Proceedings of the Judicial Conference of the United States and Annual Report of the Director of the Administrative Office of the United States Courts: 1965, 138. See also Mandel et al., Recidivism Studied and Defined, 56 J. of Crim. L., C. & P. S. 59 (1965) (within five years of release 62.33% of sample had committed offenses placing them in recidivist category).

it is not effective with respect to the great bulk of our citizens or for thinking that without the criminals laws, or in the absence of their enforcement, there would be no increase in crime. Arguments of this nature are not borne out by any kind of reliable evidence that I have seen to this date.

Thirdly, the law concerns itself with those whom it has confined. The hope and aim of modern penalogy, fortunately, is as soon as possible to return the convict to society a better and more law-abiding man than when he entered. Sometimes there is success, sometimes failure. But at least the effort is made, and it should be made to the very maximum extent of our present and future capabilities.

The rule announced today will measurably weaken the ability of the criminal law to perform in these tasks. It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials.[5] Criminal trials, no matter how efficient the police are, are not sure bets for the prosecution, nor should they be if the evidence is not forthcoming. Under the present law, the prosecution fails to prove its case in about 30% of the criminal cases actually tried in the federal courts. See Federal Offenders: 1964, *supra*, note 4, at 6 (Table 4), 59 (Table 1); Federal Offenders: 1963, *supra*, note 4, at 5 (Table 3); District of Columbia Offenders: 1963, *supra*, note 4, at 2 (Table 1). But it is something else again to remove from the ordinary criminal case all those confessions which heretofore have been held to be free and voluntary acts of the accused and to thus establish a new constitutional barrier to the ascertainment of truth by the judicial process. There is, in my view, every reason to believe that a good many criminal defendants, who otherwise would have been convicted on what this Court has previously thought to be the most satisfactory kind of evidence, will now, under this new version of the Fifth Amendment, either not be tried at all or acquitted if the State's evidence, minus the confession, is put to the test of litigation.

I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.

In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. The real concern is not the unfortunate consequences of this new decision on the criminal law as an abstract, disembodied series of authoritative proscriptions, but the impact on those who rely on the public authority for protection and who without it can only engage in violent self-help with guns, knives and the help of their neighbors similarly inclined. There is, of course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case.

Nor can this decision do other than have a corrosive effect on the criminal law as an effective device to prevent crime. A major component in its effectiveness in this regard is its swift and sure enforcement The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good common sense. If it were not, we should posthaste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct.

And what about the accused who has confessed or would confess in response to simple, noncoercive questioning and whose guilt could not otherwise be proved? Is it so clear that release is the best thing for him in every case? Has it so unquestionably been resolved that in each and every case it would be better for him not to confess and to return to his environment with no attempt whatsoever to

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[5] Eighty-eight federal district courts (excluding the District Court for the District of Columbia) disposed of the cases of 33,381 criminal defendants in 1964. Only 12.5% of those cases were actually tried. Of the remaining cases, 89.9% were terminated by convictions upon pleas of guilty and 10.1% were dismissed. Stated differently, approximately 90% of all convictions resulted from guilty pleas. Federal Offenders: 1964, *supra*, note 4, 3–6. In the District Court for the District of Columbia a higher percentage, 27%, went to trial, and the defendant pleaded guilty in approximately 78% of the cases terminated prior to trial. *Id.* at 58–59. No reliable statistics are available concerning the percentage of cases in which guilty pleas are induced because of the existence of a confession or of physical evidence unearthed as a result of a confession. Undoubtedly the number of such cases is substantial.

Perhaps of equal significance is the number of instances of known crimes which are not solved. In 1964, only 388,946, or 23.9% of 1,626,574 serious known offenses were cleared. The clearance rate ranged from 89.8% for homicides to 18.7% for larceny. FBI, Uniform Crime Reports—1964, 20–22, 101. Those who would replace interrogation as an investigatorial tool by modern scientific investigation techniques significantly overestimates the effectiveness of present procedures, even when interrogation is included.

help him? I think not. It may well be that in many cases it will be no less than a callous disregard for his own welfare as well as for the interests of his next victim.

There is another aspect to the effect of the Court's rule on the person whom the police have arrested on probable cause. The fact is that he may not be guilty at all and may be able to extricate himself quickly and simply if he were told the circumstances of his arrest and were asked to explain. This effort, and his release, must now await the hiring of a lawyer or his appointment by the court, consultation with counsel and then a session with the police or prosecutor. Similarly, where probable cause exists to arrest several suspects, as where the body of the victim is discovered in a house having several residents, see *Johnson* v. *State*, 238 Md. 140, 207 A. 2d 643 (1965), pet. for cert. pending No. 274 Misc. O. T. 1965, it will often be true that a suspect may be cleared only through the results of interrogation of other suspects. Here too the release of the innocent may be delayed by the court's rule.

Much of the trouble with the Court's new rule is that it will operate indiscriminately in all criminal cases, regardless of the severity of the crime or the circumstances involved. It applies to every defendant, whether the professional criminal or one committing a crime of momentary passion who is not part and parcel of organized crime. It will slow down the investigation and the apprehension of confederates in those cases where time is of the essence, such as kidnaping, see *Brinegar* v. *United States*, 338 U.S. 160, 183 (Jackson, J., dissenting); *People* v. *Modesto*, 398 P. 2d 753, 759, 42 Cal. Rptr. 417, 423 (1965), those involving the national security, see *Drummond* v. *United States*, 354 F. 2d 132, 147 (C. A. 2d Cir. 1965)) (*en banc*) (espionage case), pet. for cert. pending No. 1203 Misc. O. T. 1965; cf. *Gessner* v. *United States*, 354 F. 2d 726, 730, n. 10 (C. A. 10th Cir. 1965) (upholding, in espionage case, trial ruling that Government need not submit classified portions of interrogation transcript), and some organized crime situations. In the latter context the lawyer who arrives may also be the lawyer for the defendants' colleagues and can be relied upon to insure that no breach of the organization's security takes place even though the accused may feel that the best thing he can do is cooperate.

At the same time, the Court's *per se* approach may not be justified on the ground that it provides a "bright line" permitting the authorities to judge in advance whether interrogation may safely be pursued without jeopardizing the admissibility of any information obtained as a consequence. Nor can it be claimed that judicial time and effort, assuming that is a relevant consideration, will be conserved because of the ease of application of the new rule. Today's decision leaves open such questions as whether the accused was in custody, whether his statements were spontaneous or the product of interrogation, whether the accused has effectively waived his rights, and whether nontestimonial evidence introduced at trial is the fruit of statements made during a prohibited interrogation, all of which are certain to prove productive of uncertainty during investigation and litigation during prosecution. For all these reasons, if further restrictions on police interrogation are desirable at this time, a more flexible approach makes much more senes than the Court's constitutional straitjacket which forecloses more discriminating treatment by legislative or rule-making pronouncements.

Applying the traditional standards to the cases before the Court, I would hold these confessions voluntary. I would therefore affirm in Nos. 759, 760, and 761 and reverse in No. 584.

SUPREME COURT OF THE UNITED STATES

NO. 762.—OCTOBER TERM, 1965

Sylvester Johnson and Stanley Cassidy, petitioners, v. State of New Jersey, on writ of certiorari to the Supreme Court of the State of New Jersey

[June 20, 1966]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

In this case we are called upon to determine whether *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), and *Miranda* v. *Arizona*, *ante*, p. ——, should be applied

retroactively. We hold that *Escobedo* affects only those cases in which the trial began after June 22, 1964, the date of that decision. We hold further that *Miranda* applies only to cases in which the trial began after the date of our decision one week ago. The convictions assailed here were obtained at trials completed long before *Escobedo* and *Miranda* were rendered, and the rulings in those cases are therefore in applicable to the present proceeding. Petitioners have also asked us to overturn their convictions on a number of other grounds, but we find these contentions to be without merit, and consequently we affirm the decision below.

Petitioner Cassidy was taken into custody in Camden, New Jersey, at 4 a.m. on January 29, 1958, for felony murder. The police took him to detective headquarters and interrogated him in a systematic fashion for several hours. At 9 a.m. he was brought before the chief detective, two other police officers, and a court stenographer. The chief detective introduced the persons present, informed Cassidy of the possible charges against him, gave him the warning set forth in the margin,[1] concluded that he understood the warning, and obtained his consent to be questioned. Cassidy was then interrogated until 10:25 a.m. and made a partial confession to felony murder. The stenographer recorded this interrogation and read it back to Cassidy for his acknowledgment. Police officers then took him to another part of the building and apparently questioned him further. At 12:15 p.m. he was brought back to the chief detective's office for another half-hour of recorded interrogation. Under circumstances similar to those already described, Cassidy amended his confession to add vital incriminating details. For the next 11 hours he was held in a detention room and may have been subjected to further questioning. At 11:40 p.m. the police returned him to the chief detective's office for a final brief round of recorded interrogation. Taken together, Cassidy's three formal statements added up to a complete confession of felony murder, and they were later introduced against him at his trial for that crime.

While the present collateral proceeding was pending following our decision in *Escobedo*, Cassidy filed affidavits in the New Jersey Supreme Court which detailed for the first time certain supposed circumstances of his confession. In his own affidavit, he claimed that on at least five separate occasions during his interrogation, he asked for permission to consult a lawyer or to contact relatives. The police allegedly either ignored these requests or told him that he could not communicate with others until his statement was completed. Cassidy also produced affidavits from his mother, his uncle, and his aunt, claiming that during this period they called the detective headquarters at least three times and once appeared there in person, seeking information about Cassidy and an opportunity to speak with him. Their efforts allegedly were thwarted by the police. These belated claims were left uncontroverted by the State and were accepted as true by the court below for purposes of the *Escobedo* issue.

The police took petitioner Johnson into custody in Newark, New Jersey, at 5 p.m. on January 29, 1958, for the same crime as Cassidy. He was taken to detective headquarters and was booked. Later in the evening the police brought him before a magistrate for a brief preliminary hearing. The record is unclear as to what transpired there. Both before and after the appearance in court, he was questioned in a routine manner. At 2 a. m. the police drove Johnson by auto to Camden, the scene of the homicide, 80 miles from Newark. During the auto ride he was again interrogated about the crime. Upon arrival in Camden at about 4:30 a. m., the police took him directly to detective headquarters and brought him before the chief detective, three other police officers, and a court stenographer. As in Cassidy's case, Johnson was introduced to the persons present, informed of the possible charges against him, and given the same warning already set forth. He stated that he understood the warning and was willing to be questioned under those conditions. The police then interrogated him until 6:20 a. m., a period of about one and one-half hours. During the course of the questioning, he made a full confession to the crime of felony murder. This interrogation was recorded by the stenographer and read back to Johnson for his acknowledgment.

[1] "I am going to ask you some questions as to what you know about the hold-up, but before I ask you these questions it is my duty to warn you that everything you tell me must be of your own free will, must be the truth, without any promises or threats having been made to you, and knowing anything you tell me can be used against you, or any other person, at some future time."

Like Cassidy, Johnson filed affidavits in the New Jersey Supreme Court in this collateral proceeding following our decision in *Escobedo*, detailing for the first time certain supposed circumstances of his confession. In his own affidavit, he claimed that at four separate points during the period described above, he asked for permission to consult a lawyer or to contact relatives so that they could obtain a lawyer for him. As in Cassidy's case, the police allegedly either ignored these requests or told him that he could not communicate with others until he had given a statement. Johnson also produced affidavits from his mother and his girl friend, claiming that on three occasions after the homicide and prior to the confession, they called detective headquarters or went there in person, seeking information about Johnson and an opportunity to speak with him. Their efforts allegedly were rebuffed by the police. These belated claims, like Cassidy's, were left uncontroverted by the State and were accepted as true by the court below for resolution of the *Escobedo* issue.

The confessions of Johnson and Cassidy were offered in evidence by the State at their joint trial for felony murder. The judge held a hearing out of the presence of the jury on the voluntariness of the confessions. Petitioners made no effort to rebut the testimony adduced by the State relating to this issue. The judge found the confessions voluntary and admitted them into evidence. Petitioners then expressly relinquished their right under state law to have the issue of voluntariness, and the accompanying evidence, submitted to the jury for redetermination.[2] They did not introduce any testimony to dispute the correctness of their confessions..

In summation at the close of trial, defense counsel explicitly asserted that the confessions were truthful and pleaded for leniency on this ground. Cassidy's lawyer stated to the jury:

> "Whatever is in this statement made by Stanley Cassidy is true. I know it is true. . . . [M]y reason for knowing that it is true is because of the meetings and consultations I have had with Stanley. We have been over this many, many times.
>
> "I know it is true because I know Chief Dube, and Chief Dube is a fine interrogator. If you do not answer truthfully, believe me, he will question you until he does get the truth, and Chief Dube got the truth."

Likewise Johnson's lawyer told the jury:

> "The statement of Johnson was truthful and honest, because when that was finished, that was the end of it.
>
> * * * * * * *
>
> "There were no threats. There was no attempt to evade. There was no trickery. Anything that Chief Dube asked him he answered honestly and truthfully."

The jury found Johnson and Cassidy guilty of murder in the first degree without recommendation of mercy, and they were sentenced to death.[3]

The convictions of Johnson and Cassidy became final six years ago, when the New Jersey Supreme Court affirmed them upon direct appeal[4] and the time expired for petitioners to seek certiorari from the decision. There followed a battery of collateral attacks in state and federal courts, based on new factual allegations, in which petitioners repeatedly and unsuccessfully assailed the voluntariness of their confessions.[5] This appeal arises out of still another application for post-conviction relief, accompanied by a fresh set of factual allegations, in which petitioners have argued in part that their confessions were inadmissible under the principles of *Escobedo*. The court below rejected the claim, holding that

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[2] The procedure prescribed by state law was outlined in the opinion below as follows: "Under the New Jersey procedure for the admission in evidence of a confession, the trial judge must first determine whether the confession was voluntary. If he finds the confession to be voluntary, and hence admissible, he instructs the jury to also consider the voluntariness of the confession and to disregard it unless the State proves it was voluntarily given." 43 N. J. 572, 586, n. 9, 206 A. 2d 737, 744–745, n. 9.

[3] A third defendant, Wayne Godfrey, was also found guilty and sentenced to death. His conviction was subsequently overturned by a federal court in post-conviction proceedings. Upon retrial for felony murder, he pleaded *non vult* and was sentenced to life imprisonment.

[4] *State* v. *Johnson*, 31 N. J. 489, 158 A. 2d 11 (1960).

[5] *State* v. *Johnson*, 63 N. J. Super. 16, 163 A. 2d 593 (1960), aff'd, 34 N. J. 212, 168 A. 2d 1, cert. denied, 368 U. S. 933 (1961); *United States ex rel. Johnson* v. *Yeager*, 327 F. 2d 311 (C. A. 3d Cir.), cert. denied, 377 U. S. 984 (1964). See also *State* v. *Johnson*, 71 N. J. Super. 506, 177 A. 2d 512, aff'd, 37 N. J. 19, 179 A. 2d 1, cert. denied, 379 U. S. 928 (1962).

Escobedo did not affect convictions which had become final prior to the date of that decision,[6] and it is this holding which we are principally called upon to review. In view of the standards announced one week ago concerning the warnings which must be given prior to in-custody interrogation, this case also obliges us to determine whether *Miranda* should be accorded retroactive application.

In the past year we have twice dealt with the problem of retroactivity in connection with other constitutional rules of criminal procedure. *Linkletter* v. *Walker*, 381 U. S. 618 (1965); *Tehan* v. *Shott*, 382 U. S. 406 (1966). These cases establish the principle that in criminal litigation concerning constitutional claims, "the Court may in the interest of justice make the rule prospective . . . where the exigencies of the situation require such an application," 381 U.S., at 628; 382 U.S., at 410. These cases also delineate criteria by which such an issue may be resolved. We must look to the purpose of our new standards governing police interrogation, the reliance which may have been placed upon prior decisions on the subject, and the effect on the administration of justice of a retroactive application of *Escobedo* and *Miranda*. See 381 U.S., at 636; 382 U.S., at 413.

In *Linkletter* we declined to apply retroactively the rule laid down in *Mapp* v. *Ohio*, 367 U.S. 643 (1961), by which evidence obtained through an unreasonable search and seizure was excluded from state criminal proceedings. In so holding we relied in part on the fact that the rule affected evidence "the reliability and relevancy of which is not questioned" 381 U.S., at 639. Likewise in *Tehan* we declined to give retroactive effect to *Griffin* v. *California*, 380 U.S. 609 (1965), which forbade prosecutors and judges to comment adversely on the failure of a defendant to testify in a state criminal trial. In reaching this result, we noted that the basic purpose of the rule was to discourage courts from penalizing use of the privilege against self-incrimination. 382 U.S., at 414.

As *Linkletter* and *Tehan* acknowledged, however, we have given retroactive effect to other constitutional rules of criminal procedure laid down in recent years, where different guarantees were involved. For example, in *Gideon* v. *Wainright*, 372 U.S. 335 (1963), which concerned the right of an indigent to the advice of counsel at trial, we reviewed a denial of habeas corpus. Similarly, *Jackson* v. *Denno*, 378 U.S. 368 (1964), which involved the right of an accused to effective exclusion of an involuntary confession from trial, was itself a collateral attack. In each instance we concluded that retroactive application was justified because the rule affected "the very integrity of the fact-finding process" and averted "the clear danger of convicting the innocent." *Linkletter* v. *Walker*, 381 U.S., at 639, *Tehan* v. *Shott*, 382 U.S., at 416.

We here stress that the choice between retroactivity and nonretroactivity in no way turns on the value of the constitutional guarantee involved. The right to be represented by counsel at trial, applied retroactively in *Gideon* v. *Wainwright*, *supra*, has been described by Justice Schaefer of the Illinois Supreme Court as "by far the most pervasive . . . of all of the rights that an accused person has."[7] Yet Justice Brandeis even more boldly characterized the immunity from unjustifiable intrusions upon privacy, which was denied retroactive enforcement in *Linkletter*, as "the most comprehensive of rights and the right most valued by civilized men."[8] To reiterate what was said in *Linkletter*, we do not disparage a constitutional guarantee in any manner by declining to apply it retroactively. See 381 U. S., at 629.

We also stress that the retroactivity or nonretroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based. Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine must inevitably vary with the dictate involved. Accordingly as *Linkletter* and *Tehan* suggest, we must determine retroactivity "in each case" by looking to the peculiar traits of the specific "rule in question." 381 U. S., at 629; 382 U. S., at 410.

Finally, we emphasize that the question whether a constitutional rule of criminal procedure does or does not enhance the reliability of the fact-finding process at trial is necessarily a matter of degree. We gave retroactive effect to *Jackson* v. *Denno*, *supra*, because confessions are likely to be highly persuasive with a

[6] 43 N. J. 572, 206 A. 2d 737.
[7] Federalism and State Criminal Procedure, 70 Harv. L. Rev. 1, 8 (1956).
[8] *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (dissenting opinion).

jury, and if coerced they may well be untrustworthy by their very nature.[9] On the other hand, we denied retroactive application to *Griffin* v. *California*, *supra*, despite the fact that comment on the failure to testify may sometimes mislead the jury concerning the reasons why the defendant has refused to take the witness stand. We are thus concerned with a question of probabilities and must take account, among other factors, of the extent to which other safeguards are available to protect the integrity of the truth-determining process at trial.

Having in mind the course of the prior cases, we turn now to the problem presented here: whether *Escobedo* and *Miranda* should be applied retroactively.[10] Our opinion in *Miranda* makes it clear that the prime purpose of these rulings is to guarantee full effectuation of the privilege against self-incrimination, the mainstay of our adversary system of criminal justice. See, *ante*, pp. 20–29. They are designed in part to assure that the person who responds to interrogation while in custody does so with intelligent understanding of his right to remain silent and of the consequences which may flow from relinquishing it. In this respect the rulings secure scrupulous observance of the traditional principle, often quoted but rarely heeded to the full degree, that "[t]he law will not suffer a prisoner to be made the deluded instrument of his own conviction." [11] Thus while *Escobedo* and *Miranda* guard against the possibility of unreliable statements in every instance of in-custody interrogation, they encompass situations in which the danger is not necessarily as great as when the accused is subjected to overt and obvious coercion.

At the same time, our case law on coerced confessions is available for persons whose trials have already been completed, providing of course that the procedural prerequisites for direct or collateral attack are met. See *Fay* v. *Noia*, 372 U. S. 391 (1963). Prisoners may invoke a substantive test of voluntariness which, because of the persistence of abusive practices, has become increasingly meticulous through the years. See *Reck* v. *Pate*, 367 U. S. 433 (1961). That test now takes specific account of the failure to advise the accused of his privilege against self-incrimination or to allow him access to outside assistance. See *Haynes* v. *Washington*, 373 U. S. 503 (1963); *Spano* v. *New York*, 360 U. S. 315 (1959). Prisoners are also entitled to present evidence anew on this aspect of the voluntariness of their confessions if a full and fair hearing has not already been afforded them. See *Townsend* v. *Sain*, 372 U. S. 293 (1963). Thus while *Escobedo* and *Miranda* provide important new safeguards against the use of unreliable statements at trial, the nonretroactivity of these decisions will not preclude persons whose trials have already been completed from invoking the same safeguards as part of an involuntariness claim.

Nor would retroactive application have the justifiable effect of curing errors committed in disregard of constitutional rulings already clearly foreshadowed. We have pointed out above that past decisions treated the failure to warn accused persons of their rights, or the failure to grant them access to outside assistance as factors tending to prove the involuntariness of the resulting confessions. See *Haynes* v. *Washington*, *supra*; *Spano* v. *New York*, *supra*. Prior to *Escobedo* and *Miranda*, however, we had expressly declined to condemn an entire process of in-custody interrogation solely because of such conduct by the police. See *Crooker* v. *California*, 357 U. S. 433 (1958); *Cicenia* v. *Lagay*, 357 U. S. 504 (1958). Law enforcement agencies fairly relied on these prior cases, now no longer binding, in obtaining incriminating statements during the intervening years preceding *Escobedo* and *Miranda*. This is in favorable comparison to the situation before *Mapp* v. *Ohio*, 367 U. S. 643 (1961), where the States at least knew that they were constitutionally forbidden from engaging in unreasonable searches and seizures under *Wolf* v. *Colorado*, 338 U. S. 25 (1949).

At the same time, retroactive application of *Escobedo* and *Miranda* would seriously disrupt the administration of our criminal laws. It would require the

[9] Coerced confessions are, of course, inadmissible regardless of their alleged truth or falsity. See *Rogers* v. *Richmond*, 365 U.S. 534 (1961).

[10] It appears that every state supreme court and federal court of appeals which has discussed the question has declined to apply the tenets of *Escobedo* retroactively. For example, see *In re Lopez*, 62 Cal. 2d 368, 42 Cal. Rptr. 188, 398 P. 2d 380 (1965); *Ruark* v. *People*, — Colo. —, 405 P. 2d 751 (1965); *Commonwealth* v. *Negri*, 419 Pa. 117, 213 A. 2d 670 (1965); *United States ex rel. Walden* v. *Pate*, 350 F. 2d 240 (C. A. 7th Cir. 1965). The commentators, however, are divided on this issue. Compare Mishkin, Forward: The High Court, The Great Writ, and the Due Process of Time and Law, 79 Harv. L. Rev. 56 (1965), which opposes retroactive application, with Comment, *Linkletter, Shott,* and the Retroactivity Problem in *Escobedo*, 64 Mich. L. Rev. 832 (1966).

[11] 2 Hawkins, Pleas of the Crown 595 (8th ed. 1824).

retrial or release of numerous prisoners found guilty by trustworthy evidence in conformity with previously announced constitutional standards. Prior to *Escobedo* and *Miranda*, few States were under any enforced compulsion on account of local law to grant requests for the assistance of counsel or to advise accused persons of their privilege against self-incrimination. Compare *Crooker* v. *California*, 357 U.S., at 448, n. 4 (dissenting opinion). By comparison, *Mapp* v. *Ohio*, *supra*, was already the law in a majority of the States at the time it was rendered, and only six States were immediately affected by *Griffin* v. *California*, 380 U.S. 609 (1965). See *Tehan* v. *Shott*, 382 U.S., at 418.

In the light of these various considerations, we conclude that *Escobedo* and *Miranda*, like *Mapp* v. *Ohio*, *supra*, and *Griffin* v. *California*, *supra*, should not be applied retroactively. The question remains whether *Escobedo* and *Miranda* shall affect cases still on direct appeal when they were decided or whether their application shall commence with trials begun after the decisions were announced. Our holdings in *Linkletter* and *Tehan* were necessarily limited to convictions which had become final by the time *Mapp* and *Griffin* were rendered. Decisions prior to *Linkletter* and *Tehan* had already established without discussion that *Mapp* and *Griffin* applied to cases still on direct appeal at the time they were announced. See 381 U.S., at 622 and n. 4; 382 U.S., at 409, n. 3. On the other hand, apart from the application of the holdings in *Escobedo* and *Miranda* to the parties before the Court in those cases, the possibility of applying the decisions only prospectively is yet an open issue.

All of the reasons set forth above for making *Escobedo* and *Miranda* nonretroactive suggest that these decisions should apply only to trials begun after the decisions were announced. Future defendants will benefit fully from our new standards governing in-custody interrogation, while past defendants may still avail themselves of the voluntariness test. Law enforcement officers and trial courts will have fair notice that statements taken in violation of these standards may not be used against an accused. Prospective application only to trials begun after the standards were announced is particularly appropriate here. Authorities attempting to protect the privilege have not been apprised heretofore of the specific safeguards which are now obligatory. Consequently they have adopted devices which, although below the constitutional minimum, were not intentional evasions of the requirements of the privilege. In these circumstances, to upset all of the convictions still pending on direct appeal which were obtained in trials preceding *Escobedo* and *Miranda* would impose an unjustifiable burden on the administration of justice.

At the same time, we do not find any persuasive reason to extend *Escobedo* and *Miranda* to cases tried before those decisions were announced, even though the cases may still be on direct appeal. Our introductory discussion in *Linkletter*, and the cases cited therein, have made it clear that there are no jurisprudential or constitutional obstacles to the rule we are adopting here. See 381 U.S., at 622–629. In appropriate prior cases we have already applied new judicial standards in a wholly prospective manner. See *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964); *James* v. *United States*, 366 U.S. 213 (1961). Nor have we have shown any reason why our rule is not a sound accommodation of the principles of *Escobedo* and *Miranda*.

In the light of these additional considerations, we conclude that *Escobedo* and *Miranda* should apply only to cases commenced after those decisions were announced. We recognize that certain state courts have perceived the implications of *Escobedo* and have therefore anticipated our holding in *Miranda*. Of course, States are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision.

Apart from its broad implications, the precise holding of *Escobedo* was that statements elicited by the police during an interrogation may not be used against the accused at a criminal trial,

> "[where] the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent . . . ." 378 U.S., at 490–491.

Because *Escobedo* is to be applied prospectively, this holding is available only to persons whose trials began after June 22, 1964, the date on which *Escobedo* was decided.

As for the standards laid down one week ago in *Miranda*, if we were persuaded that they had been fully anticipated by the holding in *Escobedo*, we would measure their prospectivity from the same date. Defendants still to be tried at that time would be entitled to strict observance of constiutional doctrines already clearly foreshadowed. The disagreements among other courts concerning the implications of *Escobedo*,[12] however, have impelled us to lay down additional guidelines for situations not presented by that case. This we have done in *Miranda*, and these guidelines are therefore available only to persons whose trials had not begun as of June 13, 1966. See *Tehan* v. *Shott*, 382 U.S., at 409, n. 3, with reference to *Malloy* v. *Hogan*, 378 U.S. 1. (1964), and *Griffin* v. *California*, *supra*.

Petitioners challenge the validity of their convictions on several other grounds, all of which we have examined with great care, including the claim that their confessions were coerced. We conclude without unnecessary discussion that those grounds which may be tested on this direct review of the judgment of the New Jersey Supreme Court are without merit. We further find that petitioners' contentions relating to the voluntariness of their confessions are beyond the scope of our direct review in this proceeding.

Petitioners' coerced confession claim was fully litigated and rejected both at trial and in prior post-conviction hearings in the state courts. On neither occasion, however, did petitioners attempt to substantiate certain allegations made for the first time in the present proceeding. As stated above, petitioners now assert that they were prevented from obtaining outside assistance while they were being interrogated. The police allegedly refused them access to their families or a lawyer and also thwarted the efforts of their relatives and friends to contact them. We have already pointed out that allegations of this kind are directly relevant to a coerced confession claim and that such a claim presents no problem of retroactivity. See also *Davis* v. *North Carolina*, *post*, p —.

The New Jersey Supreme Court invoked a state procedural rule, previously applied in another confession case, as a bar to reconsideration of petitioners' coerced confession claim, even in the light of their new allegations regarding the denial of outside assistance. See N.J.R.R. 3:10A–5 (1965 Supp.); *State* v. *Smith*, 43 N.J. 67, 202 A. 2d 669 (1964). This is an adequate state ground which precludes us from testing the coerced confession claim on the present review, whatever may be the significance of the state court's reliance on its procedural rule in federal habeas corpus proceedings. See *Fay* v. *Noia*, 372 U.S. 391 (1963).

The judgment of the Supreme Court of New Jersey is

Affirmed.

MR. JUSTICE CLARK concurs in the opinion and judgment of the Court. He adheres, however, to the views stated in his separate opinion in *Miranda* v. *Arizona*, *ante*, p. —.

MR. JUSTICE HARLAN, MR. JUSTICE STEWART, and MR. JUSTICE WHITE concur in the opinion and judgment of the Court. They continue to believe, however, for the reasons stated in the dissenting opinions of MR. JUSTICE HARLAN and MR. JUSTICE WHITE in *Miranda* v. *Arizona* and its companion cases, — U.S. —, that the new constitutional rules promulgated in those cases are both unjustified and unwise.

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, dissents from the Court's holding that the petitioners here are not entitled to the full protections of the Fifth and Sixth Amendments as this Court has construed them in *Escobedo* v. *Illinois*, 378 U.S. 478, and *Miranda* v. *Arizona*, *ante*, p. —, for substantially the same reasons stated in their dissenting opinion in *Linkletter* v. *Walker*, 381 U.S. 618, at 640.

Senator MCCLELLAN. For the purpose of this record and for the convenience of those who may be interested, I think it will be helpful

[12] For example, compare *People* v. *Dorado*, 62 Cal. 2d 338, 42 Cal. Rptr. 169, 398 P. 2d 361 (1965), and *People* v. *Dufour*, — R. I. —, 206 A. 2d 82 (1965), which construe *Escobedo* broadly, with *People* v. *Hartgraves*, 31 Ill. 2d 375, 202 N. E. 2d 33 (1964), and *Browne* v. *State*, 24 Wis. 2d 491, 131 N. W. 2d 169 (1964).

to have the 11 bills to which I referred and the reports and executive communications thereon printed in full at this point in the record.

(The data referred to follows:)

[S. 300, 90th Cong., first sess.]

A BILL To amend section 401 of title 18 of the United States Code, dealing with the power of the courts of the United States to punish for contempts of its authority

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, section 401, of the United States Code is amended as follows: At the end thereof, add the following:

"The power of the district courts under this section and section 402, title 18, shall not be vacated, reviewed, restricted, or restrained by the courts of appeals except upon an appeal from a final order or judgment of commitment entered by the district courts."

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., October 3, 1966.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This refers further to your letter of May 13, 1966, transmitting for study and report S. 3350,* a bill "to amend section 401 of title 18 of the United States Code, dealing with the power of the courts of the United States to punish for contempts of its authority."

This is to advise you that at its meeting on September 22 and 23, 1966, the Judicial Conference of the United States voted to disapprove S. 3350.

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

[S. 552, 90th Cong., first sess.]

A BILL To amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 97 of title 18 of the United States Code is amended by inserting at the end thereof a new section as follows:

"§ 1993. Committing acts dangerous to persons on board trains

"Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of persons on board, commits any act with respect to any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

SEC. 2. The analysis of chapter 97 of title 18 of the United States Code is amended by inserting at the end thereof the following:

"1993. Committing acts dangerous to persons on board trains."

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 24, 1967.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

Dear SENATOR: This is in response to your request for the views of the Department of Justice concerning S. 552, a bill "To amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

The bill would add a new section 1993, to title 18, United States Code, to make it a Federal crime for any person to willfully commit any act with

* A similar bill of the 89th Congress.

respect to a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad, with intent to endanger the safety of any person on board or whom he believes will board, or with a reckless disregard for the safety of persons on board. A violation of the proposed section would be punishable by a fine of not more than $5,000 or imprisonment for not more than ten years, or both.

While the bill is framed in broad language and the acts denounced are not specifically defined, Senator Hart stated in introducing an identical measure in the 89th Congress that its provisions were aimed at individuals who throw rocks and other objects at trains (Cong. Rec., Sept. 13, 1966, p. 21412).

Under existing law, it is a Federal crime to derail or wreck trains or commit acts of depredation against railroad facilities with intent to derail or wreck trains (18 U.S.C. 1992); to destroy or injure property moving in interstate or foreign commerce in the possession of a common or a contract carrier by railroad, motor vehicle, or aircraft (15 U.S.C. 1281); to embezzle or steal interstate or foreign shipments (18 U.S.C. 659); and to embezzle and steal carrier's funds derived from commerce (18 U.S.C. 660). Also, existing law, applicable to the special maritime and territorial jurisdiction of the United States, provides Federal penalties for murder, robbery, or acts of violence against train passengers or crew members (18 U.S.C. 1991).

We have no information that the number or nature of the acts to be proscribed are such that they cannot be handled satisfactorily by the states. Moreover, we assume that, unlike the statutes noted above, most of the instances of missile throwing would involve juveniles, making them more appropriately a subject for local action in juvenile court. Accordingly, we are unable to recommend the enactment of S. 552. However, in the event it is determined that S. 552 warrants favorable consideration, we suggest that a provision similar to that found in section 659, 660, and 1992, title 18, United States Code, be added as follows:

"A judgment of conviction or acquittal on the merits under the laws of any state shall be a bar to any prosecution under this section for the same act or acts."

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,

——— ———, *Attorney General.*

[S. 580, 90th Cong., first sess.]

A BILL To amend chapter 3 of title 18, United States Code, to prohibit the importation into the United States of certain noxious aquatic plants

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 46 of title 18, United States Code, is amended by—

(1) striking out in subsection (b) "subsection (a)" and inserting in lieu thereof "paragraph (1) of this subsection, or which has been imported into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, in violation of paragraph (1) of subsection (b)";

(2) redesignating subsection (a) as subsection (a)(1);

(3) redesignating subsections (b) and (c) as paragraphs (2) and (3), respectively; and

(4) adding a new subsection as follows:

"(b)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, of alligator grass (alternanthera philoxeroides), water chestnut plants (trapa natans), or water hyacinth plants (eichornia crassipes), or the seeds of such grass or plants, or of any other aquatic plant or the seed thereof which the Secretary of the Interior may prescribe by regulation to be injurious to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States or to recreational value of streams, rivers, lakes, or other bodies of water in the United States, or to the navigation of rivers and streams of the United States, is hereby prohibited.

"(2) Notwithstanding the foregoing, the Secretary of the Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest, shall permit the importation for zoological, educational, medical, and scientific purposes of any such aquatic plant or seed thereof, where such importation would be prohibited otherwise by or pursuant to this section.

"(3) Whoever violates the provisions of this subsection, or any regulation issued pursuant thereto, shall be fined not more than $500 or imprisoned not more than six months, or both."

SEC. 2. The amendments made by this Act shall become effective thirty days after the date of enactment.

[S. 674, 90th Cong., first sess.]

A BILL To amend title 18, United States Code, with respect to the admissibility in evidence of confessions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 223, title 18, United States Code (relating to witnesses and evidence) is amended by adding at the end thereof the following new section:

"§ 3501. Admissibility of confessions

"(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

"(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

"(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury.

"(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

"(e) As used in this section, the term 'confession' means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing."

(b) The section analysis of that chapter is amended by adding at the end thereof the following new item:

"3501. Admissibility of confessions."

[S. 675, 90th Cong., first sess.]

A BILL To prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Wire Interception Act".

FINDINGS

SEC. 2. On the basis of its own investigations and of published studies, the Congress makes the following findings:

(a) Wire communications are normally conducted through the use of facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications. In order effectively to protect the integrity of interstate communications and the privacy of parties to such communications it is necessary for the Congress to prohibit interception of any wire communication using such facilities and to define on a uniform basis the circumstances and conditions under which such interception is permitted.

(b) Existing law prohibiting interception and disclosure of wire communications has not been effective to preserve the integrity of the Nation's wire communications systems. There is inconsistency among the laws of different States relating to wiretapping and there is extensive wiretapping without legal sanction. Additional legislation is needed to provide adequate protection against improper interception of wire communications and to regulate such interception in the limited area in which it should be permitted.

(c) Modern criminals make extensive use of the telephone and telegraph as a direct instrumentality of crime and as means of conducting criminal business. In some circumstances, interception of wire communications in order to obtain evidence of the commission of crime is a necessary aid to effective law enforcement.

(d) Wiretapping may invade the privacy, not only of the suspected criminal, but of innocent persons using the tapped facility. Accordingly, the privilege of wiretapping should be limited to certain major offenses, and accompanied by safeguards to insure that the interception is justified and that the information obtained thereby is not misused.

INTERCEPTION AND DISCLOSURE OF WIRE COMMUNICATIONS PROHIBITED

SEC. 3. (a) Except as otherwise specifically provided by this Act, it shall be unlawful for any person to—

(1) willfully intercept, attempt to intercept, or procure any other person to intercept or attempt to intercept, any wire communication; or

(2) willfully disclose or attempt to disclose to any other person the contents of any wire communication if the person disclosing that information knows or has reason to know that that information was obtained through the interception of a wire communication; or

(3) willfully use or attempt to use the contents of any wire communication if the person using that information knows or has reason to know that that information was obtained through the interception of a wire communication.

(b) It shall not be unlawful under this Act for an operator of a switchboard, or an officer, agent, or employee of any comunication common carrier, whose facilities are used in the transmission of a wire communication to intercept disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident of the rendition of service.

(c) Nothing in this Act shall be deemed to limit the constitutional power of the President to obtain information by such means as he deems necessary to protect the Nation from actual or potential attack or other hostile acts of foreign powers or to protect essential military information against foreign intelligence activities. The contents of any communication intercepted by authority of the President in the exercise of the foregoing power shall not be received in evidence in any judicial trial or administrative hearing and shall not be otherwise used or divulged except as is necessary to implement this subsection.

(d) Violations of this section shall be punished as provided in section 1362, title 18, United States Code.

EVIDENCE OBTAINED FROM UNAUTHORIZED INTERCEPTION NOT ADMISSIBLE

SEC. 4. Whenever any wire communication has been intercepted by any person, no part of the contents of that communication obtained through that interception and no evidence derived therefrom may be received in evidence in any proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, or any State or political subdivision thereof if the disclosure of that information would be in violation of section 3 of this Act, and the interception took place after the effective date of this Act.

AUTHORIZATION FOR CERTAIN INTERCEPTION OF WIRE COMMUNICATIONS

SEC. 5. (a) The Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge, after making the findings required by section 8(c) of this Act, may grant, in conformity with section 8 of this Act, leave to permit the Federal Bureau of Investigation, or other Federal agency having responsibility for the investigation of the offense as to which such application is made, to intercept wire communications when such interception may provide evidence of—

(1) any offense punishable by death or by imprisonment for more than one year under chapter 37, 105, or 115 of title 18 of the United States Code, or sections 224 to 227, inclusive, of the Atomic Energy Act of 1954 (68 Stat. 921), as amended;

(2) any offense involving murder, kidnaping, or extortion punishable under title 18 of the United States Code;

(3) any offense punishable under section 201, 1084, or 1952 of title 18 of the United States Code;

(4) any offense punishable under section 471, 472, or 473 of title 18 of the United States Code;

(5) any offense involving the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs or marihuana punishable under any law of the United States; or

(6) any conspiracy to commit any of the foregoing offenses.

(b) The attorney general of any State or the principal prosecuting attorney for any political subdivision thereof, if such person is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for leave to intercept wire communications, may apply for, and such State judge, after making the findings required by section 8(c) of this Act, may grant, in conformity with section 8 of this Act, leave to intercept wire communications within that State when such action may provide evidence of the commission of any crime or any conspiracy to commit crime as to which the interception of wire communications is authorized by the law of that State.

AUTHORIZATION FOR CERTAIN DISCLOSURE AND USE OF INTERCEPTED WIRE COMMUNICATIONS

SEC. 6. (a) Any investigative or law enforcement officer who has obtained knowledge of the contents of any wire communication in accordance with this Act may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officers making and receiving the disclosure.

(b) Any investigative or law enforcement officer, who has obtained knowledge of the contents of any wire communication in accordance with this Act, may use any information therein contained in the proper discharge of his official duties.

(c) Any person who has received, by any means authorized by this Act, any information concerning a wire communication intercepted in conformity with section 5 of this Act may disclose the contents of that communication while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any State, or in any Federal or State grand jury proceeding.

PENALTY FOR UNAUTHORIZED INTERCEPTION OR DISCLOSURE OF WIRE COMMUNICATIONS

SEC. 7. Section 1362 of title 18, United States Code, is amended by—

(1) redesignating the text thereof as subsection (a); and

(2) inserting at the end thereof the following new subsection:

"(b) Whoever willfully intercepts, discloses, or uses any wire communication, or attempts to do so or procures another person to do so, in violation of the Federal Wire Interception Act, shall be fined not more than $10,000, or imprisoned not more than two years, or both."

PROCEDURE

SEC. 8. (a) CONTENTS OF APPLICATION.—Each application under section 5 of this Act shall be made in writing upon oath or affirmation, and shall state the applicant's authority to make such application. Each application shall include the following information:

(1) A full and complete statement of the facts and circumstances relied upon by the applicant;

(2) The nature and location of the communications facilities involved; and

(3) A full and complete statement of the facts concerning all previous applications, known to the individual authorizing the application, made to any judge for leave to intercept wire communications involving the same communication facilities, or any of them, or involving any person named in the application as committing, having committed, or being about to commit an offense, and the action taken by the judge on each such application.

(b) ADDITIONAL EVIDENCE IN SUPPORT OF APPLICATION.—The judge may require the applicant to furnish additional testimony of documentary evidence in support of the application.

(c) GROUNDS FOR ISSUANCE.—Upon such application the judge may enter an ex parte order granting leave to intercept wire communications at any place within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that there is probable cause for belief that—

(1) an offense for which such an application may be filed under this Act is being, has been, or is about to be committed;

(2) facts concerning that offense may be obtained through such interception;

(3) no other means are readily available for obtaining that information; and

(4) the facilities from which communications are to be intercepted are being used or about to be used in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, a person who has committed, is committing, or is about to commit such offense.

(d) CONTENTS OF ORDER.—Each order granting leave to intercept any wire communication shall specify—

(1) the nature and location of the communications facilities as to which leave to intercept is granted;

(2) each offense as to which information is to be sought;

(3) the identity of the agency authorized to intercept the communications; and

(4) the period of time during which such interception is authorized.

(e) TIME LIMIT AND EXTENSIONS OF ORDER.—No order entered under this section may grant leave to intercept any wire communication for any period exceeding forty-five days. Extensions of the order may be granted for periods of not more than twenty days each upon further application made in conformity to subsection (a) of this section and upon the findings required by subsection (c) of this section.

(f) NOTICE OF INTENTION.—The contents of an intercepted wire communication shall not be received in evidence or otherwise disclosed in any criminal proceeding in a Federal court unless each defendant, not less than ten days before the trial, has been furnished with a copy of the court order or other authorization pursuant to which the interception was made. The ten-day period specified above may be waived by the judge if he finds that it was not possible to furnish the defendant with the above information ten days before the trial, and that the defendant will not be prejuiced by the delay in receiving such information.

(g) MOTION TO SUPPRESS.—Any defendant in a criminal trial in a Federal court may move in that court to suppress the use as evidence of the contents of

any intercepted communication or any part thereof or evidence derived therefrom, on the ground that (1) the communication was unlawfully intercepted; (2) the order or other authorization pursuant to which it was intercepted is insufficient on its face; (3) in the case of an order of a court, there was not probable cause for believing the existence of the grounds on which the order was issued; or (4) the interception was not made in conformity with the order or other authorization. Such motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds of the motion, but the court in its discretion may entertain the motion at the trial or hearing. If the motion is granted the evidence shall not be admissible in any court or proceeding.

(h) SEALING OF APPLICATIONS AND ORDERS.—Applications made to a court and orders granted by the court pursuant to this Act shall be sealed by the court. They shall not be made public except in accordance with this Act or by order of the court.

REPORTS CONCERNING INTERCEPTED WIRE COMMUNICATIONS

SEC. 9. (a) Within thirty days after the expiration of any order (including any extension thereof) entered by any State or Federal judge granting leave to intercept any wire communication under this Act, the judge shall cause to be transmitted to the Administrative Office of the United States Courts and to the Attorney General of the United States a true and correct copy of (1) that order and any order for the extension thereof, and (2) the application or applications made therefor. Within thirty days after the denial by any judge of any application made to him for the entry of any such order, or for the extension of any such order previously entered by him, under this Act, the judge shall transmit to the Administrative Office of the United States Courts and to the Attorney General of the United States a true and correct copy of that application.

(b) In March of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications under section 5 of this Act which were made, granted, and denied during the preceding calendar year. Such report shall state:

(1) the number of applications made by or on behalf of each Federal or State agency, and the number of orders granting or denying such applications;

(2) the number of applications made to, and granted and denied by, each Federal or State court;

(3) the number of applications made, granted, and denied with respect to each category of criminal offenses enumerated in section 5 of this Act; and

(4) the number of applications made, granted, and denied within each State, and each municipality or other political subdivision thereof, with respect to each such category of criminal offenses.

DEFINITIONS

SEC. 10. As used in this Act—

(1) The term "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate of foreign communications;

(2) The term "interstate communication" means any communication transmitted (a) from any State to any other State, or (b) within the District of Columbia or any possession of the United States;

(3) The term "foreign communication" means any communication transmitted between the United States and any foreign country;

(4) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any possession of the United States;

(5) The term "intercept" means the acquisition of the contents of any wire communication from a wire communication facility or component thereof, through the use of any intercepting device, by any person other than the sender or receiver of such communication or a person authorized by either;

(6) The term "intercepting device" means any device or apparatus, other than an extension telephone instrument furnished to the subscriber or user by a com-

munication common carrier in the ordinary course of its business as such carrier;

(7) The term "contents", when used with respect to any wire communication includes any information concerning the identity of the parties to such communication or the existence, contents, substance, purport, or meaning of that communication;

(8) The term "person" means any individual, including any officer or employee of the United States or any State or political subdivision thereof, and any partnership, association, joint stock company, trust, or corporation;

(9) The term "investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses described in this Act, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses; and

(10) The term "judge of competent jurisdiction" means—

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders granting leave to intercept any wire communication.

COMMUNICATIONS ACT AMENDMENT

SEC. 11. The text of section 605 of the Communications Act of 1934 (48 Stat. 1103; 47 U.S.C. 605) is amended to read as follows:

"No person receiving, or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress."

SEPARABILITY

SEC. 12. 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.

[S. 678, 90th Cong., first sess.]

A BILL To outlaw the Mafia and other organized crime syndicates

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

FINDINGS AND DECLARATION OF FACT

SECTION 1. That the Congress finds and declares that there exist in the United States, organizations, including societies and syndicates, one of which is known

as the Mafia, which have as their primary objective the disrespect for constituted law and order; that the members of such organizations are recruited for the purpose of carrying on gambling prostitution, traffic in narcotic drugs, labor racketeering, extortion, and commercial-type crimes generally, all of which are in violation of the criminal laws of the United States and of the several States; that these organizations, such as the Mafia, are conducted under their own code of ethics which is without respect for moral principles, law, and order; that the existence of these organizations is made easier through the use of bribery and corruption of certain public officials; that secrecy as to membership and authority within such organizations is a cardinal principle; that discipline and authority within such organizations are maintained by means of drastic retaliations, usually murder, and that similar methods are employed to coerce nonmembers; that, because such organizations violate every law of decency and humanity, they constitute a grave threat to the American way of life; that the members of such organizations refuse to cooperate with congressional investigative committees and deliberately engage in actions which are intended to hinder and frustrate the work of these legislative committees; and that, for the aforementioned reasons, the Mafia and other such organizations, societies, and syndicates should be outlawed.

MEMBERSHIP

SEC. 2. (a) Whoever on and after the date of enactment of this Act knowingly and willfully becomes or remains a member of (1) the Mafia, or (2) any other organization having for one of its purposes the use of any interstate commerce facility in the commission of acts which are in violation of the criminal laws of the United States or any State, relating to gambling, extortion, blackmail, narcotics, prostitution, or labor-racketeering, with knowledge of the purpose of such organization, shall be guilty of a felony and upon conviction shall be imprisoned for not less than five years nor more than twenty years and may be fined not more than $20,000.

(b) In determining membership or participation in the Mafia or any other organization defined in section 3 of this Act, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, shall consider all evidence presented as to whether the accused person—

(1) has been convicted for the violation of any State or Federal criminal law relating to the offenses mentioned in subsection (a);

(2) has made financial contributions to the organization in dues, assessments, loans, or in any other form;

(3) has given financial assistance in the form of gifts, loans or bail bonds to any member of any such organization or to such organization;

(4) has carried out or attempted to carry out any order or instruction from the organization to do any act which would be a violation of any of the criminal laws of any State or of the United States, or in any other way has carried out to any degree the plans, designs, objectives, or purposes of the organization;

(5) has participated to any degree in meetings of the organization at which was discussed matters relating to any of the criminal violations referred to in subsection (a); or

(6) has refused to cooperate with law enforcement agencies and legislative bodies in their efforts to protect society from the demoralizing influences of crime and vice.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Mafia" means a secret society whose members are pledged and dedicated to commit unlawful acts against the United States or any State thereof in furtherance of their objective to dominate organized crime and whose operations are conducted under a secret code of terror and reprisal not only for members who fail to abide by the edicts, decrees, decisions, principles, and instructions of the society in implementation of this domination of organized crime, but also for those persons not members, who represent a threat to the security of the members or the criminal operations of the society;

(2) "organization" means any group, association, society, confederation, or syndicate whose aims, objectives, and purposes are as stated in subsection (a) of section 2 of this Act; and

(3) "interstate commerce facility" means any mode of travel interstate, whether by common carrier or by private means, and any communication facility as defined in paragraph (b) of section 1403, title 18, of the United States Code.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 19, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR: In response to your request, I am pleased to submit these views concerning:

S. 674, to amend Chapter 18, of the United States Code, with respect to the admissibility in evidence of confessions;

S. 675, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses;

S. 678, to outlaw the Mafia and other organized crime syndicates.

S. 674

S. 674 provides that a confession shall be admissible in evidence if it is voluntarily given. It would also legislatively overrule the decision in *Mallory* v. *United States*, 354 U.S. 449 (1957), in which the Supreme Court held that if the arresting officer fails to comply with Rule 5(a) of the Federal Rules of Criminal Procedure requiring presentment of an arrested person "without unnecessary delay" any confession obtained during the period of "unnecessary delay" shall be excluded.

S. 674 would amend Title 18 by adding a new section 3501 entitled "Admissibility of Confessions". Subsection (a) provides for an initial determination by the trial judge as to whether the confession was voluntary and, if found voluntary by him, submission of relevant evidence on the issue to the jury. It also provides for an instruction that the jury may give such weight to the confession as it feels it deserves. Subsection (b) lists five specific factors which the trial judge is to consider in determining the issue of voluntariness. Subsection (c) provides that a confession shall not be inadmissible solely because of delay in presentment if the confession is found by the trial judge to have been made voluntarily. Subsection (d) is concerned with confessions made without interrogation, to persons other than police officers and non-custodial confessions.

A review of S. 674 indicates a conflict with the 1966 decision by the Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436. That case holds that the prosecution may not use statements obtained during custodial interrogation unless there has been adherence to specific constitutionally protected procedural safeguards based upon the privilege against self-incrimination. Such safeguards are in addition to the application of the traditional test for voluntariness and are designed to protect against the potential for coercion inherent in custodial surroundings. If S. 674 is intended to dispense with the procedural safeguards established by *Miranda* or if it is designed to modify the constitutional standard of voluntariness, it would be in conflict with current constitutional requirements.

Miranda requires that before custodial interrogation can take place, the suspect "must be warned 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 the right to consult with a lawyer and to have the lawyer with him during interrogation" and "that if he is indigent a lawyer will be appointed to represent him." The case also indicates that a suspect may waive his privilege against self-incrimination and his right to retained or appointed counsel.

Subsection (b) of S. 674 requires the trial judge in ruling on voluntariness to consider all the circumstances surrounding the giving of the confession including the five listed factors. Several of the listed factors deal with matters encompassed within the warnings required by *Miranda*. For example, 3501(b)(3) requires the judge to consider "whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him." Similarly (b)(4) requires consideration of "whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel."

Subsection (b) only requires that the trial judge "shall take into consideration" such factors. *Miranda*, on the other hand, imposes a constitutional requirement that such warnings be given prior to any interrogation. If subsection (b) is intended to dispense with the requirement that such warnings be given and to substitute a flexible standard that the presence or absence of such warnings need only be *considered* on the issue of voluntariness, it fails to comply with the mandate of *Miranda* and would be deemed unconstitutional. Only if the *Miranda* requirements are read into subsection (b), or as a constitutional gloss to be added to the bill, would this provision survive constitutional attack. In such case, however, there is a serious question whether subsection (b) does anything more than restate existing law regarding voluntariness.

Subsection (c) would overrule the *Mallory* decision. Under that subsection a confession otherwise voluntary would not be barred solely because of delay between arrest and arraignment. But under subsection (b)(1), the trial judge in determining voluntariness is to consider the time elapsing between arrest and arraignment.

Prompt arraignment of arrested persons is necessary in a free society which values the fair administration of criminal justice. The decision in *Mallory*, excluding confessions obtained during a period of unnecessary delay between arrest and arraignment, is designed to withdraw the incentive which law enforcement officers may have to delay arraignment. It is intended to encourage them to bring an arrested person promptly before a judicial officer. It discourages prolonged incarceration and interrogation of suspects without giving them the opportunity to consult with friends, family or counsel.

An outright repeal of *Mallory* would withdraw the encouragement for law enforcement officers to arraign suspects promptly. It would leave the "without unnecessary delay" provision of Rule 5(a) of the Federal Rules of Criminal Procedure as a rule without any remedy.

There is an additional reason why legislative action dealing with the *Mallory* problem would be unwise at this time. The decision in *Miranda* v. *Arizona* was rendered on June 13, 1966. That decision obviously may have implications for the *Mallory* problem. In my judgement, it would be premature to take legislative action with respect to *Mallory* until we have had more experience with the *Miranda* requirements and see their impact on the course of future decisions under Rule 5(a).

S. 675

I believe that we are all agreed that the present state of the law on wire interception is unsatisfactory. Legislation is required. Section 605 of the Federal Communications Act (47 U.S.C. 605), is inadequate, and many legislative proposals on the subject have been considered over the past twenty years, including S. 675. While S. 675 has merit, it does not go far enough in safeguarding individual privacy. Wiretapping should be allowed only in national security matters, with a total restriction imposed in all other cases.

Of necessity, when a line is "tapped" a large mass of material is intercepted and recorded, the great preponderance of which has no relationship whatever to the purpose of the tap. A tap cannot be selective and must record all that goes over the wire. It is unlike a search warrant where an officer must specify what he is searching for. As Justice Brandeis suggested more than forty years ago, wiretaps are more serious infringements of privacy than general warrants.

Viewed in this light, wiretapping—whether by private individuals or public officials—should be generally prohibited. The needs of law enforcement can be met without reliance on such large-scale intrusions on personal privacy. At the very least, proponents of judicially authorized wiretapping have a heavy burden of proof to meet to justify such intrusions, a burden which has not been met. Only when the national security itself is at stake, when the society itself is threatened, can such activity be justified.

S. 928, (the proposed Right of Privacy Act of 1967) in my opinion best meets the standards I believe necessary in this area. It also prohibits electronic eavesdropping which is an equally serious privacy problem. After consideration of all pertinent factors, the Department of Justice favors enactment of S. 928 in lieu of S. 675.

S. 678

S. 678 is a bill to outlaw the Mafia and other organized crime syndicates. I certainly wholeheartedly support the basic aim of this bill. Complete eradication of these corrupt syndicates, which prey on society and systematically subvert

the processes of justice, is a goal we all share. Unfortunately I cannot agree that S. 678, if enacted, would accomplish its purpose.

This bill would make knowing and willful membership in the Mafia, Cosa Nostra, or any similar racketeering organization a federal offense punishable by imprisonment of up to twenty years and a fine of up to $20,000. Various factors are listed as relevant for consideration by a jury in determining membership or participation in the outlawed organization or as showing knowledge of the purpose or objective of such organization. In addition to problems of proof which would be involved in its enforcement, this measure raises a number of constitutional issues of substantial magnitude. Serious questions would be posed under the Due Process Clause of the Fifth Amendment, the privilege against self-incrimination and possibly the Frst Amendment. These problems would insure extensive litigation. Because of this I would prefer to rely on existing law which as detailed below appears to be generally adequate.

There are numerous Federal penal provisions dealing with activities generally associated with organized crime. In addition, 18 U.S.C. 371 makes it unlawful to conspire with another to violate any Federal law. Taken together the offenses described by present law are applicable to almost every activity in which the organizations listed in the proposal would be engaged. While no present statute would apply to membership alone, the conspiracy statute prohibits the conspiratorial activity associated with membership in such an organization.

Your efforts in support of the passage of anticrime legislation have been outstanding. I appreciate them as I do your sponsorship of S. 917, the proposed "Safe Streets and Crime Control Act of 1967", S. 916, legislation to establish the United States Corrections Service, S. 676, "To amend Chapter 73, Title 18, United States Code, to prohibit the obstruction of criminal investigations of the United States" and S. 677, "To permit the compelling of testimony with respect to certain crimes, and the granting of immunity in connection therewith." These proposals, if enacted, would be extremely helpful in combatting organized crime.

The Bureau of the Budget has advised that there is no objection to the submission of this report and the enactment of this legislation would be in accord with the Program of the President.

Sincerely,

RAMSEY CLARK,
Attorney General.

[S. 798, 90th Cong., first sess.]

A BILL To provide compensation to survivors of local law enforcement officers killed while apprehending persons for committing Federal crimes

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

DETERMINATION OF SURVIVORS' RIGHT TO COMPENSATION

SECTION 1. If the law enforcement agency which employed a deceased local law enforcement officer at the time of his death satisfies the Attorney General that the death of such officer resulted from his apprehension of, or attempt to apprehend, any person for the commission of a crime against the United States, then the Attorney General shall pay the survivors of such officer (referred to in this Act as "qualifying officer") the compensation provided in section 2.

PAYMENT OF COMPENSATION

SEC. 2. (a)(1) The Attorney General shall pay to each person—

(A) who is an eligible survivor (as defined in section 3(4) of a qualifying officer at the end of a month for which a benefit is payable under paragraph (2), and

(B) who has made application for such benefit in accordance with subsection (b)

a benefit for that month equal to $250 divided by the number of eligible survivors of such officer at the end of such month who have made application for such benefit.

(2) A benefit shall be payable for each month beginning with the month of death of such officer and ending with (A) the ninety-ninth month after such

month of death or (B) the month preceding the first month in which there is no eligible survivor, whichever is sooner.

(b) A person may apply for a benefit for a month under subsection (a), in a manner prescribed by the Attorney General, at any time—

(1) after he becomes an eligible survivor of a qualifying officer, and

(2) before the date of payment of a benefit for such month to any other person by reason of his being a survivor of such qualifying officer.

A person may apply in a single application for benefits for more than one month.

(c) Compensation under this Act to the survivors of a qualifying officer employed by the District of Columbia shall be in addition to any other compensation to which they may be entitled under any other law of the United States.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "local law enforcement officer" means a full-time law enforcement officer employed by a State or a political subdivision of a State, or by the District of Columbia.

(2) The term "crime against the United States" includes any act made a crime by a law applicable only to the District of Columbia.

(3) The term "survivor" means a widow, child, or parent.

(4) The term "eligible survivor" with respect to a qualifying officer means—

(A) a widow,

(B) if such officer leaves no widow or if she dies or remarries, a child, or

(C) if no person is eligible under subparagraph (A) or (B), a parent.

(5) Subject to such regulations as the Attorney General may deem appropriate, the terms "widow", "child", and "parent" have the same meaning as they have for purposes of subsections (d), (e), and (h), respectively, of section 202 of the Social Security Act; except that an individual is a "child" only if in addition he is unmarried and satisfies clauses (i) and (ii) of section 202(d)(1)(B) of such Act.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 7, 1967.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 798, legislation "To provide compensation to survivors of local law enforcement officers killed while apprehending persons for committing Federal crimes."

The bill would establish a system of compensation under which payments could be made to survivors of a local law enforcement officer who died as a result of his apprehension of, or attempt to apprehend, a person for the commission of a crime against the United States. The Attorney General would make payments to survivors if the deceased officer's employing agency satisfies him that the officer's death was in the scope of the proposed statute. "Eligible survivor" would be defined as a widow, or if there is no widow or the widow dies or remarries, a child, or if there is no widow or child, a parent. Compensation in the amount of $250 monthly would be divided among eligible survivors and would be payable until the expiration of 99 months after the officer's death or until there is no eligible survivor, whichever occurs first. For the purposes of the Act, law enforcement officers employed by the District of Columbia, or by a state or political subdivision thereof, would be considered "local law enforcement officers."

Through the country, local law enforcement officers supplement the activities of Federal law enforcement personnel, thereby obviating, in large measure, the need for a larger Federal force. The enactment of legislation authorizing compensation to the families of such non-Federal officers who are killed while aiding in the enforcement of the Federal laws would appear to be an appropriate recognition of the contributions made by local forces.

Section 1 of the bill provides for compensation where death resulted from the apprehension of a Federal law violator. However, no standard is indicated for establishing that death "resulted" from such apprehension, and it is possible that considerable time might elapse between an injury sustained during apprehension and the officer's death. So that standards could be established for determining when death "resulted" from a covered injury, as well as settling any

other aspects of the program which may require guidelines, we suggest that the bill be amended to give the Attorney General authority to promulgate general rules and regulations for carrying out his duties under the Act. It is noted that while sections 2(b) and 3(5) grant some rule making authority to the Attorney General, such authority is limited to prescribing the manner in which eligible survivors may apply for benefits and promulgating regulations concerning the meaning to be accorded the terms "widow", "child", and "parent" (the persons entitled to receive benefits.)

The payment of benefits to officers "employed" by a law enforcement agency (section 1) presents a problem in that it is not clear whether compensation would be available to the survivors of an officer who terminated his employment between the time of injury and the time of death resulting from such injury.

Section 1 poses another problem by directing that the Attorney General "shall pay" compensation to the survivors of a qualifying officer, although no compensation fund is provided. We suggest that provision for the authorization of necessary funds should be added to the bill.

Further, it is not clear that compensation would be available to an officer killed while apprehending an individual wanted for both a Federal and a state or local crime, which we understand is the intent of the legislation. Accordingly, we suggest that the bill be amended to indicate whether compensation is to be available in such cases.

We suggest that section 3(2) be amended to avoid any misinterpretation of the Act's application. Although the section defines "crime against the United States" as including any acts made crimes by a law applicable only to the District of Columbia, it is possible that this definition might be considered as limiting the Act to such offenses. In the interest of clarity, we suggest language along the following lines:

The term "crime against the United States" means any Federal crime and includes any act made a crime by a law applicable only to the District of Col-Columbia.

If the Congress gives favorable consideration to this proposal, it should keep the subject matter under study. What can be done to encourage better compensation and insurance programs for all law enforcement officers? Should programs relating to Federal law enforcement officers be reviewed? Should administration of such programs be placed in the Department of Labor which has broad experience in their implementation? Is a more comprehensive program desirable for officers in the District of Columbia Police Department?

The views expressed in this letter are equally applicable to H.R. 454, H.R. 683, H.R. 1060, H.R. 1184, H.R. 2548, H.R. 3167, and H.R. 3578, identical bills also before the Committee.

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,

RAMSEY CLARK, *Acting Attorney General.*

JUNE 29, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: We have considered your request for our views on a proposed amendment to S. 798, to add a disability clause which would extend compensation to local law enforcement officers themselves in the event they are disabled while enforcing Federal laws.

We note that in H.R. 1060, to which you refer, the word "disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to be of long-continued and indefinite duration or to result in death. We assume that the term would be given a comparable definition in S. 798 if amended as you contemplate.

In our opinion, this would be a desirable amendment in furtherance of the objectives of the legislation. We believe that such an amendment could easily be inserted in section 1 of the bill.

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.

RAMSEY CLARK, *Attorney General.*

[S. 824, 90th Cong., first sess.]

A BILL To provide assistance for the improvement of State and local law enforcement agencies through acquisition of equipment for those agencies and provision of educational opportunities to their personnel, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Local Law Officers Education and Equipment Act."

TITLE I—NATIONAL COMMISSION ON LAW ENFORCEMENT ASSISTANCE

SEC. 101. For the purpose of administering and supervising the administration of titles II, IV, and V of this Act, there is hereby established in the Executive Office of the President a Commission to be known as the National Commission on Law Enforcement Assistance (hereinafter referred to as the "Commission").

SEC. 102. (a) The Commission shall be composed of nine members appointed by the President as follows:

(1) The Attorney General;

(2) Two officers of the executive branch of Government;

(3) Six members from the general public: *Provided, however,* That no more than three of such members shall be of the same political party.

(b) Except for the Attorney General, who shall be a permanent member of the Commission, the term of office of each of the other members of the Commission shall be three years except that, of the first eight appointments, four shall be for a term of two years and four shall be for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor is appointed shall be appointed for the remainder of such term.

(c) The Attorney General shall be Chairman of the Commission.

(d) Five members of the Commission shall constitute a quorum. A vacancy in the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment or designation was made.

(e) The Commission is authorized to adopt such rules and regulations as it may deem necessary to carry out the authority conferred upon it by this Act.

(f) For the purpose of assisting in the implementation and operation of titles II and V of this Act, the Attorney General shall make available to the Commission staff assistance from within the Department of Justice.

(g) For the purpose of assisting in the implementation and operation of title IV of this Act, the Secretary of State shall make available to the Commission staff assistance from within the Department of State.

SEC. 103. The Commission shall submit to the President and to the Congress not later than January 31 in each year a report detailing the activities of the Commission during the preceding calendar year with specific reference to the number and nature of requests made, granted and denied under titles II, IV, and V of this Act, and the uses to which grants were put by the agency or individual receiving them.

SEC. 104. Nothing contained in this Act shall be construed to authorize any department, agency, board, Commission, officer or employee of the United States to exercise any direction and control over the organization, administration or personnel of any State or local law enforcement or correctional agency.

TITLE II—ACQUISITION OF LAW ENFORCEMENT EQUIPMENT AUTHORIZATION

SEC. 201. (a) The Commission is authorized to make grants pursuant to the provisions of this title during the fiscal year ending June 30, 1968, and for each of the two succeeding fiscal years for the purpose of assisting State and local law enforcement agencies to acquire equipment of proven effectiveness to improve their capacity in the prevention and control of crime.

(b) For the purpose of making grants under this title there is authorized to be appropriated $80,000,000 for the fiscal year ending June 30, 1968, $120,000,000 for the fiscal year ending June 30, 1969, and $160,000,000 for the fiscal year ending June 30, 1970.

USES OF GRANTS

SEC. 202. Grants under this title may be used, in accordance with applications approved under section 203 for carrying out the purpose of this title, which shall include, but is not limited to, the acquisition of—

(1) police communications systems;

(2) accident prevention and investigation equipment;

(3) nonlethal riot control devices;

(4) automatic data processing equipment;

(5) video tape and sound recording equipment for use in transcribing interrogations in the course of law enforcement investigations;

(6) equipment for crime detection and analysis laboratories; and

(7) ancillary equipment and supplies necessary for operation, maintenance and instruction in the use of the equipment acquired under this title.

SEC. 203. (a) A grant under this title may be made to a local law enforcement agency or agencies, but only upon an application submitted to the Commission at such time or times, in such manner, and containing such information as the Board deems necessary. Such application shall—

(1) set forth a program for the acquisition of equipment which carries out the purposes set forth in the preceding section;

(2) provide assurances that the State or local law enforcement agency, or both, will pay from non-Federal sources the remaining cost of such programs;

(3) provide that such agency or agencies will make such reports in such form and containing such information as the Board may reasonably require; and

(4) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of funds received under this title.

(b) The Board may approve applications for grants under this title or any modifications thereof, only if—

(1) the application meets the requirements set forth in subsection (a) of this section;

(2) the application demonstrates that the agency has a need for the equipment;

(3) the equipment to be purchased is of proven effectiveness;

(4) the equipment can be expected to assist in the prevention, detection, or control of criminal activity or in the administration or operation of the agency; and

(5) in the case of applications for an increased Federal share in accordance with section 204(b), the application from the local law enforcement agency or agencies within a State has been approved by a State agency designated or created for the purpose of this subsection.

(c) In considering applications for grants under this title, the Commission shall consider the density of the population and the crime rate in the area served by the agency making application for a grant and, if the other requirements of this section have been satisfied, the Commission shall give preference in the making of grants to agencies serving more densely populated areas with the highest crime rates.

PAYMENTS

SEC. 204. (a) The Commission shall pay to each local law enforcement agency in that State which has an application approved under section 203(b) an amount equal to the Federal share of the amount needed for the purposes set forth in such application.

(b) For the purposes of subsection (a), the Federal share for each applicant shall be 30 per centum for each fiscal year, but such share shall be increased to 50 per centum for any fiscal year if a State agrees to pay 30 per centum of the amount needed to accomplish the procurement or acquisition approved under section 203(b) for that year.

(c) Payments under this title may be made in installments and in advance of by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

DEFINITION

SEC. 205. As used in this title, the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

TITLE III—DIVISION OF LAW ENFORCEMENT RESEARCH AND DEVELOPMENT

SEC. 301. There is established under the jurisdiction of the Department of Justice a division to be known as the Division of Law Enforcement Research and Development; said Division shall be vested with the duty of acquiring, collecting, classifying, and preserving information concerning innovations and devices applicable to law enforecement and corrections and making such information available to State and local law enforcement and correctional agencies.

SEC. 302. The cost of such acquisition, collection, and dissemination shall be paid from appropriations made to the Department of Justice, unless otherwise provided by law.

TITLE IV—INTERNATIONAL EXCHANGE PROGRAM

STATEMENT OF PURPOSE

SEC. 401. It is the purpose of this title to expand and improve the techniques, capabilities, and practices of State and local agencies engaged in law enforcement, the correction of offenders, and the prevention and control of crime by providing to eligible police officers in State and local law enforcement agencies and correctional institutions an opportunity to visit, for the purpose of study and observation, law enforcement and correctional agencies of foreign governments.

DEFINITION OF ELIGIBLE POLICE OFFICER

SEC. 402. As used in this title, the term "eligible police officer" means any person who—

(1) is employed in a supervisory, planning, or instructional position by a public State or local law enforcement agency or public correctional institution; and

(2) at the time of application for a grant under this part has been so employed by any such agency or institution for at least six years.

AUTHORIZATION

SEC. 403. The President is authorized in accordance with the provisions of this part to provide by grant, contract, or otherwise for the travel and study abroad of eligible police officers who are selected for such travel by the Commission.

LIMITATION

SEC. 404. No travel grant may be made to an eligible police officer under this part, unless—

(1) he makes an application therefor in such manner and at such time as the Commission may prescribe containing a written statement setting forth the intended purpose of the travel, and its relevance to his present or future duties;

(2) he has at the time of such application been employed by a public State or local law enforcement agency or correctional institution in an executive, management, command, or instructional position;

(3) the law enforcement agency or correctional institutions employing such officer certifies its desire to have him perform the travel and conduct the study; and

(4) the foreign governmental agency to be visited agrees to cooperate with the contemplated study visit.

APPROPRIATIONS AUTHORIZED

SEC. 405. For the purposes of carrying out the provisions of this title there is authorized to be appropriated $150,000 for the fiscal year ending June 30, 1968, and for each of the two succeeding fiscal years.

TITLE V—TRAVEL AND STUDY WITHIN THE UNITED STATES

PROGRAM AUTHORIZED

SEC. 501. (a) The Commission is authorized to conduct either directly or by means of grant of contract a program for the temporary exchange of personnel of State and local law enforcement agencies and correctional institutions for periods not to exceed ninety days to permit such personnel to observe and study the operation of other such agencies or institutions within the United States.

(b) Each person who participates in the exchange program authorized in this part shall be eligible (after application therefor) to receive a stipend at the rate of $100 per week for the period of his travel and study, and travel expenses as authorized by section 5703 of title 5 of the United States Code for persons in Government service employed intermittently.

ELIGIBLE OFFICERS

SEC. 502. Officers eligible to perform study and travel under this title shall be those employed by State and local law enforcement and correctional agencies in supervisory, planning, or instructional positions or those designated by such agencies to develop or modify operational or administrative procedures.

APPROPRIATIONS AUTHORIZED

SEC. 503. There is authorized to be appropriated to carry out the provisions of this part $450,000 for the fiscal year ending June 30, 1968, and for each of the two succeeding fiscal years.

TITLE VI—AMENDMENT TO NATIONAL DEFENSE EDUCATION ACT OF 1958

SEC. 601. Section 205(b)(3) of the National Defense Education Act of 1958, as amended (78 Stat. 1102; 79 Stat. 1253; 20 U.S.C. 425(b)(3)), is further amended by (1) inserting the words "or as a full-time law enforcement or correctional officer with a Federal, State, or local agency," after the words "United States," and (2) by deleting the word "academic" and the words "or its equivalent" where they first appear.

TITLE VII—TRAINING GRANTS FOR STATE AND LOCAL LAW ENFORCEMENT AND CORRECTIONAL PERSONNEL

APPROPRIATIONS AUTHORIZED

SEC. 701. To enable the Attorney General to make payments in accordance with the provisions of this title to eligible police officers in order that such officers may more easily participate in general educational and training programs offered by institutions of higher education, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

DEFINITIONS

SEC. 702. As used in this title—

(a) The term "eligible police officer" means any person who—

(1) is employed by a public State or local law enforcement agency or public correctional institution, and

(2) has at the time of application for payment under this title been so employed by any such agency or institution for at least two years.

(b) The term "institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association, or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any business school or technical institution which meets the provisions of clauses (1), (2), and (5). For purposes of this subsection, the Attorney General shall consult the Commissioner of Education to obtain a list of nationally recognized accrediting agencies or associations.

PAYMENTS AUTHORIZED

SEC. 703. (a) The Attorney General is authorized to make payments under the provisions of this title to institutions of higher education or to other agencies or institutions approved by him for the purposes of this title. Such payments shall be for the tuition and fees of eligible police officers, who apply therefor, not to exceed $300 per semester during the period of attendance, full time or part time, by such police officers at any such institution or agency, while the officer is making satisfactory progress in such program or course.

(b) No payment shall be made to an institution of higher education in behalf of an eligible police officer under this title for any period during which he is enrolled in and pursuing a training program or a course of study paid for by the United States under any provision of law other than this title or title VIII of this Act, where payment of such grant would constitute a duplication of benefits paid to the eligible police officer from the Federal Treasury.

(c) No payment shall be made to any eligible police officer initiating his training program or course of study after June 30, 1975.

SEC. 704. An eligible police officer who receives the benefit of education under the provisions of this title shall be obligated to serve the law enforcement agency or correctional institution employing him for a period of two years following the last month during which educational benefits of this title were provided for him.

APPLICATIONS AND REPORTS

SEC. 705. (a) Any eligible police officer who desires payments under this title shall file an application with the Attorney General in such form and containing such information as the Attorney General determines necessary.

(b) The Attorney General shall require reports containing such information in such form and to be filed at such times as he determines necessary from each eligible police officer receiving the benefit of payments under this title.

(c) The Attorney General shall make arrangements with institutions of higher education and other agencies and institutions approved by him for the purposes of this title providing for reports to be filed in the manner prescribed by him on the enrollment, interruption, and termination of the program of training or the course of study of each eligible police officer enrolled therein and receiving payments under this title. The Attorney General is authorized to pay to such agencies and institutions the costs incident to the filing of such report. No payment shall be made to such agencies or institutions for the period during which such reports were not submitted as required by this subsection.

TITLE VIII—FINANCIAL ASSISTANCE FOR THE IMPROVEMENT OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES AND PERSONNEL

SEC. 801. Section 2 of the Law Enforcement Assistance Act of 1965 (79 Stat. 828) is amended to read as follows:

"SEC. 2. For the purpose of improving the quality of State and local law enforcement and correctional personnel, and personnel employed or preparing for employment in programs for the prevention, detection, or control of crime, the

Attorney General is authorized (1) to make grants to, or to contract with, any public or private nonprofit agency, organization, or institution for the establishment (or, where established, the improvement or enlargement) of programs and facilities to provide professional training and related education to such personnel, and (2) to award traineeships or fellowships to such personnel for study in accredited colleges or universities related to law enforcement, crime detection or corrections, the development of professional skills, or the application of knowledge and technology to law enforcement problems."

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 20, 1967.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

Dear SENATOR: This is in response to your request for the views of the Department of Justice on S. 824, a bill "To provide assistance for the improvement of State and local law enforcement agencies through acquisition of equipment for those agencies and provision of educational opportunities to their personnel, and for other purposes."

The bill would provide Federal assistance for up-grading the technical capacity of police forces to provide them training and educational opportunities and career incentives and would provide a commission on law enforcement assistance to administer the provisions of the Act. The commissioner would be authorized to make grants for the purpose of assisting state and local law enforcement agencies to acquire equipment and to improve their capacity for prevention of crime. Grants under this title may be used for, but are not limited to, the following purposes: police communications systems, crime prevention and investigation, non-lethal riot prevention equipment, automatic data processing, video tape and sound recording equipment, and crime detection equipment.

The Act proposes a financial partnership between the Federal Government and the states to purchase the requisite equipment. A cost sharing formula provides 30% Federal funding when a local government provides the rest and 50% funding when a state government provides 20% of the local costs.

Title III of the Act establishes a Division of Law Enforcement, Research and Development within the Department of Justice whose duties include acquiring, collecting, classifying and preserving information concerning innovations and devices applicable to law enforcement and corrections. The new Division would make such information available to state and local law enforcement and correctional agencies. Additional provisions of the Act provide for grants and contracts for travel and study and for exchange of local law enforcement personnel. There are also provisions to amend the National Defense Education Act to include full time law enforcement and correctional officers for state and local agencies. Additional provisions help to support education and research in the area of law enforcement and corrections.

The Administration's proposed "Safe Streets and Crime Control Act of 1967" (S. 917) gives authority to develop a broad range of programs to assist state and local governments to improve law enforcement. Its proposed programs are in many cases identical with those proposed under S. 824. The major difference between the two Acts is the emphasis on detailed and coordinated planning for current and future requirements which is necessitated and subsidized under S. 917. That bill proposes a comprehensive plan for improving all facets of law enforcement and the administration of justice and has the added advantage of requiring detailed planning which should insure that the funds receive optimum utilization. It is believed that S. 917 is a better proposal for providing assistance to state and local law enforcement agencies and personnel.

The Department of Justice recommends the enactment of S. 917 rather than legislation such as S. 824.

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,

RAMSEY CLARK,
Attorney General.

[S. 911, 90th Cong., first sess.]

A BILL To prohibit certain interstate land sales in violation of State law

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part I of title 18, United States Code, is amended by adding at the end thereof the following:

"Chapter 119.—INTERSTATE LAND SALES

"Sec.
"2451. Definitions.
"2452. Sales in violation of State law.

"§ 2451. Definitions

"As used in this chapter—

"(1) The term 'subdivision' means any land which is divided or proposed to be divided into twenty-five or more lots, parcels, units, or interests, whether contiguous or not, for the purpose of sale.

"(2) The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any possession of the United States.

"§ 2452. Sales in violation of State law

"Whoever, in pursuance of a promotional plan to sell lots, parcels, or interests in a subdivision to persons residing outside the State in which such subdivision is located, uses any means of transportation or communication in interstate commerce, or the mails, to sell, or offer to sell, any such lot, parcel, or interest to any such person with knowledge, or reasonable grounds for believing, that such sale or offer is made in violation of laws in effect in the State of residence of such person specifically regulating the sale of lots, parcels, or interests in subdivisions, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

SEC. 2. The analysis of part I of title 18, United States Code, is amended by adding at the end thereof the following:

"119. Interstate land sales---------- 2451".

[S. 916, 90th Cong., first sess.]

A BILL To assist in combating crime by creating the United States Corrections Service, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created within the Department of Justice a United States Corrections Service through which the Attorney General may discharge the responsibilities imposed upon him by section 4012 of title 18, United States Code. The United States Corrections Service shall be administered by a Director, who shall receive compensation at the rate provided in level IV of the Federal Executive Salary Schedule. This position shall be in addition to those provided in section 303(d) of the Federal Executive Salary Act of 1964 (78 Stat. 417).

SEC. 2. (a) Section 3653 of title 18, United States Code, is amended by striking out the words "probation officer" whenever they appear, including in the catchline, and inserting in lieu thereof the words "community correctional officer".

(b) The analysis of chapter 231 of title 18, United States Code, immediately preceding section 3651 thereof, is amended by striking out the item

"3653. Report of probation officer and arrest of probationer."

and inserting in lieu thereof

"3653. Report of community correctional officer and arrest of probationer."

SEC. 3. Section 3655 of title 18, United States Code, is amended to read as follows:

"§ 3655. Duties of probation officers

"The probation officer shall provide the court with such information as may be relevant to the court's decision on the imposition of sentence.

"He shall keep records of his work and shall make such reports to the Director of the Administrative Office of the United States Courts as the Director may at any time require; and shall perform such other duties as the court may direct.

"Each probation officer shall perform such duties with respect to persons on parole or on probation as the Attorney General shall request."

SEC. 4 (a) The first paragraph of section 4001 of title 18, United States Code, is amended by inserting immediately after the words "institutions" the words "and services".

(b) The second paragraph of such section is amended by striking out the words "classify the inmates" and inserting in lieu thereof "programs and classify the inmates and participants".

SEC. 5. (a) Chapter 301 of title 18, United States Code, is amended by adding at the end thereof a section 4012, as follows:

"§ 4012. Responsibilities of Attorney General

"The Attorney General, through community correctional officers and other officers and employees as he may designate, shall—

"(1) have charge of the management and regulation of all Federal penal and correctional institutiions;

"(2) provide suitable quarters and provide for the safekeeping care, and subsistence of all persons charged with or convicted of offenses against the United States; or held as witnesses or otherwise;

"(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

"(4) use all suitable methods, not inconsistent wtih conditions imposed by the sentencing court or the Board of Parole, to supervise and aid probationers and parolees to bring about improvements in their conduct and condition;

"(5) establish a program of continuous research and experimentation which shall, to the maximum extent consistent with orderly administration, be incorporated into and guide the daily operation of the corrections system;

"(6) furnish each probationer under his supervision a written statement of the conditions of probation and instruct him regarding the same;

"(7) keep informed concerning the conduct and condition of each probationer under his supervision and report thereon to the court placing such person on probation; and

"(8) perform such other duties as he deems desirable with respect to probationers, prisoners, parolees, or other persons charged with or convicted of crimes against the United States."

This section shall not apply to military or naval penal correctional institutions or the persons confined therein.

(b) The analysis of chapter 301 of title 18, United States Code, immediately preceding section 4001 thereof, is amended by adding:

"4012. Responsibilities of Attorney General."

SEC. 6. (a) Subsection (b) of section 4208 of title 18, United States Code, is amended by striking out the words "Director of the Bureau of Prisons" and inserting in lieu thereof the words "Attorney General".

(b) The first paragraph of subsection (c) of such section is amended (1) by striking out the words "Director, under such regulations as the Attorney General may prescribe," and inserting in lieu thereof the words "Attorney General" and (2) by striking out the word "make" in the last sentence and inserting in lieu thereof the word "require".

SEC. 7. (a) Section 4042 of title 18, United States Code, is repealed.

(b) The analysis of chapter 303 of title 18, United States Code, immediately preceding section 4041 thereof, is amended by striking out the item

"4042. Duties of Bureau of Prisons."

SEC. 8. Section 5002 of title 18, United States Code, is amended to read as follows:

"§ 5002. Advisory Corrections Council

"(a) There is hereby created an Advisory Corrections Council composed of four United States judges designated by the Chief Justice of the United States, and, ex officio, the Chairman of the Board of Parole, the Chairman of the Youth Division of the Board of Parole, the Director of the United States Corrections Service, and a physician designated by the Secretary of Health, Education, and Welfare. The judges first appointed to the Council shall continue in office for terms of one, two, three, and four years, respectively, from the date of the amend-

ment of this section, the term of each to be designated by the Chief Justice at the time of his appointment. Their successors shall each be appointed for a term of four years from the date of the expiration of the term for which his predecessor was appointed, except that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. The chairman shall be designated annually by the Chief Justice.

"(b) The Council shall meet annually and at special sessions which may be held from time to time upon the call of the Chairman.

"(c) The Council shall consider problems of treatment and correction of persons convicted of offenses against the United States and shall make recommendations to the Attorney General, the Judicial Conference of the United States, and other appropriate officials to improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of crime. It shall also consider measures to promote the prevention of crime and delinquency and suggest appropriate studies in this connection to be undertaken by agencies both public and private.

"(d) The Council shall give attention to orders addressed to probation officers or community correctional officers by the United States judges, the Board of Parole, and the United States Corrections Service. It shall seek to resolve inconsistencies and clarify ambiguities and may make recommendations to that end to the Attorney General, the Judicial Conference, and the Board of Parole.

"(e) The Council shall keep under continuous review the standards and practices of the presentence investigations and reports and may make recommendations to the Attorney General and the Judicial Conference to increase their utility at every stage of correctional process.

"(f) The Council shall review and evaluate research by the United States Corrections Service and may make recommendations concerning the adequacy of such research to the Attorney General and to the Judicial Conference.

"(g) The Council is authorized to request from any department, agency, or independent instrumentality of the Government any information or records it deems necessary to carry out its functions, and each such department, agency, or instrumentality is authorized to cooperate with the Council and, to the extent permitted by law, to furnish such information and records to the Council, upon request made by the Chairman or by any member when acting as Chairman.

"(h)(1) The Council shall appoint an Executive Director and such other personnel as may be necessary to carry out its functions. The Executive Director shall supervise the activities of persons employed by the Council and shall perform such other duties as the Council may direct.

"(2) The Council may also procure services to the same extent as is authorized for the departments by section 15 of the Act of August 2, 1946, as amended (5 U.S.C. 55a), at rates not to exceed $100 per day.

"(i) The members of the Council shall serve without compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice."

SEC. 9. Subsection (a) of section 5003 of title 18, United States Code, is amended by striking out ", when the Director shall certify that proper and adequate treatment facilities and personnel are available,".

SEC. 10. Section 5006 of title 18, United States Code, is amended by striking out subsections (c) and (d) and redesignating the remaining subsections as (c) through (f), respectively.

SEC. 11. Sections 5007, 5011, 5013, 5014, 5015, and 5025, and subsections (a) and (e) of section 5017 of title 18, United States Code, are amended by striking out the word "Director" and inserting in lieu thereof the words "Attorney General".

SEC. 12. Section 5008 of title 18, United States Code, is amended by striking out the second sentence thereof.

SEC. 13. Section 5012 of title 18, United States Code, is amended by striking out the word "Director" and inserting in lieu thereof the word "he".

SEC. 14. Section 5016 of title 18, United States Code, is amended to read as follows: "The Attorney General shall cause periodic examinations and reexaminations to be made of all committed youth offenders and shall report to the Division as to each such offender and as to any other youth offender under the supervision of the Attorney General, as the Division may direct."

SEC. 15. Section 5019 of title 18, United States Code, is amended to read as follows:

"§ 5019. Supervision of released youth offenders

"Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of the Attorney General and such voluntary supervisory agents as he may appoint. The Attorney General is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by regulations adopted by the Attorney General."

SEC. 16. Section 5020 of title 18, United States Code, is amended by striking out the words "a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution" and inserting in lieu thereof the words "an officer of the United States Corrections Service, any other supervisory agent appointed by the Attorney General, or a United States marshal".

SEC. 17. The analysis of chapter 402 of title 18, United States Code, immediately preceding section 5005 thereof, is amended by striking out the item

"5015. Powers of Director as to placement of youth offenders."

and inserting in lieu thereof

"5015. Powers of Attorney General as to placement of youth offenders.".

SEC. 18. The fourth paragraph of section 5034 of title 18, United States Code, is amended—

(1) by striking out of the second sentence the words "Director of the Bureau of Prisons, under such regulations as the Attorney General may prescribe," and inserting in lieu thereof the words "Attorney General"; and

(2) by striking out the word "Director" wherever it appears and inserting in lieu thereof the words "Attorney General".

SEC. 19. Section 5036 of title 18, United States Code, is amended by striking out the words "Director of the Bureau of Prisons" and inserting in lieu thereof the words "Attorney General".

SEC. 20. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the purposes of this Act.

SEC. 21. Until such time and to such an extent as the Attorney General shall certify to the Director of the Administrative Office of the United States Courts that probation officers are no longer needed in a particular district to supervise parolees and probationers, probation officers shall continue to perform all supervision functions being performed by them under existing law, and to execute apprehension warrants issued under section 5020 of title 18, United States Code.

SEC. 22. This Act shall be effective on July 1, 1967.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal, "To assist in combatting crime by creating the United States Corrections Service, and for other purposes".

A primary goal of law enforcement is the rehabilitation of offenders and their return to useful citizenship. Too often we fail to attain this goal. One study of the Federal corrections process reflects that 35 percent of those who have been convicted of a Federal offense later commit a serious crime, while another study finds that this rate of repeat is as high as 48 percent.

One of the deficiencies in our corrections process results from its fragmentation—probation and parole supervision being conducted as a part of the court system and prisons and other institutional services being the responsibility of the Executive branch.

As you know, the 89th Congress enacted legislation which provides three important techniques for use in achieving prisoner rehabilitation (P.L. 89–176). This legislation authorizes the Attorney General to place prisoners in residen-

tial community treatment centers, to permit them to take emergency or rehabilitative leave, and to permit them to work at paid employment or participate in community training programs. As a result, new techniques involving prerelease and work release programs are being perfected in the hope we will more often return useful, rehabilitated citizens to their communities.

The instant proposal would constitute a further step in the improvement of our corrections process. It would establish a United States Corrections Service which would combine under a single direction the supervision of convicted persons, irrespective of whether they are confined in an institution, totally in the free community on probation or parole, or somewhere between complete confinement and complete freedom—for example, in a half-way house. This consolidation of responsibility for the supervision and rehabilitation of Federal offenders certainly has the potential of being more effective.

The proposal would also make several changes in the membership and responsibility of the Advisory Corrections Council. The Council would be composed of four United States judges, and, ex officio, the Chairman of the Board of Parole, the Chairman of the Youth Division of the Board of Parole, the Director of the United States Corrections Service, and a physician designated by the Secretary of Health, Education, and Welfare. This Council would continue to consider problems of treatment and correction and would also consider problems of coordination and integration of policy among the branches of the Government having statutory responsibilities in this area. It would make recommendations to the Attorney General and to the Judicial Conference of the United States relating to these responsibilities and to the improvement of the administration of criminal justice. In addition, the Council would be authorized to employ an Executive Director and other necessary personnel to carry out its expanded functions.

Last Congress, the Department of Justice submitted a proposal similar to this one, but broader. It would have transferred the United States Probation Service from the courts to the Department of Justice, lodging with this Department all of the functions of the Service, including responsibility for the preparation of presentence reports. Unlike the earlier proposal, however, the current measure continues the Probation Service as a part of the court system with the responsibility for preparing presentence reports for the use of district judges.

The continued increase in crime warrants the prompt, close attention of the Congress to this proposal. I urge its early introduction and consideration.

The Bureau of the Budget has advised that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Acting Attorney General.

[S. 917, 90th Cong., first sess.]

A BILL To assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Safe Streets and Crime Control Act of 1967".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress hereby declares it to be the policy of the United States to promote the general welfare by improving law enforcement and the administration of criminal justice. Crime is essentially a local problem that must be dealt with by State and local governments. But sustained and substantial national assistance is necessary to aid these governments in coping with the lawlessness that has become a serious problem of national significance.

It is the purpose of this Act to increase the personal safety of the people of the Nation by reducing the incidence of crime; to stimulate the allocation of new resources and the development of technological advances and other innovations for preventing crime; to increase the efficiency and fairness of law enforcement and criminal justice through improved manpower, training, organization, and equipment; and to encourage coordination in planning, operations,

and research by law enforcement and criminal justice agencies throughout the Nation.

TITLE I—PLANNING GRANTS

SEC. 101. It is the purpose of this title to encourage States and units of general local government to prepare and adopt comprehensive plans based on their evaluation of State and local problems of law enforcement and criminal justice.

SEC. 2. The Attorney General is authorized to make grants to States, units of general local government, or combinations of such States or units, for preparing, developing, or revising the plans described in section 204: *Provided, however,* That no unit of general local government or combination of such units shall be eligible for a grant under this title unless it has a population of not less than fifty thousand persons.

SEC. 103. A Federal grant authorized under section 102 shall not exceed 90 per centum of the total cost of the preparation, development, or revision of a plan.

TITLE II—GRANTS FOR LAW ENFORCEMENT AND CRIMINAL JUSTICE PURPOSES

SEC. 201. It is the purpose of this title to authorize grants to States and units of general local government for new approaches and improvements in law enforcement and criminal justice. The purposes for which grants may be made may include but shall not be limited to—

(a) public protection, including the development, demonstration and evaluation of methods, devices, equipment and design to increase safety from crime in streets, homes, and other public and private places;

(b) equipment, including the development and acquisition of equipment designed to increase the effectiveness and improve the deployment of law enforcement and criminal justice personnel;

(c) manpower, including the recruitment, education, and training of all types of law enforcement and criminal justice personnel;

(d) management and organization, including the organization, administration, and coordination of law enforcement and criminal justice agencies and functions;

(e) operations and facilities for increasing the capability and fairness of law enforcement and criminal justice, including the processing, disposition, and rehabilitation of offenders;

(f) community relations, including public understanding of and cooperation with law enforcement and criminal justice agencies; and

(g) public education relating to crime prevention, including education programs in school and community agencies.

SEC. 202. (a) Beginning January 1, 1968, the Attorney General is authorized to make grants to States, units of general local government, or combinations of such States or units for the purposes described in section 201. The amount of any such grant shall not exceed 60 per centum of the improvement expenditure of the applicant: *Provided, however,* That—

(1) no grant under this section shall be used for the construction of any building or other physical facility; and

(2) not more than one-third of any grant under this section shall be expended for the compensation of personnel, except that this limitation shall not apply to the compensation of personnel for time engaged in conducting or undergoing training programs and specialized personnel performing innovative functions.

(b) Improvement expenditure is the amount by which the proposed operating budget, or the amount by which the proposed operating budget per capita, whichever is greater, of the applicant for law enforcement and criminal justice purposes for the fiscal year for which the grant is sought exceeds the applicant's qualifying expenditure.

(c) Qualifying expenditure is—

(1) 105 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1968;

(2) 110 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1969;

(3) 115 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1970;

(4) 120 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1971;

(5) 125 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1972;

(6) 130 per centum of the base expenditure if the application is for funds to be used in the applicant's fiscal year ending in the calendar year 1973.

(d) Base expenditure is the applicant's operating expenditures or operating expenditures per capita, as the case may be, for law enforcement and criminal justice purposes for the fiscal year completed next preceding January 1, 1968: *Provided, however*, That if the applicant's base expenditure includes substantial and extraordinary amounts and the Attorney General is of the opinion that the requirements of this section constitute an unreasonable restriction on the applicant's eligibility for a grant under this section, the Attorney General may reduce such requirements to the extent he deems appropriate.

SEC. 203. (a) The Attorney General is authorized to make grants to States, units of general local government, or combinations of such States or units for the construction of buildings or other physical facilities which fulfill a significant, innovative function. The amount of any such grant shall not exceed 50 per centum of the cost of such construction.

(b) An applicant shall be eligible for a grant under this section only if such applicant would also be eligible for a grant under section 202.

SEC. 204. (a) The Attorney General is authorized to make grants to an applicant under this title only if such applicant has a file with the Attorney General a current law enforcement and criminal justice plan which conforms with the purpose and requirements of this Act. Each such plan shall—

(1) unless it is not practicable to do so (A) encompass a State, unit of general local government, or combination of such States or units; and (B) be applicable to a population of not less than fifty thousand persons;

(2) incorporate innovations and advanced techniques and contain a comprehensive outline of priorities for the improvement and coordination of all aspects of law enforcement and criminal justice dealt with in the plan, including descriptions of: (A) general needs and problems; (B) existing systems; (C) available resources; (D) purposes for which Federal funds are sought (with specific reference to their sequence, timing, and costs); (E) systems and administrative machinery for implementing the plan; (F) the direction, scope, and types of improvements to be made in the future; and (G) to the extent appropriate, the relationship of the plan to other relevant State or local law enforcement and criminal justice plans and systems.

(b) In implementing this section, the Attorney General shall—

(1) encourage State and local initiative in developing comprehensive law enforcement and criminal justice plans;

(2) encourage plans which encompass the entire metropolitan area, if any, of which the applicant is a part;

(3) encourage plans which deal with the problems and provide for the improvement of all law enforcement and criminal justice agencies in the area encompassed by the plans;

(4) encourage plans which provide for research and development;

(5) encourage plans which provide for an appropriate balance between fund allocations for the several parts of the law enforcement and criminal justice systems covered by the plans;

(6) encourage plans which demonstrate the willingness of the applicant to assume the costs of improvements funded under this title after a reasonable period of Federal assistance; and

(7) encourage plans which explore the costs and benefits of alternative courses of action and promote efficiency and economy in management and operations.

TITLE III—RESEARCH, DEMONSTRATION, AND SPECIAL PROJECT GRANTS

SEC. 301. It is the purpose of this title to encourage research and development for the purpose of improving law enforcement and criminal justice and developing new methods for the prevention and reduction of crime.

SEC. 302. The Attorney General is authorized to make grants to, or enter into contracts with, institutions of higher education and other public agencies or private organizations to conduct research, demonstrations, or special projects which he determines will be of regional or national importance or will make a significant contribution to the improvement of law enforcement and criminal justice.

SEC. 303. The Attorney General is authorized to make grants to institutions of higher education and other public agencies or private nonprofit organizations to establish national or regional institutes for research and education pertaining to the purpose of this Act.

SEC. 304. A Federal grant authorized under section 302 or 303 may be up to 100 per centum of the total cost of each project or institute for which such grant is made. The Attorney General shall require, whenever feasible, as a condition of approval of a grant under this title, that the recipient contribute money, facilities, or services to carry out the purpose for which the grant is sought.

SEC. 305. The Law Enforcement Assistance Act of 1965 (79 Stat. 825) is repealed and superseded by this title: *Provided, however*, That—

(a) the Attorney General may award new grants, enter into new contracts or obligate funds for the continuation of projects in accordance with the provisions of the Law Enforcement Assistance Act, based upon applications received under that Act prior to the effective date of this Act;

(b) the Attorney General is authorized to obligate funds for the continuation of projects approved under the Law Enforcement Assistance Act prior to the effective date of this Act, to the extent that such approval provided for continuation; and

(c) any awarding of grants, entering into contracts or obligation of funds under subsection (a) or (b) of this section and all activities necessary or appropriate for the review, inspection, audit, final disposition and dissemination of project accomplishments with respect to projects which are approved in accordance with the provisions of the Law Enforcement Assistance Act and which continue in operation beyond the effective date of this Act may be carried on with funds appropriated under this Act.

TITLE IV—ADMINISTRATION

SEC. 401. (a) There shall be in the Department of Justice a Director of Law Enforcement and Criminal Justice Assistance who shall be appointed by the President, by and with the advice and consent of the Senate, whose function shall be to assist the Attorney General in the performance of his duties under this Act.

(b) Section 5315 of title 5 of the United States Code is amended by the addition of the following at the end thereof:

"(78) Director of Law Enforcement and Criminal Justice Assistance."

SEC. 402. The Attorney General is authorized to appoint such technical or other advisory committees to advise him in connection with the administration of this Act as he deems necessary. Members of such committees not otherwise in the employ of the United States, while attending meetings of the committees, shall be entitled to receive compensation at a rate to be fixed by the Attorney General, but not exceeding $100 per diem, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

SEC. 403. To insure that all Federal assistance to State and local programs for law enforcement and criminal justice is carried out in a coordinated manner, the Attorney General is authorized to request any Federal department or agency to supply such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this Act. Each such department or agency is authorized to cooperate with the Attorney General and, to the extent permitted by law, to furnish such materials to the Attorney General. Any Fed-

eral department or agency engaged in administering programs related to law enforcement and criminal justice shall, to the maximum extent practicable, consult with and seek advice from the Attorney General to insure fully coordinated efforts.

SEC. 404. The Attorney General may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of his functions under this Act, and, as necessary or appropriate, delegate any of his powers under this Act with respect to any part thereof, and authorize the redelegation of such powers.

SEC. 405. The Attorney General is authorized—

(a) to conduct research and evaluation studies with respect to matters related to this Act; and

(b) to collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of law enforcement and criminal justice in the several States.

SEC. 406. Payments under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Attorney General.

SEC. 407. Whenever the Attorney General, after reasonable notice and opportunity for hearing to a grantee under this Act, finds that, with respect to any payments made under this Act, there is a substantial failure to comply with—

(a) the provisions of this Act;

(b) regulations promulgated by the Attorney General under this Act; or

(c) the law enforcement and criminal justice plan submitted in accordance with the provisions of this Act; the Attorney General shall notify such grantee that further payments shall not be made (or in his discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.

SEC. 408. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or other agency of any State or local law enforcement and criminal justice system.

SEC. 409. Unless otherwise specified in this Act, the Attorney General shall carry out the programs provided for in this Act during the fiscal year ending June 30, 1968, and the four succeeding fiscal years.

SEC. 410. Not more than 15 per centum of the sums appropriated or allocated for any fiscal year to carry out the purpose of this Act shall be used within any one State.

SEC. 411. The Attorney General, after appropriate consultation with representatives of State and local governments, is authorized to prescribe such regulations as may be necessary to implement the purpose of this Act, including regulations which—

(a) provide that a grantee will from time to time, but not less often than annually, submit a report evaluating accomplishments and cost-effectiveness of activities funded under this Act;

(b) provide for fiscal control, sound accounting procedures and periodic reports to the Attorney General regarding the application of funds paid under this Act; and

(c) establish criteria to achieve an equitable distribution among the States of assistance under this Act.

SEC. 412. On or before August 31, 1968, and each year thereafter, the Attorney General shall report to the President and to the Congress on activities pursuant to the provisions of this Act during the preceding fiscal year.

SEC. 413. For the purpose of carrying out this Act, there is hereby authorized to be appropriated the sum of $50,000,000 for the fiscal year ending June 30, 1968; and for each succeeding fiscal year such sums as the Congress may hereafter appropriate. Funds appropriated for the purpose of carrying out this Act shall remain available until expended.

TITLE V—DEFINITIONS

SEC. 501. As used in this Act—

(a) "Law enforcement and criminal justice" means all activities pertaining to crime prevention or the enforcement and administration of the criminal law, including but not limited to activities involving police, prosecution or defense of criminal cases, courts, probation, corrections and parole.

(b) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, and the Trust Territory of the Pacific Islands.

(c) "Unit of general local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State.

(d) "Combination" as applied to States or units of general local government means any grouping or joining together of such States or units including a grouping or joining together for purposes only of preparing, developing and implementing a law enforcement and criminal justice plan.

(e) "Metropolitan area" means a standard metropolitan statistical area as established by the Bureau of the Budget, subject however to such modifications and extensions as the Attorney General may determine to be appropriate.

(f) "Public agency" means any State, unit of general local government, combination of such States or units, or any agency or instrumentality of any of the foregoing.

(g) "Construction" means the erection, acquisition, expansion, or repair (but not including minor remodeling or minor repairs) of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor.

(h) "Innovative function" means a function which will serve a new or improved purpose within the particular law enforcement and criminal justice system into which it is introduced.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., February 8, 1967.

The VICE PRESIDENT,
U.S. Senate, Washington, D.C.

DEAR MR. VICE PRESIDENT: The President, in his State of the Union Address and in his recent Message on Crime in America, stressed the fact that we must combat crime with every means at our command. He stated that crime must be rooted out in local communities by local authorities, and that the National Government can, and expects to, help. He indicated that, among other things he would recommend the enactment of the "Safe Streets and Crime Control Act of 1967" to provide this assistance. Accordingly, there is enclosed for your consideration and appropriate reference a legislative proposal "To assist state and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes."

As the President stated in his Crime Message, the National Crime Commission's report "gives us an extraordinary insight into the nature of crime and criminal justice" in the United States. Lawlessness in this country has become a serious problem of national concern. Farsighted programs are already underway to assist State and local governments in eradicating the conditions which breed crime—bad housing, inferior education and unemployment. Equally bold and imaginative action must be taken by our government to assist law enforcement and criminal justice systems at the State and local levels.

This legislative proposal contains broad and comprehensive authority for the efficient and effective channeling of substantial resources to State and local government for the improvement of all law enforcement and criminal justice throughout the Nation. As the President stated in describing this proposal, "It will enable us to assist those States and cities that try to make their streets and their homes safer, and their police forces better, and their corrections systems more effective and their courts more efficient."

Title I of the proposal encourages state and local governments to prepare and adopt comprehensive plans for meeting their particular crime problems. Each plan will include a detailed outline of priorities for the improvement and coordination of law enforcement and criminal justice in the geographic area encompassed by the plan and a description of the proposed means of accomplishing needed changes. Planners are required to incorporate innovations and advanced techniques and encouraged to provide for research and promote efficiency and economy in operations. The proposal would authorize the Attorney General to approve grants not to exceed 90 per cent of the total cost of the preparation, development or revision of such plans.

Title II of the proposal authorizes the Attorney General to make grants to State and local governments which have formulated a plan such as has been

described. These grants may be used for the entire range of new approaches and improvements in law enforcement and criminal justice, including improvements in police equipment; the recruitment, education and training of personnel; the application of modern management techniques to police and criminal justice operations; and the development and use of new approaches in the enforcement, prosecutorial, judicial and correctional stages of the criminal process.

Grants under Title II are on a matching basis. The Federal share may be up to 60 per cent. The grants are keyed to a requirement that the applicant exceed a 5 per cent annual increase in law enforcement and criminal justice expenditures in order to qualify for a Federal grant. This requirement is designed not only to provide Federal financial assistance but also to stimulate increased State and local spending for law enforcement and criminal justice purposes. In the case of construction, the Federal share is limited to 50 per cent and may only be used for such a purpose where the new facility will serve a significant, innovative function. Up to one third of a grant may be applied to salaries.

Title III of the proposal will carry on the functions of the Law Enforcement Assistance Act of 1965 by authorizing grants of up to 100 per cent for research, demonstration or special projects which the Attorney General determines will have regional or national importance or will make a significant contribution to the improvement of law enforcement and criminal justice. This title also provides for the making of grants to establish national or regional institutes for pertinent educational and research activities.

In summary, the proposed legislation is a substantial and far-reaching anti-crime program which works with and through State and local government agencies to bring technology and improved capability into the battle against crime. It provides incentives for State and local authorities to work out effective plans for combatting crime in their areas and authorizes Federal financial assistance in implementing these plans. Its objective is a safer, more crime-free, Nation.

The Bureau of the Budget has advised that enactment of this legislation is in accord with the Program of the President.

Sincerely,

RAMSEY CLARK,
Acting Attorney General.

[S. 992, 90th Cong., first sess.]

A BILL To establish a National Institute of Criminal Justice

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is hereby established in the Department of Justice a National Institute of Criminal Justice (referred to hereafter in this Act as the "Institute").

(b) The Institute shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate, who shall be compensated at the rate provided for an Assistant Attorney General.

SEC. 2. (a) For the purpose of assisting State and local law enforcement agencies, courts, and correctional institutions in the prevention and control of crime, the administration of justice, and the rehabilitation of offenders the Institute shall—

(1) carry out a program of research in, and development of, new or improved approaches, methods, techniques, and devices for the prevention and control of crime, the administration of justice, and the rehabilitation of offenders;

(2) undertake systematic research into what the nature and extent of an appropriate program of Federal assistance to States, local law-enforcement agencies, the courts, and other agencies concerned with the administration of justice, and correctional institutions should be;

(3) carry out a program of behavioral research designed to provide more accurate information on the causes of crime and the effectiveness of various means of preventing it, and to evaluate the relationship between correctional procedures and the successful rehabilitation of convicted offenders into society;

(4) provide grants-in-aid to States, local governments, police departments, judicial agencies, correctional institutions, and educational institutions for the purpose of creating and maintaining demonstration and research programs relating to improving the approaches, methods, techniques, and devices for the prevention and control of crime, the administration of justice, and the rehabilitation of offenders, and for developing new career opportunities in these fields;

(5) carry out a program of fellowships and instructional assistance consisting of—

(A) long-term research and training fellowships in the development of new or improved approaches, methods, techniques, or devices in accordance with paragraph (1) of this subsection, and

(B) short-term workshops for the dissemination of information and knowledge resulting from research authorized by this Act,

for such terms, and with such stipends and allowances for travel and dependents, as the Director may prescribe;

(6) carry out a program of collection and dissemination of information obtained by the Institute, Federal agencies, and other public or private institutions engaged in research or demonstration projects under this Act which relates to such approaches, methods, techniques, and devices and which may be useful in the prevention and control of crime, the administration of justice, and the rehabilitation of offenders;

(7) undertake, upon request from other Federal agencies, the valuation and assessment of and dissemination of publications and results arising from grants and contracts initiated by such other agencies in the fields of prevention and control of crime, the administration of justice, and the rehabilitation of offenders; and

(8) provide an extension service to furnish demonstrations and practical instruction through consultants, field agents, or in any other manner determined appropriate by the Attorney General, to personnel of State and local law-enforcement agencies, the courts, and other agencies concerned with the administration of justice and correctional institutions.

(b) The Institute shall establish such laboratories and research facilities as may be necessary to carry out the programs described in subsection (a). The Institute may conduct programs authorized by this Act by grant or contract with individuals, and with public or private agencies or organizations.

(c) The Institute shall make available, for the benefit of the States and local law-enforcement agencies, courts, and other agencies concerned with the administration of justice, correctional institutions, and the public, information and publications concerning the results of programs conducted under this Act, and innovative or advanced approaches, methods, techniques, and devices for the prevention and control of crime, the administration of justice, and the rehabilitation of offenders.

SEC. 3. (a) The Attorney General shall appoint a national advisory committee to advise him in connection with the administration of this Act.

(b) Members of such committee not otherwise in the employ of the United States, while attending meetings of their committee, shall be entitled to receive compensation at a rate to be fixed by the Attorney General, but not exceeding $50 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

SEC. 4. To carry out this Act there is authorized to be appropriated (1) for the fiscal year ending June 30, 1968, the sum of $10,000,000, (2) for the fiscal year ending June 30, 1969, the sum of $30,000,000, (3) for the fiscal year ending June 3, 1970, the sum of $60,000,000, and (4) for each fiscal year thereafter, such sum as may be necessary.

SEC. 5. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the organization, administration, or personnel of any State or local police force or other law-enforcement agency, court, or correctional institution.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 11, 1967.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

Dear SENATOR: This is in response to your request for the views of the Department of Justice on S. 992, a bill "To establish a National Institute of Criminal Justice."

The bill would establish, in the Department of Justice, a National Institute of Criminal Justice to be headed by a Director appointed by the President, by and with the advice and consent of the Senate. It would authorize the Institute to conduct research, and to provide grants for research by others, in the fields of crime prevention, administration of justice and rehabilitation of offenders. Also, the Institute would be charged with undertaking research into the nature and extent of an appropriate program of federal assistance to state and local authorities in these fields. Finally, the bill would authorize the Institute to provide a variety of training fellowships, collect and disseminate information, establish laboratories and research facilities, provide consulting and technical services to local agencies, and carry on other specified activities to promote progress in the over-all administration of criminal justice.

The Law Enforcement Assistance Act of 1965, 79 Stat. 828, authorizes the Attorney General to make grants for training state and local law enforcement personnel and for improving the capabilities, techniques and practices of state and local agencies engaged in law enforcement, the administration of the criminal laws, the correction of offenders, or the prevention and control of crime. The Law Enforcement Assistance Act is therefore an existing vehicle for many of the objectives contemplated by S. 992. Moreover, the President, in response to the findings and recommendations of the President's Commission on Law Enforcement and the Administration of Justice, has proposed the enactment of the "Safe Streets and Crime Control Act of 1967," S. 917. This proposal, if enacted, while repealing the Law Enforcement Assistance Act of 1965, would expand on the programs pioneered under that law and is sufficiently broad in scope to implement virtually all of the objectives and functions delineated by S. 992.

In particular, Title III of the proposed Safe Streets and Crime Control Act of 1967, deals with research, demonstration, and special project efforts. The unit administering the Title III program, which authorizes the establishment of national or regional institutes for research and education, might well take on the character of a national institute or national foundation, but it would, under the administrative scheme of S. 917, have the advantage of common over-all direction and integrated planning with the broad planning and formula grant assistance available under Titles I and II of S. 917. Like S. 992, the Safe Streets and Crime Control Act contemplates a Director appointed by the President at an Assistant Attorney General compensation level.

While the Department of Justice supports the purposes of S. 992, we recommend that the broader proposed "Safe Streets and Crime Control Act of 1967," S. 917, is a far better vehicle through which to accomplish them.

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,

———— ————, *Attorney General.*

[S. 1007, 90th Cong., first sess.]

A BILL To amend chapter 313, title 18, United States Code, to provide for the commitment of certain individuals acquitted of offenses against the United States solely on the ground of insanity

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 313, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 4249. Commitment of certain individuals acquitted of offenses against the United States on the ground of insanity

"(a) Whenever the issue of insanity at the time of the commission of an offense against the United States is raised by the pleadings or evidence, the court shall find or, in the event of a jury trial, shall instruct that the verdict shall be

one of the following: (1) guilty, (2) not guilty, or (3) not guilty by reason of insanity at the time of the commission of the offense. The judgment shall so state.

"(b) Whenever any person charged with an offense against the United States is acquitted solely on the ground that he was insane at the time of its commission, the United States attorney, if he has reasonable cause to believe that such person so acquitted may be presently insane and that, because of his insanity, his release would constitute a danger to himself or others, shall file a motion for a judicial determination of the mental condition of such person, setting forth the grounds for such belief, in the trial court in which the proceedings which resulted in his acquittal were conducted. Upon the filing of such a motion or upon its own motion, the court shall, after notice, hold a hearing within a reasonable time to determine whether the person acquitted of an offense against the United States on the ground that he was insane at the time of its commission, would, because of his insanity, constitute a present danger to himself or others. Such person shall be entitled to be represented by counsel at such hearings, and, if such person is indigent, counsel shall be provided for him at the expense of the Government.

"(c) After the filing of a motion to determine the mental condition of a person found not guilty of an offense against the United States solely because he was insane at the time of its commission, or upon its own motion, the court may order such person to be examined by at least two qualified psychiatrists designated by the court. The psychiatrists so designated shall, within sixty days thereafter, file their reports with the court setting forth their findings with respect to such examination, including their conclusions as to the mental condition of such person and whether the release of such person would constitute a danger to himself or others. For the purpose of examination the court may order the person committed for such reasonable period as it may determine, not to exceed sixty days, to the custody of the Attorney General who shall hospitalize such person in a sutiable mental institution or other facility designated by the court.

"(d) If, after the hearing provided in (b), the court shall determine that the person, because of his insanity, would constitute a present danger to himself or others if released from custody, the court shall commit the person so acquitted to the custody of the Attorney General, who shall hospitalize such person in a suitable mental institution or other facility.

"(e) Whenever a person shall be committed to the custody of the Attorney General or his representative pursuant to subsection (d) of this section, his commitment shall run until his mental condition is so improved that his release would not constitute a danger to himself or others.

"(f) Where any person has been confined by the Attorney General in a mental institution or other facility pursuant to subsection (d) of this section and the superintendent of any such mental institution or the head of any such facility certifies that, in his opinion, the release of such person will not in the reasonable future constitute a danger to himself or others and that the person is entitled to his unconditional release from such mental institution or facility, 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, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined.

"(g) Where, in the judgment of the superintendent of such hospital, a person committed 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 with the clerk of the court in which the person was tried, and a copy thereof served on the United States attorney, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall impose at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section.

"(h) Nothing contained in this section shall preclude a person committed under the authority of subsection (d) of this section from establishing by a writ of habeas corpus his eligibility for release under the provisions of this section.

"(i) The superintendent of any mental institution or the head of any facility in which any person is confined by the Attorney General pursuant to subsection (d) of this section shall annually, during the hospitalization of that person,

submit to the court a written report with respect to the mental condition of such person, together with the recommendations of such superintendent or head concerning the continued hospitalization of such person. Upon the receipt thereof, the court shall consider such report and recommendations and, if it determines that his release will not in the reasonable future constitute a danger to himself or others, the court shall order his immediate release. Such reports and recommendations shall be made available to counsel in any judicial proceeding challenging the continued hospitalization of a person committed under the provisions of subsection (d).

"(j) The Attorney General is authorized to enter into contracts with the several States (including political subdivisions thereof) and private agencies under which appropriate institutions and other facilities of such State or agencies will be made available, on a reimbursable basis, for the confinement, hospitalization, care, and treatment of persons committed to the custody of the Attorney General pursuant to subsections (c) and (d) of this section.

"(k) The provisions of this section shall not be applicable to the District of Columbia."

(b) The chapter analysis of chapter 313, title 18, United States Code, is amended by adding at the end thereof the following new item:

"4249. Commitment of certain individuals acquitted of offenses against the United States on the ground of insanity."

[S. 1094, 90th Cong., first sess.]

A BILL To make it a Federal offense to incite or participate in a riot which impairs interstate or foreign commerce or to interfere with a fireman or law enforcement officer who is performing official duties incident to and during such a riot, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, is amended by inserting, immediately following chapter 101 thereof, the following new chapter:

"Chapter 102.—RIOTS

"§ 2101. Riots.

"(a) (1) Whoever willfully (A) incites, promotes, encourages, or participates in, or facilitates the incitement, promotion, encouragement, or commission of a riot which affects adversely the free flow of any part of interstate or foreign commerce, or the operation, functioning, or use of any facility, instrumentality, or means of communication, transportation, or travel in interstate or foreign commerce, or (B) obstructs, impedes, or interferes with any fireman or law enforcement officer engaged in the performance of his official duties incident to and during the commission of any such riot; or

"(2) Whoever moves or travels in interstate or foreign commerce or uses any facility, instrumentality, or means of communication, transportation, or travel in interstate or foreign commerce, with intent to (A) incite, promote, encourage, or participate in, or facilitate the incitement, promotion, encouragement, or commission of a riot; or (B) obstruct, impede, or interfere with any fireman or law enforcement officer engaged in the performance of his official duties incident to and during the commisison of any riot—

"Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) The term 'riot' means any disturbance of the peace in any State or the District of Columbia by three or more persons which results in unlawful acts of violence or depredations against persons or property or threats of the commission of such unlawful acts of violence or depredation by three or more persons who have the ability to perform the acts so threatened.

"(2) The term 'fireman' means any member of a fire department (including a volunteer fire department) of any State, any political subdivision of a State, or the District of Columbia.

"(3) The term 'law enforcement officer' means any officer or employee of the United States, any State, any political subdivision of a State, or the District of Columbia, engaged in the enforcement or prosecution of any of the criminal laws of the United States, a State, any political subdivision of a State, or the District of Columbia.

"(c) This section shall not be construed to affect or impair the validity or enforcement of any law of any State or political subdivision of any State, or the District of Columbia."

SEC. 2. The analysis to "PART I—CRIMES" of title 18, United States Code, is amended by inserting after the following chapter reference:

"101. Records and reports ..... 2071"

the following new chapter reference:

"102. Riots ..... 2101".

[S. 1194, 90th Cong., first sess.]

A BILL To define the jurisdiction of the Supreme Court and the inferior courts ordained and established by the Congress under article III of the Constitution of the United States in criminal prosecutions involving admissions or confessions of the accused

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

SECTION 1. That the sole test of the admissibility of an admission or confession of an accused in a criminal prosecution in any trial court ordained and established by the Congress under article III of the Constitution of the United States shall be its voluntary character and neither the Supreme Court nor any inferior appellate court ordained and established by the Congress under article III of the Constitution of the United States shall have jurisdiction to reverse, vacate, modify, or disturb in any way a ruling of such a trial court in any criminal prosecution admitting in evidence as voluntarily made any admission or confession of an accused if such ruling is supported by any competent evidence admitted at the trial.

SEC. 2. Neither the Supreme Court nor any inferior court ordained and established by the Congress under article III of the Constitution of the United States shall have jurisdiction to review or to reverse, vacate, modify, or disturb in any way, a ruling of any trial court of any State in any criminal prosecution admitting in evidence as voluntarily made an admission or confession of an accused if such ruling has been affirmed or otherwise upheld by the highest court of the State having appellate jurisdiction of the cause.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 21, 1967.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1194, a bill "To define the jurisdiction of the Supreme Court and the inferior courts ordained and established by the Congress under article III of the Constitution of the United States in criminal prosecutions involving admissions or confessions of the accused."

This bill would provide that in federal courts the sole test of admissibility of an admission or a confession would be voluntariness. The Supreme Court and intermediate federal appellate courts would not have jurisdiction to review the trial court's ruling on the admission of a confession if that ruling had been supported by "any competent evidence admitted at the trial." No federal court would have jurisdiction to review a ruling of a State court that a confession is voluntary if that ruling had been upheld by the highest appellate court of that State.

The law regarding the admissibility of confessions in both Federal and State courts is that statements "given freely and voluntarily without any compelling influences" are admissible, *Miranda* v. *Arizona*, 384 U.S. 436, 478 (1966), but that confessions given without proper safeguards of Fifth and Sixth Amendment rights are inherently compelled and therefore inadmissible, *Id.* at 457–58.

The apparent purpose of S. 1194 is to establish voluntariness as the sole test of the admissibility of a confession in criminal trials. The *Miranda* decision affirmed that voluntariness is the test of admissibility; it also defined further criteria by which voluntariness would be determined. Even if S. 1194 were

enacted, the trial courts would be obliged to apply that criteria in making a determination. The only effect of the bill would be that federal appellate courts could not review a ruling of admissibility if that ruling had been (1) supported by any competent evidence in a lower federal court, or (2) upheld by the highest court in a State having jurisdiction over the matter.

Such a bar to appellate review would be undesirable. Such a limitation would make the numerous trial courts the final interpreters of the meaning of the *Miranda* decision. This could lead to serious confusion and conflict in the criminal law, not only between different jurisdictions, but even within the same jurisdiction. Appellate review contributes to the achievement of uniformity in the law and to the goal of equal protection.

Apart from those considerations, this bill touches upon fundamental constitutional rights. By denying review of a ruling of admissibility supported by "any competent evidence admitted at the trial," the bill does not provide constitutional guarantees equal to *Miranda*.

For the reasons stated above, the Department of Justice is opposed to enactment of S. 1194.

The Bureau of the Budget has informed us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Attorney General.

[S. 1333, 90th Cong., first sess.]

A BILL Relating to the admissibility in State courts of certain evidence

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

FINDINGS

SECTION 1. Congress hereby finds that it is necessary to enforce by appropriate legislation the restraints which the United States Supreme Court has determined are imposed upon State law enforcement officials by the fourteenth amendment to the Constitution, specifically the prohibition against unreasonable searches and seizures and the prohibition against interrogation of a suspect without advising him of his constitutional rights; that an appropriate method of enforcing these restraints is a requirement that in any State criminal trial, evidence obtained as a result of an unreasonable search or seizure and evidence obtained by interrogation of a suspect that is not preceded by advice as to constitutional rights shall be excluded unless the trial judge determines in the exercise of his sound discretion, and in accordance with appropriate criteria, that such evidence should be admissible to avoid a miscarriage of justice; and that this method of enforcing the aforementioned restraints is necessary to insure observance of these restraints by State law enforcement officers and also to guard against the possibility that a miscarriage of justice may occur whenever one of these restraints is in any manner violated.

FLEXIBLE RULE FOR ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE

SEC. 2. (a) Whenever upon the trial of any criminal charge in the courts of any State, evidence is offered by the State which has been obtained by or as a result of an unreasonable search or seizure, such evidence shall not be admissible, unless the trial judge determines in the exercise of his sound discretion that the exclusion of such evidence will result in a miscarriage of justice, in which event he may rule the evidence to be admissible.

(b) In exercising the discretion conferred in subsection (a), the trial judge shall consider—

(1) the degree to which the search or seizure fails to meet the constitutional standard of reasonableness;

(2) the justification, if any, of the law enforcement officer for failing to meet the constitutional standard of reasonableness;

(3) the seriousness of the criminal charge; and

(4) the likelihood that the State will not be able to present a prima facie case without the offered evidence.

FLEXIBLE RULE FOR ADMISSIBILITY OF STATEMENTS

SEC. 3. (a) Whenever upon the trial of any criminal charge in the courts of any State, evidence is offered by the State which is, or has been obtained as a result of, a statement voluntarily made by a person in custody or whose liberty has been restrained, who has not been advised of his constitutional rights concerning the privilege against self-incrimination and the right to counsel, such evidence shall not be admissible, unless the trial judge determines in the exercise of his sound discretion that the exclusion of such evidence will result in a miscarriage of justice, in which event he may rule the evidence to be admissible.

(b) In exercising the discretion conferred in subsection (a) of this section, the trial judge shall consider—

(1) the degree to which the interrogation in which the statement was made fails to meet constitutional standards;

(2) the justification, if any, of the law enforcement officer for failing to meet the constitutional standard of reasonableness;

(3) the seriousness of the criminal charge; and

(4) the likelihood that the State will not be able to present a prima facie case without the offered evidence.

(c) Nothing contained in this section shall be construed to permit a trial judge to rule admissible a statement not made voluntarily or evidence obtained as a result of such a statement.

APPELLATE REVIEW

SEC. 4. The decision of a State trial judge made pursuant to this Act shall be reviewable by the appellate courts of the State and the United States Supreme Court in the same manner as rulings on the admissibility of evidence are reviewable by the laws of the State and of the United States.

SEPARABILITY OF PROVISIONS

SEC. 5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 19, 1967.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1333, a bill "Relating to the admissibility in State courts of certain evidence."

S. 1333 would authorize a State trial judge, in the exercise of his discretion, to admit into evidence items seized in violation of the Fourth Amendment as well as "voluntary" confessions obtained without Fifth and Sixth Amendment safeguards, if the trial judge determines that the exclusion of the evidence would result in a miscarriage of justice.

The Department of Justice considers this legislation of doubtful constitutional validity. The authority granted Congress by Section 5 of the Fourteenth Amendment, the assumed constitutional basis for this bill, does not appear to permit Congress to pass legislation which grants State judges authority for avoiding constitutional standards. Only last Term, the Supreme Court in *Katzenbach* v. *Morgan*, 384 U.S. 641, 651, n. 10, stated:

"* * * § 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees."

The Department considers this pronouncement a rather clear indication that the Court would find the proposed legislation unconstitutional. Further, when

the Supreme Court ruled that illegally seized matter must be excluded from evidence in State courts, it indicated clearly that it was announcing a constitutional rule, not an implementing rule of evidence. The opinion in *Mapp* v. *Ohio* described the "exclusionary rule" as an essential part of the Fourth and Fourteenth Amendments, 367 U.S. 643, 567. In our view, an attempt by Congress to overrule *Mapp* v. *Ohio*, as proposed in S. 1333, would itself be unconstitutional.

Similarly, the Court indicated in *Miranda* v. *Arizona*, 384 U.S. 436, 457–8, that confessions obtained during custodial interrogation without proper safeguards of Fifth and Sixth Amendment rights are inherently compelled and their admission into evidence is prohibited by the Fifth and Fourteenth Amendments. Again, we consider an attempt to overrule this decision unconstitutional.

Section 4 of S. 1333 provides that decisions on the admissibility of confessions and illegally seized evidence would be reviewable by the appellate courts of the State and by the Supreme Court in the same manner as other evidentiary rulings. Since the issues involved are inherently of constitutional dimensions, however, it is extremely doubtful that section 4 would, or could, have the effect of reducing the issue in such appeals to a question of evidence, as distinguished from a question of basic due process.

For the reasons stated above, the Department of Justice recommends against enactment of this legislation.

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,

RAMSEY CLARK,
Attorney General.

Senator MCCLELLAN. All Senators have been invited to testify, to give the committee the benefit of their conclusions, their judgment and recommendations in this field. We are very pleased this morning that we have four of our colleagues with us who have responded to that invitation. First we will hear from Senator John Stennis, the junior Senator from Mississippi. Senator Stennis.

STATEMENT OF HON. JOHN STENNIS, U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman and members of the committee, first I am grateful for the bills that have been introduced, and for the effort and work on behalf of the subcommittee up to the present and in the future to bring these matters to a proper issue, and try to do something about it.

I am here, Mr. Chairman, impelled with this sense of general obligation. I feel that the trend of decision with reference to criminal procedure in particular is such, if not stopped and in part reversed, but if permitted to continue, will leave society where it will be unable to protect itself from the law violator. I think we are living in a time that was well expressed by one of the outstanding ministers of an outstanding church in this city in a sermon I heard sometime last summer, in which he said that times are such that everyone is responsible for the acts of the wrongdoer except the wrongdoer himself. I believe that is the trend and the thought of the times. The wrongdoer is not responsible but someone else or some other group is.

I don't like to make personal references, but I come too, as one that spent 20 years, perhaps the most active 20 years of his life, in the trial courtroom, as a practicing lawyer, as a trial lawyer, and then as a trial judge, and I have those years of observation of the administration of justice in real life and as it is, and I think these procedural trends that I have mentioned take the heart out of the police depart-

ments and the individual policemen themselves, and puts him under such handicap and restriction that he can no longer be effective, and he loses the will to do so.

I think by and large the old time-tried system in use for centuries in the English courts, of having all the facts presented first to a trial judge, a man experienced in the law and trained in procedures and by experience, to pass on whether or not a confession is voluntary—if he has any doubt about it, he throws it out right there.

The second safeguard is that if he admits it, it still has to go before a jury of 12, where there has to be a unanimous decision of guilt, before anything can be done regarding the accused.

As I say, that is the heart of the system that has been tried for centuries. No system is perfect, but this one has served the practical end as well as the just end. As I understand this S. 674, the bill regarding the *Miranda* case, it seeks to restore the law generally to what it was that I have just outlined with reference to confessions.

Senator McCLELLAN. As I indicated here, we have four approaches now.

Senator STENNIS. Yes.

Senator McCLELLAN. One, to more or less restore the practice that prevailed, and that I think was constitutional, from the beginning of our Government. S. 674 seeks to restore that practice. Then secondly we have the harsher remedy proposed by Senator Ervin as he spoke here this morning, the bill which he has introduced today, which would simply restrict the jurisdiction of the Supreme Court and the appellate courts and limit that jurisdiction so that they couldn't review the action of State courts where the issue had been carried to the highest court of the State.

Now that is, I think, a harsh approach, harsher particularly than the S. 674 approach. But, as I have said, we either do nothing to start with, or we undertake to restore the practice and procedures that have been tested and proven worthy and most reliable, or we take the harsher step of limiting the jurisdiction of the Court.

Apparently, under the Constitution we would have the authority to do this. The Congress may, however, have to go through the cumbersome process of trying to secure the adoption of a constitutional amendment. Or, of course, we have the fourth alternative, to do nothing.

Those are the only four remedies. I don't mean that S. 674 cannot be studied and modified, but I am talking about it as an approach to the problem. Very well, proceed.

Senator STENNIS. I thank the chairman. I prefer for myself the rule that I have outlined, because it has been beaten out on the anvil of experience and time-tested literally for centuries. I had the privilege, with the chairman, of visiting a court in England, the Old Bailey, where we saw a continuation of that same process going on there at this very high level, and both of us were impressed with it.

Mr. Chairman, most unfortunately for me, I am under tremendous pressure for time. Nothing is more important than this, but I did call a meeting of the group of which I happen to be chairman. I feel compelled to be there at 11 o'clock. May I ask the committee to admit the first four pages of my written statement to the record, and I will read briefly then from one or two points.

Senator McCLELLAN. Very well, however, we will have your whole statement printed in the record.

(The statement referred to is as follows:)

STATEMENT OF HON. JOHN STENNIS, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

I certainly want to commend the committee for its splendid work. While everyone else is talking about the serious crime problem, this committee has gotten down to the hard job of doing something about it. The legislation which the Committee is now considering is a small but necessary and promising start toward bringing the criminal menace under control. I do not believe I can improve on the proposals before the committee, but I do want to take this opportunity to give my strongest support to the fine effort which they represent.

Of the several bills under consideration, I think the most significant—in many ways—is S. 674, relating to the admissibility of confessions. This bill is necessitated, of course, by the recent decision of the Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436. In this case, as the committee knows, five members of the Court created a new rule of constitutional law that no confession, no matter how freely given, could be used to convict a criminal if the police failed to advise him beforehand that he has a right to remain silent, that anything he says can be used against him, that he has the right to have an attorney present while he is being questioned, and that if he cannot afford a lawyer, one will be furnished free.

This decision is less than a year old and it is still too early to assess its full impact on law enforcement. This is no reason for Congress to hesitate in counteracting it, however. The Court had no sure knowledge of what its effects would be when it laid down its new rule, and Congress need not wait to see what the full consequences will be before restoring the old. We have already had several months' experience under the new rule, and all of it bad. There are frequent reports in the press of confessed murderers, rapists, and other vicious criminals being set free under the *Miranda* ruling, but I have yet to read an instance where the *Miranda* decision has contributed to the conviction of a guilty man or has even saved a genuinely innocent man from an unjust conviction. If the purpose of our system of criminal justice is to convict the guilty and clear the innocent, it has been seriously and unnecessarily impaired by the *Miranda* decision.

This decision holds grave implications for our system of criminal law. If the ruling of the Court is rigorously enforced in its full sweep, it could well mean the end of all police interrogation and the total exclusion of confessions and other incriminating statements from criminal trials. Any interference with a person's liberty, any interruption of his freedom of movement, however slight, by the police may be considered an arrest requiring the appointment of counsel to protect his rights. Unless the police were accompanied by defense counsel, they could not delay a suspect briefly on the street or at the scene of a crime or at his home to ask even the most superficial questions about the crime. Under such circumstances, fewer questions will be asked by the police, fewer confessions will be made by criminals, and more crimes will go unsolved.

Even if the suspect waives his right to counsel and agrees to talk, the police cannot rely on the waiver and accept his confession because the burden of proving the waiver is on the prosecution. If the suspect gives a confession or other information which leads the police to additional evidence, and his confession is later found to be involuntary, all of the evidence obtained as a result of it will also be inadmissible under the so-called "fruit of the poison tree doctrine." Thus the police will be discouraged from seeking even voluntary confessions and will be reluctant to question witnesses who might be potential suspects for fear that it will actually produce other evidence that may become "tainted." If this condition persists, confessions will become extinct and law enforcement will suffer a further decline.

We simply cannot afford this needless waste of evidence. The questioning of suspects is too valuable an aid to the solution of crime to be suppressed. Confessions are too important to law enforcement to be thrown away. Many serious crimes cannot be solved without police interrogation and many dangerous criminals could not be convicted without voluntary confessions or the evidence to which they lead. It is sheer folly to ignore these realities in considering the formulation of rules governing the admissibility of confessions.

Regardless of what the ultimate effects of the *Miranda* decision may be, this is obviously no time to be experimenting with new protections for the criminal. Last year, 2,780,000 serious crimes were committed. Over three quarters of these cases went unsolved. In those instances where charges were filed, there was a five percent decrease over the preceding year in the number of convictions. At the same time there was a thirteen percent increase in the number of acquittals and dismissals recorded. Three out of every ten murder defendants were either acquitted or their cases were dismissed at some state in the proceedings. The same was true for about one third of the rapists and persons charged with aggravated assault.

This dangerous trend will undoubtedly continue at an accelerated pace under the *Miranda* decision. Only two months after the opinion was published, the District Attorney for Brooklyn, New York reported to the *New York Times* that the number of criminal suspects who were refusing to make any statement to the police had increased fourfold. The District Attorney spoke from experience what most of us know from common sense when he added: "Most of these men will walk the streets as free men. These vicious crimes may never be solved. Recent Supreme Court rulings have shackled law-enforcement agencies making it possible for vicious criminals to escape punishment."

This is an early warning of what we may expect to follow from this ill-advised opinion if something is not done to limit its sweeping terms.

As Mr. Justice White said in dissenting with the majority opinion in the *Miranda* case, "The most basic function of any government is to provide for the security of the individual and of his property." It should be emphasized that this is the basic function of all three branches of the government, and if one branch neglects its responsibility, it is the duty of the other two to apply the appropriate checks and balances provided by the Constitution. I believe Congress is responding to the duty in proposing the enactment of S. 674, and for this reason I want to give it my strongest endorsement.

As I understand the bill, its purpose and effect is to provide that a confession shall be admissible as evidence if the trial judge and the jury find, after considering all the circumstances of the making of the confession, that it was voluntarily made. This seems to me to be an eminently fair and reasonable solution to the problem created by the *Miranda* case. It quite properly makes the admissibility of the confession depend on the question of voluntariness and not whether the officer has delivered a virtual charge to the jury before questioning a suspect. It puts this issue in the hands of the trial judge and the jury who actually observe the witnesses as they testify and who are, therefore, in the best position to assess the truth of their testimony. It provides that an experienced trial judge must first satisfy himself that a confession is voluntary before the jury is allowed to hear the evidence and decide for themselves, thus giving the defendant two chances to prove his statement was coerced. It adequately protects the rights with which the *Miranda* decision is concerned by requiring the trial judge to consider whether the accused was advised of his privilege against self-incrimination and his right to counsel in determining whether a confession was voluntary. These provisions amply protect the rights of the individual without unnecessarily disarming society in its war on crime.

I commend this bill not only for its intrinsic merit, but also for what it symbolizes. The immediate benefit of the bill will be to restore to the police a small measure of the strength that has been drained from them by the *Miranda* decision. I think its importance transcends this single issue, however. I believe this bill marks a turning point in several respects.

For too long Congress has been content to leave the development of the criminal law to the courts. This has encouraged the courts to pursue too strongly their own philosophy of law without due regard for the sentiments of the people and the wisdom of other equally qualified to interpret the law and the Constitution. This on occasion has led the courts to extremes which I am sure they would not have ventured under a vigilant Congress disposed to exert its own authority when appropriate. I think this bill reflects the determination of Congress to reassert its proper authority in the field of criminals and I think its enactment will be so interpreted by the courts. If it is so understood, I believe it will have a moderating and highly beneficial influence on the courts.

I think this bill represents the beginning of a new emphasis on the rights of society in the struggle with the criminal. The courts have gradually over the past 30 years greatly overweighted the scales of justice in favor of the criminal.

This bill indicates that Congress intends to right the balance again and give to the people some fraction of the protection currently enjoyed in abundance by only the most vicious and depraved members of our society. This adjustment is long overdue and the quicker it is made the closer we will be to solving the crime problem.

Our system of criminal justice is already heavily weighted in favor of the criminal defendant. The burden of proof is always on the prosecution. Every element of the case must be proved beyond a reasonable doubt. All twelve men on the jury must agree as to the guilt of the defendant before he can be convicted. He may appeal any error made by the prosecution, in convicting him, but no matter how great a miscarriage of justice his acquittal may be, he is completely safe from further proceedings. With these built-in safeguards there is no reason for casually tossing new stumbling blocks in the path of justice.

Senator STENNIS. I thank the chairman. Mr. Chairman, I did not come here to speak and run away. I will come back, should anyone want to ask me questions. I would feel flattered if you did, and I am certainly willing to try to answer, and I will come back.

Mr. Chairman, members of the committee, this dangerous trend that I have outlined will undoubtedly continue at an accelerated pace under this 5-to-4 *Miranda* decision, unless something is done about it.

Only 2 months after that opinion was published, the district attorney for Brooklyn, N.Y., reported to the New York Times that the number of criminal suspects who were refusing to make any statement to the police had increased fourfold. This district attorney spoke from experience what most of us know from commonsense, when he added:

Most of these men will walk the streets as free men. These vicious crimes may never be solved. Recent Supreme Court rulings have shackled law enforcement agencies, making it possible for vicious criminals to escape punishment.

This is an early warning of what we may expect to follow from this ill-advised opinion, if something is not done to limit its sweeping terms.

As Mr. Justice White said in his dissenting opinion in this *Miranda* case, and I quote him:

The most basic function of any government is to provide for the security of the individual and of his property.

It should be emphasized that this is the basic function of all three branches of the Government, and if one branch neglects its responsibility, it is the duty of the other two to apply the appropriate checks and balances provided by the Constitution. I believe Congress is responding to the duty in proposing the enactment of S. 674, and for this reason I want to give it here and everywhere my strongest possible endorsement.

And then referring to what was the rule before *Miranda*, with reference to the power of the trial judge, I follow with this thought. This seems to me to be an eminently fair and reasonable solution to the problem created by the *Miranda* case. It quite properly makes the admissibility of any alleged confession depend on the question of its voluntariness and not whether the officer has delivered a virtual charge to the jury before questioning a suspect.

It puts this issue in the hands of the trial judge and the jury who actually observe the witnesses as they testify and who are therefore, in the best position to assess the truth of the testimony.

All of us with trial lawyer experience know that the biggest fact about any case is the sense of feeling, the atmosphere, and demeanor,

the general tone and trend of testimony, not just what the words are, but the trend of it; the atmosphere is where you get the believability or the nonbelievability.

It provides that an experienced trial judge must first satisfy himself that a confession is voluntary before the jury is even allowed to hear the evidence, *before they are allowed to hear the evidence*, then giving the defendant two chances as to whether or not his statement was coerced.

The burden of proof, of course, is always on the prosecution, not for a preponderance of the evidence, but proof beyond a reasonable doubt, and if anywhere in that trial reasonable doubt is created even in the mind of a judge alone, it is his duty to stop that trial, and if necessary to declare a mistrial and give the defendant an entirely new hearing or a new trial.

Senator McCLELLAN. You are speaking with respect to a situation in which it develops that the confession was not voluntary.

Senator STENNIS. That is right. If it appeared to be voluntary in his first decision——

Senator McCLELLAN. And, of course, at the trial proper, if the judge concluded that it wasn't voluntary he could declare a mistrial.

Senator STENNIS. If that testimony comes in from any source, from the State or from the defendant, and I mention that with emphasis, because I believe that nonlawyers, and maybe some lawyers who have not had courtroom experience, fail to realize the importance of that point, and it does actually work in practice.

I believe, as I have already said, we are living in a time when there is greater demand for criminal procedure, there is less discipline in the courtroom and in the streets and in the homes. There is less punishment for wrongdoing everywhere.

I have said that I was afraid that discipline is about to disappear from the American scene except in our military services, but I am not that skeptical. I do think that one reason why our fighting men in Vietnam have shown such a remarkable spirit and morale is because of the emphasis there, many of them for the first time in their lives, of some discipline. I thank the Chair and the committee very much.

Senator McCLELLAN. Thank you. Are there any questions by anyone? You say you have to go?

Senator STENNIS. Yes.

Senator McCLELLAN. I would like to have you come back some time.

Senator STENNIS. Thank you, Senator. I would be delighted to.

Senator KENNEDY. Could I ask one question? Is it the Senator's impression that this aspect of criminal procedure is the most significant obstacle to the war on crime.

Senator STENNIS. I feel what is most significant—the *Miranda* case?

Senator KENNEDY. That is correct. I was trying to ask this in light of the President's message to Congress and in light of the rather complete presentation which was made by the President's Commission on Crime.

There have been many suggestions and recommendations as to how we should approach the problems of crime. In view of your background and experience, are you suggesting that our first step must be taken in the area which you have developed.

Senator STENNIS. I can quickly answer that. My opinion is that this is an essential move, an essential move that must be made to change the emphasis, change the approach from the *Miranda* decision, and even if other good points in the administrations recommendation should be carried out, failing in this one, they will virtually all fail, and our courts will be unable to function as they should, and our law enforcement officers will be so restricted and restrained that they cannot meet the practical problems that they face. I put that as No. 1.

Senator KENNEDY. I don't want to delay you but I have one further question.

Senator STENNIS. That is all right.

Senator KENNEDY. On the basis of your experience in the courtroom, which as you mentioned was for some 20 years, how long do you really think it takes to determine the impact of a particular court decision?

I am thinking now of the *Miranda* case, which was decided relatively recently, Is it appropriate for us to reach a conclusion that this is providing an unreasonable restriction on the ferreting out of crime, particularly in the light of the fact that *Miranda* has been convicted of rape and is now serving time in jail?

Senator STENNIS. That would vary a great deal according to the rule you are talking about, but this one is at the very threshold of the investigation of law violations. It is not just a courtroom matter. This goes to the very heart of your entire investigative processes, and is going to make us unable to meet the situation, I think, and it is very obvious now.

Thank you, Mr. Chairman.

Senator MCCLELLAN. Senator Hruska would like to ask you one question.

Senator HRUSKA. Senator Stennis, one of your statements was that the dangerous trend will continue at an accelerated pace unless something is done about it in the application of the *Miranda* decision.

It may be one thing to say that it would take a while before we get nationwide statistics where we can say that prior to *Miranda* we would get so many confessions, now we get so many percentages less. However, in recent weeks, a new trend has appeared. As far as I know the first case that reached national attention was one in New Jersey where *Miranda* has been applied to juvenile cases. In this past week we found another such application in Iowa. Is this a part of the trend to which you refer, to expand it not only in particular situations but even to additional fields?

Senator STENNIS. I think if it is not challenged and changed, why by the natural course of events, the river will flow on and on and gather momentum as it goes. That is the history of our court system and our society, so there is no doubt about the expanded interpretation of it. I think that is already very evident.

Senator HRUSKA. Of course, that has been the situation.

Senator STENNIS. Yes.

Senator HRUSKA. In the *Mallory* case, for example.

Senator STENNIS. That is right.

Senator HRUSKA. Where there are new, restrictive applications.

Senator STENNIS. Yes.

Senator HRUSKA. I thank the Senator.

Senator STENNIS. Thank you.

Senator MCCLELLAN. Thank you very much, Senator.

Senator STENNIS. Thank you, Mr. Chairman.

Senator MCCLELLAN. I note that Senator Lausche has come in since we opened our hearings, and he was second on our list today. This list was arranged in accordance with the indication of those who wished to testify. I do understand, too, that Senator Bennett is under pressure of time.

Senator BENNETT. I am a part of the same meeting to which Senator Stennis has gone.

Senator LAUSCHE. Senator McClellan, I do not expect to be called before the other Senators who came here this morning prior to the time that I arrived. I will wait my turn.

Senator MCCLELLAN. Very well, would you yield to Senator Bennett so that he might get through?

Senator LAUSCHE. Yes.

Senator MCCLELLAN. Thank you very much. Senator Bennett, we will be glad to hear from you at this time.

STATEMENT OF HON. WALLACE F. BENNETT, U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. Mr. Chairman, I am a little out of place this morning because the bill for which I appear is entirely different from the general crime bills you have been discussing. But it was set up for hearing as part of this package, and I think a record should be made of it.

I am referring to S. 911, whose purpose would be to make it a Federal offense to use any means of interstate communication, or transportation, or the mails, to offer for sale parcels of land in violation of State laws, in effect in the State of residence of a prospective purchaser.

The proposal is a very simple one. It follows the precedent set by the Webb-Kenyon Act prohibiting the transportation of liquor into a State in violation of the law of the State, the Connally Hot Oil Act, forbidding interestate transportation of oil made contraband by State, and a law passed by Congress in 1961, making it a Federal offense to use the facilities of interstate commerce to carry out certain racketeering enterprises which were prohibited by State law.

I have a brief statement that I had expected to read, with a more comprehensive statement for the record, together with one or two exhibits to illustrate the extent of the problem; but in view of the pressure, I would like to submit the rest of my brief statement along with the other information for the record as though it had been read. I realize that this problem may be less serious.

I would hope, however, that when the committee meets, the very fact that it is not so serious or has such wide ramifications might make it possible for the committee to get this out of the way before it settles down to a very long consideration of these other important bills.

Senator MCCLELLAN. Very well. Would you like to have your statements printed in the record in full, Senator?

Senator BENNETT. Yes, I would, Mr. Chairman and the bill which is attached.

Senator McCLELLAN. Your statement will be printed in the record at this point and the bill printed in the record with the other bills we are discussing here today. I add, however, that this bill has not been referred to this subcommittee as yet.*

(The statement referred to follows:)

TESTIMONY OF WALLACE F. BENNETT, A U.S. SENATOR FORM THE STATE OF UTAH, IN SUPPORT OF S. 911

Mr. Chairman, I appreciate this opportunity to testify in favor of S. 911.

My remarks this morning will be very brief. However, I do have a more complete statement which I would like to have included in the record in its entirety.

S. 911 would make it a Federal offense to use any means of interstate communication or transportation or the mails to offer for sale parcels of land in violation of State laws in effect in the State of residence of a prospective purchaser. The proposal is a very simple one and follows the precedent set by the Webb-Kenyon Act, prohibiting the transportation of liquor into a State in violation of the law of a State, the Connally Hot-Oil Act, forbidding interstate transportation of oil made contraband by State law, and a law passed by Congress in 1961, making it a Federal offense to use the facilities of interstate commerce to carry out certain racketeering enterprises which were prohibited by State law. Land sales, their regulation, and licensing of real estate salesmen have always been a responsibility of various States and, while we may not feel that the States have completely fulfilled their responsibility in protecting their citizens from fraudulent sales, we must realize that much has been done and that much is presently being done. We find that in States where interstate land sales have been a real problem, legislation dealing with the problem has been enacted. It is true that some States have not enacted such legislation, but I feel that in the spirit of creative federalism, it is our responsibility to provide incentives for the States to improve their efforts and fill only the gaps which cannot be filled by the States.

Last August a Uniform Land Sales Practices Act was approved by the National Conference of Commissioners on Uniform State Laws. The proposed Uniform Act has also been approved by the American Bar Association and recommended to all the States for enactment. The proposed Uniform Act is a far-reaching and comprehensive one which would provide for full disclosure on a State level. I am informed that at least 7 States are considering the uniform proposal in this legislative session. I might mention that 23 States already have legislation regarding interstate land sales. Some of these States have very effective laws. States with effective laws can control sales made by individuals operating within their borders, but they are unable to regulate sales made through the mails or by telephone or other means of communication by outsiders who do not have operations within the State.

I feel, therefore, that it is necessary for us to supplement the State laws with Federal legislation which will allow State authorities to protect their own citizens from fraudulent interstate land sales promotions by requiring the out-of-State promoter to comply with the laws of the State in which he is attempting to make sales. This is what S. 911 would require.

The only other alternative to this approach is a Federal statute which would turn over to the Federal Government the basic responsibility of interstate land sales and the regulation of those engaged in such sales. I do not think that is either desirable or necessary.

I hope that this Committee will see fit to approve this proposal so that the States may more effectively perform their responsibilities.

SUPPLEMENTARY STATEMENT BY SENATOR WALLACE F. BENNETT IN SUPPORT OF S. 911

Mr. Chairman, I offer this supplementary statement supporting S. 911, a bill which would make it a Federal offense to use any means of interstate commerce or communication or the mails to offer for sale parcels of land in violation of laws in effect in the State of residence of the prospective purchaser.

*This bill had not been referred to this subcommittee at the date of printing this record.

As a result of hearings in the Subcommittee on Frauds and Misrepresentations Affecting the Elderly, as well as in the Securities Subcommittee of the Senate Banking and Currency Committee last year, the problem of fraudulent interstate land sales has been very graphically demonstrated. Through various methods, unscrupulous promoters are able to bring about sales not in the best interest of the purchaser. There are several common promotional gimmicks. I will mention only a few. One of the most used is the "give-away" scheme in which closing costs exceed the actual value of the land. Another is the "free lot" promotion, in which the free lots are very small and the purchaser finds that to have a parcel large enough for building, it is necessary to obtain another lot next to the one which was given. The price of the second lot exceeds the real value of both lots combined. There are also lottery schemes. In addition to these promotional methods, some promoters use advertising, which makes fraudulent claims or omits material facts such as easements, difficulty of obtaining water, climate, elevation, nearness to other developed areas, etc.

The Post Office Department provided a list of abuses or omissions or misrepresentations used in promotional literature and documents which I will include for the hearing record:

ABUSES, OMISSIONS OR MISREPRESENTATIONS IN INTERSTATE MAIL ORDER SALES PROMOTION LITERATURE AND DOCUMENTS

Item No.

1. "Giveaway" lots for so-called "Closing Costs" which far exceed acquisition expense or actual value of land.
2. Unrealistic projected values advanced to lull lotowners into sense of security as to equity and continuation of investment on installment plan.
3. Boundary surveys only are made, with subdivision lots platted in areas honeycombed with washes, gullies, and arroyos, so that some lots are directly in the path of natural drainage courses without flood control, or actually in arroyos many feet below the normal land surface.
4. Roads in subdivisions dedicated to county authorities for maintenance will not be serviced unless or until there are nearby residents in the subdivision. This means original roadways installed by developers will deteriorate through weathering and lack of maintenance.
5. Ready water access claimed to be available although shallow water tables may be restricted by existing water right reservations.
6. No figures on information given as to depth of water table or cost of wells where lot owners must arrange for their own water supply.
7. Distances to nearby facilities inaccurately described in units of time instead of mileage and road conditions. For example, a 47-mile mountain road with two-way traffic has been referred to subdivision promotional literature to "as 30 minutes travel time" between points mentioned.
8. Public transportation facilities "to the subdivision" not accurately explained as being to the edge of the property. Lots sold and assigned within the subdivision may be as far as 15 miles from the nearest accessible public transportation.
9. References are made to "availability" of public utilities in a subdivision, but does not include mention of cost of extending them from peripheral or marginal areas.
10. Artist's conception of subdivision property is misleading when not labeled as such.
11. Failure to issue promised "Survivor's Certificate" to lot purchasers' heirs or assignees in event of death.
12. Description of lots by metes and the bounds so that cost of survey to determine lot boundaries is far more expensive that the lot itself.
13. Designation on subdivision plats of road easements misleads reader to believe roads are actually present.
14. Subdivision location maps out of scale or proportion and thus deceptive as to relative distances.
15. Lot sales contract describing installment payments and having no acceleration clause unduly protracts time when deed will be conveyed (37 years in one instance). This may be done purposely because vendor is unable to promptly furnish deed.
16. Refund or lot switch privilege restricted to on-site inspection within limited period, making the offer unrealistic to extent the expense of special travel may exceed cost of lot.

It is unfortunate that prospective land purchasers generally know very little about real estate values, and many either cannot or do not find individuals who are experienced to assist them in making a rational decision. Too many prospective purchasers accept blown up statements or exaggerations made by sales literature and sales personnel as statements of fact, and when suggestions are made that the land may increase rapidly in value, they do not consider this as only a sales promotional statement and thus are enticed to make purchases which may not be suitable for their purposes.

Let me at this point say that the methods thus far described are used by only a very small proportion of those who are in the interstate land development business. By far the overwhelming majority of interstate land sales are legitimate and in the interest of the purchaser. As in all industry, most promoters build their business and reputation on satisfied customers.

I personally feel that in developing an attack on fraudulent promoters, it is necessary for us to consider the rights of the reputable land developers and, to the extent possible, avoid an approach which would burden them with unnecessary, undesirable, and expensive requirements. Any additional expense would, of course, be passed on to land purchasers.

A proposal has been introduced which would require all land developers who use a common promotional plan to sell over 25 parcels to register with the Securities and Exchange Commission and provide certain information regarding their proposal as determined by legislation and SEC regulation. It is my view that such legislation is unnecessary. Land sales have traditionally been a responsibility of the States. Licensing of real estate brokers and land development requirements are local matters, and I do not feel that the Federal Government or an agency of the Federal Government is in a position to fulfill this responsibility as well as are local authorities. I may also add that while the Securities and Exchange Commission seems to be the most logical agency to take on such a responsibility if it were desirable, this is outside of their present jurisdiction and would add an additional responsibility with all of its required staff and expenditure. No one has been able to determine or even estimate what the additional cost to the Federal Government would be. But I presume that it would be significant because of the great number of land development programs which are underway in this country.

Those who recommend a Federal solution to this problem claim that the States have been unable or unwilling to solve the problem themselves. While I must admit that some States have no legislation regarding interstate land sales, it is important to point out that those States in which this has become a significant problem have enacted legislation which has been very helpful. I might also add that last August 4, the National Conference of Commissioners on Uniform State Laws approved a Uniform Land Sales Practices Act. The proposed Uniform Act was also approved by the American Bar Association and has since been recommended to State legislatures for enactment. I am informed that at least 7 States are considering this legislation thus far this year. In addition, 23 States already have laws on their books regulating interstate land sales. Some of these laws are far more comprehensive than that which has been recommended on a Federal level. And if I might add, I believe that the Act approved by the National Conference of Commissioners is a more comprehensive approach and a more desirable approach than delegating authority to a Federal agency to require registration of land sales. It is my personal view that the States will rapidly enact legislation. They have taken great strides in the past few years, and I see no reason why this should not continue.

The bill which is before this Subcommittee today, however, is a necessary adjunct to State legislation. As was pointed out in prior hearings, even when a State has good legislation, it is next to impossible for the State regulatory authorities to take action against a promoter who does not physically do business within the State. In other words, if a promoter selling Utah land to California residents sets up an office in California, the State law of California would apply and action could be taken if the sales were considered to be fraudulent, misleading, or improper. On the other hand, if the Utah promoter used the mails or telephone or any other means of communication while remaining outside of the California borders, the State authorities are unable to enforce the requirements of their law. Even if all 50 States had good interstate land sales laws, this same problem would exist. Therefore, I believe that it is necessary for us on the Federal level to enact legislation which would make it a Federal offense to use any

means of interstate communication or transportation or the mails to offer for sale parcels of land if the offer is made in violation of laws in effect in the State of residence of the prospective purchaser. This is what S. 911 would do. It is an extremely simple proposal which would only bridge the gap between what the States can do and what needs to be done. It would avoid overlapping jurisdiction and unnecessary burden and expense on land developers, and I believe that since it gives each State an opportunity to protect its own citizens against outsiders, it would encourage the rapid enactment of better State laws, and the Federal Government would, as I believe it should, do only that which the State is unable to do for itself.

This proposal is not without precedent. Examples paralleling this proposal are the Webb-Kenyon Act, prohibiting the transportation of liquor into a State in violation of the law of a State; the Connally Hot-Oil Act, forbidding interstate transportation of oil made contraband by State law; and the law passed in 1961 by Congress making it a Federal offense to use the facilities of interstate commerce to carry out certain racketeering enterprises which were prohibited by State law. This type of legislation is in the spirit of creative federalism, as I understand it.

I would like to include for the record some comments made on the problem during our hearings last year in the Banking Committee. A letter from the Deputy Attorney General, who has recently been appointed Attorney General, Ramsey Clark, stated opposition to Federal legislation to control land subdivision sales in interstate commerce:

"The Department of Justice recommends against enactment of this legislation.

"There is no clear need for new Federal legislation to control land subdivision sales in interstate commerce. In the past few years, a substantial number of convictions have been obtained under 18 U.S.C. 1341. The indictments charged use of the mails by subdivision promoters in furtherance of schemes to defraud purchasers by fraudulent representations as to the nature of land purchased and its suitability for its intended purpose. Similarly, the Federal Trade Commission already has the power, pursuant to 15 U.S.C. 45, after formal complaint and hearing, to issue and enforce cease and desist orders against land promoters utilizing false, deceptive and misleading advertising. Accordingly, additional penal sanctions and further administrative remedies at the Federal level are unnecessary.

"Real estate transactions traditionally have been regulated by the states in which the property is located. In our view, enactment of local legislation, utilizing existing state real estate commisisons and incorporating the full disclosure provisions outlined in the bill, is the appropriate remedy.

"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."

The Department of Commerce also opposed enactment of such legislation in a letter form Robert E. Giles, General Counsel:

"Although this Department is in full sympathy with the objectives of S. 2672, to prevent fraudulent sales of real estate, we do not recommend its enactment.

"Some sellers of land use high pressure tactics and misrepresent their product. Retired persons or those contemplating retirement may often be the victims of these tactics.

"However, we do not believe this broad proposal is necessary to cope effectively with the small minority of unscrupulous land subdividers. The bill would add considerably to the cost of homesites, and put a considerable burden on the Securities and Exchange Commission to administer such legislation effectively."

The Post Office Department stated that the solution to the problem could be provided through adequate State legislation in a letter from Lawrence F. O'Brien, Postmaster General:

"I do believe, however, that the primary solution to these problems can be provided by adequate state legislation. Our records disclose that land frauds occur infrequently in states which have adequate statutory controls which are actively enforced."

The Federal Trade Commission did not go on record either for or against Federal legislation but did state that—

"Recent letters of complaint alleging questionable practices in promoting sales of real estate in interstate commerce have been referred to the Post Office Department upon receipt of information through liaison channels that the activities complained of were receiving attention by that Department under the postal fraud statutes."

"* * * A registration requirement for all developers engaged in the interstate sale of real estate coupled with the right of private action against such developers by defrauded individuals would remove the above limitations and would greatly supplement the existing remedies."

The Securities and Exchange Commisison in testimony suggested that if Federal legislation is necessary, then a bill requiring registration with the SEC would be the most desirable way to approach the problem.

This year we have heard testimony from Manuel F. Cohen, Chairman of the SEC, in which he supported Federal legislation requiring registration with the SEC. When asked by Senator Brooke if he favored Federal legislation in the field, Mr. Cohen answered:

"Well, I didn't quite say that, Senator Brooke, I said that we had not made an independent investigation. But having read the green book of last year, and the book for the earlier year and the report, I have no basis for suggesting anything different than what was said this morning that Federal legislation of some kind is necessary. And if that is so, I think that a bill of the kind of 275 would most effectively, expeditiously, economically, take care of the problem.

"Senator BROOKE. Is it because you feel the states cannot do the job or will not do the job or, as Senators Proxmire and Mondale have suggested, the states might take too long to do the job?

"Mr. COHEN. I think it is for all of those reasons in proportion depending on particular states you are talking about."

Later in the testimony, Chairman Cohen stated:

"So on a personal basis I am more convinced perhaps than I was last year, on a personal basis, wholly apart from what I have read here, that such legislation would be most appropriate. In fact, I guess, I come around to the end by saying, Senator Brooke, flatly what I do think it is an appropriate thing. Now I am speaking for myself on this point."

When I questioned him regarding the proposal before this Subcommittee today, he said that there would be some problems. Primary among these is the lack of necessary State legislative action and enforcement and injunctive provisions. He added:

"I understand in saying what I have, I have also spoken to the idea of combining the two. I have tried here today, not to be an advocate for either approach or indeed, an advocator for the Commission being the patsy, so to speak, here."

The Department of Justice in a Statement made by Nathaniel E. Kossack, First Assistant, Criminal Division of the Department, recommended the enactment of legislation embodying the philosophy and chief substantive features of S. 275. Mr. Kossack, when asked if he thought the matter could be handled by the States, answered, "Well, assuming that everybody had the same interest, the investor and the site state had the same interests, it is a conceivable thing, but that is something which we have learned for some time now is not a conceivably possible thing."

Commenting on the approach which we have before us today, Mr. Kossack said that he had not had time to consider it but did make the following statement:

"I only have one reaction that may be of interest to you, sir, based on our experience. While we do have one or two Federal laws—one comes to mind, 1952, of Title 18, which adopts the state criminal law as a basis for prosecutions. It is quite a simple law. It is on committing bribery, which is almost uniform from state to state. We have a great deal of difficulty being experts in two fields, not that we are experts in any one field, sir, but we devote a great deal of attention to being experts in the Federal criminal law, and we don't have the time or the manpower, I would say, to be expert in 50 state laws. They are usually different, you know. The philosophy and attitude of the State of Utah naturally is quite different than the philosophy and attitude of the State of Massachusetts. It would express itself in a different criminal law."

I have already included other examples of the type of law we are considering here. I have not been aware that there is any unusual difficulty in enforcement of these laws. I also feel the fact that the attitude and philosophy is different in the various States is an important matter and that each State should be able to protect its own citizens to the degree that it desires.

We have received no official report from the other agencies or Departments to indicate if they retained their position of last year.

Regarding the injunctive power which Chairman Cohen says is a weakness inherent in the approach which is before this Subcommittee today, I have no strong feelings. We have received testimony from various witnesses that injunctive powers would be desirable. However, such powers giving State authorities the right to go into a Federal court in another State and receive an injunction are unprecedented. My background is not in the legal field, and I do not feel personally qualified to determine whether this additional authority would be desirable. However, I think that if in the wisdom of this Subcommittee it seems desirable, I would be happy to support such an addition or amendment to the bill which we are presently discussing.

While it has been suggested by some that if authority be given to the SEC to take care of the interstate land sales problem, that will be sufficient. I disagree with such a conclusion. It was pointed out very clearly in our hearings on the SEC legislation that this would be considered a bare minimum requirement and that States could have laws equal to or exceeding the Federal statutes. In fact, it was hoped that the States would have such laws and suggested that in such cases the State law would be applicable. State authorities would regulate land sales, and the Federal Government would need to take no action. It was claimed that such a Federal statute would provide incentive for State legislation exceeding its provisions. If that is the purpose of the Federal statute, then the legislation before us today would still be required. Suppose, for example, that even with the Federal law, a promoter in State A complied with the Federal regulations and the State regulations in State A before promoting land sales in State B. State B may have more stringent requirements which must be met by promoters and yet there would be no way for State B authorities to take action against the promoter in State A if he did not comply with the State law in effect in the State of residence of the prospective purchasers.

In summary, I feel strongly that S. 911, in conjunction with effective State law, is the best approach to fraudulent interstate land sales. I hope that this Subcommittee will see fit to report the bill.

Senator McCLELLAN. One question. Do you feel that the present mail fraud statutes and similar statutes are inadequate, and thus this expansion of those statutes is necessary?

Senator BENNETT. I had not felt that they were inadequate, but in the hearings before the Subcommittee on Frauds and Misrepresentations Affecting the Elderly as well as before the Security Subcommittee of the Senate Banking and Currency Committee, certain developing types of land fraud sales were presented, and there is a bill now being considered by the Securities Subcommittee of the Banking and Currency Committee which would turn this problem over to the Securities and Exchange Commission, and require registration of every real estate agent who wanted to sell land across the State line in a very intricate system required by SEC.

I have proposed this as a substitute, and we run into a problem of jurisdiction. The Banking and Currency Committee cannot consider this proposal, nor will you have before you the proposal to give SEC the full responsibility. So I have proposed this, which would in effect protect the right of the State in which the proposed purchaser of the land lives to be protected by the laws of his own State against people who would attempt to defraud him by the use of interstate systems.

It is a fine question, but apparently the Department of Justice feels that the present laws are not adequate because it has made an appearance before the Banking and Currency Committee suggesting that some new legislation is needed.

Senator McCLELLAN. Thank you very much. Any questions? Very well, Senator Fannin.

STATEMENT OF HON. PAUL FANNIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator FANNIN. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before your subcommittee and offer a few comments on crime, the Nation's foremost domestic problem.

I want to commend the subcommittee for what they are doing. Mr. Chairman, I have been very much impressed with your statement and objectives.

As a leader of the civilized world, America is looked to for leadership in many fields, but crime prevention is not among them. In fact, America has one of the highest crime rates of any nation—and this despite the fact that our whole system of government is based upon moral and political truths which demand that each of us respect our laws and the person and property of our fellow men.

Yet, as clearly shown by the recent report of the President's Commission on Law Enforcement and Administration of Justice, society needs protection from itself. As related by you, Mr. Chairman, approximately one-third of a representative sample of all Americans say it is unsafe to walk alone at night in their neighborhoods; slightly more than one-third say they keep firearms in the house for protection against criminals; approximately 30 percent say they keep watchdogs for the same reason; and 20 percent say they would like to move to another neighborhood because of their fear of crime. Yes, there is a problem.

The basic cause of crime is, of course, the increasing moral and social disorder that mark contemporary society, and it is thus less a problem for the Congress than for parents, for churchmen and for educators. But Congress can—and must—properly aid the States and cities in developing plans to combat crime and to restore law and order throughout the land.

First, Congress has a definite responsibility to take corrective action against crime here in Washington, D.C. It is a national disgrace that our Capital City—which should be a showplace for visitors from throughout the world—has a crime rate three times the national average, which is itself far too high. Congress should do everything in its power to make this a model city in which all Americans—visitors and residents alike—can take pride and feel secure.

Secondly, Congress can work as a partner with State and local governments in eliminating the conditions that lead to crime. Needless to say, the correct answer is not merely more spending, more welfare. In far too many instances, particularly in the Nation's great urban centers, current welfare and housing policies have lead to an undue concentration of idle and aimless and demoralized persons in an environment which breeds crime and criminals. And no program to restore law and order can be effective unless it comes to grips with this fact. Congress must find answers to the problems which many years of permissive legislation and policies have not cured, but have only compounded.

Thirdly, Congress can provide the Nation's many excellent State and local law enforcement agencies with the tools they need to do a

better job of enforcing the law, of controlling the criminal element. And in this instance money is the answer. More than any other public service bureau, law enforcement agencies have been caught in public economy drives—so much so that they can neither retain highly trained officers nor attract qualified recruits in sufficient numbers.

Furthermore, law enforcement agencies, unlike many of the professional criminal groups with which they must contend, have for the most part been unable to take advantage of the latest technological advances, advances which offer an element of hope to policemen and protection to society. And the only way to affect a change is to give law enforcement agencies the money they require, the money they must have.

In this regard, I support the new legislation before this subcommittee, particularly the Safe Streets and Crime Control Act of 1967. This act is important in two respects: First, it will make needed money available to State and local law enforcement agencies; and secondly, while acknowledging that crime is essentially a local problem that must be dealt with by State and local governments, the act recognizes the need for national assistance in coping with lawlessness and in providing the majority of Americans, those who obey the laws, with their right as citizens to adequate protection against crime.

For far too many years our meager efforts to deal with crime have failed because we ourselves have neglected to consider the opinions of the foremost authorities on the subject—law enforcement officials themselves. They know better than anyone else what needs to be done—what the absence of adequate financing and public support have made it impossible for them to do. Now at last they will have that chance.

The Safe Streets and Crime Control Act will provide funds so that law enforcement agencies, acting either alone or as partners, can undertake immediately a host of needed reforms—including better trained, equipped, and paid policemen; more planning, pilot and research projects; more sophisticated crime laboratories and equipment; more and better community relations programs; and in-depth studies of crime and its causes. Therefore, the act will provide an element of immediate relief while opening the door to long-range solutions.

I have, however, a word of caution. There is some concern among State and local law enforcement officials that too much power, too much authority, is given the U.S. Attorney General under the act. For my own part, I am confident this is not the case. But Congress must make certain that the Attorney General's authority to approve or disapprove projects for funding is limited to their probable fulfillment of the aims of the act and to their economical and efficient administration. In other words, the Attorney General should write guidelines sufficiently broad to permit maximum flexibility in meeting what are essentially different needs in different communities.

Congress must preserve at all cost the right of State and local law enforcement agencies to approach the crime problem differently and individually, accepting those anticrime concepts which work, rejecting those which do not.

In my own State of Arizona, for example, the problems of crime and law enforcement are considerably different from the problems existing in other States. For example, Arizona shares a common border

with the Republic of Mexico, a situation which gives rise to mutual border problems, particularly the flow of narcotics.

Also, Arizona has a peculiar problem with regard to its Indian population, which is the largest of any State. Many of the Indians live on reservations—on which outside law enforcement officers have only limited authority—and more than 75 percent of the adult Indian population cannot speak English, nor does it share a basic language that is generally spoken. Naturally, these situations create unique problems for law enforcement agencies and officers.

Congress must extend protection against crime and lawlessness to our Indian population—the overwhelming majority of which lives within the letter and spirit of the law. One way of doing this, it seems to me, is to train more young Indian men for the honorable profession of law enforcement.

The point I have sought to make is that Arizona's problems in crime and law enforcement require different solutions than do similar problems in other States. In the long run, this autonomy will produce effects, as it already has in the important field of education, far more beneficial than could ever be achieved by a single national technique. And it will do so because it encourages experimentation and innovation.

In conclusion, Mr. Chairman, I urge this subcommittee and the Congress to act favorably on this needed legislation, and to do so at the earliest possible opportunity.

We must make our cities and streets safe—our homes secure.

I commend you again, Mr. Chairman and members of the subcommittee, for your dedication in seeking legislation to accomplish the objectives outlined by the chairman and the members of the subcommittee. Thank you, Mr. Chairman.

Senator McCLELLAN. Thank you very kindly.

Any questions?

Thank you very much, Senator.

Senator BIBLE?

STATEMENT OF HON. ALAN BIBLE, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator BIBLE. Thank you, Mr. Chairman. I certainly appreciate your invitation to testify this morning. I am going to confine myself almost entirely to S. 674, one of the three bills that you mentioned that you were going to hold hearings on this morning. I am very well aware of the fact that you have 11, 12, 13, or 14 bills before your subcommittee on the general subject of crime. I hope that I might be able to contribute something of value based upon my experience as chairman of the Senate District Committee.

Crime is not a new subject to us in that committee, and we have devoted long and exhausting hearings on it in the 87th, the 88th, and the 89th Congresses. We have held more than 19 days of hearings. We have heard 100 witnesses. We held many, many executive sessions with the House of Representatives, in trying to hammer out an omnibus crime bill. We were finally successful in doing that, and unfortunately it was vetoed by the President.

The bill tried to meet some of the fatal shortcomings of the *Mallory* decision, which had a direct effect of denying police officers the right to question suspects. The *Mallory* decision which formulated the Supreme Court's interpretation of Rule 5(a) of the Federal Rules of Criminal Procedure was decided, as you well know, in 1955.

Mr. Chairman, I develop in detail the main parts of the *Mallory* decision, and then recite the Court applications of narrowing that decision as time went along, and I would ask consent that my entire statement, which is rather lengthy, be incorporated in full in the record, and that I simply highlight those parts which I think are of particular interest to this committee.

Senator McCLELLAN. Without objection it will be printed in the record at this point. You may highlight it, Senator.

(The statement referred to follows:)

STATEMENT OF SENATOR ALAN BIBLE, A SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I appreciate your invitation to testify on S. 674, a bill providing for voluntary confessions and admissions to be admitted into evidence in criminal trials.

At the outset, Mr. Chairman, I want to personally commend you and the members of your Subcommittee for undertaking such a broad and comprehensive legislative crime program. I note that there are 11 legislative bills, and each of them involves a separate subject matter.

As you well know, Mr. Chairman, the Senate District Committee, of which I am the Chairman, has engaged in a long and exhaustive study of crime in the District of Columbia. Commencing in the 87th Congress and extending through the 89th Congress when the omnibus crime bill was finally approved by the Congress, the Committee has held more than 19 days of crime hearings, heard from more than 90 witnesses, and has met in more than 10 executive sessions with members of the House District Committee.

The omnibus crime bill, approved in the past Congress, but subsequently vetoed by the President, sought to curb crime through a number of legislative measures. In particular, the bill sought to correct the abuses and fatal shortcomings of the Mallory decision, which has had the direct effect of denying police officers the right to question suspects.

The Mallory decision, which formulated the Supreme Court's interpretation of Rule 5(a) of the Federal Rules of Criminal Procedure, was decided in 1955. In effect, the Mallory ruling requires police officers to take an arrested suspect before a commissioner or magistrate without unnecessary delay. Unfortunately, in defining unnecessary delay the Mallory decision resorted to language that has placed a heavy restriction on police activity following arrest. The decision, in pertinent part, stated:

"The scheme for initiating a federal prosecution is plainly defined. The police may not arrest upon mere suspicion but only on 'probable cause.' The next step in the proceeding is to arraign the arrested person before a judicial officer as quickly as possible so that he may be advised of his rights and so that the issue of probable cause may be promptly determined. The arrested person may, of course, be 'booked' by the police. But he is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself, even if not so designed, to eliciting damaging statements to support the arrest and ultimately his guilt.

"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."

During the decade since Mallory, the meaning of "unnecessary delay" in Rule 5(a) has not been satisfactorily resolved.

As a matter of fact, the courts of the District of Columbia have interpreted Rule 5(a) as meaning essentially no delay between arrest and commitment. This

extremely narrow and impractical interpretation has had the effect of barring police officers from questioning suspects.

It has been stated by the District of Columbia Appeals Courts in various opinions that the time-lapse between arrest and presentment is not the sole measure of delay; yet the court has consistently found that a delay surpassing 4½ hours as unnecessary, regardless of the other circumstances. Shorter periods of time, however, have produced less predictable results. One member of the court has stated flatly that "confessions obtained by questioning an arrested person before thus arraigning him are not admissable in evidence". In his view, even a 5-minute delay for questioning may be too long. 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 witnesses had seen him shoot. In *United States* v. *James J. Jones*, (Crim. No. 366–63), the District of Columbia trial judge excluded a confession which occurred 15 minutes after arrest. At times, certain panels on the court have appeared to endorse the position that any delay for questioning is unnecessary per se, maintaining that "if the arrest was made on probable cause, the accused should have been taken without delay to a magistrate. If there was no probable cause, he should not have been arrested."

Mr. Chairman, after the many, many hours and days that my Committee has devoted to the study of crime in the District of Columbia, I must admit that the Mallory rule appears to be a factor influencing the increase in the crime rate. Due to it, criminals are let free by the courts, while many others are permitted to plead guilty to lesser pleas that are in many instances completely incompatible with the seriousness of the crime that has been committed. Certainly, I do not look kindly upon principles of law that allow an accused to be treated more kindly than otherwise should be the case.

None of us can read the day-to-day newspaper accounts without realizing that serious crimes have dramatically increased in recent years in the District of Columbia as well as in all of our major cities. Crimes reported by the Washington Metropolitan Police Department as Part I offenses [murder, manslaughter, negligent homicide, rape, robbery, aggravated assault, housebreaking, grand and petit larceny, auto theft] have increased from 20,163 in fiscal 1950 to 34,765 in fiscal 1966, a 72 percent increase in 16 years. Although serious crime is generally increasing throughout the United States, the District's increase in recent years has been greater than that in cities of comparable size. In 1966, misdemeanor offenses included in Part I crimes increased by 47 percent over 1950. On the other hand, Part I felonies increased by 89 percent over 1950.

Meanwhile, there has been a decline in police clearance rates, or the proportion of cases solved. In 1950, the clearance rate for Part I offenses in the District of Columbia was 48.5 percent; in 1966, it was down to 26.3 percent. Some observers attribute the decline to the Mallory rule; they point out that the clearance rate is adversely affected by limits on police ability to question a suspect about serious crimes which he may have committed in addition to the one for which he has been arrested.

Although there has been a tremendous increase in crime in the District during the past 15 years, available statistical data on felony prosecutions reveals that the number of felony prosecutions has steadily decreased in the District of Columbia. Reported felonies nearly doubled between 1950 and 1965, but nevertheless the number of felony prosecutions decreased in the same period by 39 percent. Moreover, the decline in felony prosecutions has been accompanied by increasing pleas of guilty to lesser offenses. In 1950, pleas to lesser offenses or fewer counts were accepted from 21 percent of defendants. By 1960, the percentage was 38 percent and by 1965, it was still climbing. During the same period, the percentage of pleas to the counts contained in the original indictment decreased from 29 percent to 14 percent.

These statistics clearly point out that something is drastically wrong with our system of criminal justice. What is causing the drastic decline in felony prosecutions, as well as the growing increase in pleas of guilty to lesser offenses, may be conjecture, but in my opinion, the Mallory decisions and other rights granted defendants by the courts have contributed to it.

What is to be done about it is properly a matter for the Congress. Certainly, there must be remedial legislation to correct the abuses of Mallory and to properly allow some opportunity for police officers to question.

It seems to me that we have become so obsessed with uncovering new rights and safeguards for the criminal that we have unbalanced the scales of justice, and find ourselves in the unenviable position of losing control of the crime and violence that are running rampant in our cities.

The fundamental rights to the safety of our homes, our streets, and our places of business cannot continue to be eroded. The sophisticated criminal, the hoodlum, the thrill thug, and the juvenille delinquent must be stopped if our nation is to remain a nation of laws and if our countrymen are to be respecters of those laws.

The Justice Department, in testifying before the Senate District Committee in the 89th Congress in connection with proposed crime legislation, supported post-arrest procedures that would permit police officers to have some leeway in questioning a suspect following arrest. The spokesman for the Justice Department stated the following:

"But in policing a large metropolitan city where the police deal more frequently from crimes of violence, such as rape, murder, robbery, burglary, and other crimes requiring prompt arrest and often involving few, or no, witnesses, and little, if any, detectable evidence, questioning suspects is indispensable in law enforcement.

Of equal significance, and within a 4-year period after writing the opinion in the Mallory case, Mr. Justice Frankfurter, in writing for the court in *Culombe* v. *Connecticut* (367 U.S. 568, 571 (1961)), stated:

"Despite modern advances in the technology of crime detection offenses frequently occur about which things cannot be made to speak. And where there cannot be found innocent human witnesses to such offenses, nothing remains—if police investigation is not to be balked before it has fairly begun—but to seek out possibly guilty witnesses and ask them questions * * *. Such questioning is often indispensable to crime detection. Its compelling necessity has been judicially recognized as its sufficient justification, even in a society which, like ours, stands strongly and constitutionally committed to the principle that persons accused of crime cannot be made to convict themselves out of their own mouths."

The President's Commission on Crime in the District of Columbia, in its Report dated December 15, 1966, also supported a change in post-arrest procedures in order to afford police officers the opportunity to question suspects. I am indeed gratified that the Commission, in its long and conscientious study of crime in the District, concluded that such a change is considered necessary. However, I have some reservations about the change to the Mallory rule as proposed by the Crime Commission. In essence, the Commission's proposal would allow police officers to detain a suspect for a reasonable period of time. I am sure if the courts could be restrained in their interpretation of reasonableness, the procedure might then work perfectly well. My concern is that reasonableness does not have any definite meaning, and in time, problems as they now exist concerning the interpretation of unnecessary delay could develop and narrow the time the police officers might have for questioning a suspect.

Mr. Chairman, I am certainly not wedded to any particular concept of remedial legislation designed to correct the abuses brought on by the Mallory decision. In Title I of the omnibus crime bill, my Committee and the Congress subsequently approved the concept of providing that an accused who waives counsel can be held by police officers and questioned, exclusive of interruptions, for an aggregate period of 6 hours. At the end of this period, the accused would be brought before a committing magistrate. Further, any confession or admission given by the accused during a period of detention would be admissible at trial only if uncoerced and completely voluntary. The final determination with regard to the issue of voluntariness would be resolved by the judge and the jury.

Thus, in my view, S. 674 and Title I of the omnibus crime bill are quite similar, and differ only in that the latter places an outside limit of an aggregate period of 6 hours on detaining a suspect for questioning. It was the view of the members of my Committee, in their careful consideration of procedures to modify Mallory, some time period be included, so that police officers would be unable to detain a defendant in police custody for an indefinite period of time.

Whatever action the Congress takes in this matter, it seems absolutely imperative that statutory language be approved that sets forth in clear and positive terms the guidelines that will control and guide police officers once they have taken an accused into custody. Experience to date has taught us, if nothing else, that the decisions of the court are too inexact to deal with the post-arrest prob-

lem. It is only through legislation of the type heretofore discussed that we are going to remove the great aura of uncertainty that exists at the present time with regard to the procedures that police officers are to follow, once an arrest has been consummated.

If and when this is done, the immunity for criminals based on unsubstantial and frivolous grounds will be removed and the courts will once again be able to receive uncoerced and voluntary statements and utilize them as the trial judge and jury deem appropriate.

The bill under consideration today and the crime bills that have been before the District Committee have dealt with the question of admissibility of confessions and admissions. As far as these bills relate to the Mallory rule and related cases, they relate also to rules of evidence and interpretations of the Federal Rules of Criminal Procedure, matters clearly within legislative cognizance of Congress.

However, the Supreme Court decisions in *Escobedo* and *Miranda* based further restrictions on police interrogation upon the Fifth Amendment self-incrimination clause and the Sixth Amendment guarantee of the right to counsel. Thus, since *Mallory* limits interrogation between arrest and presentment, and *Miranda* regulates conditions for any custodial interrogation by police, confessions obtained in conformity with one rule might still be barred for noncompliance with the other rule.

As yet, there are still unanswered questions concerning the interplay of these rules. For instance, there is the question of whether a delay in presentment, made necessary by application of the *Miranda* requirements, may become "unnecessary delay", under *Mallory*. It is also an open question as to whether a suspect may waive his right to prompt presentment under Rule 5(a). It is as yet too soon to tell what the long-term effect of *Miranda* will be. The police and courts will need sufficient time to accommodate themselves to the decision before a meaningful body of law will develop.

Additionally, the legal remedies for *Miranda* violations are far more comprehensive than those developed under *Mallory*. Because *Miranda* deals with constitutional rights, the defendant would have available habeas corpus and collateral attack under 28 U.S.C. Sec. 2255, as well as other procedures.

Unlike the District of Columbia, law enforcement in state and other Federal jurisdictions, in my view, undoubtedly will be seriously affected by the *Miranda* decision. The impact of *Miranda* on the law enforcement in the District has been greatly minimized as a result of the *Mallory* rule and the effective manner in which it has curtailed police questioning. The legal application of *Mallory* in the District through the courts has been so effective that the United States Attorney for the District of Columbia in October of 1964 instructed the Metropolitan Police Department as follows:

"That persons under arrest are not to be questioned regarding the facts of the offense following their arrival at precinct or headquarters, until after their appearance before the magistrate and appointment or retention of counsel."

This order has since been rescinded, and I am happy to report that as a result of the crime hearings held by my Committee in the 89th Congress, Metropolitan Police officers are now operating under police regulations that permit members of the force a 3-hour period in which to question suspects following arrest.

From my limited study of *Miranda*, I can foresee certain disastrous effects on police procedures both here in the District and other state and Federal jurisdictions, and I would like to point these out at this time.

First, the admissability of "thresh-hold" statements given by persons at the scene of a crime would be in serious jeopardy. These spontaneous statements, often actually made during or immediately after commission of a crime, and before the defendant is put in a position in which he is cut off from the world around him, have been extremely valuable and particularly trustworthy. Also, such thresh-hold statements are important in obtaining a fuller confession at a subsequent time in the police investigation.

Second, *Miranda* puts on the government the burden of showing that the defendant was informed of his rights, and that his confession or other statement was made with knowledge of his rights. Often, this would be impossible to prove. In the circumstances surrounding apprehension and taking into custody of a defendant, it may be difficult or dangerous to stop to apprise the person of his rights and to obtain the quantum of proof required by *Miranda* that the defendant was properly notified and that his statement was made only after being so in-

formed. To put this burden on the police would mean that arrests and post-arrest acts would become a travesty on what a policeman's job should be.

While, as I said previously, the Congress can and should legislate with regard to *Mallory*, the situation with *Miranda* may be different. Because *Miranda* deals with constitutional rights and thus allows collateral attack, it may become necessary for Congress to amend the Constitution to extricate the criminal law from the dilemma created by that case.

In any event, time is of the essence. As has been said many times, a trip of a thousand miles begins with a single step, and I look upon S. 674 as the first step forward of an advance that must not be stopped.

Mr. Chairman, in closing, I want to thank you for allowing me to appear here today and to present my views on these important crime legislative matters.

Senator BIBLE. It became apparent to us in hearing these many, many witnesses, and there were pros and cons obviously, and there came before our committee many suggestions. There is no easy or quick or patent answer to this question. It is many faceted, and certainly there is a long-range approach with which I concur, but there are intermediate and more timely remedies which I think can be taken.

I am going to confine myself as best I can to the question of the bill introduced by yourself, Mr. Chairman, with which I am in agreement. I think this bill will go a long way or potentially a long way toward helping us out of these many, many problems.

I became convinced personally, as chairman of the D.C. Committee, that the *Mallory* rule was a factor in influencing the increase in the crime rate, and I know that can be argued pro and con. It is an individual interpretation as to whether the *Mallory* rule was one of the factors in the District of Columbia. Personally I think it was, based upon the testimony which I heard and the actual statistical information that came before our committee, which I think could be of some interest to you.

Senator MCCLELLAN. Senator, if I may interrupt.

Senator BIBLE. Certainly.

Senator MCCLELLAN. Is there any testimony at all to refute the conclusions you have come to with respect to its impact?

Senator BIBLE. Well, I think there are those in the field of criminology who would testify that this in itself wasn't the main factor, that there were the psychological factors, there was the upbringing of the fatherless child in the District of Columbia who had no place to go and no playground to play on and no recreation and no job opportunities. I recognize these as long-range factors.

Senator MCCLELLAN. Nobody questions those may be factors.

Senator BIBLE. They were factors. I wouldn't say that there was a unanimous feeling of those who testified. The record will speak for itself, and believe me it is a long and voluminous one, as to the effect of the *Mallory* decision. Personally I think *Mallory* had an adverse effect on law enforcement, and certainly this was the belief unanimously of those charged with the responsibilities of keeping the streets safe, and that was the chief of police and the men under him, the men who walk the street.

Senator MCCLELLAN. Is this the opinion of those charged with the responsibility, the unanimous opinion?

Senator BIBLE. I think without exception.

Senator MCCLELLAN. That is what I was interested in getting in the record.

Senator BIBLE. Now in the District of Columbia there are a few statistics, and I am not going to burden this committee because I know you have an extensive witness list, but I want to highlight a few of the more significant ones that occur to me.

In crimes reported in the Washington Metropolitan Police Department as part 1 offenses—part 1 offenses are murder, manslaughter, negligent homicide, rape, robbery, aggravated assault, housebreaking, grand and petit larceny, and auto theft—there has been an increase from 20,000 in fiscal 1950 to 34,000 in fiscal 1966; a 72-percent increase in 16 years, and although serious crime is generally increasing throughout the United States, the District's increase in recent years has been greater than in cities of comparable size, and constantly there was the statement made before our committee that we compare favorably in the number of crimes committed with any other State.

My retort has always been, well, that is a bad comparison because any crime is bad. The mere fact that we compare well with cities of comparable size I don't think puts us in a very favorable light.

I think it is significant statistically to point out that there has been a decline in police clearance rates for the proportion of cases solved. In 1950 the clearance rate for part 1 offenses, which I just mentioned, was 48½ percent. In 1966 it was down to 26.3 percent.

Some observers attribute the decline to the *Mallory* rule. They point out that the clearance rate is adversely affected by limits on police ability to question a suspect about serious crimes which he may have committed in addition to the one for which he had been arrested.

Although there has been a tremendous increase in crime in the District of Columbia during the past 15 years, available statistics data on felony prosecutions reveal that the number of felony prosecutions has steadily decreased in the District of Columbia. Reported felonies nearly doubled between 1950 and 1965, notwithstanding the fact that these doubled, felony prosecutions decreased in the same period by 39 percent.

Moreover, the decline in felony prosecutions has been accompanied by increasing pleas of guilty of lesser offenses. In 1950 pleas to lesser offenses or fewer counts were accepted from 21 percent of the defendants. By 1960, the percentage was 38 percent, and by 1965 it was still climbing.

These statistics clearly point out, it seems to me, that something is drastically wrong with our system of criminal justice. What is causing the drastic decline in felony prosecutions as well as the growing increase in pleas of guilty to lesser offenses may be, again repeating, conjectural, and depending upon the person to whom you are talking, but in my opinion the *Mallory* decision and other rights granted to defendants by the courts have contributed to it.

It seems to me we have become obsessed with uncovering new rights and safeguards for the criminal to such a degree that we have unbalanced the scales of justice, and find ourselves in the unenviable position of losing control of the crime and violence that are running rampant in our cities.

The fundamental rights, the safety of our homes and our streets and our places of business, cannot continue to be eroded. The sophisticated criminal and the hoodlum and the thrill thug and the juvenile

delinquent must be stopped, if our Nation is to remain a Nation of law, and if our countrymen are to be respectors of these laws.

I develop then some of the other decisions in connection with the *Mallory* case in my full statement. I think it is significant to note that the President's Commission on Crime in the District of Columbia, in its report dated December 15, 1966, also supported a change in post-arrest procedures, in order to afford the police officers the opportunity to question suspects. I am indeed gratified that the Commission, in its long and conscientious study of crime in the District, concluded that such a change is considered necessary.

However, I have some reservations about the change in the *Mallory* rule as proposed by the Crime Commission. In essence, the Commission's proposal would allow police officers to detain a suspect for a reasonable period of time, and again we are right back almost where we started from, because I am sure if the courts could be restrained in their interpretation of reasonableness the procedure might then work perfectly well.

My concern is that reasonableness does not have any definite meaning, and in time problems as they now exist, concerning the interpretation of unnecessary delay, could develop, and narrow the time that the police officers might have for questioning a suspect. I am certainly not wedded to any particular concept of remedial legislation designed to correct the abuses brought on by the *Mallory* decision.

In title I of our omnibus crime bill, which really is the title which should be discussed with you in line with your bill S. 674, the committee and the Congress approved the concept of providing that an accused who waives counsel can be held by police officers and questioned exclusive of interruptions for an aggregate period of 6 hours. At the end of this period, the accused would be brought before a committing magistrate.

Further, any confession or admission given by the accused during a period of retention would be admissible at the trial only if uncoerced and completely voluntary, which is the thrust of your bill.

The final determination with regard to the issue of voluntariness would be resolved first by the judge and then by the jury, and thus in my view S. 674 and title I of the omnibus crime bill are quite similar, and differ only in that the latter places an outside limit of an aggregate period of 6 hours on detaining a suspect for questioning.

It was the view of the members of my committee, in their careful consideration of procedures to modify *Mallory*, that some time period be included, so the police officers would be unable to detain a defendant in police custody for an indefinite period of time. Whatever action the Congress takes in this matter, it seems to me that it is absolutely imperative that statutory language be approved that sets forth in clear and positive terms the guidelines that will control and guide police officers, once they have taken an accused into custody.

Experience to date has taught us, if nothing else, that the decisions of the court are too inexact to deal with the postarrest problems. It is only through legislation of this type heretofore discussed, and being discussed here this morning, that we are going to remove this area of uncertainty that exists at the present time.

The bill under consideration today, the crime bills that have been before the District Committee, have dealt with the question of admis-

78-433—67——10

sibility of confessions and admissions. As far as these bills relate to the *Mallory* rule and related cases, they relate also to rules of evidence, and the interpretation of the Federal rules of criminal procedure, matters clearly within the legislative cognizance of Congress. However, the Supreme Court decisions in *Escobedo* and *Miranda*, place further restrictions on police interrogation based upon the fifth amendment self-incrimination clause, and the sixth amendment guarantee of the right to counsel. Thus, since *Mallory* regulates condition for custodial interrogation by police, confessions obtained in conformity with one rule might still be barred for noncompliance with the other. As yet there are still unanswered questions concerning the interplay of these rules.

For instance, there is the question of whether a delay in presentment made necessary by application of the *Miranda* requirements may become unnecessary delay under *Mallory*. It is also an open question as to whether a suspect may waive his right to prompt presentment under rule 5(a). It is yet too soon to tell what the long-term effect of *Miranda* will be. The police and courts will need sufficient time to accommodate themselves to the decisions before a meaningful body of law will develop.

Additionally, the legal remedies for *Miranda* violations are far more comprehensive than those developed under *Mallory*, which really in the final analysis had its delimiting effect solely here in the District of Columbia, because it was applying a rule of Federal criminal procedure to the District, whereas most States relied upon their State laws and statutes, and were not confronted with rule 5(a). But here all crimes are tried under the limitations of rule 5(a).

Unlike the District of Columbia, law enforcement in State and other Federal jurisdictions will be seriously affected by the *Miranda* decision. The impact of *Miranda* on law enforcement in the District has been greatly minimized as a result of the *Mallory* rule, and the effective manner in which it has curtailed police questioning. The legal application of *Mallory* in the District to the courts has become so effective that the U.S. attorney in the District of Columbia in October 1964 instructed the Metropolitan Police Department as follows:

That persons under arrest are not to be questioned regarding the facts of the offense following their arrival at a precinct or headquarters until after their appearance before a magistrate and appointment or retention of counsel.

I am happy to say that the order has since been rescinded, and I am happy to report that as a result of the crime hearings held by my committee, Metropolitan Police officers are now operating under police regultaions that permit members of the force a 3-hour period in which to question suspects following arrest.

I then go on to give my observations on some of the problems created by *Miranda*, and expressing some frank doubt as to how you particularly deal with *Miranda* problems, in view of the fact that it was premised and bottomed on the Constitution, and whether this does take a constitutional amendment. I frankly don't know. Maybe it takes a delimiting bill similar to that suggested by Senator Ervin with which I am not too familiar, I haven't studied it at any depth, and so accordingly, I somewhat hesitate to comment on that.

I thought that my comments might be of some help to the committee as you move forward with S. 674. The real problem that we had, in trying to correct what we felt was the adverse effect of the *Mallory* decision, was the time factor, and again this caused all kinds of problems, and ultimately resulted in an Executive veto on grounds that the time allowed for questioning was too long.

It is significant that the then Attorney General of the United States, Senator Kennedy, in the 88th Congress, speaking through his Chief Deputy, Nicholas Katzenbach, later Acting and then Attorney General, now over in the State Department, suggested a law which did allow a maximum of 6 hours elapsed time for this period of questioning. Later the now Attorney General, Ramsey Clark, and I know he is going to testify before you later, suggested that we could accomplish this change administratively rather than freezing it into a statutory law, and that the time to be allowed should be in the neighborhood of 3 hours.

It seems to me, and in response to a question that Senator Kennedy posed a few moments earlier, I don't try to give this priority in this long running hard fight against crime, but it is essential as one of the steps as we move forward in that direction, if we are to solve this very, very bad crime problem.

Thank you very much, Mr. Chairman. I am available for questions.

Senator McCLELLAN. Senator, as I understand you, you think a very serious problem has been created by Court decisions, and you think it is the three decisions to which you have referred?

Senator BIBLE. That is correct.

Senator McCLELLAN. You feel that the Congress has a duty to seek a remedy?

Senator BIBLE. I do.

Senator McCLELLAN. For the harm that these decisions are doing?

Senator BIBLE. I do.

Senator McCLELLAN. I feel they do militate against the best interests of society, the protection of society, and make it more difficult for law enforcement officers to perform their function.

Senator BIBLE. I certainly agree, and I might just add an additional thought. We have done everything we could to "beef up" the Police Department here in our Nation's Capital. It has an excellent Police Chief. It is a fine Department. We have added to its strength. We passed a pay bill last year to increase their pay 10 percent. It ranks among the third or fourth cities in the entire United States in the pay for beginning police officers. Notwithstanding everything that we have attempted to do, in building up our recruiting practices, more attractive pay, and a very fine retirement system, we can't get sufficient officers to bring it up to strength. Many of these potential police officers simply say they don't want to serve in this particular capacity. I think they are about 290 or 300 short of their authorized strength. There has been money for them, but the Department can't recruit them.

Senator McCLELLAN. What is the minimum, Senator, in the District?

Senator BIBLE. I think the last raise took it up to about $6,700 as a starting salary.

Senator McCLELLAN. Starting at around $550 a month?

Senator BIBLE. Very close to $550, just a shade over that figure.

Senator MCCLELLAN. And then they proceed on?

Senator BIBLE. That is right, and their promotion steps I think are somewhat attractive, but even with that, the point I am making is that we can't build our police force up to the authorized strength.

Senator MCCLELLAN. I personally think even that pay is very, very low, and still should be increased. I am in favor of paying these people who dedicate their lives to law enforcement, who take the risks to protect our homes, protect our families, much more, but my concern is that merely increasing the salaries, merely spending more money, does not resolve the problems that are created by court decisions which make it difficult, I think unusually difficult, unnecessarily difficult, for these officers to perform their duties.

Senator BIBLE. I am in agreement with you.

Senator MCCLELLAN. I can well imagine, I think we all can, the impact on the morale of a dedicated police officer who works hard, diligently, and faithfully; who finally succeeds in solving a crime by apprehending a criminal suspect who voluntarily confesses, only to learn that because of some rule adopted afterward, something the officer couldn't possibly have known about, and something unknown in the regular practices and procedures heretofore approved throughout the history of our jurisprudence, this guilty criminal is turned loose. The officer probably risked his life to apprehend the criminal. He risks his life every day he is on duty, and sometimes when he is not on duty. I think this may be having some impact on the recruitment of personnel for our police departments.

Senator BIBLE. I am sure it has, and I think our testimony will at least indicate that.

Senator MCCLELLAN. As I understood you with respect to S. 674, you think it could be improved by stating some time limit?

Senator BIBLE. This is my own personal feeling on it. In my prepared statement, which will be before you, I have cited some of the examples of the application of the *Mallory* rule, where detention of 15 minutes, for example, had resulted in the throwing out of a confession.

I think if it is possible to do so, and this is always where the going gets rough in a bill of this kind, we should, I believe, try to spell out the time. We took the figure that was given to us by the then Attorney General of the United States, and we put it in the bill. The Justice Department felt then that that was too long a period of time. They all say that the police officers' hands should not be handcuffed, that they should have a reasonable length of time in which to question the suspects, but it all falls upon what is that reasonable length of time. I don't know whether you can come up with a satisfactory answer.

Senator MCCLELLAN. In other words, you are apprehensive, if the time limit is not set by law, that what you would think is reasonable time and what you have in mind in voting for the bill, might vary under different circumstances. I can appreciate that, "reasonable time" might be construed in a different way, or for all practical purposes to deny any time, and reasonable time might be construed as being just the time from the point of apprehension, or arrest, to the magistrate.

Senator BIBLE. That is exactly my position. I base that, Mr. Chairman, on the historic pattern set by the Court decisions after the *Mallory* rule. You only have to go to the *Mallory* rule and the subsequent decisions to see how difficult it is and the wide variations.

Senator MCCLELLAN. It says "without unnecessary delay," and this has been interpreted to mean you have got to start about the time you take a suspect into custody, you have got to be on your way to the magistrate with him.

Senator BIBLE. At least it has a wide variety of interpretations, and most of them in my judgment very much limiting the police officer.

Senator MCCLELLAN. Any questions?

Senator HART. Mr. Chairman, perhaps this is not a question, and I know that the record as we go along will give voice to some of the concerns by those who feel that the Court has moved prudently, and the Congress ought not to overreact to these crime statistics nor respond too enthusiastically or unwisely to the need to protect society. But let me just make this comment and I know everyone who has testified thus far will share this generality.

Some of these decisions cause a lot or trouble, and it is the kind of trouble that no police state ever suffers from. The people of this country react with abhorrence when they read of people who have to live in a country where they knock on the door in the middle of the night, take the man away, not to a magistrate but to some jail. We like to think isn't it nice that we don't do things like that. Let's be sure that we don't begin to move in that direction by overaction.

The right to keep quiet, that is the right of the poor man as well as the rich fellow, and the right to a lawyer and to a phone booth at least to get the lawyer right away, that is everybody's right. To be told promptly on arraignment of what it is that you are charged with, that is a right, and none of these are new rights. There is nothing new about this.

What I sense may be new is a series of decisions by which the Court seeks to insure that those rights which wealthy Americans have always enjoyed will be extended to all Americans, and it does cause trouble as we seek to do this, but I think we all share the desire that we not overreact.

Senator BIBLE. I certainly concur. I don't want a police state. I think there is very, very little of it and there is not any evidence that that exists in any police department, at least to my knowledge.

The days of brutality and of beatings and of all of this type of thing, which I suppose did happen at one time in the buildup of our American jurisprudence system, I don't think exists today. Maybe the pendulum swung too far the other way. I don't want it to swing as far as you say, but I want to try to find a good, sound middle ground where our streets will be somewhat safer.

Senator HART. I wasn't conscious that I indicated where I thought it should be. I don't. I do feel a responsibility to express what I am sure witnesses will later, a concern that we not overlook what is very basic.

I know that we have, if any, very few police departments where they beat up suspects any more, thanks in part to court decisions. But now we have improved psychological techniques which leave no blood, but can be perhaps just as influential in operating on a person held in custody.

No, I am not suggesting that any Member of the Senate is for a police state, by supporting these bills. That is absurd. My only point is that we are reacting to court decisions which reflect that court's concern with rights that most of us have always assumed we would be given. I think all of us would have gotten these rights had we been in a hole, but these same rights should be available to somebody that can hardly spell his name.

Senator McCLELLAN. Do you have any questions, Senator?

Senator HRUSKA. No.

Senator McCLELLAN. Are there other questions? If I may interrupt for just a moment off the record.

(Discussion off the record.)

Senator McCLELLAN. Back on the record.

Senator KENNEDY. Senator, it is my understanding that the relevant provision of the Nevada Code is very similar to the Federal Code. Chapter 171, section 200 of the Nevada Code reads as follows:

> The defendant must in all cases be taken before the magistrate without unnecessary delay.

I am wondering whether this has, in your opinion, made it more difficult for law enforcement officials in Nevada?

Senator BIBLE. Frankly, I am not conversant with the problems that they have had since these later decisions. I was attorney general of Nevada. During that period of time I don't think we had any particular difficulty with the Nevada statute which you read, which is almost identical, I believe in all of the States. But in reading the press on some of the more recent criminal cases that they have had there, I do believe that *Miranda* and *Escobedo* both have given them difficulty. Obviously *Mallory* hasn't because that is a Federal rule, though the Federal rule is similar to the Nevada statutory one.

Senator McCLELLAN. Anything further? Speaking of a police state, I fail to see where we were moving toward a police state in this country prior to these decisions. Now others may think we were, but I fail to see that we are moving toward a police state as of now. The trend seems to be more in the direction of a crime-ridden society, and that is what gives me concern.

We have to keep some balance. The rights of the individual simply must be protected. But there is also an obligation, I believe, on the part of citizens to cooperate, in an effort to try to bring about law and order and respect for law and order. Anyway, we are going into this area very thoroughly, and I hope that in the course of these hearings we can get a cross section of views from law enforcement officials in this country.

I am going to keep the hearings open. I will not exclude the views of anyone who has anything they think they can offer because I want this weighed carefully. I plan no hasty, ill-advised, ill-considered action.

I think there is a duty that devolves upon the Congress to act in these circumstances, and I want us to approach it deliberately, studiously, and with dedication. I thank the Senator very much for his contribution. I appreciate your appearance, Senator.

Senator BIBLE. Thank you, Mr. Chairman.

Senator McCLELLAN. Very well, Senator Lausche.

STATEMENT OF HON. FRANK J. LAUSCHE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator LAUSCHE. Senator McClellan and members of the committee, I appear before you this morning proposing to testify in support of S. 674 and S. 675. My background with respect to criminal law lies in 10 years of service as a judge in Cuyahoga County of the State of Ohio. Four years of that 10 were given in service as the presiding judge of the criminal court of Cuyahoga County, which at that time had a population of about 1,400,000 people.

The presiding judge not only presided over criminal trials, but also was the individual before whom pleas of guilty and not guilty were made. In other words, the indicted individuals were arraigned before the presiding judge.

I do not say it boastfully, but I believe that my experience was rather broad as a basis to formulate some judgments about the meaning of crime in a community, the need of exercising reasonably all of the powers possessed by government in suppressing crime, and the need, and I would say over and above everything else, of guaranteeing and reserving to the accused a full enjoyment of his constitutional rights.

Our system of jurisprudence has its root in the Anglo-Saxon concept of how criminal laws and laws in general should be administered, and our concept is that every doubt has to be resolved in favor of the accused. And so with that basis of thinking, the writers of our Constitution, in the Bill of Rights, proceeded to set forth the safeguards that shall be available to an accused, when he is charged with crime.

The basis for the writing of those safeguards were rooted in what our forefathers understood was happening in totalitarian nations and in dictatorships, in maintaining their supremacy and their subjudication of the citizenry.

Now, I do not have it written out, but we all know of them. The accused has the right to compulsory attendance of witnesses, to a speedy trial by a jury of his peers, to the right of freedom not to testify against himself if he so desires, the right to be released under reasonable bond, and the right to be immune from cruel and unreasonable punishment.

Those safeguards were brought out in a hallowed and sacred way by the writers of our Constitution, and they have been the protection of the accused when he has come before the criminal courts in the United States.

But of late, interpretations have been made of these constitutional provisions that to many are seemingly completely in conflict with what was originally intended, and that departure from the original interpretation has become most conspicuous in the *Escobedo* and in the *Miranda* cases.

In determining whether a statement made by an accused is admissible or not admissible in a trial before the jury, the primary issue is to decide was it a voluntary statement. Government shall not be vested with authority to compel a witness to testify against himself. But if he voluntarily makes a statement, that statement in the 177 years before the Supreme Court made its pronouncement in the *Miranda* case, was deemed admissible in evidence.

The procedure from time immemorial, in the trial of criminal cases, whenever the challenge was made that the confession was obtained by force and coercion, was for the judge to examine the witness, learn what happened at the time the alleged confession was made, and learn whether there was duress, either actual or indirect by fatiguing and exhausting the accused, so that what seemed to be a voluntary confession was in fact one that was extorted from him.

Time and again, in a jury trial when a challenge was made that coercion was practiced, I examined the witness, the defendant's lawyer examined the witness, and the prosecuting attorney, to find out if there was coercion.If it appeared that there was not, as Senator McClellan has already stated, the jury was called back in, and the testimony was given, and finally the court, I would say:

Ladies and gentlemen of the jury, testimony has been given by witnesses A, B, C, and D. This testimony has been challenged by the accused to have been extorted from him. He states that it was not voluntarily given. It is your sacred duty to examine all of the facts, all that has been said, and then determine whether or not the confession, the statement was voluntary or involuntary.

Senator McClellan. Senator, may I interrupt you at this point?

Senator Lausche. Yes, sir.

Senator McClellan. The same jury that you say should have the right to determine whether the confession or the statement was voluntary or not is empowered, in a given case, is it not, to determine guilt or innocence, and to determine guilt in some cases where it might mean the defendant or the accused would be condemned to death?

Senator Lausche. That is correct.

Senator McClellan. It seems to me that if a jury can be empowered to pass on guilt or innocence that may condemn a man to death, or even to life imprisonment, or to a prison term, that same jury, after hearing all of the evidence, should be capable of determining beyond a reasonable doubt whether a statement of an accused was voluntary or if it was coerced.

Senator Lausche. That is a very powerful, logical, and constructive statement. The jury in my State has the power to determine whether a man shall be put to death. Why shouldn't it have the power to determine whether or not a statement was voluntarily or involuntarily made?

Now, these safeguards which you have written in the bill—I would like to discuss them for a moment:

The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confessions including (1) the time elapsing between arrest and arraignment of the defendant making the confession.

I subscribe to what Senator Bible said about the need of giving study to this provision. In Ohio, the courts have held that 48 hours is a reasonable time. The reasonableness of the time depends upon the circumstances.

(2) Whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession; (3) whether or not such defendant was advised or knew that he was not required to make any statement, and that any such statement could be used against him; (4) whether or not such defendant had been advised prior to the questioning of his right to assistance of counsel and (5) whether or not such defend-

ant was without the assistance of counsel when questioned and when giving such confession.

I think there might be added advisedly a sixth condition: The circumstances and the environment under which his statement was made, that is if there were 20 detectives surrounding the man and a lot of lights——

Senator McClellan. Senator, I think it is in there. It says all of the circumstances, does it not, at the beginning? If not, it certainly should be in there.

Senator Lausche. I think you might give that consideration, because that is a very important factor.

Senator McClellan. I agree with you that all circumstances, everything that can throw any light on what the situation was at the time the individual talked ought to be considered.

Senator Lausche. Right. Now I would like to discuss the general situation. To argue that criminality is not growing rampant is to completely disregard the records that we get out of practically every metropolitan city in the country.

The limiting of the courts in the right to receive in evidence statements voluntarily made, unless the accused is told that he is entitled to a counsel, and if he says that he wants one that you must provide one for him, has had a deleterious effect on the administration of law and justice.

For 177 years I don't know how many Supreme Court judges were up there, but I suppose there were 150 to 200 at least, and no one ever thought of this *Miranda* principle until the five judges who recently made the pronouncement, and with those five speaking, there were four who disagreed with them.

If we want to aggravate the fear and trepidation of the women in our homes, keep the *Miranda* law in effect; on the other hand, if law and order is to be maintained the Congress should take action to nullify that decision.

While I have never had a gun in my home, the invasions that have been made by criminals into the homes of our citizenry have caused me to think of getting a gun for my home for the protection of my wife and myself.

But when your wife does not dare open the door, when she heard about the escape of that man up in New Jersey and she began to tremble about the thing, and that was true probably in every home in the District, well, the time has come when you have got to start thinking about the innocent victims of crime, while still, of course, providing a full protection of all the constitutional provisions that exist for the criminal.

Now I want to say one word or two on the wiretapping. The present law is inadequate. The present law seems to prohibit wiretapping unless it is consented to by one, but the language of the law makes it practically impossible to utilize it as a prohibition against wiretapping.

It prohibits wiretapping "for purposes of interception and disclosure," the two conditions must be present. It is in the conjunctive, the tapping must be for interception and disclosure. You can intercept and not disclose, and thus not violate the law, though by interception

you are invading the privacy of the individual, and acquiring information upon which you then proceed in a legitimate way to obtain other information for purposes of prosecution.

The bill before the committee, and offered by Senator McClellan, contains the language "prohibiting interceptions or disclosures." It is put in the subjunctive instead of the conjunctive.

Under this bill, S. 675, wiretapping would be prohibited except for national security purposes and except in specific cases of duly authorized law-enforcement officers engaged under specific court order. I subscribe to that provision, Mr. Chairman. That is my testimony, and if there are any questions you desire to ask, I will try to answer them.

Senator McCLELLAN. Thank you very much, Senator. Wiretapping is something that has concerned me for some time. Some two or three Congresses ago I introduced wiretapping legislation—substantially the bill before us today—which I thought had the support of the Department of Justice, and I think it did at that time. However, I can appreciate that there is some element of dissatisfaction in any kind of a wiretapping law.

Occasionally there would be some information secured that would be strictly private and that should be kept private, and information that no one would have a right to have or want.

But the criminal element in this country, certainly the organized criminal forces, makes tremendous use of the telephone, and I think all of the police enforcement officers and the FBI, would pretty much verify that statement. They use it as a weapon, as an instrument to further their own nefarious trade.

Shall we say law enforcement shall not be permitted to use the same weapon? It is somewhat like this. We know that the ganster, the thug, the robber, carries a gun. Shall we disarm our police just because we think it is wrong to kill, to murder? You have to fight these criminals with weapons comparable to those they use.

I think the wiretapping proposal is premised largely upon the same principle which permits the securing of a search warrant to invade the privacy of a home. If you believe a crime is being committed, stolen property concealed, or there is evidence there of a crime, a search warrant can be obtained. And a search warrant can only be procured on a proper showing before a court of competent jurisdiction.

Senator LAUSCHE. That parallel is excellent.

Senator McCLELLAN. And that court carries control, it retains control, it can revoke a search warrant at any time, it can say under what conditions it can be executed, and the court here would have comparably the same power in dealing with wiretapping.

Senator LAUSCHE. Yes.

Senator McCLELLAN. There has to be a showing made that would warrant a wiretap order, and the court could retain control of it and specify the exact place, the time, the duration, and the purpose.

There are those who say we should have no wiretapping except in the matter of the security of the country. Let me say this in that connection: The life of a citizen, the protection of an innocent child who has been kidnaped, the protection from heinous crime, is just as important to the individual citizen as is the protection of this country

from its enemies. I do believe there has to be some authorized use made of this instrumentality in waging the war on crime, especially organized crime, and specifically crimes of the nature of kidnaping, murder, extortion, narcotics rackets, and syndicated gambling. If we don't use that weapon, our police, in my judgment, will be handicapped, and unduly so. I just make that observation.

Senator LAUSCHE. The writers of our Constitution never intended that criminals shall be made absolutely immune from being reached by law. They tried to adopt reasonable prohibitions, and that they did.

Now, then, it is best illustrated by the provision in the Constitution, the right of one to remain uninterrupted in his home, shall be inviolate, and no search and seizure shall be made except upon authority duly issued by a court of justice.

Senator MCCLELLAN. Well, suppose you tap a wire, you will hear, perhaps, some conversations that you have no right to hear. That is true in many instances. But when you take a search warrant and go into a home you may see a lot of things you have no right to see. So it is the same situation. There has got to be some yielding to combat lawlessness.

Senator LAUSCHE. I would like to summarize my view of it. I give the fullest protection possible to the citizen in the enjoyment of his privacy, and in approaching these exceptions, there are two of them in the bill now, nail them down within the strictest meanings available so as to insure to the maximum degree possible that there shall be no abuse of that right.

I have not thought it out adequately, but to begin with, I subscribe to the proposal made here. How does this conform, if I may ask, Senator McClellan, with the Crime Commission's study?

Senator MCCLELLAN. As I recall, a majority of the members of the Crime Commission indicated they favored some measure of this nature. I believe it was on the confession matter that seven of them indicated they favored it, and with respect to this issue of wiretapping, a majority indicated they favored it, but the President didn't——

Senator LAUSCHE. Didn't recommend it.

Senator MCCLELLAN. Didn't recommend it in his message.

Any questions?

Senator HART?

Senator HART. No. I thank Senator Lausche very much.

Senator LAUSCHE. Thank you.

Senator MCCLELLAN. Thank you very much, Senator.

Senator Montoya couldn't be present, but he has sent a statement which I am ordering without objection be placed in the record at this point.

(The statement referred to follows:)

STATEMENT OF THE HONORABLE JOSEPH M. MONTOYA BEFORE THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES OF THE SENATE JUDICIARY COMMITTEE, IN SUPPORT OF S. 824, THE LOCAL LAW OFFICERS EDUCATION AND EQUIPMENT ACT, MARCH 7, 1967.

Mr. Chairman, crime is rising faster than the population of our country, turning our cities into places where terror exists, tearing at the fabric of our national life and making fear a permanent dweller in the lives of millions of innocent citizens. This is a situation that can and must be alleviated.

As a result of this situation, we hear many voices raised in concern. Those who have suffered first hand are the most bitter. Others have an awful anticipation that sooner or later they and theirs will feel the heavy hand of the criminal. A few seek to spread fear so they may take personal advantage of it.

It is therefore incumbent upon us to think clearly, speak objectively and act realistically in order to aid law enforcement, so that the citizen and his property may be given the security he and his family deserve.

But to leap into a frenzy of uncoordinated punitive measures may hurt society more than assist and preserve it. I believe we must attack the problem by aiding law enforcement agencies of the states and localities without interfering with their freedom to act.

Perhaps the crux of our problem lies in the pincer-type situation our law enforcement people find themselves in. Faced with the perpetrator of violent or open crime on one hand and the minion of organized crime on the other, our city, county and state officer of the law finds he lacks modern equipment, is underpaid for risks he is asked to take and is increasingly isolated from the very community he risks all to protect.

One of the most appalling things I have noted is that this estrangement has proceeded so far that extremists from the fringes of the world of ideology are able to woo into their ranks numbers of law enforcement personnel as a result of taking positions in their support.

Some steps have been taken by the Congress to aid law enforcement on all levels. The Law Enforcement Assistance Act of 1965 helps develop new equipment and aids training and operating procedures. A national commission is studying our criminal law and procedures with a view to recommending revision and modernization of existing Federal criminal law by 1968.

The new Senate Subcommittee on Criminal Laws and Procedures is a positive step, while the National Crime Commission has certainly cast long overdue light into hitherto darkened corners. But these, even taken all together, are not nearly enough.

Let us examine some visible roots of our national problem. The pay of the average policeman in this nation is shockingly low. How can we ask men to risk their lives for our benefit if they have to make a financial sacrifice in order to do so?

Then there is a question we must ask about how the local law enforcement officer is keeping up with latest scientific developments. Does he have access to computers and TV tape recording systems that can do so much for his function? Usually he does not have swift access to these things. We must get fruits of technology into the hands of these officers as swiftly as possible, and certainly faster than we do now.

Let us inquire into the caliber of personnel now being attracted into law enforcement. Where are the college graduates? The skilled and increasingly educated officers and research people? The criminal is smarter and tougher nowadays than his counterpart of previous eras. Why not the officer?

We must enable persons to further their education through police work. If we establish a series of educational incentives, it is conceivable that many young people will enter the field of law enforcement in order to better themselves, rather than because they cannot find anything else. College graduates can be produced through law enforcement. Some will stay in police work as a result.

Let us scrutinize costs of law enforcement, which bear down so heavily upon communities, preventing them from doing justice to their police personnel. It would be aggravatingly and dangerously unconstitutional for the Federal Government to take a hand in active local law enforcement. But government could make financial aid available, thus enabling localities to more easily bear the burden of costs.

I do not advocate that our national government subsidize local police salaries. This could be a step in the direction of establishing a national police force, and this I oppose vehemently. But helping pay for modern equipment, and providing personnel with educational opportunities, thus freeing revenues on local levels for salaries of local officers . . . this would accomplish much.

All of the problems I have outlined have solutions. The special message of the President gives us an excellent cue. It is my opinion that this bill, S. 824, best embodies these solutions. It will provide federal assistance to enable state and local law enforcement agencies to acquire modern crime-fighting equipment and to provide a broad program of educational opportunity for state and local law enforcement personnel.

Briefly, this bill will:

(1) Provide up to 50% of the cost of modern law enforcement equipment for state and local police use.

(2) Create a Division of Law Enforcement Research and Development in the Department of Justice to disseminate information relevant to law enforcement work.

(3) Establish travel-study grants for state and local law enforcement officers to examine the best domestic and foreign law enforcement theory and practice.

(4) Provide that two years of law enforcement work by college graduates could serve as repayment of 50% of a National Defense Education loan.

(5) Provide tuition payment programs for state and local officers who have at least two years tenure and agree to serve for two additional years after completion of aided education.

(6) Provide full expense fellowship grants to law enforcement personnel who pursue courses directly related to their work.

(7) Create a Federal Commission for Law Enforcement Assistance to supervise administration of the Act and protect independence of state and local law enforcement agencies.

In this manner we can reach out a hand to the hard pressed law enforcement groups throughout the nation. They would be provided with greater incentives to perform, their ranks would be swelled by infusions of healthy, intelligent new blood, and the result should be more effective law enforcement because of Federal aid . . . although without Federal interference.

Senator McCLELLAN. Senator Hruska asked permission that his full prepared statement which he summarized this morning be placed in the record. It will be placed in the record at the point where Senator Hruska testified, without objection.

There will be placed in the record at this point a statement of Senator Spessard L. Holland of Florida, concerning the bill, S. 580.

(The statement referred to follows:)

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
March 6, 1967.

Hon. JOHN L. McCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that your Subcommittee will consider my bill, S. 580, to amend Chapter 3 of Title 18, U. S. C., to prohibit the importation into the United States of certain noxious aquatic plants, during the course of the hearings scheduled for March 7, 8, and 9, 1967.

Since it will not be possible to appear personally before the Subcommittee, it would be appreciated if you will take the necessary action to have the enclosed statement in support of S. 580 incorporated into the record at the proper place.

With kind regards, I remain

Yours faithfully,

SPESSARD L. HOLLAND.

STATEMENT OF SENATOR SPESSARD L. HOLLAND IN SUPPORT OF S. 580

Mr. Chairman, I fully support S. 580, a bill I introduced to amend Chapter 3 of Title 18, USC, to prohibit the importation into the United States of certain noxious aquatic plants, which your distinguished Committee is now considering.

Section 46 of Title 18, USC, presently makes it a crime to transport from one state to another certain types of water plants and seeds thereof; namely, alligator grass, water chestnut plants and water hyacinths.

My bill, Mr. Chairman, would merely extend the present law to prohibit the importation of these noxious aquatic plants from a foreign country into the United States. Certainly where present law provides that transportation of these plants across state moundaries is detrimental to the nation's interest and when millions of dollars are being spent by local, state, federal agencies and private interests in an effort to control these noxious aquatic weeds, none of which

species are native to the United States, it appears to me to be only logical that we prohibit transportation of these same noxious plants into any area of the United States from foreign lands.

Mr. Chairman, I do not wish to belabor this matter as I know the Committee has many other problems to consider. I do ask, however, that a letter dated November 16, 1966 from Mr. James D. Gorman, President of The Hyacinth Control Society, Incorporated, outlining the problems with respect to the control of noxious aquatic weeds, together with a resolution adopted at a formal meeting of The Hyacinth Control Society, Incorporated, on June 21, 1966, at Lakeland, Florida, be included as a part of my statement.

THE HYACINTH CONTROL SOCIETY, INC.,
Fort Lauderdale, Fla., November 10, 1966.

Senator SPESSARD HOLLAND,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLAND: The membership of the Hyacinth Control Society has directed me to contact you and bring to your attention a serious problem which exist in several southeastern states including Florida.

Millions of dollars are being spent by local, state, Federal agencies and private interests in an effort to control noxious aquatic weeds. Many thousands of dollars are being spent annually in research and experimentation to develop chemical means to control these noxious aquatic weeds.

The aquatic plants that are causing our greatest problems are water hyacinths, alligator weed and elodea. None of these plant species are native to the United States but have been imported and introduced into our lakes and streams and waterways. Elodea is a serious problem, not only in the southeastern United States, but also in California, Oregon and Washington in the west. Water hyacinth and alligator weed are prevalent throughout the southeastern states.

The members of the Hyacinth Control Society realize that nothing can be done to restrict the noxious aquatic plant species already introduced into our waters, we do feel action should be taken to prevent importation of other noxious aquatic plants. The most feasible solution appears to lie in Federal legislation to control the importation of these exotic aquatic plants into this country. At present many aquatic plant species are being imported by commercial and private interests and distributed throughout the entire country.

Experience has shown us that the unrestricted importation and distribution of exotic aquatic plants can only lead to increased problems for all agencies involved in water control, water supply, mosquito control, fish and wildlife management, recreation and navigation in this country.

The members of the Hyacinth Control Society, who are dedicated to the control of noxious aquatic plants, respectfully request that you consider the introduction of Federal legislation in the Congress of the United States which would regulate and control the importation of exotic aquatic plants into this country and prohibit the importation of those plant species found to be detrimental or harmful.

I am attaching herewith a resolution adopted by the membership of the Hyacinth Control Society, Inc. at its formal meeting in Lakeland, Florida on June 21, 1966 calling for the support of the various state and local agencies and bodies in accomplishing the necessary legislation to limit the importation of exotic species of aquatic plants.

Your early and favorable consideration of this request will be appreciated.

Yours truly,

JAMES D. GORMAN,
President, Hyacinth Control Society, Inc.

RESOLUTION

Whereas, the Hyacinth Control Society, Inc; meeting in Formal Business Session during its annual meeting in Lakeland, Florida, Tuesday June 21, 1966,

Whereas, that the members of the Hyacinth Control Society, Inc; are dedicated to the control of all noxious aquatic plants in all lakes, streams, ponds, and other bodies of water,

Whereas, several species of exotic aquatic plants have been introduced into the United States of America,

Whereas, several species of these exotic aquatic plants such as water hyacinth, elodea, and alligator weed are presently causing great economic losses of our water resources,

Be it resolved that the members of the Hyacinth Control Society, Inc. do hereby call special attention to these great economic losses of our water resources,

Be it further resolved that the membership request the support of the various State and Federal bodies and other agencies to enact necessary legislation limiting the importation of exotic species of aquatic plants into the United States of America and/or the separate states.

Senator McCLELLAN. The committee will stand in recess until 2 o'clock.

(Whereupon, at 12:15 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

Senator McCLELLAN. The committee will come to order. We welcome you, Mr. Attorney General. You may proceed. We are very glad to have you present your views.

STATEMENT OF HON. RAMSEY CLARK, U.S. ATTORNEY GENERAL; ACCOMPANIED BY FRED VINSON, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Attorney General CLARK. Thank you very much, Mr. Chairman. It is a great privilege to appear before you and this distinguished committee. At the outset I would like to say that I well know your personal concern about the crime problem in America, and that is a concern that this administration shares fully. We want to work with this committee in every way possible to enact laws that will most effectively protect the citizens of the United States.

Today I have prepared for delivery a statement on one of the numerous bills that you have set for hearing. It is the bill among those that we feel so strongly has the great potential to make the most significant difference in the crime control problems of the United States.

Two years ago tomorrow, President Johnson, in announcing creation of the National Crime Commission and recommending the Law Enforcement Assistance Act, observed that crime will not wait while we seek to eliminate its underlying causes. These are immense and stubborn forces pervading our environment, measuring our character and determining the quality of our lives. Through long-range effort we can conquer poverty, ignorance, disease, discrimination, social tension and despair, family breakdown, the dehumanization of mass culture, and injustice. To do these things is our firm commitment. But while we strive to uproot the causes of crime, we must secure the public safety.

Protecting the lives, the property, and the rights of its citizens is the first purpose of government. The level and quality of public safety and criminal justice afforded by our governments is not adequate to our need. It must be made so.

Crime is a national problem. It tarnishes the goodness of life in every part of the country. The effectiveness of law enforcement, of correc-

tions, of courts in any part of the Nation affects the rest of the Nation. If crime flourishes in one city, its tentacles reach others. When criminals go unapprehended or unpunished in one county harm results to others. If one State's prisons release inmates bent on further crime, some victims will be in other States. We must seek excellence in all processes of criminal justice in every jurisdiction throughout the country.

But law enforcement is a local responsibility. As a nation we have preached local law enforcement. As a nation we have practiced it. There are more of New York's finest, the police of New York City, than there are Federal law enforcement officers for the Nation. Los Angeles County has six times more deputy sheriffs than there are deputy U.S. marshals for the whole United States, and the Los Angeles Police Department is larger than the sheriff's office. A single county has twice as many probation service officers as the entire Federal Probation Service. The Federal Bureau of Prisons has less than 5 percent of the prison population of the Nation. The Federal judiciary is but a tiny fraction of the judiciary of the States.

We would have it no other way. Our safety and our liberty depend on the excellence of local and State law enforcement.

How then can the Federal Government significantly assist in crime control?

The Safe Streets and Crime Control Act of 1967 is the way, consistent with our principles, that Congress and the President can lend their powers to reduce crime in America. It is the heart of President Johnson's national strategy against crime. It is the one appropriate way the Federal Government can make a major difference. Its potential is immense.

It is based on the demonstrated need for more resources, better applied, to improve the estate of criminal justice in America. The need is to carefully study and plan, to coordinate among agencies, to raise standards and train personnel, to develop methods, to provide more and better police; to devote new sciences and expanded resources to corrections; to assure fairness, effectiveness and efficiency in the courts.

The proposed act recognizes that we spend only a little more than $4 billion a year for local, State, and Federal police, corrections, and courts, and that this is not nearly enough. Approximately $2.8 billion is for police, $1.03 billion for corrections, some $300 million for courts and prosecution. It is estimated that the average annual increase in investment for these functions is 5 percent.

The Safe Streets and Crime Control Act seeks to create and guide new investment.

It takes into account the wide diversity and variations of needs and problems among law enforcement agencies, and the necessity for flexibility. It recognizes that law enforcement is a service with perhaps 90 percent of its expenditures going to salaries, that there are 40,000 police jurisdictions with more than 420,000 law enforcement officers serving, that corrections and courts are undermanned and controlled by State laws often needing change, that crime is increasing more rapidly in urban than in rural America, that the cost of law enforcement per capita ranges more than three times as high in large cities as in rural areas and small towns.

It is supported by the most comprehensive study of crime ever undertaken in this country. The National Crime Commission has amassed an invaluable reservoir of fact, experience and judgment. The theory of the act is buttressed by 18 months grant experience involving the expenditure of $10 million for research, demonstration, training, and education in law enforcement under the Law Enforcement Assistance Act of 1965.

Planned, studied, and tested, the Crime Control Act is ready.

Because a mere increase in expenditures is both inadequate and inefficient, the act provides leadtime for the most careful planning by agencies of criminal justice. It will permit potential applicants to begin planning upon its passage. Fifty million dollars will be sought to provide adequate planning funds and continued research, development, and demonstration.

For fiscal year 1969, $300 million will be asked to commence a sweeping action program. The funds will be granted generally for calendar, and fiscal years beginning in 1969, providing ample time for careful planning and detailed budgeting.

The Crime Control Act as planned can triple the rate of increase in resources devoted to criminal justice. Requiring the normal 5 percent increase for eligibility, Federal funds for action programs will be available up to 60 percent of the expenditures above that level. Instead of a normal $200 million increase, an additional $700 million can be available for better police, corrections, and courts by the injection of $300 million from Federal sources in this program.

The grants can cover the spectrum of criminal justice and will emphasize such priority areas as:

1. Specialized training, education, and recruitment programs, including intense training in such critical areas as organized crime and police-community relations, and the development of police tactical squads.
2. Modernization of equipment, including portable two-way radios for patrol cars, new alarm systems, and improved laboratory instrumentation for applying advanced techniques in identification.
3. Programs for the reorganization of personnel structures and the coordination and consolidation of overlapping law enforcement and criminal justice agencies.
4. Advanced techniques for rehabilitating offenders, including the establishment of vocational prerelease guidance in jails, work-release programs, and community-based corrections facilities.
5. High-speed systems for collecting and transmitting information to police, prosecutors, courts, and corrections agencies.
6. Crime prevention programs in schools, colleges, welfare agencies, and other institutions.

In addition to planning and action grants, the act contemplates construction grants for innovating facilities and firm commitment to the research, development, demonstration programs pioneered under the Law Enforcement Assistance Act.

It is a vital proposal, urgently needed. The Crime Control Act of 1967 can make a safer American tomorrow. We must act on it now.

In addition, Mr. Chairman, we have prepared a statement on S. 916 providing for a unified Federal Corrections Service. Under the

circumstances I will read briefly from the statement, and summarize the remainder, if that is satisfactory.

A continuously increasing national crime rate, and a recidivism rate estimated as between 35 and 50 percent tells us that our system of criminal law is failing—it is time to act. When we know that three of four persons convicted of felonies were previously convicted of misdemeanors, usually while youths, we know we are failing. When estimates indicate half of those convicted of a felony will, after release, be convicted of a subsequent felony, we know we are failing.

We are taking action to reduce crime on many fronts which hold great promise. The establishment of a unified corrections service, however, is a step which may offer the greatest opportunity for bringing Federal criminal laws to maximum effectiveness.

Corrections is a key, a very major part, of our total opportunity to reduce crime. If we cut the rate of recidivism in half, and science tells us we can, a major part of our crime will be eliminated.

Whatever our view of the purposes of the sanctions of criminal law, society must seek to consequences from their exercise:

Protection of the public from further offenses, and rehabilitation of the individual and his return to a useful life.

But to separate these two essential aims obscures their oneness. Rehabilitation is protection. The best, the only sure way to protect society from the antisocial convicted of crime, who will be at large again some day, is to rehabilitate him.

Our success will be measured by the effectiveness of our corrections system. The value of the most effective corrections system devisable is measurable not only in billions of dollars, but in lives and human happiness.

One of the laws' primary goals must be the rehabilitation of the offender and his return to useful community life. To accomplish this end, he is placed in the corrections process, which extends from the imposition to the completion of sentence. This process, which includes probation, imprisonment, and parole, is presently divided. Parole and probation supervision are lodged with the courts, prison services are lodged with the executive branch, and research is diffused through both systems.

We believe that this disunity impedes the channeling of resources and efforts in a rational, systematic manner. For example, although probation and parole supervision are two of the key steps in avoiding a return to a criminal activity, the depth and quality of supervision may depend on the caseloads and presentence reporting duties of the approximately 550 probation officers in the 93 Federal judicial districts. This diversity of supervision may affect the planning of an offender's treatment program, since the program must take into account the amount of support which the probation officer can provide a parolee in the community.

If this division of responsibility and authority were eliminated and the corrections process worked toward the rehabilitation goal as a single, unified mechanism, it would be greatly strengthened. Directed by one authority, an offender's rehabilitation program would correlate the efforts of the institutional personnel who evaluate his needs and devise and execute his treatment plan, and the community personnel who supervise his release on parole.

The division of the correction function between the courts and the prison system is at perhaps the most critical point in the correctional process, distinguishing prison operations from community operations. This at a point when, as we can see from our past experience, the great need in corrections is the strong shift toward community operations. For here is the opportunity to rehabilitate.

The value and potential of community based operations is shown by a recent experimental treatment program conducted by the California Youth Authority and discussed in the National Crime Commission report. Juvenile court commitments, excluding those for whom institutional care was deemed requisite, were divided between community and regular institutional programs. Youths assigned to the community treatment project were supervised by officers having a caseload of 10 to 12 and employing treatment methods designed to meet each youth offender's individual needs. After 5 years, the community treatment project reports that only 28 percent of its group have had their paroles revoked, as compared with 52 percent of those who were institutionalized. Community supervision employing a variety of individually tailored treatment alternatives could similarly benefit Federal offenders, both youths and adults. This type of treatment program would be feasible under the proposed corrections system.

To date, there has been no major national investment in corrections research. However, since the goals of parole and probation and their supervision techniques are so closely analogous, a division of research could be created within the service to conduct study on subjects of benefit to the entire system. There would be no gaps, no duplication of effort. Most important, results could then be implemented on a uniform basis, throughout the corrections system.

In answer to the need for strengthening the corrections process, the 89th Congress enacted legislation providing three innovative techniques to be used in achieving prisoner rehabilitation. This important legislation authorizes the Attorney General to place prisoners in residential community treatment centers, to permit them to take emergency or rehabilitative leave, and to permit them to work or participate in community training programs. As a result, new techniques involving prerelease and work release programs and halfway houses are being perfected to return useful, rehabilitated individuals to their communities.

Under the work program alone, almost 3 percent of our prison population are being released for employment in the community. If these new techniques are to achieve their maximum rehabilitation potential, adequate supervision is an essential adjunct. To this end, we have appointed a force of work release coordinators in the newly established Division of Community Services. These new techniques may soon apply to probationers and parolees. Efficiency and reason would require that a single authority be used to provide coordinated assistance and supervision for them. Such supervision would extend from the court granting probation or the institution in which sentence is served, to the residential institution center from which the offender is eased back into community life.

That the respective corrections agencies have accomplished as much as they have under the present system is a tribute to their efforts and

cooperation. But to be fully effective, the corrections system should have a single administrative framework within which the flexible sentencing and treatment alternatives presently available can operate and in which time and money can be budgeted on a coordinated basis. Such a framework would permit a better balanced range of services, since coordinated planning will assure that funds and personnel are allocated in relation to need. Moreover, it would free parole officers to devote more time to the preparation of presentence reports.

The establishment of a unified corrections system within the Department of Justice is predicated on its responsibilities in the field of law enforcement, particularly those of containing and reducing the incidence of criminal activity.

A unified corrections system will afford an opportunity to greatly reduce crime while enabling us to return many persons who would otherwise continue criminal activity to their communities to lead productive lives. It is essential to the public safety. It is essential to our humanitarian purposes.

Senator McCLELLAN. Thank you very much. Do you have any comment on any of the bills now pending before the committee at this time?

Attorney General CLARK. I have planned no formal comment on any of the other bills. If you would care, I am prepared to make an informal comment. It might be that we could work more constructively with the committee at some other time, but whatever would please you, sir.

Senator McCLELLAN. We do not want to proceed further because a number of members of the subcommitee expressed the desire to ask you some questions on these two bills. Other members cannot be here because they are very much interested in the issue now before the Senate, particularly an amendment that is highly controversial and that is expected to be voted on shortly. I think your suggestion is very good as to the other bills, since you are not today prepared to make a formal statement on them.

We shall defer questioning about those until you can return. The bills that I refer to that I have a particular interest in are S. 674, the confessions bill, as I term it, which deals with the *Miranda* decision and other 5-to-4 decisions of the Court; S. 675, the one on wiretapping, those two particularly; and S. 678, outlawing the Mafia.

On S. 678, I understand, there is a serious question as to its constitutionality. I recognize that. But I do think that there is a great challenge there, if there is any way we can, within the framework of our Constitution, reach organized crime and those who are dedicated to it, who belong to the syndicate or organization, whether named or unnamed, whose objective or primary pursuit is that of violating the law and reaping the illegitimate fruits thereof.

If there is any way to reach them within our constitutional framework, I think Congress should concern itself with legislation in that field. And, of course, we want, as you have suggested, the cooperation, the counsel of the Attorney General's Office, the Department of Justice, the highest law enforcement office in the land, in all these areas. As I have tried to say not only in statements here but elsewhere, the particular bills as now drafted can probably be improved, and

wherever they can we seek information that will guide us in making these improvements. The evil of the crime menace is frightening, but how to reach the objectives of these bills, how to deal with the problem that is created, is a matter about which we can have honest differences of opinion, of course.

I would like to invite your attention to these bills to which I have specifically referred, and I hope you will give us the benefit of your opinion as Attorney General. I would think—I may be wrong, but I would think—that just the two bills you have referred to, that you have emphasized in your statement here, are not alone adequate to deal with the overall crime problem; that there are other tools and weapons that are needed in this law enforcement war against crime.

I invite your attention to these and your study of them. We will want to examine thoroughly the proposed safe streets and crime control bill and ask many questions concerning its provisions. Although generally I support it, we may want to refine it or strengthen it in some areas to try to insure that we get the best results from it.

I don't think, and I am sure you do not, that just spending money is the answer to the crime problem. We have got to get results as we spend it. It is results that is going to have its impact on reducing crime, not just the amount of money we spend. I think the proposals in S. 917 should be examined carefully to determine as best we can what the consequences, what the results will be, before we authorize and appropriate money for these purposes.

As to its overall general objectives, I strongly support the bill.

Thank you very much. That was the signal for a vote. Thank you. The committee will stand in recess. Did you want to say anything?

Attorney General CLARK. No, Mr. Chairman. Only that I will be happy to testify or to submit our views on these bills to suit your pleasure.

Senator MCCLELLAN. Thank you very much. The committee will stand in recess until 10 o'clock in the morning.

(Thereupon, at 2:45 o'clock p.m. the committee recessed, to reconvene Wednesday, March 8, 1967, at 10 o'clock a.m.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

WEDNESDAY, MARCH 8, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan (presiding), Ervin, Hart, and Scott.

Also present: William A. Paisley, chief counsel; James C. Wood, assistant counsel; Paul L. Woodward, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

Our first witness this morning is our distinguished colleague, Senator Burdick, of North Dakota.

Senator Burdick, we welcome you and are glad to have your comments.

STATEMENT OF HON. QUENTIN N. BURDICK, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Mr. chairman and members of the committee, you have some broad problems here affecting criminal law. I have a matter here which I believe commands attention of this committee and the Nation.

When it was first brought to my attention, I thought it was small and insignificant. When a group met with me in my office about a year ago, they told me there was a growing problem about vandalism on railroads, and they told me of incidents where rock throwing had derailed trains, had injured employees of the railroad and injured passengers; and at first having heard the story, I assumed that it was a series of isolated instances, but it is a pattern.

The testimony I will give this morning will indicate that in a 13-month period these violations occurred almost every day, and in many cases more than once a day. In the period of 13 months there were 478 of these violations. Mr. Chairman, vandalism endangers the safety of people who are passengers on trains. It endangers the safety of the crews who operate these trains. And it can seriously impair their ability to operate trains in a safe manner.

The bill before you this morning would carry penalties up to $5,000 or imprisonment of 10 years in jail for any individual who is convicted of injuring or the safety of others in this manner.

Senator McCLELLAN. I believe you are testifying to S. 552, Senator?

Senator BURDICK. That is correct.

Senator McCLELLAN. That bill will be printed in full in the record with other bills under consideration in these hearings.

Senator BURDICK. On just one part of the Pennsylvania Railroad, the line which serves Washington, there were 487 incidents of rocks thrown at trains which resulted in everything from broken train windows to a one 5-car train wreck in a period of some 13 months. Among these 478 incidents, 31 people were injured, most of them by flying glass from shattered windows. To get some idea of the number of such incidents that are nationwide, you must multiply this number of 478 times the fact that this is only one segment of one of the railroads operating in this country.

The most serious incident occurred on November 2, 1966. At that time some youngsters told the judge that they were trying to toss rocks into open box cars as the train passed by, but the engineer of the train ducked as rocks crashed through the glass of the engine cab. His foot slipped off the automatic deadman control, jerking the train to an emergency stop. Six cars were then derailed. In this instance, four of the youths were arrested, but of the 487 other reported instances, arrests were made in only 58 of them.

I might add at this point, Mr. Chairman, that these incidents of vandalism are not confined to youth. There are many instances of adults also engaging in this vandalism. Concern for the safety of people on board trains is the more obvious concern because it is easy to visualize someone being hit by a flying rock or flying glass. Concern for the ability of operating personnel on board trains to carry out all of their necessary functions is perhaps most vital.

These acts of vandalism occur most frequently in areas of heavy population, and it is in the most heavily populated areas where there is the greatest risk to life and property due to train derailment or other types of train accidents.

At this point I would like to insert in the record of this hearing all the reported incidents of throwing of rocks and other objects at trains between January 1, 1966, and February 13, 1967, on the Chesapeake division, eastern region, of the Pennsylvania Railroad, which includes the territory from a point just north of Wilmington, Del., to Potomac yard, Washington, D.C., and to Delmar, Del. And I add here a documentation of the time, place, and train and where these 487 incidents took place.

I would like, Mr. Chairman, that this either be filed or made a part of the record.

Senator McCLELLAN. Without objection it will be received and made a part of the record.

(The document referred to follows:)

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
Jan. 1, 1966	12:55 p.m.	115	North end B. & P. Tunnel	3	0	
Do	7:30 p.m.	153	Playground, opposite Russel Iron	1	0	
Jan. 2, 1966	2:52 p.m.	128	Between Frederick Rd. and Gwynn	1	0	
Jan. 10, 1966	5:47 p.m.	154	Playground, North of Warwick Ave	3	0	
Do	5:54 p.m.	Bowie race train	do	19	1	
Jan. 15, 1966	11:45 a.m.	403	Red Mill Rd., Ruthby Rd	1	0	
Do	5:15 p.m.	149	Broadway	1	0	
Jan. 16, 1966	4:00 p.m.	132	Falls Rd.-B. & P. Tunnel	1	0	
Jan. 17, 1966	4:15 p.m.	106	North of Davis, Del	1	0	
Jan. 22, 1966	2:30 p.m.	174	Bladensburg Rd	1	0	
Feb. 9, 1966	4:30 p.m.	928	North Wilmington Station	1	0	
Feb. 10, 1966	7:00 p.m.	MD-18	Biddle St. area	2	0	
Feb. 12, 1966	1:10 p.m.	127	Biddle St	0	0	
Feb. 14, 1966	5:45 p.m.	414	Just south of Lanham, Md	0	0	
Feb. 15, 1966	2:40 p.m.	174	Biddle St	1	0	
Do	3:34 p.m.	132	Franklin St	0	0	
Do	4:45 p.m.	400	Route No. 450 bridge, Washington, D.C	0	0	
Do	5:37 p.m.	400	Edison Highway	1	0	
Feb. 17, 1966	3:05 p.m.	128	Fulton Junction	2	0	
Do	7:55 p.m.	158	Vern, Md	1	1	
Feb. 19, 1966	2:20 p.m.	174	North of Jericho Park	1	0	
Do	5:25 p.m.	BL-6	Deanwood	1	0	
Feb. 22, 1966	2:45 p.m.	128	Fulton Junction	1	0	
Feb. 23, 1966	2:07 p.m.	174	Landover	1	0	2
Do	2:14 p.m.	403	do	1	0	2
Feb. 26, 1966	5:58 p.m.	105	Seabrook	2	0	
Feb. 27, 1966	11:35 a.m.	Passenger extra 4936	Fulton Junction	2	0	
Do	1:40 p.m.	107	Biddle St	1	0	
Do	3:45 p.m.	106	Odenton Tower, South	0	0	
Do	4:40 p.m.	105	Biddle St	1	0	
Do	7:25 p.m.	BL-6	Q St., Washington, D.C	2	0	
Do	8:15 p.m.	153	Route No. 50 and Lanham Hill	2	0	
Mar. 1, 1966	4:06 p.m.	171	Patterson Park	0	0	2
Do	5:45 p.m.	149	Just south of Lanham, Md	1	0	
Do	6:08 p.m.	156	Scrap iron siding, District of Columbia	1	0	
Mar. 2, 1966	5 p.m.	400	Seabrook area	0	0	
Do	5:50 p.m.	154	Cheverly, Md	1	0	
Mar. 3, 1966	5:55 p.m.	105	Seabrook area	1	0	
Do	3:40 p.m.	132	South of Edmondson Ave. bridge	0	0	
Do	3:50 p.m.	132	Biddle St	1	0	

See footnotes at end of table.

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
Mar. 4, 1966	5:22 p.m.	149	Broadway	1	0	
Do	4:30 p.m.	106	Landlith, west of Wilmington	1	0	
Mar. 6, 1966	4:45 p.m.	152	Seabrook Shopping Center	1	0	
Mar. 8, 1966	3:53 p.m.	171	Broadway	0	0	
Do	4:40 p.m.	554	Riderwood	1	0	
Do	4:45 p.m.	105	Chase, Md	1	0	
Mar. 9, 1966	2:40 p.m.	174	Biddle St	1	0	
Do	6:30 p.m.	549	West Riderwood	1	0	
Mar. 11, 1966	6:05 p.m.	156	North of New York Ave., District of Columbia	2	0	
Do	9:14 p.m.	158	South of Ragan	2	0	
Mar. 12, 1966	2:11 p.m.	127	Between Lanham and Seabrook	3	1	
Do	12:12 p.m.	148	Biddle St	1	0	
Do	2:27 p.m.	174	South of Bowie	1	0	
Do	2:38 p.m.	107	do	1	0	
Mar. 13, 1966	10 a.m.	BP-106	Glendale Rd. crossing	0	0	
Do	2:45 p.m.	128	LaFayette Ave	1	0	
Do	2:40 p.m.	106	Seabrook	2	0	
Do	4:30 p.m.	152	Gwynn Tower and Fulton Junction	1	0	
Mar. 14, 1966	6:35 p.m.	156	Edmondson Ave	1	0	
Mar. 15, 1966	2 p.m.	121	Loney's Lane	2	0	4
Mar. 16, 1966	4:27 p.m.	171	Lanham overhead bridge	0	0	
Do	9 p.m.	B-2-B-6	Biddle St	3	0	
Mar. 17, 1966	2:30 p.m.	174	1 to 3 miles south of Fulton Junction	1	0	
Do	5 p.m.	105	Broadway-Patterson Park area	1	0	
Mar. 18, 1966	4:40 p.m.	554	West of Riderwood	1	0	
Do	5 p.m.	152	Biddle St	1	0	
Do	5:58 p.m.	154	Broadway	2	0	1
Mar. 19, 1966	4:50 p.m.	171	Lanham area	0	0	2
Do	2:20 p.m.	127	Between Lanham and Seabrook	2	0	
Do	4:52 p.m.	105	Biddle St. area	1	0	
Mar. 21, 1966	6:11 p.m.	173	Broadway	3	0	
Do	7:48 p.m.	575	Mount Washington	1	0	
Mar. 22, 1966	5:25 p.m.	149	South end, Union Tunnel	1	0	
Do	5:28 p.m.	414	South end B. & P. tunnel	1	0	
Mar. 23, 1966	5:10 p.m.	400	Halethorpe area	1	0	
Do	5:29 p.m.	154	Halethorpe area	1	0	
Do	5:50 p.m.	149	Biddle St	2	0	
Mar. 25, 1966	9:12 a.m.	401	Patterson Park Ave	0	0	
Do	2:36 p.m.	174	Biddle St	1	0	
Mar. 26, 1966	1:25 p.m.	127	Patterson Pk	1	0	
Do	6:57 p.m.	575	Lanham	0	0	

Mar. 27, 1966	2:30 p.m.	174	Broadway	1	0	
Do	4:45 p.m.	132	Middle River	1	0	
Do	6 p.m.	173	Middle River freight station	1	0	
Mar. 28, 1966	6:12 p.m.	414	Halethorpe	0	0	
Do	6:30 p.m.	113	do	0	0	
Mar. 29, 1966	3:35 p.m.	106	Frederick Rd	1	0	
Do	4:38 p.m.	400	Ivy City	1	0	
Do	6:42 p.m.	192	Edmondson Ave	0	0	
Mar. 30, 1966	3:30 p.m.	128	Ivy City	1	0	
Do	5:05 p.m.	173	Brandywine Creek and 29th St	3	0	
Apr. 1, 1966	1:20 p.m.	127	Washington St	0	0	
Do	6:30 p.m.	173	Biddle St. and Gay St	0	0	
Do	6:35 p.m.	156	Landover (Joe Smith junkyard)	1	1	
Do	6:59 p.m.	128	Biddle St	2	0	
Apr. 2, 1966	12:09 p.m.	Race train 5789	do	1	0	2
Do	4 p.m.	B-4	Deanwood	3	0	
Do	5:44 p.m.	128	Seabrook	1	1	
Apr. 3, 1966	12:20 p.m.	130	Fulton Junction	0	0	
Do	2:20 p.m.	174	½ mile south of Frederick Road station	1	0	
Apr. 4, 1966	12:42 p.m.	115	Middle River station	2	0	
Do	5:09 p.m.	140	South end, Union Tunnel	0	0	
Apr. 6, 1966	6:15 p.m.	173	North Broadway	0	0	
Do	4:36 p.m.	171	Lanham overhead bridge	2	0	
Apr. 7, 1966	5:10 p.m.	149	Prior to Union Tunnel (Broadway)	2	0	
Apr. 8, 1966	2:10 p.m.	174	Jericho Park	1	0	
Do	2:45 p.m.	174	Biddle St	0	0	
Do	2:47 p.m.	128	do	1	0	
Do	5:40 p.m.	D-3	Collins Pk, New Castle 2d track	0	0	
Apr. 10, 1966	3:55 p.m.	D-3	do	0	0	
Apr. 11, 1966	9:30 a.m.	126	Biddle St	1	0	
Do	2:15 p.m.	121	River (ba.)	1	0	
Do	3 p.m.	174	Chase, Md	2	0	
Do	4:35 p.m.	152	Edmondson Ave	0	0	
Do	4:50 p.m.	171	Edmondson Station	2	0	1
Do	4:50 p.m.	MU extra	Between Newport and Koppers Crossing, Del	1	0	
Do	4:55 p.m.	Wreck train	Eastern Ave., Sparrows Point Bridge	6	0	
Apr. 12, 1966	10:45 a.m.	172	Mount St	0	0	4
Do	12:10 p.m.	Bowie race train	Chester St	1	0	
Apr. 14, 1966	2:30 p.m.	174	Fulton Junction	3	0	4
Do	3 p.m.	106	Bladensburg, Md., IBM Building	3	0	
	3:20 p.m.		Fulton Junction	0	0	
Do	3 p.m.	174	Biddle St		0	
Do	3:05 p.m.	121	Fulton Junction	1	0	4
Apr. 15, 1966	12:10 p.m.	Race train	Union Railroad, both sides	2	0	3
Do	4:20 p.m.	132	North of Middle River	1	0	

See footnotes at end of table.

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
Apr. 15, 1966	5:05 p.m.	105	Linwood, Ave	1	0	
Do	5:30 p.m.	152	North Aberdeen Station	1	0	
Do	6:23 p.m.	414	Fred and Baltimore St. bridge	1	2	
Apr. 17, 1966	4:25 p.m.	171	Between Broadway and Bayview	1	0	
Do	6:30 p.m.	Passenger extra	Broadway and Gay	0	0	1
Apr. 18, 1966	10:45 a.m.	172	Acme Stores siding	0	0	
Do	5:52 p.m.	106	Edmondson Ave	1	0	
Arp. 20, 1966	4:35 p.m.	554	East of Timonium, Md	1	0	3
Do	6:58 p.m.	156	Broadway & Biddle Sts	2	0	
Do	7:02 p.m.	101	do	4	0	3
Do	7:04 p.m.	192	do	4	0	3
Do	6:25 p.m.	173	Biddle St	2	0	
Apr. 21, 1966	7:35 p.m.	153	do	1	0	
Apr. 22, 1966	5:36 p.m.	414	Kenilworth Ave. bridge	2	0	
Do	6:13 p.m.	Passenger extra	North of Cheverly, Md	2	2	
Apr. 23, 1966	5:12 p.m.	105	Stommers Run crossing	1	0	
Do	5:55 p.m.	173	South of Middle River	1	0	
Apr. 25, 1966	11:05 a.m.	131	Frederick Rd.	1	0	2
Do	6:45 p.m.	156	Fulton Junction	1	0	
Do	7:55 p.m.	158	Frederick Rd. Station	1	1	
Apr. 26, 1966	7:55 p.m.	158	Halethorpe	1	0	
Apr. 30, 1966	2:15 p.m.	121, 2	Broadway	1	0	2
May 1, 1966	10:45 a.m.	104	South Fulton Junction	1	0	
Do	12:31 p.m.	148	Signal 1020, Westinghouse Pl	0	0	
May 2, 1966	3:30 p.m.	Motor 4830	Deanwood, District of Columbia	1	0	
Do	6:35 p.m.	156	Edmondson Ave	0	0	
Do	7:35 p.m.	156	North Ruthby crossing	1	0	
Do	10 p.m.	MD-13-A	Deanwood, District of Columbia	1	0	
May 6, 1966	7:20 p.m.	113	Patterson Park siding	1	0	
May 8, 1966	6:55 p.m.	113	Biddle St	2	0	
May 10, 1966	11:15 a.m.	111	Preston and Wolfe	1	0	
May 10, 1966	3:58 p.m.	171	Biddle St	0	0	
Do	7:02 p.m.	Helper engine 4849	Industrial Gwynns Run	0	0	
May 11, 1966	2:09 p.m.	121	Biddle St	1	0	2
Do	2:37 p.m.	174	Broadway	1	0	2
Do	5:06 p.m.	149	do	1	0	
May 13, 1966	8:20 p.m.	113	Between Baltimore and Washington	1	0	
Do	10:25 p.m.	160	North of Union Tunnel	1	0	
May 14, 1966	9:50 a.m.	126	Middle River	[2] 1	0	
Do	1 p.m.	403	Biddle St	0	0	
Do	2:39 p.m.	174	do	1	0	
May 15, 1966	7:35 p.m.	153	Frederick Rd	1	0	
Do	8:15 p.m.	166	South of Gwynns Run	1	0	

May 16, 1966	6:36 p.m.	156	North Gwynn Tower	3	0	
May 17, 166	5:10 p.m.	149	River	1	0	
Do	6:55 p.m.	113	Chester St	1	0	3
Do	7:30 p.m.	575	Warwick Ave	0	0	
Do	7:45 p.m.	CB-9	Franklin Street Bridge	(3)	0	
Do	8:01 p.m.	158	Edmondson Ave	3	0	
May 18, 1966	3:10 p.m.	171	Stanton, Del	1	0	
Do	6:22 p.m.	173	Middle River Station	1	0	
Do	7 p.m.	192	South Edmondson Station	1	0	
Do	7 p.m.	156	Cheverly, at junkyard	0	0	
May 19, 1966	1:36 p.m.	115	Mount St	2 1	0	
May 20, 1966	6:43 p.m.	173	Fred Rd. Station	1	0	
May 21, 1966	10:20 p.m.	Light engine 4460	North Fulton	1	0	
May 22, 1966	2:50 p.m.	171	North Wilmington Station	0	0	
May 23, 1966	7:10 p.m.	D-3	Greenwood, Del	0	0	
May 24, 1966	5:10 p.m.	554	Woodberry	0	0	
Do	7:10 p.m.	Passenger extra, 4013	Lafayette Ave	2	0	
Do	9:45 p.m.	BB-9	River	0	0	
May 26, 1966	7 p.m.	192	Playground, Warwick Ave	2	0	
Do	7 p.m.	113	Broadway	1	0	
May 27, 1966	1:32 p.m.	130	North of Davis	2	0	
Do	2:30 p.m.	174	Gwynns Run	1	0	
May 28, 1966	8:45 p.m.	175	Biddle St	1	0	
Do	10:15 p.m.	Coal extra 4463	Ruthby, north of Davis	3 1	0	
May 29, 1966	6:30 p.m.	153	Danny Pt. south of Ragan	1	0	
Do	7:40 p.m.	156	Ragan	1	0	
May 30, 1966	8:56 p.m.	575	Pennsylvania Ave	0	0	
May 31, 1966	6:48 p.m.	156	South of Odenton	1	0	
June 2, 1966	5:42 p.m.	154	Fulton Junction	1	0	
Do	7:05 p.m.	173	Lanham Shopping Center	1	0	3
June 3, 1966	5:20 p.m.	932	Ragan	0	0	
Do	5:25 p.m.	C. & O. 4	Long Bridge, District of Columbia	1	0	
Do	5:30 p.m.	Light engine 5767	Station side of Union Tunnel	0	0	
June 4, 1966	12:41 p.m.	130	South of Frederick Rd	0	0	
Do	8:15 p.m.	158	Patterson Park area	2	1	
Do	10:02 p.m.	PB-125	Deanwood, District of Columbia	1	0	
June 5, 1966	6:40 p.m.	17	Between Seabrook and Lanham	2	0	3
Do	7:25 p.m.	CB-9	South end of Anacostia Bridge	(4)	0	
June 6, 1966	2:18 p.m.	174	Warwick Ave	1	0	
Do	6:56 p.m.	192	Patterson Park	1	0	
Do	9 p.m.	PE-3	M St. and Jersey Yard	(4)	0	
June 7, 1966	7:02 p.m.	105	Newport, Del	1	1	
Do	7:05 p.m.	156	Middle River	1	0	
June 8, 1966	4:40 p.m.	B-6-A	Biddle St	0	0	2
Do	4:45 p.m.	149	do	0	0	2
Do	7:05 p.m.	156	Biddle St. area	2	0	
June 10, 1966	1:45 p.m.	403	Jacison Grove	0	0	

See footnotes at end of table.

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
June 11, 1966	6:24 p.m.	Philadelphia race extra	Ragan	0	0	
Do	6:30 p.m.	153	Fourth St., Wilmington	0	0	
June 13, 1966	5:17 p.m.	400	Fulton Junction	0	0	
Do	6:45 p.m.	192	South Fulton Junction	0	0	
June 15, 1966	5:45 p.m.	Philadelphia race extra	Beach St., Wilmington	1	0	
June 16, 1966	2:28 p. m.	174	1 mile south of Seabrook	2	0	3
June 17, 1966	7:32 p.m.	105	Broadway	1	0	
June 18, 1966	12:08 p.m.	111	Pennsylvania Ave	2	0	
Do	1:14 p.m.	148	do	1	0	
June 20, 1966	11:15 p.m.	172	Osborn Crossing, Aberdeen	1	0	
Do	12:27 p.m.	130	Warwick Ave. (school grounds)	1	0	
Do	11:10 a.m.	172	Osborn Crossing, Aberdeen	1	0	
Do	3:15 p.m.	115	New York Ave. bridge	1	0	
Do	6:18 p.m.	400	Aberdeen Station	0	1	
Do	7:36 p.m.	105	Broadway	1	0	
June 21, 1966	12:47 p.m.	Delaware race train	West Yard, Wilmington	1	1(?)	
Do	5 p.m.	554	Glencoe Crossing and Lake	0	0	
Do	6:48 p.m.	156	Biddle St	1	0	
Do	8 p.m.	158	Between Frederick Rd. and Gwynns Run	0	0	
Do	9:25 p.m.	Station engine	Wire Cage	0	0	
June 22, 1966	7:20 p.m.	153	Biddle St	2	0	
Do	3:10 p.m.	132	South Landover at junkyard		0	
June 27, 1966	10:43 a.m.	172	South of Winans (?)	1	0	
June 28, 1966	3:55 p.m.	171	River and Broadway	3	0	
Do	5:48 p.m.	154	Patterson Park	2	0	
Do	6:08 p.m.	173	Biddle St	0	0	
Do	8:22 p.m.	105	Washington St	0	0	
June 29, 1966	8:52 a.m.	571	Timonium (Packard Fence Co.)	1	0	
Do	6:23 p.m.	173	North of Broadway	1	0	3
Do	7:17 p.m.	153	do	1	0	3
June 30, 1966	11:15 a.m.	111	Stemmers Run	1	0	
July 1, 1966	6:20 p.m.	132	Stemmers Run area	3	0	
Do	11:50 p.m.	BL-5	Old Arwicke Rd. crossing	1	0	
July 2, 1966	5:10 p.m.	554	Lake Station (on NC branch)	1	0	
July 3, 1966	12:25 a.m.	PE-3	Cut Section, West Pilot	?	?	
July 4, 1966	7:05 p.m.	113	Biddle St	0	0	
Do	9:58 p.m.	137	do	1	0	
July 7, 1966	1:25 p.m.	403	Edmondson Ave. area	0	1	1
Do	2:25 p.m.	174	do	0	0	1
July 9, 1966	9:15 p.m.	175	Chester St. area	0	0	1
July 11, 1966	6:25 p.m.	154	Fulton Junction	1	0	
July 12, 1966	3:50 p.m.	132	do	1	0	
July 13, 1966	2:40 p.m.	174	Lafayette Ave. (business car 100)	0	0	

July 14, 1966	5:45 p.m.	154	Edmondson Ave.	2	0	
July 15, 1966	2:10 p.m.	2d 130, 4910	Broadway (report from Wilmington)	1	0	
July 16, 1966	4:30 p.m.	171	Fulton area (report from District of Columbia)	1	0	3
Do	5:17 p.m.	171	Bladensburg bridge	2	0	
Do	6:30 p.m.	Passenger extra	Fulton area	0	0	3
Do	8:00 p.m.	575	do	1	0	
July 20, 1966	4:40 p.m.	152	Mount St.	1	0	
July 21, 1966	2:15 p.m.	2-A crew, 8776	Edmondson Ave.	0	0	
July 22, 1966	12:45 p.m.	130	Landover	1	0	
July 23, 1966	7:11 p.m.	153	Stemmers Run Station	0	0	
Do	7:32 p.m.	105	South end of Union Tunnel	0	0	
July 25, 1966	4:31 p.m.	171	Biddle St. and Patterson Pike	0	0	
July 26, 1966	3:34 p.m.	132	Edmondson Ave.	1	0	
Do	3:50 p.m.	Engine 8776	Lafayette Ave.	0	0	
Do	7:35 p.m.	113	Acme siding	0	0	
July 27, 1966	5:15 p.m.	554	Lake Station	1	0	
July 28, 1966	3:35 p.m.	132	Fulton area	1	0	
July 30, 1966	2:25 p.m.	121	Louden Pike	1	0	
Aug. 1, 1966	7:39 p.m.	105	Biddle St.	1	0	
Aug. 2, 1966	7:36 p.m.	105	Broadway	1	0	
Do	8:10 p.m.	161	Washington St.	1	0	
Aug. 4, 1966	12:45 p.m.	130	Between Washington and Baltimore	1	0	
Do	5:20 p.m.	Engine 5617	M St., Washington, District of Columbia	1	0	
Aug. 6, 1966	3:40 p.m.	132	Between Odenton and Winans	1	0	
Do	5:06 p.m.	153	South of Middle River plant	1	1	
Aug. 7, 1966	8:21 p.m.	105	Biddle and Belvedere St. (2 separate locations)	2	0	
Aug. 8, 1966	4:15 p.m.	171	Linwood Ave.	1	0	
Aug. 10, 1966	7 p.m.	113	Middle River area	0	0	5
Do	7 p.m.	156	do	2	0	5
Do	7:05 p.m.	575	Near Hecht Co., Washington, District of Columbia	1	0	
Aug. 13, 1966	10:40 p.m.	9182-83	Union Tunnel	2	0	
Aug. 14, 1966	2:42 p.m.	148	Stanton Del.	0	0	
Do	2:18 p.m.	121	1 mile north of Halethorpe	2	0	
Aug. 15, 1966	9:20 p.m.	175	Biddle St.	2	0	
Aug. 16, 1966	3:15 p.m.	132	Union Market	1	0	
Do	7:20 p.m.	113	South Winans	1	0	
Aug. 20, 1966	4:54 p.m.	149	Chesacho Park	1	0	
Aug. 22, 1966	9:40 p.m.	Light engine	Tome, C. & P.D.	1	1	
Do	9:40 p.m.	B-4, engine 4817	Biddle St.	1	1	
Aug. 23, 1966	8:25 a.m.	114	Emondson Ave.	0	0	
Aug. 24, 1966	12:10 p.m.	148	do	0	0	
Do	2:05 p.m.	174	Lanham Rd. crossing	0	0	
Aug. 25, 1966	5 p.m.	400	Odenton Home Signal	0	0	3
Aug. 26, 1966	11:31 a.m.	111	North of Gwynn	1	0	
Aug. 28, 1966	4:50 p.m.	554	Overhead bridge at Phoenix	1	0	
Aug. 30, 1966	11:45 a.m.	148	North of Halethorpe	1	0	
Do	4:45 p.m.	152	North of Halethorpe (Wynans hill)	(3)	0	

See footnotes at end of table.

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
Aug. 31, 1966	5:30 p.m.	154	Halethorpe South of Washington Aluminum Co.	1	0	
Do	9:10 p.m.	570	Timonium Fair Grounds	1	0	
Sept. 1, 1966	2:15 p.m.	174	South of Odenton	1	0	3
Do	3:32 p.m.	132	Halethorpe south of GE Co.	1	0	
Do	4:52 p.m.	400	South of Odenton	1	0	3
Sept. 3, 1966	11:20 p.m.	155	Broadway	3	3	
Sept. 4, 1966	7:03 p.m.	113	do	0	0	
Sept. 5, 1966	7:05 p.m.	961	12th St., Wilmington, Del.	1	1	
Sept. 6, 1966	5:15 p.m. 5:31 p.m.	152	Elkton, Md. Newport, Del.	2	1	4
Sept. 7, 1966	2:55 p.m.	174	Middle River	1	0	
Sept. 11, 1966	3:15 p.m.	121	Between Fulton and Edmondson	1	0	0
Do	4:52 p.m.	152	Stemmer's Run	1	0	
Sept. 12, 1966	7:24 p.m.	153	Curve, north of Bayview	1	0	
Sept. 15, 1966	5:35 p.m.	923	Edgemoor Station	1	0	
Do	6:30 p.m.	SOU-18	14th Street Bridge, District of Columbia	1	0	
Sept. 19, 1966	1:45 p.m.	D-2	Greenwood, Del.	0	0	
Sept. 21, 1966	12:45 p.m.	131	Passing Bowie Tower	1	0	
Do	6:45 p.m.	156	Passing Edmondson Ave.	1	0	
Do	7:15 p.m.	156	Passing Broadway	1	0	
Sept. 22, 1966	4:55 p.m.	152	South of Biddle St.	1	0	
Sept. 23, 1966	4:35 p.m.	154	Edmondson Ave. bridge	1	0	
Sept. 24, 1966	2:35 p.m.	172	Edmondson Ave.	1	0	
Do	2:55 p.m.	121	Gwynns Run	1	0	
Do	5:50 p.m.	113	Brandywine Creek	1	0	
Do	6:45 p.m.	164	Edmondson Ave. bridge	1	0	
Sept. 25, 1966	4:31 p.m.	171	Landover, Md.	1	0	
Do	5:10 p.m.	154	Landover Tower	1	0	
Sept. 26, 1966	5:43 p.m.	154	Seabrook	1	0	
Sept. 29, 1966	5:25 p.m.	TT-24	Deanwood	0	0	
Do	5:30 p.m.	400	Lafayette Ave.	0	0	
Oct. 2, 1966	12:27 p.m.	130	do	1	0	
Do	3:58 p.m.	132	South Stemmer's Run	2	2	4
Do	4:43 p.m.	132	Between Ruthby Rd. and Stanton	1	0	
Oct. 3, 1966	3:57 p.m.	171	Biddle St.	4	1	
Oct. 4, 1966	4:42 p.m.	152	Gwynns Run	1	0	
Do	6:20 p.m.	173	Biddle St.	2	0	
Oct. 5, 1966	5:40 p.m.	154	South of Seabrook	1	0	
Oct. 6, 1966	2:40 p.m.	121	Warwick Ave.	0	0	
Do	2:40 p.m.	174	do	0	0	

Oct. 7, 1966	4:33 p.m.	171	Ivy City—Hecht Co. siding	1	0	
Do	5:30 p.m.	TT-24	South B. & O. bridge	2	0	
Do	5:50 p.m.	154	Biddle St.	1	0	
Do	6 p.m.	400	Harewood Park, south of Gunpowder	1	0	
Oct. 8, 1966	3:33 p.m.	132	Lafayette St. bridge	1	0	
Oct. 10, 1966	4:34 p.m.	932	Landlith Bridge	1	0	
Do	6:30 p.m.	156	Bowie	1	0	
Oct. 12, 1966	2:40 p.m.	174	Edmondson Ave	1	0	
Do	3:30 p.m.	132	South of Landover, Md	1	0	
Oct. 14, 1966	5 p.m.	400	Lanham	1	1	
Oct. 15, 1966	11:20 a.m.	111	Edmondson Ave	1	0	
Do	3:35 p.m.	171	Charlestown	1	0	
Oct. 16, 1966	2:35 p.m.	174	Seabrook Western Auto South of Wilkins Ave	2 1 2	0 0 0	
Do	2:58 p.m.	171	Route 95, Wilmington	0	0	
Do	3:02 p.m.	121	South of Edmondson Ave	4	0	
Do	4:06 p.m.	171	Edmondson Ave	6	0	
Do	11:10 p.m.	176	Just outside Baltimore Passenger Station	1	0	0
Oct. 17, 1966	4:05 p.m.	171	Luzerne Ave	0	0	3
Do	5:40 p.m.	932	Ruthby Rd	1	0	0
Do	5:50 p.m.	154	Edison Eighway	1	0	2
Oct. 22, 1966	12:06 p.m.	111	1 mile north of Seabrook	1	0	1
Do	12:41 p.m.	115	Biddle St	0	0	4
Do	6:20 p.m.	162	Newark, Del	1	0	
Do	7:05 p.m.	Passenger extra 4025	Odenton (later Frederick Rd.)	1	4	
Oct. 23, 1966	8:10 p.m.	HD-2	Between Dover and Wyoming	1	0	
Oct. 26, 1966	1:35 p.m.	115	North of Frederick Rd	1	0	4
Do	2:35 p.m.	174	Broadway	0	0	
Do	6:25 p.m.	414	Edmondson Ave	2	0	
Oct. 27, 1966	12:31 p.m.	130	do	1	0	4
Do	4:40 p.m.	149	Harmony Rd. crossing	1	0	
Oct. 28, 1966	5:00 p.m.	BL-6	Virginia Ave	1	0	
Oct. 29, 1966	10:15 a.m.	Passenger extra 4804	Biddle St	1	0	
Do	6:10 p.m.	173	Broadway	0	0	2
Oct. 31, 1966	2:45 p.m.	121	Biddle St	1	0	
Do	7:40 p.m.	575	Phoenix, Md	2	0	
Do	7:55 p.m.	D-55	Marydel, Del	4	0	
Nov. 1, 1966	2:17 p.m.	121	Broadway	0	0	
Do	5 p.m.	152	Biddle St	1	0	
Nov. 2, 1966	2:25 p.m.	174	Fulton Junction	1	0	
Nov. 3, 1966	4:47 p.m.	400	½ mile north of Landover	1	0	
Do	5:11 p.m.	154	Route 50 overhead bridge	3	0	
Nov. 5, 1966	8:24 p.m.	Extra, 4913	North Odenton	3	0	
Nov. 7, 1966	4:45 p.m.	171	Seabrook Station	1	0	

See footnotes at end of table.

Date	Time	Train	Location	Windows broken	Persons injured	Persons arrested
Nov. 8, 1966	10:10 a.m.	126	Ragan	0	0	
Do	1:05 p.m.	115	Canton Junction	2	0	
Do	6:02 p.m.	149	Baltimore	1	0	
Nov. 9, 1966	10:45 a.m.	148	Edmondson Ave	1	0	
Do	6:08 p.m.	173	Biddle St	1	0	
	6:15 p.m.		Frederick Ave	1	0	
Nov. 14, 1966	1:05 p.m.	115	Orangeville	0	0	0
Do	6 p.m.	152	Gunpowder	1	0	
Do	7:47 p.m.	575	Fulton	1	0	
Nov. 20, 1966	12:30 p.m.	115	Biddle St	1	0	4
Do	5:10 p.m.	152	Martin plant	1	0	
Do	5:15 p.m.	149	Broadway	1	0	
November 25, 1966	9:55 a.m.	104	Vanderveer Ave., Wilmington	1	0	
Do	4:15 p.m.	Yard crew, Engine 7889	Bennings Yard, northbound	0	0	2
Nov. 26, 1966	12:38 p.m.	1st 115	Orangeville	1	0	2
Do	1:30 p.m.	130	do	0	0	2
Do	3:51 p.m.	171	Biddle St	1	0	
Do	6:40 p.m.	105	South of Union Tunnel	1	0	
Nov. 29, 1966	1:00 p.m.	115	Loudon Park	1	0	
Dec. 3, 1966	12:15 p.m.	548	White Marsh	0	0	
Dec. 4, 1966	2:34 p.m.	174	Patterson Park			
Dec. 6, 1966	3:42 p.m.	132	Warwick Ave	(?)	0	
Dec. 8, 1966	5:41 p.m.	154	Edmondson Ave	1	0	
Dec. 10, 1966	11:50 a.m.	172	Davis	2	0	
Dec. 12, 1966	10:42 a.m.	172	Edmondson Ave	0	0	
Dec. 17, 1966	10:53 a.m.	172	Broadway	0	0	
Dec. 18, 1966	4:10 p.m.	105	Harmony Rd	0	0	
Do	3:59 p.m.	HD-2	M.P. 31	0	0	
Dec. 21, 1966	10:20 a.m.	172	Glendale	0	0	5
Do	11:18 a.m.	148	Odenton (?)	1	0	5
Do	4:30 p.m.	149	Seabrook	1	0	
Dec. 22, 1966	2:38 p.m.	128	Fulton	1	0	
Do	3:11 p.m.	106	Edmondson Ave	0	0	
Do	5 p.m.	106	Edgemoor Yard	1	0	

Dec. 23, 1966	12:27 p.m.	130	Fulton Junction	2	3	
Dec. 30, 1966	2:35 p.m.	174	Edison Highway	0	0	
Dec. 31, 1966	12:30 p.m.	130	South of Edmonsdon Ave	2	0	
Jan. 1, 1967	2:25 p.m.	174	Fulton Junction	2	0	
Jan. 2, 1967	3:15 p.m.	106	Edmondson Ave	1	0	
Do	3:40 p.m.	174	Edgemoor Yard	0	0	2
Jan. 12, 1967	10:45 a.m.	172	Catonsville branch	1	0	
Jan. 13, 1967	3:31 p.m.	132	North Edmondson Ave	1	0	
Jan. 16, 1967	5:15 p.m.	154	Landover	0	0	
Do	6:50 p.m.	414	Halethorpe	0	0	
Jan. 17, 1967	5:07 p.m.	149	Gunpowder	2	0	
Do	6:21 p.m.	105	Broadway	1	0	
Jan. 19, 1967	4:30 p.m.	152	Edmondson Ave	3	0	
Jan. 20, 1967	5:05 p.m.	171	South Landover (Smith Junkyard)	1	0	
Jan. 21, 1967	5:05 p.m.	105	Halethorpe	1	0	
Do	6:14 p.m.	164	South of Seabrook	1	0	
Jan. 22, 1967	(?)	175	South of Baltimore	1	0	
Jan. 23, 1967	11:20 a.m.	111	Chester St	1	0	
Do	12:36 p.m.	115	Just north of Biddle on curve	1	0	
Do	[1] [8] 12:36 p.m.	130	Canton Junction	2	0	
Do	3:40 p.m.	132	Gwynns Run	1	0	
Do	4 p.m.	132	Stemmers Run	1	1	
Do	6:12 p.m.	156	South of Seabrook Station	1	0	
Jan. 24, 1967	4:35 p.m.	160	Edgemoor Station	1	0	
Do	4:40 p.m.	554	Ridewood Station	2	0	
Jan. 25, 1967	4:45 p.m.	554	do	2	0	
Jan. 26, 1967	4:45 p.m.	554	Lutherville	2	0	
Jan. 29, 1967	1:45 p.m.	107	Between Gunpowder and Middle River	1	0	
Jan. 30, 1967	3:42 p.m.	106	Edison Hwy	1	0	
Feb. 1, 1967	10 p.m.	160	Fulton	3	0	
Do	12:53 p.m.	115	Knecht Ave	1	0	
Feb. 5, 1967	2:10 p.m.	107	B. & P. Tunnel at Pennsylvania Ave	1	0	
Feb. 13, 1967	3:12 p.m.	MD-18	Jersey Yard	0	0	

[1] Motor 4889.
[2] Engine.
[3] Cabin car.
[4] All windows in cabin car.
[5] 1 window and 1 headlight.
[6] Auto
[7] 1 window cracked.
[8] Reported from Wilmington by conductor 12:26 p.m.

Senator BURDICK. At this time, Mr. Chairman, I should like to include a picture for the file showing the derailment caused in the Northeast Washington area. Thomas W. Cox, of Alexandria, was the engineer of this train. He tried to duck as rocks crashed through the glass of his cab. In the process his feet slipped off the automatic deadman control, triggering the train to an emergency stop. As a result, six cars were derailed and the tracks were torn up disrupting the rail traffic for many hours.

Senator MCCLELLAN. The picture will be received and will be retained in the permanent files as an exhibit.

Senator BURDICK. Mr. Chairman, this matter has reached, in my opinion, serious proportions. It is not a case of incidents of isolated cases where young boys out for a lark throw rocks. This is a pattern. This is happening just too often. When you consider it happens everyday and sometimes twice a day on this small segment, I think we have to do something to discourage this type of conduct.

In checking with my staff, I thought perhaps there might be sufficient legislation on the books that would take care of vandalism on the tracks, but they are of the opinion and I am of the opinion, and the people who operate the trains are of the opinion that they need some stiffer penalties for this type of conduct.

Senator MCCLELLAN. There is no Federal statute to cover this so far as you know?

Senator BURDICK. Not specifically.

That is all I have this morning, Mr. Chairman.

Senator MCCLELLAN. Thank you very much.

How many arrests did you say had been made in these 487 cases?

Senator BURDICK. 57.

Senator MCCLELLAN. How many convictions?

Senator BURDICK. I don't believe I have that. I am sure it would be less than 57. I understand youth are involved in many of these, Mr. Chairman, and of course you know much leniency is given to youthful offenders.

Senator MCCLELLAN. I understand, but as to conviction, if we could get the disposition where there was in effect a finding of guilt, though not so reported in terms of the record.

Senator BURDICK. I would be very happy to provide it for the committee.

Senator MCCLELLAN. If you have it and if it is convenient. I just wondered what the result was. You say that these are not just the acts of youth who are out for a thrill or something. What is behind it? Do you have any idea?

Senator BURDICK. No, I don't know what is behind it. I presume it starts out as a juvenile lark sort of thing, and then it grows. I don't know what causes this.

Senator MCCLELLAN. As I say, it is understandable to all of us that youngsters might get out and throw some rocks at trains, but you said that adults were engaged in this, too.

Senator BURDICK. Yes, and they don't throw them at the train. They throw at the cab. They throw them at the engineer, who has cargo and passengers to take care of.

Senator MCCLELLAN. In this instance where they had the wreck, do you know whether anyone was arrested in connection with that?

Senator BURDICK. Yes, I do. Nine youths were arrested in that case. Let me see what the disposition of the case was.

Senator MCCLELLAN. Do you know what the disposition was?

Senator BURDICK. Well, the story says—I will make this a part of the record too, the news story on this one—the judge told the boys, all of whom were present with members of their families, that he doubted anything ever will be done to punish them. I understand that the maximum penalties are often stiff for youth if they are first offenders, but as I say, the instances here include adults, and be that as it may, this just can't go on if it happens this frequently, in my opinion.

Senator MCCLELLAN. Thank you very much. Senator Hart, any questions?

Senator HART. No, thank you.

Senator MCCLELLAN. Thank you, Senator.

Senator BURDICK. Thank you.

(The article referred to follows:)

NINE JUVENILES FACE COURT IN DERAILMENT

Nine youngsters charged with tossing rocks at a Pennsylvania Railroad freight train, which resulted in the derailment of seven cars and $12,600 damage Nov. 2, appeared yesterday in the District Juvenile Court.

Two of the boys denied involvement in the case and their cases were continued to a later date.

Six others pleaded involvement and their cases were continued until case histories can be compiled on each.

The charge of tossing rocks filed against a 17-year-old was dropped because he entered a plea of involvement of stealing a pack of hot dogs from a food store on Dec. 10. The theft case was continued for disposition.

Charges of assaulting the freight train engineer by throwing rocks at him were dismissed on the motion of Miss Rhoda Lakritz, an attorney for the Neighborhood Legal Services Project.

One of the youngsters told Chief Judge Morris Miller that they were trying to toss rocks into open boxcars as the train passed by.

The judge told the boys, all of whom were present with members of their families, that he doubted "if anything ever will be done" to punish them.

He ordered case histories compiled on each of them with reports due before him in 30 days. He said if the youngsters stay out of trouble between now and then, the charges probably will be dismissed.

The boys, ranging in age from 10 to 17, were charged with trespassing on the Pennsylvania Railroad property in the 1400 block of Kenilworth Avenue NE, tossing rocks at the train, and causing the engineer to lose control of the engine, which resulted in the derailment.

Senator MCCLELLAN. Very well, our next witness is the Honorable J. Edward Lumbard, chief judge, U.S. Court of Appeals, for the Second Circuit, New York, N.Y. I will ask that you give us a brief sketch of your background and experience.

Judge Lumbard, do you have a prepared statement?

Judge LUMBARD. I do, Mr. Chairman.

Senator MCCLELLAN. Do you wish to read it intto the record?

Judge LUMBARD. I would like to do that for the most part if that is agreeable to you.

Senator MCCLELLAN. Indeed it is. Very well.

We certainly welcome you. We appreciate your interest and your willingness to cooperate with the committee and to come here and give us the benefit of your wise conclusions and counsel.

You may proceed.

STATEMENT OF HON. J. EDWARD LUMBARD, CHIEF JUDGE OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, NEW YORK CITY

Judge LUMBARD. Mr. Chairman, I am pleased to respond to your request to appear and testify regarding proposed legislation which has been introduced by you and other Members of the Senate. During the past 10 years the most troublesome questions before the trial and appellate courts, both State and Federal, have involved the administration of criminal justice under our Federal Constitution. The judges share the alarm of the public, the Congress and the President over the worsening crime situation and the shrinking power of law enforcement to cope with it as effectively as it should.

My extrajudicial experience includes three terms of service in the Department of Justice in the office of U.S. attorney for the southern district of New York, 1925 to 1927, 1931 to 1933, and lastly as U.S. attorney for the southern district of New York from April 1953 until I took office as a circuit judge in July 1955; in addition, four special prosecutions as assistant attorney general of New York State, 1928, 1930, 1936, and 1943; also, the representation of defendants in State and Federal courts over a period of 26 years of private practice, by assignment and retainer, in cases ranging from misdemeanors to murder; and lastly, since August 1964 as chairman of the American Bar Association Special Committee on Minimum Standards for Criminal Justice. However, on this occasion I speak only for myself.

Any proposals for expanding and clarifying the powers of law enforcement agencies must be considered in light of the fact that it has become more and more difficult for these agencies to secure sufficient evidence of crime to justify arrest, prosecution, and conviction.

First, decisions of the Supreme Court now require law enforcement agents to warn suspects, who are in custody, of their rights in such a way that those who otherwise would voluntarily speak are now virtually encouraged not to do so. Moreover, the requirement that, before any questioning, counsel must be available, if desired, and that counsel be furnished if the suspect cannot get counsel himself, prevents or postpones questioning at the very time that it would be most fruitful. Thus in many cases the most ready, the most authentic and the most natural means of getting information by the voluntary statement of the person best able to tell, is no longer available.

Second, court decisions have made it impossible to secure testimony before grand juries and government bodies where there is any claim of fifth amendment privilege.

Third, revolutionary developments in the speed and means of travel and communication have enabled organized crime to operate countrywide, through agents who may be far removed, and in such ways that detection is not only difficult but almost impossible in view of present restrictions. At the same time it is now unlawful for law enforcement agencies to tap telephone wires and divulge what is thus obtained and the use of any electronic devices is now being questioned.

There is a fourth obstacle: the increasing reluctance of witnesses to come forward to complain and to testify. As law enforcement difficulties increase and the likelihood of successful prosecutions decreases,

those who suffer from organized crime become more fearful of the consequences of speaking.

The report of the President's Commission on Law Enforcement and Administration of Justice, published on February 18, notes the importance of the telephone to large criminal enterprises, and the belief of law enforcement officials that evidence necessary to prosecute will not be obtained without the aid of electronic surveillance techniques. It explains why this is so:

> (T)he organizational structure and operational methods employed by organized crime have created unique problems for law enforcement. High-ranking organized crime figures are protected by layers of insulation from direct participation in criminal acts, and a rigid code of discipline inhibits the development of informants against them. A soldier in a family can complete his entire crime career without ever associating directly with his boss. Thus, he is unable, even if willing, to link the boss directly to any criminal activity in which he may have engaged for their mutual benefit. Agents and employees of an organized crime family, even when granted immunity from prosecution, cannot implicate the highest level figures since frequently they have neither spoken to, nor even seen them.

Because of all these present day difficulties of getting evidence it is of the utmost importance to strengthen by all possible means the powers of law enforcement agencies to get evidence. In the present crisis, means which may have seemed questionable and undesirable a few years ago now are reasonable and necessary.

I believe that to the great majority of the American people it is unthinkable that law enforcement should remain as impotent as it is today; it is unthinkable that we should shrink from supplying the necessary powers under proper safeguards.

S. 675. TO CONTROL AND OUTLAW WIRETAPPING

With these considerations in mind, there is urgent need for legislation such as S. 675 which would prohibit wiretapping except by duly authorized law enforcement officers in the investigation of crime, upon a finding by a judge that there is probable cause to believe that evidence of crime may thereby be obtained. The application would require approval of the Attorney General or a designated assistant, and the court order would be limited to specified phones for a limited period of time, and reports of these orders would be filed with the Congress.

Authority to tap telephone wires and use other electronic devices to overhear and record conversations has long been considered by law enforcement agencies to be the single most important tool for investigating organized crime. It is reliable; it furnishes leads for investigation; it saves time and expense of agencies who have too little manpower and money to do all that the public expects.

The proposed legislation would also make it lawful for State officers to wiretap under supervision of a State court similar to that required by the proposed act for Federal officers. Thus this bill would require all the States to set up similar high standards which would have to be met before wiretapping by State officers would be lawful. The enactment of S. 675 would not only curb unlawful wiretapping but it would result in proper controls of police wiretapping where those do not now exist. Only five States, of which New York is one (New York Code of

Criminal Procedure sec. 813–a) now authorize police wiretapping under court order.

In two major respects I think the proposed bill is too narrow in scope and that it should be broadened. First, it is limited to use in investigating just a few Federal crimes. I think it should be available in investigating any crime.

While it is true that section 5 would permit wiretapping in investigation of many major Federal crimes as it includes (1) offenses against national security; (2) murder, kidnapping, and extortion; (3) bribery and graft, and interstate transmission of gambling, and interstate traffic in racketeering; (4) counterfeiting; and (5) narcotics violations; organized crime does not limit itself to these particular Federal offenses. It frequently deals in other serious Federal crimes not included in this list, such as bank robbery, stock frauds, stolen securities, stolen automobiles, goods stolen from interstate commerce, blackmail, obstruction of justice, and schemes to defraud.

Senator McCLELLAN. If you will pardon the interruption, they also get into the bankruptcy racket, do they not?

Judge LUMBARD. Yes; they do, Mr. Chairman.

Senator McCLELLAN. I don't believe you mentioned it. I hadn't thought of it until now.

Judge LUMBARD. You are quite right.

Senator McCLELLAN. I have information that that is correct.

Judge LUMBARD. That should be on the list.

There are a host of other Federal crimes, not covered by S. 675, which may well be just as important, such as threats against the President, assaulting an officer of the United States, injuring property of the United States, arson, blowing up a bridge or a tunnel, destruction of aircraft, and air navigation facilities.

Furthermore, I believe that a limitation as to the crimes investigated is really unnecessary as there are several factors which themselves greatly limit the use of wiretapping.

First, the proposed statute, section 5a, provides that only the Attorney General, or any Assistant Attorney General specifically designated by him, may authorize the necessary application to a Federal judge for approval to wiretap. Thus the application will be carefully screened.

Second, wiretapping is expensive and is not used except in situations of importance where results may reasonably be expected, as I am sure District Attorneys Koota and Frank Hogan of New York City can tell you. This has been the New York experience. Even with modern devices it requires at the least four men for each 24 hours to monitor a wiretap.

Third, the judge to whom the application is made can be expected to exercise sound discretion about approving its use unless a strong showing of need is made in cases of lesser importance.

And there is still a fourth limiting factor—the Director of the Administrative Office of the U.S. Courts is required to report each year to the Congress on the number and nature of all applications.

Although the proposed bill limits the permissible areas for wiretapping by Federal agents for Federal crimes, it does not do so with respect to State wiretapping. Under appropriate orders of a State

judge, section 5b provides that leave may be granted "when such action may provide evidence of the commission of any crime * * * as to which the interception of wire communications is authorized by the law of that State."

I need hardly remind you that in New York's prosecutions against organized crime, commencing in 1935 with the special rackets investigation under Thomas E. Dewey and continuing under District Attorney Frank S. Hogan, the single most valuable weapon has been electronic surveillance. And the President's Commission notes that "Only in New York have law enforcement officials achieved some level of continuous success in bringing prosecutions against organized crime." Since Federal court decisions have recently made it clear that use of wiretap evidence in court would be a violation of the Federal Communications Act, 47 U.S.C. 605, almost all New York State prosecutors have abandoned those cases where such evidence was necessary for prosecution.

In New York State under section 813 of its Code of Criminal Procedure, enacted in 1942 under the 1938 New York Constitution, article I section 12, a State court judge may permit wiretapping (and since 1957 this includes "eavesdropping") wherever there is reasonable ground to believe that evidence of crime may be thus obtained.

What I am trying to point out is that the New York statute does not limit the use of these devices to any particular crime. It permits them to be used with respect to evidence of any crime.

Senator McCLELLAN. I don't want to interrupt you now, but at the proper time if you could, I want you to elaborate on how that law has operated with respect to whether there are trespasses or injustices done the innocent, or whether they are operated as a vital instrumentality in the detection of crime.

Judge LUMBARD. I can only say in answer to that, that the uniform belief of our New York City prosecutors over the years has been that this is the single most important weapon against organized crime; and I think the feeling is that also under the very careful system of requiring orders from a judge, and limiting the taps, and because of the fact that it is expensive to do this and it is done only in important cases, that there is a minimum of trespass on the public, on the innocent members of the public.

It seems to be that surely any citizen who is concerned about law enforcement ought not to mind the possible annoyance of using this important weapon against organized crime. I don't know any misuse of it that has come to light in recent years, Mr. Chairman.

Senator McCLELLAN. For how many years has New York had this statute?

Judge LUMBARD. Since 1942.

Senator McCLELLAN. Since 1942, nearly 25 years. And in that period of time, what would you say about abuses? I believe you indicated that no serious abuses have come to light?

Judge LUMBARD. I can recollect no serious abuses by law enforcement officers, but I should add that the district attorney has prosecuted cases of independent investigators who were not authorized to tap wires, and that some of these people have been sent to jail.

Senator McCLELLAN. That would be true. That would be a violation of the law.

Judge LUMBARD. Certainly.

Senator MCCLELLAN. But I am talking about where it is authorized under procedures that are established by the New York law, for officers to employ those procedures in the detection of crime. There have been no substantial abuses of the powers conferred upon the courts to grant the authority to wire tap?

Judge LUMBARD. Well, Mr. Chairman, I have heard of none, but I think District Attorney Koota and District Attorney Hogan would be more fully advised about that than I am.

Senator MCCLELLAN. If there had been any serious abuses, it would certainly have come to light and there would have been publicity about it, I assume.

Judge LUMBARD. I think I might have heard of them, yes.

Senator MCCLELLAN. Very well. At this point while you were on this, I just wanted you to elaborate a little bit on your experience in New York under a similar statute.

Judge LUMBARD. Yes. Well, as I was saying, under New York's practice, the fact is that almost all the orders permitting wiretaps have related to organized crime or to a major felony, although as I have said the statute would permit it to be used for any crime.

Senator MCCLELLAN. But there has been no tendency on the part of the officials who have the authority to apply in the courts and the authority to grant wiretapping orders, to make undue use of this instrumentality. They have been conservative in the use of it, I assume?

Judge LUMBARD. Yes, it has been used quite sparingly, and you will find for example, there are seven or eight times as many search warrants issued and executed than there are wiretaps orders.

Under New York's definition of crime this includes any "act or omission forbidden by law" punishable by fine or imprisonment, except traffic infractions of the vehicle and traffic laws and the conservation law. (Penal law § 2). But although the New York law thus permits wiretapping and eavesdropping for any crime, in practice almost all the orders which have been signed relate to organized crime or to a major felony. If it has been so used in New York, which requires no approval by a major law officer such as the attorney general, and no central reporting, as S. 675 does, it would seem unnecessary to limit the application of S. 675 to certain enumerated crimes.

There is a second alternative to limiting the crimes to those listed in S. 675 and that is to permit authorization in the investigation of any crime where the maximum penalty is 5 years' imprisonment or more. I believe this would cover all the areas enumerated in S. 675 and most other crimes in which professional criminals engage.

My second comment is that it is unduly restrictive to require that, before approving the wiretap, the judge must find (p. 9) that there is probable cause to believe that "(3) no other means are readily available for obtaining that information."

As S. 675 provides for challenging the wiretap order before trial by a motion to suppress (p. 11) on the ground that "There was not probable cause for believing the existence of the grounds on which the order was issued." a requirement of a showing that other means were not readily available would lead to unnecessary litigation and delay in many cases. We already know from the nature of the offenses and

the manner in which organized crime operates that the usual methods would be a waste of time. Surely any direct approach or any inquiry of those involved would only tipoff the higher ups and frustrate arrest and prosecution. As I have said, weapons which were available to law enforcement a few years ago are not available today.

The act should also cover the situation where a wiretap is permitted in an investigation of one crime and unanticipated evidence of another crime is disclosed. It seems to me this possible difficulty would also be obvious if a wider use of wiretapping were permitted with respect to all crimes.

Senator McCLELLAN. In other words, if the wiretap order was secured for the purpose of securing information or evidence to sustain charges of interstate gambling or racketeering or something, and in the course of that you discovered some other crime, it ought not be excluded. That evidence ought to be admissible.

Judge LUMBARD. Exactly. I think provisions should be made for that.

Senator McCLELLAN. And the bill as now drafted you think doesn't provide for that.

Judge LUMBARD. At least it would raise a question, and I suggest it might be well to make provision against it.

Senator McCLELLAN. I think that is an excellent suggestion, even if we limit the offenses that can be investigated in some manner.

Judge LUMBARD. For example, suppose wiretapping for evidence of narcotics violations has been permitted and the law enforcement agency finds evidence of extortion or counterfeiting. It would seem advisable to make specific provision for the issuance of a supplemental order permitting use of such evidence already obtained and further interception regarding the newly discovered crime. It is well settled that where during the execution of a search warrant to discover fruits of one crime evidence of other crimes is also found, such other evidence is lawfully seized and may be used. As it is equally possible that the agents may get evidence of some crime not enumerated under the five categories listed in section 5a, this is an additional reason why S. 675 should be broadened to permit wiretapping in the investigation of all Federal crimes so that such difficulties would be eliminated.

APPEALS FROM SUPPRESSION ORDERS

I suggest that S. 675 could also be greatly strengthened by permitting the Government to appeal from any order suppressing wiretaps. Of course if the Government cannot appeal that usually ends the case. Such an appeal in the Federal courts from orders suppressing evidence is now allowed only in narcotics cases. 18 U.S.C. § 1404(2).

The President's Commission has urged (p. 140) that "Congress and the States should enact statutes giving the prosecution the right to appeal from the grant of all pretrial motions to suppress evidence of confessions," and in stating its reasons it said:

> Not only does the absence of a right of appeal preclude successful prosecution in many cases, including important cases involving organized crime, narcotics, and major thefts, but it has distinctly undesirable effects upon the development of law and practice. The law of search and seizure and confessions today is highly uncertain. This uncertainty is compounded by lower court rulings that re-

strict police conduct yet cannot be tested on appeal, and by inconsistent lower court decisions that can be resolved only on an appeal sought by the defendant.

The uncertainty about this would be compounded, if there were orders of suppression in the district courts which prevented prosecution unless appeal could be taken from those orders, so I suggest that provision be added to with 675.

Since 1965 New York has permitted appeal by the State from all orders of suppression of evidence and also orders suppressing confessions or statements where the district attorney certifies that without use of the matter suppressed the proof available is insufficient or so weak that any reasonable possibility of prosecution has been effectively destroyed. (N.Y. Code of Criminal Procedure, § 518–a, enacted in July 1965.)

In the light of today's crisis in law enforcement, the old arguments against wiretapping are no longer weighty.

Wiretapping, under the safeguards provided in S. 675, is no more an unreasonable search and seizure in violation of the fourth amendment than is a search warrant. The fact that innocent people may use the particular telephone ought not outlaw wiretapping approved by a court; likewise the execution of a valid search warrant may also involve inspecting and looking through the effects and papers of innocent people. We cannot have effective law enforcement without running the risks of some invasion of privacy; no good citizen who places any value on living in an orderly and peaceful society where crime is under reasonable control will object to those occasional annoyances which sometimes are the byproduct of a suitable police action.

If wiretapping by law enforcement agents is legalized because, as I believe, it is necessary, it will not be "dirty business." Those who oppose wiretapping have always relied heavily on the eloquent dissent of Justice Holmes in *Olmstead* v. *United States* (277 U.S. 438), where the majority permitted the Government to use wiretap evidence to convict bootleggers despite the fact that the wiretapping was itself a crime in violation of laws of the State of Washington. Of course, these was no Federal law on the subject at the time.

Justice Holmes called it "dirty business" because the evidence was "obtained and only obtainable by a criminal act;" that is, a violation of State law, and he held that courts should exclude evidence obtained by a crime committed by the officers of the law.

It seems clear that had there been a Federal law which permitted wiretapping, upon findings of the public necessity for such legislation, as S. 675 proposes, Justice Holmes would not have said what he did about wiretapping, even in 1928; it would not have been "dirty business" had the law authorized it.

It was Justice Holmes who write in 1880, "The life of the law is not logic but experience." The bootleggers whose convictions were affirmed in the *Olmstead* case in 1928, I submit, were public benefactors compared to the professional criminals of 1967. There is no dirtier business today than the business of organized crime; it rules by violence and terror; it victimizes the public and corrupts public officials. Every possible resource of Government should be used to expose and destroy it.

Senator McClellan. A lot of people thought them to be public benefactors.

Judge LUMBARD. I thought that was an apt analogy.

The report of the President's Commission ends its discussion of electronic surveillance by pointing out that the "present status of the law with respect to wiretapping and bugging is intolerable" and that the present controversy must be resolved. A majority of the Commission favors legislation "granting carefully circumscribed authority for electronic surveillance to law enforcement officers."

We should never forget the price we must pay if the enemies of society are permitted to operate without fear of detection. The Commission appointed to investigate the facts relating to Pearl Harbor, of which Mr. Justice Roberts was chairman, noted in its report, filed in January 1942, that the restrictions then in effect prevented resort to "certain methods of obtaining the content of messages transmitted by telephone or radio-telegraph over the commercial lines operating between Oahu and Japan" and that the contents of the messages sent just prior to December 7, 1941, might have furnished valuable information. It concluded that among the causes which contributed to the success of the Japanese attack were "restrictions which prevented effective counterespionage." Today there are too many enemies within the country in the ranks of organized crime who can operate almost at will because we have denied to law enforcement the necessary means of detection

The Congress should legalize the use of evidence secured by electronic surveillance, under such safeguards as S. 675 proposes, as a necessary measure in the war against organized crime. Shall I now proceed, Mr. Chairman, with respect to S. 677 permitting compulsion of testimony by granting of immunity?

Senator MCCLELLAN. Yes, proceed and we will ask questions later.

Judge LUMBARD. The bill would extend to four new areas the power of the Government, acting through the U.S. Attorney, with approval of the Attorney General or his designated assistant, to compel a witness to testify and produce evidence in exchange for a grant of immunity from prosecution for matters concerning which testimony and evidence is given; namely—

(1) certain interstate transactions in gambling, narcotics, prostitution, extortion, and bribery;
(2) influencing or injuring a witness;
(3) bankruptcy crime;
(4) Federal bribery and graft.

While the bill thus gives some additional help to the Government in unsealing lips which otherwise would remain closed, it is only a piecemeal approach and it does not go far enough. The bill should permit the Government to compel testimony and evidence in every investigation of a Federal crime.

There is no reason why the Government should not expect every person to tell what he knows in a criminal investigation so long as that person is not compelled to incriminate himself by doing so. Except as to certain confidential communications, there is no right to remain silent apart from the right under the fifth amendment that one may not be compelled to incriminate himself. Once the Government is empowered to guarantee that a witness will not be prosecuted regarding the matters to which he may testify, and thus

he cannot possibly incriminate himself, the witness no longer has any right to refuse to speak. Of course the witness obtains no immunity regarding the truth or falsity of his testimony; he must tell the truth and if he does not he may be prosecuted for perjury. S. 677 so provides, and this is the customary provision. If the witness is granted immunity and then refuses to testify he is in contempt of court and the court may find him guilty of contempt and commit him until he testifies, or the court may impose a sentence of not more than 6 months, or he may be given the right to be tried before a jury and if found guilty he may be sentenced in excess of 6 months' imprisonment.

The President's Commission has recently recommended that a general witness immunity statute should be enacted at both Federal and State levels, which would provide immunity sufficiently broad to assure compulsion of testimony. (Report, p. 141.) The Commission notes that some States already have general immunity statutes which permit the granting of immunity and the compulsion of testimony in any criminal case. The Commission also recommends that the immunity should be granted only with the prior approval of the chief prosecuting officer, as in S. 677 which requires the approval of the Attorney General or his designated assistant. Under its illuminating discussion of a "National Strategy Against Organized Crime" it states (page 200) that such a general immunity statute "is essential in organized crime investigations and prosecutions." And it goes on to point out that:

> (t)here is evidence to indicate that the availability of immunity can overcome the wall of silence that so often defeats the efforts of law enforcement to obtain live winesses in organized crime cases. Since the activities of criminal groups involve such a broad scope of criminal, violations, immunity provisions covering this breadth of illicit actions are necessary to secure the testimony of uncooperative and criminally involved witnesses.

We already have at least 39 different Federal statutes which permit the compulsion of testimony either before a grand jury or before a Government agency empowered to take testimony in certain areas of agency jurisdiction. There are five different kinds of statutes regarding immunity. Under group I statutes, of which there are at least nine, if the witness appears pursuant to subpena and testifies, he automatically gets immunity. Accordingly, he must testify if he is subpenaed and sworn. The Interstate Commerce Act has had such a provision since 1893 and the Sherman Anti-Trust Law since 1903. If businessmen in legitimate business can be compelled to testify about their business why should not those associated with organized crime be cempelled to testify about any or all of their businesses without restriction.

Group II consists of at least nine statutes where the immunity is not automatic. But when the fifth amendment privilege is claimed the Government may compel testimony by granting the immunity or, as in the case of the Immunity Act of 1954, applying to the court to direct the witness to answer. The Narcotic Control Act (18 U.S.C., Sec. 1406), also permits compulsion of testimony under the procedure proposed in S. 677.

Group III consists of at least nine statutes where immunity is automatically given a witness who is subpenaed and testifies or who

is required to file an incriminating statement before certain administrative agencies.

In group IV are at least five statutes such as the Labor-Management Relations Act and the Social Security Act, where, upon claim of immunity before an administrative agency, the agency may compel testimony upon grant of the immunity.

Finally, group V consist of at least seven statutes which empower the Securities and Exchange Commission and the Federal Power Commission to compel testimony in certain proceedings before these Commissions or in court proceedings they institute.

It would seem that if administrative agencies have been given the power to grant immunity in so many instances where the violation of the criminal law is relatively unimportant, then the U.S. attorneys should be entrusted with similar power wherever it may be in the public interest to compel testimony.

There is a difficulty in compelling testimony which should be mentioned. Despite a grant of immunity, under existing statutes, many witnesses attempt to put off the evil day of testimony as long as possible by appeal. If these appeals are allowed to wind their way through the court of appeals and an application to the Supreme Court in the usual way, the particular avenue of investigation may have been lost to the Government.

This is exactly what has happened in six recent cases in the second circuit. Four of these involved narcotic investigation witnesses whose testimony was delayed in each case for more than 2 years. The district court had ordered the witnesses committee for 2 years or until they testified. They were released on bail. However, by the time the cases got to the Supreme Court the grand jury before whom they had been brought was no longer in existence and on that ground the Supreme Court vacated the judgments.

Another witness, Emanuel Brown, who was questioned under the Motor Carriers Act, received a 23-month delay before the Supreme Court finally affirmed his contempt conviction. In the sixth case, 26 months after Harris was given immunity and ordered to testify under the Federal Communications Act, the Supreme Court reversed his contempt conviction, 5 to 4, because it had changed its mind about the necessary procedural steps in such contempt cases. With such long delays it is always doubtful whether the particular witness can any longer be useful.

Therefore I recommend that provision be made that an appeal from contempt adjudications must be taken within 5 days and, upon application by the Department of Justice, that the court of appeals be required to fix an expedited schedule for hearing the case, giving it preference ahead of all other business, and that similar provisions should apply to any petition for certiorari and action thereon by the Supreme Court.

In 1951, in its third interim report, the Senate's Special Committee To Investigate Organized Crime in Interstate Commerce (known as the Kefauver committee) made numerous recommendations which included the proposal of a general immunity statute in these words:

> The Attorney General of the United States should be given authority to grant immunity from prosecution to witnesses whose testimony may be essential

to an inquiry conducted by a grand jury, or in the course of a trial or of a congressional investigation.

If a general immunity statute was necessary in 1951, it is much more necessary today when the imbalance in criminal justice has made it difficult and, in many cases, impossible for law-enforcement authorities to get evidence of crime. With your leave, Mr. Chairman, may I now turn to S. 674?

Senator McCLELLAN. Yes, sir.

S. 674. TO ADMIT CONFESSIONS UPON FINDING OF VOLUNTARINESS

Judge LUMBARD. This bill seems designed to nullify the Supreme Court decision in *Miranda* v. *Arizona* by reinstating the law as it was before June 13, 1966, when the only test of the admissibility of a defendant's statement was whether it was voluntary. I am sure the committee realizes that as the Court put its rulings in those cases on constitutional grounds, by applying the due process clause of the 14th amendment to the three State cases, and the fifth and sixth amendments to the Federal case, there would be serious question that the Court's interpretation may effectively be changed by legislation.

However, it has been suggested that the rulings in the *Miranda* cases apply only to situations where defendants are in the custody of the police when their statements are taken.

Senator McCLELLAN. May I interrupt? I don't know, it may be a forlorn hope, but I should like to hope that if this legislation is enacted and its constitutionality is tested, only one Justice changing his position would sustain the law. That wouldn't be unheard of with respect to members of the Court. They might change their position this time on the side of law and order instead of continuing to insist on a position that obviously does work to the advantage of criminals. If Congress passes such a statute at least one among them might be persuaded to change his position.

Judge LUMBARD. That is a matter of policy for the Congress which you are much better qualified to judge than am I.

Senator McCLELLAN. At least it would put the Congress on record.

Judge LUMBARD. Yes.

Senator McCLELLAN. In this respect the law should be what it has been since the founding of this Government. It should not be changed by a Court decision, by a 5–4 Court decision which reverses, in effect, what has been the principles of justice and jurisprudence in this country from the beginning of our Government.

I know since they put it on a constitutional ground, that they might continue to hold that even a statute like this was unconstitutional. They might do so. But I, as one Member of the Congress, don't agree with their conclusion, and I think that many throughout the country are disappointed in the Court and its findings and in its ruling, particularly the law-abiding citizens of this country. I think it behooves Congress, if it will, to study it and make some expression by the enactment of a statute which in its opinion should correct this condition.

Judge LUMBARD. Senator, it seems to me perhaps the greatest contribution the Congress and the State legislatures can make in this field is getting the facts with respect to how these decisions are now operat-

ing and the extent to which they may be impeding the enforcement of the criminal laws.

Senator McClellan. That is one of the purposes of these hearings, and this bill gives us a vehicle upon which to take testimony and to weigh it in the light of these decisions. Of course, the bill can be amended if we find amendments are required.

Judge Lumbard. Courts are always persuaded by evidence of this nature and by findings of the Congress and legislative committees, and I think it is fair to say that we haven't had enough such guidance from the Congress and the legislatures in this field.

Senator McClellan. I think the majority opinion in the *Miranda* case suggested that the Congress should weigh this matter, did it not?

Judge Lumbard. Yes, and the Chief Justice pointed out that there may be other ways in which the Congress and the State legislatures can make suitable provisions for the taking of such statements in criminal cases.

Senator McClellan. I would like to have a suggestion from you, a concrete suggestion.

Judge Lumbard. I am going to mention that in the course of what I am prepared to say.

Senator Ervin. If I may interject myself at this point, the way I interpret the majority opinion in the *Miranda* case, the majority did give Congress permission to legislate in this field, provided that the requirements which Congress might impose were at least as strict as those imposed by the Court in the *Miranda* case.

Judge Lumbard. Yes.

Senator Ervin. It was stated by the Chief Justice that the Congress could not set up any requirements, any standards that would weaken those that, as the Chief Justice said, I believe, that "we delineate today."

Judge Lumbard. Yes, Senator, and of course, I think what the majority of the Court meant was that it is conceivable that there might be some other ways to provide for the safeguarding of the taking of data and confessions—some method other than outright exclusion.

But at the moment I was addressing myself to the fact that the Court, in its opinion, covered only those cases where the defendant in making the statement was in the custody of the police. In fact, in all four of the cases which the Court passed upon, the defendants were confined in jail at the time.

The Court in the *Miranda* cases passed only on situations where the statements were taken from the defendents after they had been arrested and were in the custody of the police. In fact in all four cases they were confined in jail at the time. Throughout the opinion of the Chief Justice it is clear that the rules laid down apply only to in-custody interrogation. The holding of the Court does not apply to statements made by defendants who are not in the custody of the police at the time. Take the case of a defendant, not under arrest, who is interviewed in his home where other members of his family are present, or where someone is questioned on the street. In such cases it would be open to lower courts to determine on the facts of each case whether the statements made at such a time should be received.

78-433—67——13

If these considerations are valid, there is no reason why the Congress should not feel free to state a policy and lay down appropriate rules regarding the admission in evidence of statements in Federal cases where the statements are made voluntarily by defendants before they are in custoday.

The American Law Institute, in collaboration with the American Bar Association Special Committee on Minimum Standards for Criminal Justice, on March 1, 1966, published tentative proposals for a prearraignment code. The code sets forth the circumstances under which the police could question and take statements at various times and places. It sets forth the warnings that the police would be required to give from time to time so as to insure the voluntariness of the statements, the availability of advice of counsel when requested prior to arraignment and the sanctions which would follow from failure to comply with the code. As a result of the *Miranda* decisions, the proposed code is being subjected to further study. Meanwhile there has been considerable speculation as to the effect of the *Miranda* warnings on the willingess of suspects to waive their rights and to talk without asking that counsel be present. Obviously, the manner of warning suspects may vary considerably from place to place.

Senator McCLELLAN. May I interrupt to get your opinion, Judge? What would be the interpretation of the words "in custody"? If an officer accosts somebody and starts questioning him about a crime, are they in custody? What would the Court hold on that?

Judge LUMBARD. That would depend upon all the surrounding circumstances, the other people who were present, how the officer happened to do this. You can't pass upon a matter of this sort, I think by making a general statement. The Court would have to examine all the facts in the particular case before that.

Senator McCLELLAN. You don't know how to write a statute to define "in custody"? A policeman or an arresting officer might go to the scene of the crime and see someone he feels sure should be interrogated and stop him for questioning.

Judge LUMBARD. Yes. Senator, I think you will find, I know that you know that the American Law Institute and the American Bar Association committee made proposals with respect to these matters and they suggested a prearraignment code which was published on March 1 of last year, and we did make an attempt in those proposals to define the areas, and to state the circumstances under which warnings were necessary, and all circumstances where we thought they were not necessary, and I suggest that this study might be a starting point.

Senator McCLELLAN. It would be helpful if we could find out how we could legislate and clarify it so that it would not create another area of confusion and litigation. I can well concede that if a citizen is stopped by an officer, or gives attention to the officer with deference to his authority and undertakes to answer questions that the officer may ask, that is custodial interrogation.

Now, he may say, "Get in the car and let's go down to headquarters," and he interrogates him but he hasn't arrested him. But he tries to find out what he knows. Is that custodial interrogation?

Judge LUMBARD. You see you have one situation that the man is perfectly free to come and go, and to speak or not to speak as he chooses and that is one situation.

Senator McCLELLAN. Isn't he free to do that until he is arrested?

Judge LUMBARD. Ordinarily that would be the situation.

Senator McCLELLAN. The officer may take him to headquarters and he says, "Thunder to you, I'm going to walk out." Then the officer has no choice except to arrest him. He doesn't want to let him go.

Judge LUMBARD. You see how complicated the situation is. Many people walk into a police station, and you have a problem there.

Senator McCLELLAN. You talk about writing a statute. I don't see how it can be done very well without again creating an area of confusion and doubt that would be subject to lengthy litigation before it could ever be resolved. It is a problem.

Judge LUMBARD. We agree with you that the difficulties are great, but we think that this matter is so important that the Congress and the State legislatures ought to do the best they can to lay down the rules under which statements may be taken, and to provide how the rights of the individuals should be protected.

Senator McCLELLAN. I wasn't challenging your viewpoint, but trying to emphasize the difference.

Judge LUMBARD. Yes.

We must await court rulings when admissions and confessions are offered in evidence. These rulings will turn upon whether the defendant has been suitably warned and whether he has understandingly waived his rights. I am now talking about cases where the man is in custody and where the police seek to use the statement or admission on the claim that they have given the required warnings, and that the man has nevertheless indicated his willingness to talk.

Of course, in many of those cases the defense will claim that the warnings were not properly given, that the defendant did not knowingly waive his rights and, consequently, that the statement should not be received. Therefore, I suggest that it would be helpful to enact provisions, similar to those proposed in S. 675 regarding wiretapping, and require notice in advance of trial that a statement or confession will be used and also require that the defendants must make any motion to suppress prior to trial.

If the trial court should rule with the defendant and suppress the statement, the Government should have the right to take an immediate appeal where suppression of the statement places further prosecution in jeopardly.

At present, the Government has no right to appeal any ruling which suppresses a confession or statement. If the Government is not given the right, an adverse ruling by the district court would put an end to the case. There are bound to be many such rulings in the next few months.

It is important that the law in this field should be developed by appeals and decisions of the courts of appeals, and that this may be done in suitable cases where the district courts have suppressed statements as well as in cases where the court has ruled with the Government and the defendant has been convicted. If the Government is allowed to appeal from suppression orders, we shall know more from the appellate courts and we shall know it sooner.

As I have pointed out in connection with S. 675, the President's Commission has recently recommended that appeals by the Government from orders of suppression should be permitted.

For these reasons I suggest that S. 674 be modified to apply to noncustodial cases and that the Government be given the right to appeal from orders of suppression.

Senate Joint Resolution 22: This is a proposed joint resolution introduced by Senator Ervin for himself and 15 other Senators which is designed to accomplish the same purpose as S. 674, but it would do this by amending the Constitution. The resolution goes further in that the Federal courts would be prohibited from disturbing any State court ruling that an admission or confession has been voluntarily made if it is supported by competent evidence.

If the Congress finds that the application of the Supreme Court decision in the *Miranda* cases is seriously interfering with the obtaining of voluntary statement by Federal and State law enforcement officers, the only way to correct the situation would be by amendment of the Constitution.

If the Congress so finds, then for the reasons set forth in the separate statement of seven members of the President's Commission, Messrs. Jaworski, Malone, Powell and Storey, joined in by Messrs. Byrne, Cahill and Lynch, appended to the Report of the President's Commission—page 303—I think the public interest in effective law enforcement would require a return to the rule that the admission of the statement or the confession of an accused should depend only on whether it was voluntary.

Whatever our views may be on *Miranda*, we must apply the Constitution and the law as the Supreme Court has interpreted them, subject, of course, to action of the Congress in areas which are not governed by constitutional rulings.

In my opinion, it is most important that the Congress should take some action in the important areas I have discussed. The legislative process permits a wide variety of views to be screened and testimony can be taken from those who know the facts and those who bear the responsibility for law enforcement.

The legislative process is far better calculated to set standards and rules by statute than is the process of announcing principles through court decisions in particular cases where the facts are limited. The legislative process is better adapted to seeing the situation in all its aspects and establishing a system and rules which can govern a multitude of different cases.

Judges seldom have before them all those who are the best informed regarding practical problems and the difficulties in living with any proposed change in the law. Judges usually are advised only by the parties in the case; the parties want to win the case and do not always care about general principles of wider application.

As I said before, it is because the Congress and the legislatures of the States have taken so little action in the field of criminal justice that the courts have more and more chosen to lay down rules which have the force of law until changed, and which all too frequently come to us in the form of new constitutional principles which then can be modified only by constitutional amendment.

Senator McClellan. Thank you very much. This is a very illuminating statement. I am very grateful to you for your interest, your courtesy, and your cooperation with this committee. I will try to limit my questioning.

I have listened with great interest to your comment on S. 674, a confessions bill. I think we all agree, most of us at least, that the impact of the *Miranda* and other decisions that are similar, are having a most adverse effect and will have a most adverse effect on law enforcement. It makes it more and more difficult for the law-enforcement officials to detect crime and conduct the investigative work that is necessary and fruitful in the detection of crime, and in solving or determining who committed crimes.

In this area, there is one sure way to remedy the problem and that is a constitutional amendment as you have pointed out. It is certainly at best a cumbersome process, very nearly impossible of achievement as far as the machinery of government is concerned. In addition to being cumbersome, it takes quite some time to get a constitutional amendment through. In the meantime, pending that, you have the present law, as enunciated by the Supreme Court, which would prevail.

Another remedy is embodied in a bill that has been introduced by a member of the subcommittee, Senator Ervin. Did you introduce it yesterday, Senator?

Senator ERVIN. Yes, I did.

Senator MCCLELLAN. He introduced it yesterday. He announced that he would introduce it and some of us have cosponsored it. The bill would limit the jurisdiction of the Supreme Court, restrict its appellate jurisdiction in some of these areas.

That is a harsh remedy. I would regard it as the harshest remedy of all. We have, we think, the constitutional authority to do this, but I don't know what the Court would hold when it got there. They could hold we didn't have such authority. I think the Constitution expressly confers the authority upon Congress to do this, but I regard that as a harsh remedy. I would hate for us to have to apply it.

I have introduced this bill, S. 674, realizing that it does present a constitutional question. But with the statute as an expression of the Congress, and the facts that will be developed in relation to this problem in the course of these and other hearings it would be my hope that upon reconsideration a majority of the Court would find it in good conscience, advisable and the better course of wisdom, to return to what has been the law of the land for all these years.

Now, if that cannot be achieved by the bill that I have introduced and by modifications or amendments that the Congress may hammer out, then I believe the situation is so critical that we have no alternative except to pursue the constitutional amendment course, or in the meantime enact a statute that would restrict the jurisdiction of the Supreme Court in this area. I would regret doing that, but if we can't get other relief, if law enforcement must be afflicted with the burden which the Supreme Court has imposed upon it by these decisions, then I shall certainly support the means of last resort—to try to restore effective law enforcement in the country.

I want to thank you for your views on this. They have been very, very illuminating.

If I may, I would like to make another comment or two about "in custody." That disturbs me, what meaning the courts would give to "in custody." If an officer stops someone and says "Wait a minute, I want to talk to you," is he in custody? If he says "Come, go with me

down to headquarters, I want to ask you some questions," is that custodial interrogation? I don't know. I don't know what the Court would hold. Is he not in custody until arrested? Is he not an accused until he is arrested?

The Court has implied that he becomes an accused, so far as the privileges of the Constitution are concerned, the minute he becomes a principal suspect, and as I pointed out, this gets into another area of doubt and confusion.

We have a real problem on this issue, and we want to build a record here that can give the most enlightenment possible from both sides. I don't want to preclude anyone who has something to offer for our consideration. Then we will try to find a way either with the vehicle here, the bill I have introduced, by processing it with proper amendments, or finally, if we can't do it that way we will have to go one of the other routes to achieve the objective that I feel is most imperative.

Now, may I ask you one or two questions about the wiretap bill? I think I asked you a few questions as you went along. As I understand it, you would broaden the bill so as not to exclude any crime from its provisions and application. Would you limit that to felonies only, or would you say to any crime?

Judge LUMBARD. Well, I see no reason to limit it, Mr. Chairman. I would permit its use with respect to the investigation of any Federal crime. I suggest as an alternative, as an alternative which in my view would be a compromise, that you might fix the limit with respect to crimes where the maximum penalty was 5 years imprisonment or more.

Senator MCCLELLAN. Some crimes, possibly in organized crime, the penalty might not be that great.

Judge LUMBARD. No, it might not. And you can't tell. Organized crime will go into any field where the profits are large and the possibilities are good.

Senator MCCLELLAN. Yes.

Judge LUMBARD. And I don't think law enforcement ought to be any more limited than organized crime is limited with respect to its possibilities.

Senator MCCLELLAN. I have been charged with being an ultraconservative, but kind of a radical in this law-enforcement issue. I find you are more liberal than I have disclosed myself to be, at present at least. I am conservative in wanting to enforce the law in this field.

But, anyway, the experience in New York State—I think it was the largest State in the Union, though I think California now claims to be, populationwise—where there is conceded to be all types of crime, the experience in the enforcement or in the use of this statute, wiretapping, has not demonstrated any serious abuses of it.

Judge LUMBARD. In my opinion, it has not.

Senator MCCLELLAN. And it is the consensus of law-enforcement officials that it is and can be one of the most vital tools, one of the most useful tools, in law enforcement.

Judge LUMBARD. The most necessary with respect to organized crime.

Senator MCCLELLAN. Particularly with respect to organized crime.

Judge LUMBARD. Yes.

Senator McCLELLAN. The administration's wiretap bill is not before this subcommittee, but as I understand it, it would authorize wiretapping only by order of the President or the Attorney General in cases where the security of the Nation was threatened by the acts of an enemy. I cannot rationalize why, if there is threat of sabotage to some of the Government's property, that that is more sacred and that we could make dispensation for the use of the tool to detect that crime, but yet we would deny it to the same officers to enforce laws against kidnaping and against murder, just using those as an illustration. It seems to me that if the Justice Department can rationalize wiretapping in an instance like that, I don't see how we can say it should be denied where the life of a citizen is involved, where the life of a child who has been kidnaped is involved. I just use those two as an illustration.

Then I go further. I don't see how it could be denied in use against organized crime, because if organized crime prevails in this country, that will destroy our internal security, and internal security is just as vital to the survival of our Nation and of our freedom, in my judgment, as is our ability to defend against an external enemy. So as I rationalize it, I think it is imperative that law enforcement be given this tool under proper regulation. As to the immunity statute, I would think there could hardly be any argument against it. It certainly should be held constitutional I think, in the light of statutes we already have, which have been so approved by the Supreme Court.

I again wish to thank you.

Do my colleagues have any questions? Senator Ervin.

Senator ERVIN. Yes. Judge, as one lawyer to another, I would like to simplify some of these matters that are involved here. Under the interpretations placed upon the sixth amendment prior to the *Escobedo* case, a man's right to counsel was assumed to arise only after there was a formal criminal charge filed against him either through a formal warrant or an indictment or other precipitate method of charge. Is that not true?

Judge LUMBARD. Usually upon his arraignment.

Senator ERVIN. The sixth amendment on this point reads as follows:

> In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense.

That is the constitutional provision.

Judge LUMBARD. Yes.

Senator ERVIN. Do you not think that the prior interpretation was correct, that this right arose only when a criminal prosecution was begun?

Judge LUMBARD. I do, and then the failure to have counsel, or the denial of counsel, simply becomes one of the circumstances which the court would pass upon in determining whether or not a statement taken in the absence of counsel was voluntary or was not voluntary.

Senator ERVIN. In the *Escobedo* case, which I would say by way of parenthesis was a hard case and made quicksand of this constitutional provision, the *Escobedo* case, by a 5-to-4 opinion, held that the right of counsel, to have counsel under the sixth amendment, applied prior to a criminal prosecution, and arose whenever an arresting officer began suspecting in his mind that the person he had in custody may have committed the offense he was investigating. Isn't that substantially the holding?

Judge LUMBARD. Well, I like to think of these cases in terms of the facts of the case, Senator. In the *Escobedo* case, he was in police custody, and was being questioned, and he asked for his lawyer, and his lawyer was at the station house, and the police denied the lawyer the right to see the client, and after that, the statement was taken.

Senator ERVIN. Yes.

Judge LUMBARD. So that you have an in-custody situation where counsel was asked for and was denied.

Senator ERVIN. And in that case, the man had counsel.

Judge LUMBARD. In that case he actually had counsel.

Senator ERVIN. And he was asking for the assistance of counsel.

Judge LUMBARD. Yes.

Senator ERVIN. And so it was not necessary in my judgment for the Court to reach the conclusion it did, for the Court to go beyond the words of the Constitution and say that the right to counsel arose in all cases whenever the arresting officer began to suspect in his mind that the person he had in custody was guilty. But that was the rule that was laid down in general terms in that case.

Judge LUMBARD. Well, I don't think it went quite that far, but it certainly indicated the lines along which the Supreme Court was then thinking, and it presaged the rulings which followed later in the *Miranda* case.

Senator ERVIN. Do you not think that the issue of whether or not the law should be changed to give the right of counsel prior to the beginning of prosecutions should be a legislative matter rather than a judicial matter?

Judge LUMBARD. It is a legislative matter and, of course, the Congress has provided that this is done now upon arraignment in the Federal courts, as you know. When a defendant is arraigned before a U.S. Commissioner, he must be advised of his right to counsel, and counsel must be furnished if he does not have his own.

Senator ERVIN. In other words, such safeguards as ought to exist should be matters for the Congress rather than for the courts, except the courts take all the circumstances into consideration and determine whether a confession is voluntary or involuntary.

Judge LUMBARD. I agree with that, Senator, yes.

Senator ERVIN. Now prior to the *Miranda* case, was it not virtually the uniform holding of all Federal courts and all State courts that whether an admission or confession of guilt would be admitted in a criminal case was dependent upon whether or not the admission or confession was voluntary or involuntary in character?

Judge LUMBARD. Yes, it was.

Senator ERVIN. The *Miranda* case departed from that, did it not, by saying that, at a minimum, before a confession, even though voluntarily made, may be admitted in evidence, the person in custody must be apprised by the arresting officer that he doesn't have to say anything, that anything he should say may be used against him, that he has a right to counsel, and that, if he is unable to procure counsel, counsel will be procured for him before he is required to say anything, or rather before he can be interrogated?

Judge LUMBARD. That is right.

Senator ERVIN. Now, under the existing law, where you prosecuted a man and sought a conviction in a criminal case, you had to show

two things in any case, whether there was a confession or not. First, you had to establish beyond a reasonable doubt that a crime had been committed, and second, you had to show beyond a reasonable doubt that the accused was the person who perpetrated the crime.

Judge LUMBARD. Yes.

Senator ERVIN. So under the law as it existed before the *Miranda* case no man could be convicted of any crime merely upon his own confession that he committed the crime. In other words, before he could be convicted, it would have to be shown by evidence outside of his voluntary confession, beyond a reasonable doubt, that a crime had been committed.

Judge LUMBARD. I can't remember any case in recent times, Senator, where a man has been convicted in this country solely on his own confession.

Senator ERVIN. And, then, in addition to that, you had to show either by other evidence or by the confession that the defendant accused in a particular case was the man that committed the crime.

Judge LUMBARD. Yes.

Senator ERVIN. And you had to show these things beyond a reasonable doubt—that is, to a moral certainty.

Judge LUMBARD. Yes.

Senator ERVIN. Is it not true that, prior to the *Miranda* case, it was held in virtually all courts, both State and Federal, that the self-incriminating clause in the fifth amendment had nothing whatever to do with voluntary confessions?

Judge LUMBARD. Well, there had been some language in a few lower court decisions, but I should say at least 80 percent or 90 percent of the lower court decisions, both State and Federal, were as you stated them.

Senator ERVIN. You could say that that principle was established just about as firmly as any legal principle.

Judge LUMBARD. Yes.

Senator ERVIN. Now here I would like to invite your attention to the fifth amendment provision against self-incrimination—I am leaving out immaterial words:

"No person shall be compelled in any criminal case to be a witness against himself."

Now, wasn't it held in these prior cases that the first element that called into play the self-incrimination clause was that there must be compulsion in the testimony?

Judge LUMBARD. Yes.

Senator ERVIN. And a voluntary confession is a confession which is made free from compulsion, is it not?

Judge LUMBARD. Yes.

Senator ERVIN. So for that reason, taking the language of the self-incrimination clause, it would seem to have no application whatever to a voluntary confession; is that not true?

Judge LUMBARD. I think I would agree with that. That is my own personal view.

Senator ERVIN. And was it not also required that recognizing and interpreting the self-incrimination clause, that a person had to be a witness under circumstances where he was called on either by a statute or by rule of the court to give testimony?

Judge LUMBARD. Yes, it was applied only in some judicial proceeding, some form of judicial proceeding.

Senator ERVIN. And so under the language of the fifth amendment, it would seem that the plain English words there have a clear meaning and that they could have no application to a voluntary statement made by a person in the custody of an officer, because he is not a witness in any legal sense.

Judge LUMBARD. This is exactly the arguments the States made in the *Miranda* cases.

Senator ERVIN. And also he would have to be in a judicial proceeding, a criminal case, or a proceeding which could give rise to a criminal prosecution against him if he incriminated himself.

Judge LUMBARD. Yes.

Senator ERVIN. In summary, don't you agree with me that just from the standpoint of assigning to the English language the true meaning of these words, that it is quite an intellectual feat to say that the self-incrimination clause could have any application to a voluntary confession?

Judge LUMBARD. I agree with your point of view, Senator, and I said so in some opinions which I wrote for our court prior to the *Miranda* cases.

Senator ERVIN. Now, normally in the trial of a case, the judge who passes initially on the question whether a confession is voluntarily or is involuntarily made is the trial judge, is he not?

Judge LUMBARD. The trial judge in the first instance, and then of course the jury also passes on it, where there is a jury.

Senator ERVIN. Prior to the *Miranda* case, wasn't it the prevailing practice where an accused on trial objected to the introduction of an admission or confession of guilt on the ground that it was involuntarily obtained, for the trial judge to exclude the jury in the first instance, and hear the testimony offered by the prosecution and the testimony of the accused as to all of the circumstances which preceded and accompanied the making of the admission or confession?

Judge LUMBARD. That is right.

Senator ERVIN. And the trial judge would give the accused an opportunity, if the accused saw fit to avail himself of it, to give his testimony concerning the circumstances under which the admission or confession was made without requiring him to testify as to the merits of the charge at all.

Judge LUMBARD. That is right. This was the practice in the Federal courts and in most of the States.

Senator ERVIN. And then if the trial judge ruled that the confession was voluntary, and therefore admitted it for the consideration of the jury, he would normally in his charge instruct the jury that the law did not permit the conviction of the man upon an involuntary confession, and that the jury in the second instance, in passing upon the question of the guilt or innocence of the accused, should determine to their own satisfaction whether or not the admission of the confession was voluntarily or involuntarily made. And he would instruct them that if they found it was involuntarily made, then they should reject it and not consider it in any aspect in passing upon the issue of guilt or innocence.

Judge LUMBARD. That is right.

Senator ERVIN. Do you not think that this procedure afforded full protection to the accused, as long as the admission of justice is in the hands of human beings?

Judge LUMBARD. I think it did, and of course in addition to that, these questions could be passed upon and were passed upon by the appellate courts if there were a conviction.

Senator ERVIN. On that aspect of it, you have had great experience in the trial court and in the appellate court. The judge who sits in the trial court and passes initially on this question has an opportunity to observe the conduct and the demeanor of the witnesses upon the stand, does he not?

Judge LUMBARD. Yes.

Senator ERVIN. And the judge who sits on the appellate court where the ruling is reviewed has to depend upon his interpretation of the printed or mimeographed record.

Judge LUMBARD. Yes.

Senator ERVIN. And do you not agree, on the basis of your experience in the administration of justice, that ordinarily it is not too difficult for the trial judge who sees the witnesses and observes their conduct and demeanor to determine what the truth is with respect to whether the confession is voluntary or involuntary?

Judge LOMBARD. Well, our whole system of justice is founded upon exactly that, plus the face that a jury of 12 persons must be unanimous. That is the Federal rule, and in most of the States it must be unanimous in making a finding.

Senator ERVIN. And does not the trial judge, in your opinion, and the jury, have a superior opportunity, or rather superior facilities to pass upon this question because of the fact they do see and observe the conduct and demeanor of the witness?

Judge LUMBARD. Yes. I have also sat as a trial judge, and I agree entirely with that, Senator.

Senator ERVIN. I have sat in both capacities, and I have never had very much difficulty as a trial judge in determining this question. I had great difficulty sometimes as an appellate judge, because an appellate judge has to depend on the record, and with just the cold record, it is very difficult sometimes to tell whether you are analyzing the testimony of an Ananias or a George Washington.

Judge LUMBARD. In the last few years we have even an additional safeguard and that is that counsel is assigned and under the Federal system is paid something in every case. Defendants are much better represented now than they were a few years ago.

Senator ERVIN. When you get to the question of just what you might call logic or commonsense, you can think of any stronger evidence that a man committed an offense than his own testimony, than his voluntary confession that he did so?

Judge LUMBARD. Not only is there no better evidence but I think the jury usually expects to know what the man said. If he said anything.

Senator ERVIN. Yes. That is an interesting point. Having done a lot of trial work, and I might say always on the side of the accused, I have always wondered about some of our theoretical brethren who in-

sist that there ought to be a right to comment on the failure of a defendant to testify. My experience is that about the first question the jurors ask when they go out to deliberate on the verdict is "If this fellow wasn't guilty, why didn't he get up there and so state?

Judge LUMBARD. You really don't need to comment on it. It is self-evident.

Senator ERVIN. Now I think most people who are concerned with this subject, who are concerned with the administration of justice, and people who are apprised of the effects of these decisions, particularly in the *Miranda* case, are very much disturbed about them. I must confess that I am. I have devoted all my life and my major interest to the administration of justice and have helped to legislate on it, and I have been very much concerned about these decisions. I think enough has been done for those who murder and rape and rob, and it is time for Congress to do something for those who don't wish to be murdered, raped or robbed. I don't invite any comments on that. That is just my personal conviction.

I have given serious consideration to this subject, and as you stated awhile ago, I have proposed a constitutional amendment, cosponsored by some 18 other Senators, which would in effect set aside the *Escobedo* and *Miranda* cases and restore the rule about voluntary confessions as it prevailed prior to that time.

I recognize, as the chairman said, that we have a long and rocky road to get the Constitution amended, notwithstanding the great public feeling that has been aroused by the injury done to the administration of justice by these decisions, because it requires a two-thirds vote of each House of the Congress and three-fourths of the States. And I have been concerned about the same objection that you had with some of the other bills. Congress passed a bill applicable to the District of Columbia at the last session undertaking to alleviate the effects of the *Mallory*, *Escobedo*, and the *Miranda* cases, and the President vetoed the bill, largely upon the conviction on his part I think that it was unconstitutional under those cases.

And so I, yesterday, took the course of action that I have always been reluctant to take. I have never favored curtailing the jurisdiction of the Court. But I have reached the conclusion that if the Court of highest authority will not exercise judicial self-restraint, then the Congress is going to have to impose some restraints upon it. So I introduced a bill with two sections, the first applicable to the Federal courts which provides in effect that neither the Supreme Court nor any other court established by Congress under article III shall reverse or modify or otherwise disturb the ruling of a trial judge admitting a confession as voluntarily made if that ruling is supported by competent evidence. The second section applies to State courts, and provides that neither the Supreme Court nor any other Federal court established under article III of the Constitution shall review or in any manner disturb any ruling of a State trial judge admitting a confession that is voluntarily made, if his ruling has been sustained by the highest appellate court of the State having jurisdiction of the case.

Now each of these sections would give the accused 2 days in court. Under section 1 he would have a day in court before the trial judge. Then he would have a day in court in the appellate court on the question of whether there was competent evidence to sustain the findings

of the trial judge. And section 2 would give the man 2 days in the State court, one in the trial court and one in the highest appellate court of the State having jurisdiction. Since the prosecution only has 1 day in court in any event, I think that certainly furnishes some protection, some substantial protection of the rights of the individual.

I hated to take this course, but I felt it was the only practical course available. If we passed a law to overcome these decisions, since they are based on constitutional grounds, the courts would say our law is unconstitutional.

I would be glad to have any comments you might make on that bill. I introduced it with reluctance, but I introduced it as the only practical and immediate way of granting some protection to society in this matter.

Judge LUMBARD. I would hope that the situation could be solved by other means, Senator. It would occur to me that this might be an unfortunate precedent for the Congress to curtail the jurisdiction of the Supreme Court. We need to have an ultimate arbiter in this Federal system of ours, and naturally that is the Supreme Court. I would hope that the situation could be relieved and could be worked out by other means.

Senator ERVIN. I must confess that I share to a large extent your views on that. I have always been opposed to curtailing the jurisdiction of the courts, and I think that the times that this has been done in the history of the country—I am thinking of the *McCardle* case—have been most unfortunate incidents.

I would like to ask you a few questions as to what you think of the constitutionality of this approach, however regrettable you may consider it from a practical standpoint. Article 3 of the Constitution provides:

> The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.

Is there any question in your mind as to the power of Congress under that clause to define the jurisdiction of the so-called "inferior courts" which it establishes under the laws?

Judge LUMBARD. I think there is no question as to your power with respect to inferior courts. I think there might be a serious question if you attempted to go beyond that. I haven't given that enough thought, but I think it is obvious that there is a serious question of constitutionality.

Senator ERVIN. Section 2 of article 3 also says this in part, after defining the cases in law and equity to which the judicial power of the United States extends:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Would those words not seem to confer jurisdiction upon Congress to define the appellate jurisdiction of the Supreme Court?

Judge LUMBARD. Yes, it would, and of course, you may remember that at one time there wasn't any right to appeal a criminal case at all beyond the trial court.

Senator ERVIN. That is true. That is a recent innovation.

Judge LUMBARD. Yes.

Senator ERVIN. Apparently, in the development of our law, there have been a great many instances in which Congress has curtailed the jurisdiction of a Federal court, for example, among other things, in these trade agreement acts that we have been passing. And there are a number of other instances. I realize this is an interesting subject. The decisions are mostly by way of dicta, with the exception of a few cases like the *McCardle* case. There can be a very plausible case made for the proposition that Congress does have vast powers when it comes to defining the appellate jurisdiction of the Supreme Court.

Judge LUMBARD. Yes, it certainly does have considerable power, as you have indicated from reading the Constitution. I think this is a question of public policy which, of course, can better be determined by the Congress than by the judges themselves.

Senator ERVIN. We have had in the past three approaches to this problem that is now I think one of the most serious problems affecting the ability of society to protect itself. One is by constitutional amendment, one by the bill which undertakes to restore the former law without affecting the jurisdiction of the courts, and the one that is this more drastic measure that I have offered.

I sincerely trust that the committee and the Congress will work out some solution to the problem. I have no reason to be prejudiced. As I say, I have spent my life as far as criminal practice is concerned representing defendants, and I never held an office of public prosecuter of any kind. But it does seem to me that these decisions tilt the scales too much in favor of the accused and against society, and tend to ignore the very fundamental truth that the victims of crime are entitled to some justice too.

I have enjoyed seeing you again, Judge, and I want to commend you for the fine job which you did as a U.S. attorney, also on the district court, and the fine job you are doing on the court of appeals.

Judge LUMBARD. Thank you, Senator.

Senator MCCLELLAN. I just want to make this further observation. The difficulty that confronts us here and the gravity of the problem are clear to all of us. It would be my hope that we could avoid the long process of a constitutional amendment, and that we would find it unnecessary to attempt the harsh action of limiting the court's jurisdiction. It would be my further hope that we could make such a record here of recorded counsel and opinion of learned jurists and legal minds that the Congress could enact a bill comparable to that which I have introduced, with such a strong majority that it would invite and induce the Court to reconsider its opinion in the *Miranda* case, and thus find the bill to be constitutional.

Some may say that is a forlorn hope. But there is an old adage that wise men change their minds, and I do believe that some of those five men, one or more of them, are wise, and that upon due reflection and consideration, they will find it not only constitutional but in the interests of justice and the protection of society in this country, in effect to restore the law regarding confessions to what it has been throughout the history of our Nation.

Thank you, Senator Scott.

Senator SCOTT. Nice to see you again, Judge Lumbard.

In your opinion, Judge, should S. 675, which now applies only to wiretapping, be extended to eavesdropping by means of electronic surveillance?

Judge LUMBARD. I think that would be very helpful, Senator. But let me point out that I think when it comes to eavesdropping, that would in almost every case be a matter of State law, because it is done locally, and it ordinarily would not affect a telephone or any interstate means of communication.

However, what 675 could do with respect to eavesdropping would be to say that what is evidence secured by eavesdropping could not be admitted in a Federal court, unless it had been done in accordance with certain procedures set up by the States and which procedures would meet certain standards; for example, the very standards which are set out in S. 675.

I do think it would be helpful to cover the subject of eavesdropping, because that now is being questioned in the courts, and if the Congress should find, upon a record, that this was an important means of getting evidence, that it was important that law enforcement should have this weapon, as I believe it is, it would be very helpful indeed if Congress made that finding and included it in this bill.

Senator SCOTT. One other question, Judge. I would like to ask you to comment on this section of the *Miranda* case, where in the opinion the court indicates potential alternatives, and even rather generously goes on to use the word "encourage" Congress to do something about this situation. I would like your comment on that paragraph, and I will read it so as to have it in the record at this time, because it has not been read. This is a quote from page 28 of my copy:

> 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 rulemaking 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.

Now I come to what I think is the gravamen here:

> Our decision in no way creates a Constitutional strait jacket which will handicap sound efforts at reform, nor is it 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 laws.

I interpolate here, of course warning. Quoting again:

> 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.

My question is whether you feel that that opens the door for legislation which would permit our avoiding the constitutional amendment process if we can?

Judge LUMBARD. No; I don't think it permits you to do that, but there certainly is a wide area which obviously the Court has not covered in its opinion in the *Miranda* cases, not only the matter of questioning before a person is in custody, but then the manner in which

the defendant or suspect is handled while he is in custody, the way in which the warning is given, the record that is made, the presence of other people so that when the question later comes up as to whether the warning was properly given and whether the waiver of right was knowingly and understandably made, these are obviously the next questions that are going to be raised in contested cases.

I think that this whole area is open to the Congress, and it seems to me it would be most helpful and most important that Congress should attempt to deal with these areas, and lay down the rules and the standards so far as Federal cases are concerned.

Senator SCOTT. Then you think it is possible that the Congress might, by legislation, establish standards other than those specifically established in the four major standards in the *Miranda* case, if those standards—and here we are on dangerous grounds, I guess—served adequately and fully to protect the individual with regard to his constitutional rights.

Judge LUMBARD. I think this is worth exploring. I cannot myself and haven't yet been able to come up with any concrete suggestions, but certainly it is not impossible that from the testimony that you take and the exploration you make of this subject, that some other method of handling part of the process cannot be worked out which would meet the test laid down by the Supreme Court with respect to protecting the defendant who is in custody when he is questioned.

Senator SCOTT. Thank you, Judge. Thank you, Mr. Chairman.

Senator ERVIN. I have to confess from my experience I believe neither the Congress nor the Supreme Court nor anybody else could ever be smart enough to devise any rules more calculated to prevent anybody from ever confessing their guilt than those that are laid down in the *Miranda* decision.

Judge LUMBARD. Well, that is what many of the law enforcement people say, and I am sure you are going to have before you the people who really know the facts about this; namely, the district attorneys, the State attorneys general, and the police chiefs in our larger cities.

Senator ERVIN. Judge, I would like to make one request of you. I worked awfully hard on a constitutional amendment. I don't know how many times I wrote it and rewrote it before I introduced it and then after I introduced it originally I made some changes in it. I would appreciate it if you would look very carefully at its phraseology and if you think there ought to be some changes made in it, I would certainly welcome them.

Judge LUMBARD. I would be very glad to study them, Senator.

Senator MCCLELLAN. One or two other questions. If they base the *Miranda* decision strictly on constitutional issues, I don't understand how you could write a statute that did not do everything the Court has said must be done. And if you do that, you destroy everything that you seek to attain anyhow.

Judge LUMBARD. Unless you can find some suitable substitute for the requirements laid down by the Supreme Court as suggested by Senator Scott.

Senator MCCLELLAN. They wouldn't accept it as suitable unless it accomplished the destruction that their decision does. They say it is

based on the Constitution. I don't know how you can do it. They say you have got to do these things. Well, how can you do less if the Constitution requires that this be done?

Judge LUMBARD. One of the alternatives which has been suggested and discussed, Mr. Chairman, as you probably know, is whether or not some of the questioning might be conducted before some magistrate or quasi-judicial officer, and the circumstances under which that might be done to comply with the Supreme Court ruling in *Miranda*.

Senator MCCLELLAN. If that were true, it seems to me that this would furnish the greatest loophole for a confirmed criminal that it would be possible to give him; that is, the minute the officer took him in custody and said "Let's go to a magistrate" he would say "Yes, I did it. What about it." That would be the end of it.

Judge LUMBARD. All the more reason to give law enforcement agencies the means of getting evidence through wiretapping, through the granting of immunity.

Senator MCCLELLAN. Yes, sir. I think we are going to have to give them every tool consistent with our Constitution in order to protect society. I think we are going to have to do it. This society of ours can't survive. It is headed for absolute chaos if the present trend of the crime rate continues.

By 1985 you would have 15 million major crimes committed in this country, assuming now, as they say, only half of them or less than half of them are reported. If you multiply that, that would be the number reported if the present rate continues, and no society can withstand an attack like that on its structure, in my judgment, no free society. We are reaching a perilous situation, if we don't arrest this trend in some way.

One other question. The American Law Institute proposes a code seeking to balance the rights of the accused with society's rights. Could not Congress formulate a similar code?

I understand they were working on some kind of a code at the time the *Miranda* decision came out, and then they just abandoned any further effort, is that right?

Judge LUMBARD. It was published on March 1 of last year, just 3 months before the Supreme Court decisions. It is now being studied further in the light of the *Miranda* case, to see whether changes should be made in order to bring it in compliance with that decision, and that work is now going forward.

Senator MCCLELLAN. I am glad to know that it is. I hope in the course of these hearings that we will be given the benefit of their conclusions, if they reach conclusions in time for us to get their views.

Judge, thank you very much. You have been most helpful. We deeply appreciate it.

Senator ERVIN. I would like to make one other observation. I don't invite any comment on it, but I am going to state my interpretation of the *Miranda* case and the case handed down in the next week, *Johnson* v. *New Jersey*. The five members of the Supreme Court who handed down the decision in the *Miranda* case made a voluntary confession in the *Johnson* case that they had amended the Constitution in handing

down the *Miranda* case, because they ruled in the *Johnson* case that the *Miranda* case had no application in cases tried prior to the *Miranda* case, notwithstanding the fact that the constitutional provision they professed to be interpreting had been in the Constitution of the United States since 1791.

Judge LUMBARD. Yes. That applied to trials, trials prior to the *Miranda* case, Senator.

Senator ERVIN. Yes. So it is rather queer that the Constitution meant one thing from 1791 until the *Miranda* case was handed down and something entirely different after the *Miranda* case.

Senator MCCLELLAN. Thank you very much.

Senator SCOTT. Mr. Chairman, may I make this comment? There is a vacancy on the Supreme Court. You have made a very moving appeal for accession of wisdom to the courts. In regard to the President's power of appointment here, and in such other vacancies as may occur during his current term, I would like to express the prayful hope that such appointments will be consistent with his messages to the Congress on crime and law enforcement.

Senator MCCLELLAN. I made that observation or something comparable the other day when the new Attorney General came before us. I expressed the hope that, in view of the announcement that his father would resign from the Supreme Court by reason of his appointment as Attorney General, the President would appoint someone who would carry out the philosophy in these cases that had been expressed by his distinguished father. I don't know whether the President heard what I said or would pay any attention to it if he did.

Senator SCOTT. The President hears everything, Mr. Chairman.

Senator MCCLELLAN. I have the expectations and hopes that my views will be recorded.

Thank you kindly. Will District Attorney Arlen Specter come around please. Senator Scott, would you introduce the witness to the committee please, sir.

Senator SCOTT. Mr. Chairman, it is a great pleasure for me to have the opportunity to present and introduce to this committee the Honorable Arlen Specter, district attorney of the city and county of Philadelphia, who was formerly a special assistant attorney general of Pennsylvania, assistant counsel for the Warren Commission on the investigation of the assassination of President Kennedy, a graduate of the University of Pennsylvania and of Yale Law School, past chairman of the criminal law division of the Philadelphia Bar Association, and currently a member of the advisory committee on criminal procedure of the Pennsylvania Bar Association.

He is well known as one of this country's most competent attorneys in the whole field of criminal law and law enforcement. I have read his statement and I do commend him on the concern that he expresses; and I am sure that his contribution will be an extremely useful one in these hearings. I am, therefore, very glad that Mr. Specter is here.

Senator MCCLELLAN. Thank you.

We welcome you. We appreciate your interest and your cooperation with this committee. We appreciate it very much.

(Off the record.)

Senator McCLELLAN. Without objection we will recess until 1:30.

(Whereupon, at 12:10 p.m., the subcommittee recessed until 1:30 p.m. of the same day.)

AFTERNOON SESSION

Senator McCLELLAN. The committee will resume.

Come around, Mr. Specter.

You may proceed.

STATEMENT OF ARLEN SPECTER, DISTRICT ATTORNEY FOR THE CITY AND COUNTY OF PHILADELPHIA, PA.

Mr. SPECTER. Mr. Chairman, Senator McClellan, Senator Scott, I appreciate the invitation to appear before this Senate subcommittee. I would like to say at the outset that it brings to mind the very splendid cooperation which the Philadelphia district attorney's office received from your committee, Senator McClellan, with regard to the prosecution of Local 107 Teamsters in Philadelphia. I have written my thanks to you, but haven't had a chance to appear and thank you in person.

Your committee, the McClellan committee, back in 1957 and 1958 investigated the Philadelphia Teamsters as well as the Teamsters generally; and based upon the evidence which you made available, and we had a personal meeting back in 1961 and 1962, we were able to get convictions on the six officials in Philadelphia, who have all served their time in jail, so that this is a finished matter; but I am reminded of it when I appear before the McClellan committee.

Senator McCLELLAN. Thank you very much. I covered a pretty wide area of the country, went to different places where there was evidence of labor-management problems, racketeering, corruption, violence, and so forth.

I have always thought that the hearings did some good. It didn't get strong legislation as I thought we should have, but I have always thought they did a little good. It reversed a trend that was getting out of hand I thought at that time.

Mr. SPECTER. Not only was the evidence which your committee uncovered instrumental in getting the convictions in Philadelphia, but I think the investigation was extremely helpful in putting the union on a much better basis to this day.

Senator McCLELLAN. I think so. I think a great many reforms were adopted.

Mr. SPECTER. Yes.

Senator McCLELLAN. Changes that had a salutory influence throughout unionism, to be frank about it.

All right, we will be glad to hear you. We welcome you again to our inquiry into this matter relating to crime and criminal laws and procedures that are needed, reforms, and so forth. We are especially pleased to have your cooperation and the benefit of your counsel.

Mr. SPECTER. Senator McClellan, if it please the committee, I would like to have the statement made a part of the record, and I could summarize it and go to the essence of what I have to say here, and perhaps save the committee some time by so doing.

Senator MCCLELLAN. The statement will be printed in the record in full at this point.

(The statement referred to follows:)

STATEMENT OF ARLEN SPECTER BEFORE THE SENATE SUB-COMMITTEE ON CRIMINAL LAWS AND PROCEDURES

In evaluating the results flowing from the *Miranda* decisions, two factors should be considered before deciding upon any changes in the fundamental criminal law:

1. What rules are necessary to obtain justice, both from the viewpoint of the safety of the community and the rights of the individual?; and
2. How may modifications in existing rules be made without adversely affecting fundamental institutions such as the Supreme Court of the United States?

The experience of the Philadelphia District Attorney's Office discloses some of the problems resulting from the *Miranda* decision and may provide a basis for suggestions for future action.

Findings of the Philadelphia District Attorney's Office and the Philadelphia Police Department show that confessions and admissions are significantly decreased by giving defendants warnings before interrogation. While no statistics were compiled prior to October 1965, consultation with police officials and experienced assistant district attorneys provide a basis for reasonable estimates. Prior to the *Escobedo* decision in 1964, it is estimated that 90 per cent of those arrested gave some type of a statement.

Frequently the statements did not constitute admissions or confessions, but they were very helpful in later investigation. For example, in some situations a suspect would give a statement which placed him in some locale other than the scene of the crime. When subsequent investigation showed that his statement was not true, it was helpful in establishing motivation to fabricate. Thus, even while such statements might be exculpatory on their face, they were later used to incriminate the suspect.

Immediately following *Escobedo*, as a precautionary matter, the District Attorney's Office advised the Homicide Division of the Police Department to ask each suspect "Do you want a lawyer?" When four of the first five suspects requested a lawyer, that question was omitted and the more limited warnings required by *Escobedo* were given. It is estimated that the post-*Escobedo* warnings resulted in refusals to give statements by approximately 20 per cent of those arrested.

Statistics have been compiled by the Detective Division of the Philadelphia Police Department starting in October 1965 shortly after the United States Court of Appeals for the Third Circuit denied a rehearing in the *Russo* case.[1] In general, the cases covered the most serious offenses, such as homicide, robbery, rape and burglary and some other offenses, such as aggravated assault and battery and larceny.

STATISTICAL FINDINGS

After *Russo*, the Philadelphia Police Department followed the instructions of the Third Circuit by advising the suspect that he had the right to consult with counsel before making any statement, in addition to the warnings required by *Escobedo*. From October 17, 1965, through June 11, 1966, out of 4,891 individuals arrested, 1,550 or slightly less than 32 per cent refused to give a statement in the face of *Escobedo* and *Russo* warnings.

During the period from June 12 through 18, 1966, which included the date of decision of *Miranda*, seventy out of 145 arrestees refused to give police a statement. On June 17, 1966, the District Attorney's Office provided the Police Department with guidelines on warnings to be given and questions to be asked in

[1] *United States ex rel. Russo* v. *New Jersey*, 351 F. 2d 429 (3d Cir. 1965).

the light of the *Miranda* decision. When the requisite warnings were given, these statistics followed:

Date	Total arrests	Total who refused statement after warning
June 19 to 25, 1966	140	75
June 26 to July 2, 1966	138	89
July 3 to 9, 1966	149	87
July 10 to 16, 1966	127	78
July 17 to 23, 1966	139	73
July 24 to 30, 1966	167	90
July 31 to Aug. 6, 1966	158	76
Aug. 7 to 13, 1966	113	62
Aug. 14 to Aug. 20, 1966	138	99
Aug. 21 to Aug. 27, 1966	158	87
Aug. 28 to Sept. 3, 1966	170	104
Sept. 4 to Sept. 10, 1966	161	99
Sept. 11 to Sept. 17, 1966	176	108
Sept. 18 to Sept. 24, 1966	167	96
Sept. 25 to Oct. 1, 1966	127	77
Oct. 2 to Oct. 8, 1966	164	107
Oct. 9 to Oct. 15, 1966	130	74
Oct. 16 to Oct. 22, 1966	142	67
Oct. 23 to Oct. 29, 1966	136	78
Oct. 30 to Nov. 5, 1966	143	78
Nov. 6 to Nov. 12, 1966	145	82
Nov. 13 to Nov. 19, 1966	156	86
Nov. 20 to Nov. 26, 1966	142	96
Nov. 27 to Dec. 3, 1966	157	100
Dec. 4 to Dec. 10, 1966	151	98
Dec. 11 to Dec 17, 1966	154	85
Dec. 18 to Dec. 24, 1966	134	73
Dec. 25 to Dec. 31, 1966	107	97
Jan. 1 to Jan. 7, 1967	141	78
Jan. 8 to Jan. 14, 1967	151	96
Jan. 15 to Jan. 21, 1967	156	89
Jan. 22 to Jan. 28, 1967	143	86
Jan. 29 to Feb. 4, 1967	145	92
Feb. 5 to Feb. 11, 1967	134	68
Feb. 12 to Feb. 18, 1967	118	64
Feb. 19 to Feb. 25, 1967	143	101
Total	5,220	3,095

These statistics show that 59% of those arrested refused to give a statement after the *Miranda* warnings.

CASES ARE LOST

It is not possible to obtain precise statistics on how many of these cases have been or will be lost without incriminating statements, but it is definite that a substantial number of these prosecutions will result in improper acquittals. A review of the 200 criminal cases on the daily list in the Philadelphia courts shows that many of the guilty are being acquitted where confessions or admissions have been suppressed on the authority of *Escobedo* or *Miranda*.

The *Miranda* decision has caused very acute problems in cases where the police investigation was conducted prior to June 13, 1966, the date of the *Miranda* decision, but the trial started after the date of *Miranda*. In those situations, the police conformed to the interrogation rules in effect at the time of the investigation. Those rules were changed before the trial so that confessions, admissions or other helpful statements were excluded.

In such situations, people have literally gotten away with murder. On January 9, 1967, the Commonwealth was forced to nol pros the case against Fred O. Aguson which rested to a substantial extent upon a confession given voluntarily by Aguson to Philadelphia police detectives. After the *Miranda* decision, the confession was suppressed because Aguson had not been warned that counsel would be provided for him in the events that he wished a lawyer and could not afford his own counsel. When the confession was suppressed, the prosecution for murder had to be abandoned.

A similar result followed in the case of *Commonwealth* v. *T. L. Bailey*. Bailey and a co-defendant, Robert Rowe, were implicated in a robbery-murder substantially on the basis of confessions. The police investigation and Rowe's trial oc-

curred before the *Miranda* decision. Rowe was convicted of murder in the first degree and received life imprisonment. The *Miranda* decision intervened before Bailey's trial resulting in the suppression of Bailey's confession. Today Bailey is walking the streets of Philadelphia. These cases are illustrative of numerous prosecutions which have been abandoned or lost where statements had been suppressed under the *Miranda* rule.

A number of conclusions follow from our post-*Miranda* experience: (1) fewer suspects are giving statements; (2) some of the guilty are being acquitted because statements are not obtained by the Police Department under post-*Miranda* procedures, and (3) many cases are being lost because the *Miranda* rules apply to matters investigated before *Miranda* and tried after that decision.

As to the third problem, the Commonwealth ought to be permitted to use evidence which was legal when obtained. Many of those suspects could still be prosecuted, if the rule were changed, because cases have been nol prossed which would permit further prosecution without the bar of double jeopardy.

SOME ALTERNATIVES

As to revising the restrictions imposed by *Miranda* on law enforcement, three alternatives come to mind:

1. A constitutional amendment;
2. Relitigating the *Miranda* rules with the appeal taken by the prosecution; or
3. Congressional action on a statute under the Fifth Clause of the Fourteenth Amendment.

OPPOSITION TO CONSTITUTIONAL AMENDMENT

I adhere to the views which I expressed last year before the Senate Sub-Committee on Constitutional Amendments on the issue of amending the United States Constitution in order to countermand the *Miranda* decision. I am opposed to any constitutional amendment which would limit the authority of the Supreme Court to rule on questions of state criminal procedure under the Due Process Clause of the Fourteenth Amendment. I do not think that it is practical for the Congress and the state legislatures to consider a constitutional amendment which would change the law as announced by the Supreme Court on specific cases. In my opinion, it would be highly dangerous to alter generally the authority of the Supreme Court to review state criminal proceedings. Should that be done, the danger would be substantial that unpopular reaction would later alter the interpretation of the Equal Protection Clause of the Fourteenth Amendment and nothing would be secure including the most basic guaranty of freedoms of speech, religion and press under the First Amendment.

Historically, the Supreme Court of the United States has been a progressive institution reflecting the national moral conscience. The Court has provided the medium of change, in conformance with the realities of modern times, which could not be achieved through the format of new legislation because of numerous procedural and other problems. The Court's decisions have obviously drastically altered the basic concept of federalism so that the division of authority between the federal government and the states is at great variance with that which was intended at the adoption of the Constitution or on the ratification of the Fourteenth Amendment. But the general benefit enormously outweighs any potential for disadvantages which may restrict state criminal prosecutions. I further adhere to the view, more extensively expressed last year before the Senate Sub-Committee on Constitutional Amendments, that it would be highly desirable for the Supreme Court to conduct extensive hearings and consider much basic evidentiary material before making fundamental modifications in constitutional law.

ANOTHER TEST CASE

As to the second alternative, I have instructed my assistants to be alert to find a proper case to relitigate the *Miranda* rule. So far, we have not yet found the case which provides an opportunity to create a full record to relitigate the implications of *Miranda*. When the right case is found, it is my view that the suppression hearing should contain the full range of statistics showing the reduction in statements obtained by the police, the consequences of the *Miranda* rule including improper acquittals, the general impact on police procedures, and as many other factors relating to the underlying social policy as can be appropriately introduced in a suppression hearing.

CONGRESSIONAL LEGISLATION

The third alternative would be congressional legislation such as that embodied in the bill designated S674. The thrust of that bill leaves it up to the trial judge to determine if a confession has been voluntarily given based on a number of factors. That bill could be extended to criminal proceedings in state courts where the *Miranda* rule is equally applicable.

The most important restriction of the *Miranda* decision is the requirement that a suspect in custodial interrogation must be advised that he has a right to have an attorney appointed for him, if he wishes one and cannot afford counsel, before he is questioned. After that warning, the suspect must affirmatively waive that right.

Once that right is asserted, police interrogation is, for all practical purposes, ended. If an attorney is not provided, the police may not question the suspect further. If an attorney is provided, further interrogation is worthless. In *Miranda*, the Supreme Court expressly recognized the propriety of defense counsel to advise the suspect not to talk:

"An attorney may advise his client not to talk to the police until he has had an opportunity to investigate the case, or he may wish to be present with his client during any police questioning. In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement. He is merely carrying out what he is sworn to do under his oath—to protect to the extent of his ability the rights of his client. In fulfilling this responsibility, the attorneys plays a vital role in the administration of criminal justice under our Constitution." [2]

Justice Harlan, in dissent, reached the same conclusion:

". . . the lawyer in fulfilling his professional responsibilities of necessity may become an obstacle to truthfinding." [3]

Those statements follow the frequently-quoted declarations of Mr. Justice Jackson in *Watts* v. *Indiana*:

"To bring in a lawyer means a real peril to the solution of the crime, because, under our adversary system, he deems that his sole duty is to protect his client—guilty or innocent—and that in such a capacity he owes no duty whatever to help society solve its crime problem. Under this conception of criminal procedure, any lawyer worth his salt will tell the suspect in no uncertain terms, to make no statement to police under any circumstances." [4]

Therefore, the crucial question on police interrogation arises where the suspect is given the fourth *Miranda* warning and asked if he is willing to waive that right. Realistically viewed, it is inconsistent to say, as the Court does in *Miranda*, that the waiver must be "knowingly" and 'intelligently" made. Any suspect who really understands that right could really not waive it "knowingly" and "intelligently" because to "know" or to act "intelligently" requires that he not give up that right. It is fictional to say that the fourth *Miranda* right could be knowingly and intelligently waived.

In the long run, it will be hard for the court to stand in the path of constitutional law on that fictional stone. I suggest that the stone will sink and that the court must step one way or the other. The Court must say that a statement may be admitted only if an attorney is present because of the absence of a real intelligent waiver of that right. Or, to take a step to the side, the Court must say that the balance between individual rights and law enforcement does not require that the suspect be afforded that last protection.

From my experience in the District Attorney's Office, I believe a balance of fairness can be established without an affirmative waiver of the fourth *Miranda* requirement. At a maximum, I would think it sufficient to have the first three *Miranda* warnings to wit:

(1) You have a right to remain silent.
(2) Anything you say can and will be used against you in court.
(3) You have the right to have the advice of a lawyer.

Beyond those warnings and affirmative waivers, it is my view that it is sufficient to leave it to the discretion of the trial court to see that justice is done in the individual case under the general rule that statements must be voluntarily given.

By appropriate legislation, Congress may well be able to modify the detailed holding of *Miranda* and still conform to the broad Constitutional mandate on the

[2] *Miranda* v. *Arizona*, 384 U.S. 436, 480–81 (1966).
[3] Id. at 514.
[4] *Watts* v. *Indiana*, 338 U.S. 49, 59 (1949).

privilege against self-incrimination announced by that decision, at least insofar as state criminal procedure is concerned. This is an idea which was first suggested to me by my law school classmate, Jon O. Newman, the United States Attorney for Connecticut. Section Five of the Fourteenth Amendment provides that:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The *Miranda* decision makes the privilege against self-incrimination applicable by state criminal trials through the due process clause of the Fourteenth Amendment.

Congress has acted under the general terms of Section Five of the Fourteenth Amendment in order to enforce the provisions of the equal protection clause of the Fourteenth Amendment. That legislative action, and the cases interpreting it, show that Congress has discretion to establish appropriate standards for enforcing the equal protection clause, and for that matter the due process clause of the Fourteenth Amendment.

In *Miranda* the Supreme Court said that there could be alternative safeguards to guarantee the privilege against self-incrimination. An Act of Congress could provide such alternatives and could reasonably modify some details so long as the procedures guaranteed the ultimate protection of the privilege against self-incrimination.

The ultimate balance must be struck by the Supreme Court as to the extent of the Congressional function as compared to the Court's function. In the current context of the close decision on *Miranda* and the excellent argument against its outer limits, the possibilities are substantial that the Supreme Court would not hold such federal legislation, under Section Five of the Fourteenth Amendment, to be unconstitutional even if the fourth requirement of *Miranda* is modified.

At least there is sufficient basis for this approach to warrant Congressional action to modify what Congress may conceive to be the most restrictive aspects of the *Miranda* case. The Congress, in hearings such as these, has a much broader opportunity to inquire into all the facts. It is likely that the Supreme Court would accept such legislation based on reasonable standards enacted after thoughtful legislative judgment following hearings which show a factual basis necessitating the modification.

SAFE STREETS AND CRIME CONTROL ACT

The proposed "Safe Streets and Crime Control Act of 1967" providing for federal assistance to law enforcement and the administration of criminal justice is splendid legislation. Our experience in Philadelphia shows that law enforcement is seriously hampered by the utter lack of any comprehensive plan to coordinate and improve the operation of the various law enforcement agencies and processes.

In response to this need, my Office, early in 1966 together with the Greater Philadelphia Movement and a wide range of other civic agencies, undertook a survey of criminal justice in Philadelphia. At the present time, under the directorship of Professor Paul Bender of the University of Pennsylvania Law School, the survey is in process and has already uncovered many areas in which innovation and assistance are essential. Many of the areas found in Philadelphia to be desperately in need of improvement are the same areas which were spotlighted in the recent report of the President's Crime Commission.

The requirement of the proposed Act that grants not be made to local governments until a master plan has first been evolved is a salutary one. Such a requirement will encourage a much needed fact-finding survey in the urban communities of our nation and will help to insure that federal grants to law enforcement will be for specific, well thought-out projects rather than to hastily conceived schemes for merely obtaining federal funds. Article 3, permitting grants to universities, units of local government and private organizations is also essential as it is only through a mobilization of the entire resources of the community, including long established civic agencies with expertise in particular areas, that imaginative and effective advancements can be made in the field of crime prevention and enforcement.

Mr. SPECTER. The vantage point from which my testimony starts concerns two main considerations: to wit, how to attain justice, both from the point of view of the safety of the community as well as the

rights of the individual; and second, how to make modifications in existing rules without adversely affecting fundamental institutions such as the Supreme Court of the United States.

The first comment that I have to make is that the experience of the Philadelphia district attorney's office and the experience of the Philadelphia Police Department show that the new rules limiting police interrogation have resulted in a substantial decrease in the number of statements which we have obtained, and I have a body of statistical evidence to offer the committee on that subject.

Before getting to the statistics, I would like to give you our thoughts on the general situation before these decisions, before we were compiling statistics. Prior to the *Escobedo* case, it is a joint conclusion of experienced police officers and experienced assistant district attorneys, and myself included, that nine out of 10 men would make a statement before the *Escobedo* decision came down.

Now, frequently those statements were not incriminating or, that is to say, confessions or admissions; but sometimes an individual would say that he was in a given locale. Investigation later would show that to be false, and that was very helpful on further investigation to show a motivation to fabricate; so that the statements were helpful whether or not they were confessions or admissions, they were later used at trial in many instances to incriminate the suspect. In that broad context, some nine out of 10 it is estimated gave statements before *Escobedo.*

After *Escobedo*——

Senator McCLELLAN. They wouldn't necessarily be confessions, but the statement itself, the truthfulness of it or the lack of truthfulness of it, as the case may be, would give you a clue and some guidance as to further procedures.

Mr. SPECTER. Extremely helpful, even what the Court has designated an exculpatory statement, that is not incriminating on its face, later becomes as a matter of ultimate import incriminating, as the Court itself concluded, by excluding them from evidence if the *Miranda* rules are not followed so they have placed so-called exculpatory and incriminating statements on the same level.

At any rate, *Escobedo* came down and we all know the rules imposed by *Escobedo* and the estimate is that 80 percent, the figure dropped from 90 to 80 percent would give statements. Then we had a decision in Pennsylvania in the Court of Appeals for the Third Circuit—actually, Pennsylvania, New Jersey, and Delaware—which held that *Escobedo* had an extension, and that extension was that the defendant had to be advised that he had a right to a lawyer. Of course, *Miranda* ultimately went substantially further than did what we call the *Russo* case from the third circuit in Philadelphia.

But in October 1965, my office started to compile statistics based upon the *Russo* warning. We don't have to tell you about our estimates. We can tell you about facts that we have gathered.

Senator McCLELLAN. What area do the statistics cover? Let's get that clear for the record.

Mr. SPECTER. Right. These statistics covered the most serious offenses such as homicide, robbery, rape, burglary, and some other offenses, such as aggravated assault and battery and larceny. These were com-

piled by the detective division of the Philadelphia Police Department under the guidance and instruction of the district attorney's office, and the detective comes into the case if it is on the serious level, if interrogation is required, say, in addition to what may be a surface case, à la numbers or liquor violations.

Senator McCLELLAN. What area, geographically, does it cover?

Mr. SPECTER. The city and county of Philadelphia. Philadelphia, Senator McClellan, is all under the jurisdiction of my office, one district attorney, unlike New York City which has five boroughs and five district attorneys. We have one public prosecutor for the entire city.

Now, from October 17 through June 11, 1966, these statistics were maintained; that is, October 17, 1965, through June 11, 1966. Out of 4,891 individuals arrested, 1,550, or less than 32 percent, refused to give a statement; so, follow the trend: 10 percent before *Escobedo*, 20 percent after *Escobedo*, and then after the *Russo* case, up to 32 percent.

When the *Miranda* decision came down on June 13, 1966, my office immediately put out guidelines for the police, issued some 4 days later, on June 17, 1966, so that we could be protected as of that date forward to be sure to comply with the Supreme Court's rulings. I think these statistics are highly significant, and I have included them in my statement at pages 3 and 4 on a week-by-week basis.

Suffice it to say at this point that out of a total arrest number in the same category of 5,220, 3,095 refused to give a statement after the warnings, which was a percentage of some 59 percent of those arrested refused to give a statement after the *Miranda* warnings.

Senator McCLELLAN. Would you say that percentage is destined to increase, to rise higher as they become more familiar with the decision and its impact?

Mr. SPECTER. Senator McClellan, I think it will be constant. The figures have been constant so far. They started off in the 58-percent range, and the same warnings are now being given. We meticulously complied with the mandate of the Supreme Court, so I would suspect that they would hold pretty much the same.

Senator McCLELLAN. In other words, close to 60 percent now are declining, whereas before these decisions, 10 percent only declined, so that is a gain of 50 percent. Half of your chance, then, to get a statement from the accused has been completely wiped out by these decisions.

Mr. SPECTER. That is the statistical findings we have made in these serious cases. Now, one of the most serious impacts of *Miranda*, and when I appear before this committee, as I appeared before the Senate Subcommittee on Constitutional Amendments, I feel it to really be beyond my function to be critical. I am here to give you facts and what we have found.

I appreciate and understand that the Supreme Court makes the decisions, and I am an officer sworn to uphold the Constitution, and I just carry out the law that the Supreme Court has stated.

In this context, we have had a very serious problem with cases investigated before *Miranda* but not tried until after *Miranda*. *Miranda* is not retroactive in its import to a substantial extent in that the

Johnson case said the *Miranda* rule applied only to cases where the trial started on or after June 13, 1966. But still, we have a substantial backlog in the city of Philadelphia, where cases for months before the *Miranda* decision were not tried, and I think that some attention should be focused on the problem of having a decision, even though not retroactive as to trial started before its date, applied where investigations were legally conducted when they were put into operation, but by the intervening decision are defective as to trials which have to start at some time after those investigations were begun.

On these cases, we have decided as a matter of our policy to nolle prosequi the cases; that is, not to try them and let an acquittal be entered which would bar future prosecution on the ground of double jeopardy, but to this effect withdraw the prosecution, which then leaves us an alternative. If we get new evidence in the future or if the *Miranda* rules should be changed, the statute of limitations, of course, does not apply to murder in Pennsylvania, and that is a very big area of concern, and we can go back and move to take off the nolle prosequi. I don't want to dwell on it unduly, but that is a big problem for us.

Senator MCCLELLAN. In other words, you don't want to run the risk of double jeopardy, so to avoid that, you simply withdraw the charge against them as of now, in the hope that you may develop sufficient evidence to try them later.

Mr. SPECTER. Exactly. We know that it is a losing case without the confession, that we cannot get to the jury, and we gain nothing by submitting what little we have and having an acquittal result, which puts in the bar of double jeopardy.

I have summarized two cases for you under the category of decisions which we have lost, and I could give you many, many other where this problem has come to pass.

Senator MCCLELLAN. They are in your statement?

Mr. SPECTER. Yes, they are in the statement and I won't dwell on them. They are illustrative only. One case is a curious one which you might be interested to hear just a word about, because there were two defendants involved, and the confession was the instrumental evidence as to each. One was tried before *Miranda*, convicted of murder in the first degree, and sentenced to life imprisonment. The second could not be tried before *Miranda*, and he is walking the streets of Philadelphia today, which is a curious application of the rule in the same killing.

Senator MCCLELLAN. It is quite a curious thing, as Senator Ervin pointed out here this morning, that the Supreme Court announced certain constitutional rights that apply to people tried following the *Miranda* decision, but don't apply to those tried before. I don't understand that kind of judicial rationalization.

Mr. SPECTER. But I worry about advancing that argument because that may lead the Court to apply it retroactively completely and that would be more adverse.

Senator MCCLELLAN. It would be worse, but again I come to how we arrive at these things, and what an awkward situation it actually puts the court in.

Mr. SPECTER. Yes. Well. the dissenters in *Sylvester Johnson* said the *Miranda* rule didn't apply to the *Miranda* case because the *Miranda* case had its trial commence before the date of the *Miranda* decision, which is accurate on the basis of the *Johnson* case.

Senator McCLELLAN. Are you going to give us some illustrations of serious cases where you have been forced to dismiss?

Mr. SPECTER. Yes, I have two murder cases in my statement.

I could have given you many, many more. We have them in substantial numbers in Philadelphia.

Senator McCLELLAN. Do you have statistics as to the number of cases up to now you have had to dismiss because of these decisions, whereas otherwise you would have had confessions that would likely have brought about a guilty verdict?

Mr. SPECTER. We do not have statistics yet. We are hopeful of being able to supply some such statistics.

Senator McCLELLAN. If you get them, will you supply them to us at any time?

Mr. SPECTER. Yes. Without those statistics, the best that I can say, and this is categorically true, that some of the guilty are being acquitted, because statements could not be introduced into prior cases, and from the statistics on the reduction in the number of statements, I think it follows as a totally logical inference that we are now not getting statements which would have been helpful, had not the statements trickled off under the *Miranda* warnings, which we are giving.

Senator McCLELLAN. Let me ask you whether you believe that the dismissal of cases and acquittal on the basis of these decisions could possibly have any impact on the increase of crime in this country? The situation applies throughout the country, I suppose. Could it possibly have any impact on the increase of crime?

Mr. SPECTER. Senator McClellan, I think that there is too much which we don't know or at least I don't know to draw any conclusion on causal connection.

I am pleased to say that in Philadelphia in 1966, we had a decrease of 6.4 percent in major crime at a time when the national average went up to 10 percent, and exactly what caused the decrease is something which is so involved that I am reluctant to draw any conclusions on that, sir.

Senator McCLELLAN. I can think of one thing that may have caused it. Apparently a good district attorney.

Mr. SPECTER. It is very generous for you to say that. Thank you very much.

Senator SCOTT. I think the fact that the district attorney is known to be free of any forms of pressure has a very direct causal connection on not merely law enforcement, but on the willingness with which the criminal mind will take chances in that community, and it is a tribute to Mr. Specter that we have had this decrease, and he is too modest to take credit for part of it, but I think that should be said.

Mr. SPECTER. I very much appreciate those very generous remarks.

Senator McCLELLAN. I didn't think I was taking much chance of error when I made the statement.

In that connection, I believe you testified before the Bayh subcommittee last year that criminals were fully aware of court decisions, sometimes even before the new Court requirements are included in police warnings.

Mr. SPECTER. Yes, that is true.

Senator McCLELLAN. Wouldn't that be pretty well true, especially true I would say, with those who are involved in or associated with some crime organization or syndicate?

Mr. SPECTER. Well, if you move to that level of sophistication, I would say it is true. Where you have the crimes of robbery, which are nonsophisticated crime, or the emotional offense of homicide or the offense of rape, it is pretty hard to make any accurate generalization on what factors motivate the people. I think that is one of the most fascinating subjects of criminal law, but I just don't want to overstate the case on it because I am not sure.

Senator McCLELLAN. I have in mind where they are associated with a syndicate.

Mr. SPECTER. Oh, yes.

Senator McCLELLAN. The confirmed, habitual criminals working with an organization of a kind, they know it almost by the time the prosecuting and district attorney know it, don't they?

Mr. SPECTER. Oh, absolutely, absolutely.

Senator McCLELLAN. I am persuaded that they always take all the advantage of it they can, any loophole or any decision that gives them any advantage, they pretty soon get well educated to it and make application of it for their protection.

Mr. SPECTER. Absolutely, there is no question about that at all. On the point that you mentioned, I didn't touch the statistics between my *Russo* and *Miranda* statistics, but during the week itself, and I did present this to the Senate subcommittee last summer, from the period from June 12 through June 18—mind you, the decision came down on the 13th and my guidelines came down on the 17th—there were 145 people arrested on these serious offenses, and 70 refused to give a statement before the *Miranda* warnings were out. So that even before the police department issues these warnings from our guidelines, the word had reached those who were arrested. They knew something was up, and the trend had already started even before the specific warnings were given.

Senator McCLELLAN. Let's take what I would term a habitual criminal, one who has been arrested a number of times, convicted a time or two and served a sentence or two. Do you feel that there is any need to give them a warning that they don't have to say anything or that they are entitled to a lawyer?

Mr. SPECTER. Senator McClellan, when you reach that category of person, I would impose very different standards than the Supreme Court has under *Miranda*. I think we are dealing in a different area there in terms of knowing intelligently and understandingly applying the rights they have. I am aware of the fact that *Miranda*, by very forceful language, forecloses any inquiry as to knowledge of the law, and on its face would foreclose any inquiry, even if, well, I won't take district attorneys or Senators, but if a judge were involved, subject to questioning, that the warnings have to be given to a judge because it says no inquiry into his knowledge of the law.

Senator McCLELLAN. That is why to me the requirements are simply too rigid. Certainly there are those who would need that warning, but I think what we are trying to do at least with the bill I have introduced is to restore the procedures and guidelines to what they were and what they have been for all these years.

When a confirmed criminal comes up for trial, he has been convicted before, he has been through the mill. Suppose by inadvertence the policeman happened to ask him something before issuing warnings and he just volunteered, "I did it". You are precluded from prosecuting him on the basis of that statement. And yet, you didn't have to tell him of his rights. He knew he didn't have to speak. He knew he was entitled to an attorney.

I think they have given such criminals a loophole now they can use to their advantage. If a policeman asks them anything, they can say "Well, I was interrogated but I wasn't warned." If a policeman walks up on the street to apprehend someone whom he thinks may have committed a crime, and stops him, and asks him any questions before he says to him "I am going to ask you some questions, and remember, you don't have to answer, you can be silent, but if you do talk it may be used against you and you are entitled to a lawyer, and if you are not able to get one, we have to get one for you," he has to go through all of that before he can even question a man he thought was fleeing from the scene of a crime. It looks to me like it has gone entirely too far.

Mr. SPECTER. There may be some areas, Senator McClellan, where questions can still be asked before the warnings.

Senator MCCLELLAN. You say there may be.

Mr. SPECTER. May be.

Senator MCCLELLAN. We don't know that, do we?

Mr. SPECTER. Well, we do know that there is an area before custody attaches, that is a substantial restraint of a man's liberty, which is footnoted on a reference back to *Escobedo* to pick up the accusatory versus the investigatory stage.

I think, for example, that it may be very important when a police officer comes to the scene, before anybody has been identified, and if he sees an offense that has been committed, if he says to a man standing there "Did you shoot this man?", that is probably out. And the guy says "Yes, I did." If he says on the other hand, "What happened here?" and the man says "I shot that fellow," we may be in better shape. It is a hard line to draw.

Senator MCCLELLAN. That is the trouble. We have got to say maybe. We don't know what the court will do with the trend of these decisions. Who would have thought a few years ago that we would find ourselves boxed in as we are now by reason of the Supreme Court decisions. Who would have thought this would occur. Can you foresee any time in your experience prior to this that you would have anticipated this would happen?

Mr. SPECTER. My experience does not make me so wise, Senator.

Senator MCCLELLAN. Very well.

Mr. SPECTER. I have three alternatives which I have discussed in this paper, and I will summarize briefly, coming to the third one with some emphasis, in terms of dealing with the problems posed by *Miranda.*

One is a constitutional amendment which I frankly oppose, and I have expressed those views last year before the Senate Subcommittee on Constitutional Reform, and I have repeated them in my statement here. The essence is that I do not think it is practical, on a case-by-case

basis, to reverse decisions, and I am very reluctant as an individual, to see a constitutional amendment take place where it may lead into the first amendment freedoms ultimately of speech and press and religion, and that is the main reason why I think that as an institution over the course of the life of our country, that the Supreme Court has been a good one, and we ought to stop short of constitutional amendment.

My second choice is a test case, this time with the vigor and the initiative coming from the prosecutors, and I am looking for a test case which would enable me to put into a record the statistics which I have presented here, the restrictive influences on police practices, so that we might really try to relitigate this issue with some broader factors to be before the Supreme Court.

Senator McCLELLAN. In other words, as I suggested this morning, you would like to persuade some of them that they have made an error and that they should change their minds.

Mr. SPECTER. Yes, and I think that is possible.

Senator McCLELLAN. I can see that.

Mr. SPECTER. We know for sure that if the shoe were on the other foot, and it were five to four against the defendant, that we would have had dozens of appeals already taken to try to have the question relitigated, so why not from the prosecutor's point of view.

One of the things I said before the Senate subcommittee last summer, which I have not repeated here, is that I think a fundamental problem that the Supreme Court has is its failure to consider a broad enough panorama of factors which it really can't do very well in the procedures it has so far. But they just don't know the effect of this decision.

When they have before the Court four limited cases like *Miranda* and *Westover*, and the other cases they have, they just can't know the impact.

That could be relitigated in another test case, but even the boundaries of the test case are narrow, and that brings me to the third alternative.

Senator SCOTT. May I make a comment here, Mr. Specter, with the chairman's permission. As a citizen, it is my duty to respect the law of the land. As a Senator and legislator, it is my duty to uphold the Court whenever I conscientiously can; where I cannot, I seek to explore possible alternatives within the orderly framework of our governmental system. I think one thing that shakes public and congressional confidence in the Court is the Court's seeming determination to make broad constitutional findings which establish entirely new directions for the law on these narrow 5-to-4 decisions. One thing I think, as lawyers, that we worry about is the Court never seems to be impressed by the need for some disciplines or some restraint on itself as a court until it can find a true test case, that it can do more than to make its decision depend upon the narrow shading of a single man's opinion, knowing as the Court has to know, that the very next appointee of the Court may, in the next test case, reverse the whole procedure under that particular constitutional decision.

I say this for the purpose of getting it into the record as a part of the legislative history of what we are discussing. Because if the Court will not exert any interdisciplines, then it is a role of the legislative

branch, I think, to express its concern as to that very unfortunate aspect of the Court's attitude toward vast and fundamental changes in constitutional viewpoints.

Mr. SPECTER. I think, Senator Scott, on your point, it brings me right into what I am coming to, that committees like this one, subcommittees like this one, have an opportunity for exploring facets of human experience, and to gaze at the impact of these judicial decisions in a way which the Court does not have available to it. The Court does not have available to it, the factors which you can inquire into through your legislative factfinding hearings. I think that legislation such as S. 674 may have a very useful place when it is based upon facts which you find in such proceedings to show the reasonable standards which you may come to in the terms of S. 674, or some other legislation of a similar nature.

S. 674 on its face applies only to Federal proceedings, and of course, the bill could affect State proceedings as well, or it could be left to State courts, but I want to call the attention of this committee to a very interesting idea which was called to my attention by Jon Newman, who is a law school classmate of mine, and is now the U.S. Attorney for Connecticut.

We were discussing this whole problem last December, and Mr. Newman called my attention to section 5 of the 14th amendment, and I don't know whether this particular point has been picked up before or not.

Mr. Newman is publishing an article in a national magazine which is coming out this weekend, where he develops the point somewhat differently. But section 5 of the 14th amendment provides that "the Congress shall have the power to enforce by appropriate legislation the provisions of this article," and I have cited it at page 11 of my statement.

The *Miranda* decision and most of the other Supreme Court decisions which apply to the States are made applicable through the due process clause of the 14th amendment, which is of course an earlier section of the same article, to wit, the 14th amendment, so that there is a constitutional invitation for the Congress to speak on matters of enforcing the requirements of the 14th amendment, and the Supreme Court said that the privilege against self-incrimination and the right to counsel, the two rock beds of *Escobedo* and *Miranda*, come to be applied by the States by virtue of the due process clause of the 14th amendment.

Now then, we also have the language from the Supreme Court opinion, which says there is no constitutional straitjacket from the *Miranda* rule. There is a real question as to whether you can cut back on the requirements of *Miranda*, whether you have to increase them or can cut back on those requirements, and I would suggest that there is a reasonable likelihood that on this narrow 5-to-4 decision, with strong arguments militating against the furthest reaches of *Miranda*, that if Congress speaks on this subject, based on an extensive record of factfinding, and with reasonable conclusions, that the Supreme Court would be likely to uphold that kind of standard to enforce the due process clause on the States as Congress has the right to through the fifth section of the 14th amendment.

Then the question comes up, what do we do? Where do we look? Where are the really crucial areas of *Miranda* where we might reassess the balance, to still provide the basic right against self-incrimination and still leave some better balance between law enforcement and the rights of the individual under the Constitution.

I call to this committee's attention the fourth *Miranda* warning which our experience has shown us to be the most difficult of all.

The three *Miranda* warnings are, first, you have the right to remain silent; second, anything you say can and will be used against you; and, third, you have the right to counsel; and, fourth, if you do not have a lawyer, and if you wish a lawyer, and if you can't afford a lawyer, the State will provide a lawyer to you before questioning goes further.

Now, once that warning is given, and the person refuses to affirmatively waive it, in a way which the State can carry its heavy burden of proof under *Miranda*, interrogations for all practical purposes is stopped, because if the man says, "I will not waive that right," we can't question him any more, unless we provide a lawyer, and if a lawyer is provided, we know as a practical matter that no further questioning will be useful.

The lack of utility of further questioning has been recognized by the Supreme Court in *Miranda*, and I have cited the language from Chief Justice Warren at page 9 of my written statement, and Justice Harlan's dissenting view to the same effect, and the language of Justice Jackson back in *Watts* v. *Indiana* in 1949, where all recognize that the lawyer's function is not to help law enforcement, the lawyer for the defense. His job is to protect his client's rights, and he is not going to help out.

So that this particular warning, I think, is the really crucial one which upsets the balance. I think there is a legal fiction in the Supreme Court's opinion, as of course, many, many cases are arguably fiction, where they say that a right cannot be waived knowingly, intelligently and understandingly; rather, that in order to have a waiver of a constitutional right, it must be made knowingly, intelligently, and understandingly, and it is my view that you can't really waive that right knowingly or intelligently, or understandingly, because there is so much to be said for not waiving it.

If any man really knows what he is doing, he is not going to waive that right, because to assert that right is to beat the case, in effect, and most men want to beat the case, in the vernacular. So I may say in my statement, in the long run it would be hard for the Court to stand in the path of constitutional law on that fictional stone. I suggest that the stone will sink, and the Court must step one way or the other.

The Court must say that a statement may be admitted only if an attorney is present, because of the absence of a really intelligent waiver of that right, or the Court must take a step to the side and say that the balance between individual rights and law enforcement does not require that the suspect be afforded that very last protection.

Now if Congress is to legislate in this area, I would urge Congress to focus in on that particular problem, which we have found in our experience to be the most acute problem, really, to see whether or not it has to be there, to give meaning to the privilege against self-incrimination.

Now, I think that you might cut back even further as your proposed legislation does, S. 674, in terms of making it discretionary for the trial judge to make an evalution after considering all of the facts, and as I understand it, that is the rule in England, and I do not think that we can sit here and say that the trial judges of the United States will be derelict in their duty to enforce the Constitution.

So that if they are given a standard to consider the four *Miranda* warnings, and the requirements set forth in S. 674, that they will conscientiously apply the law to make an intelligent judgment, and I think the trial judge has to balance to some extent what are the Commonwealth's rights. What status does the State have in the case.

If the State has other evidence, you might say, well, as a matter of balance, even if it doesn't go too far, we will exclude it. Put this case on a more even par. But if all the State has is a confession, the State is going to be out of court, then it is a function of the judge in the administration of criminal justice to see that justice is done, and that requires the exercise of discretion every step of the way, and I think that is an area which is worth exploring.

Once this committee for this Congress has a record to support this kind of a change, then I think that when that record is presented to the Congress and Congress acts on it, when the test case comes to the Supreme Court as to whether the Congress can do that with a really factual record supporting the underlying social policy behind your legislative judgment, the chances are good that the judgment will be upheld, because the Court does wrestle with the questions of social policy.

We all know, as Chief Justice Hughes said years ago, the Constitution is what the Supreme Court says it is, and if you have the factual basis to show them that as a matter of social policy this is what it ought to be, I think the chances are realistic that the Court would agree in this difficult area.

Senator SCOTT. The Court says in the *Miranda* case, in effect, paraphrasing that being bound by what words say is not the standard, because words have lost their reality.

Now, if that is to be the standard of future decisions, then the Congress can never know the effect of the words it legislates, because at any time it wants to, the Supreme Court can say, "Well, that is what the words say, but they have lost their reality. The only true reality is the inward truth which lies in five out of nine of us."

This is a very disturbing thought to me, and I agree with you when you say that it is fictional to say that the fourth *Miranda* right could be knowingly and intelligently waived. Here the Court has set up a new standard not supported by law, not supported by anybody with precedent, but very tortuously worked out, in order to staple in what it is justly concerned about, the prevention of abuses.

Mr. SPECTER. Senator Scott, I think on that subject that the current task, to pick up what Senator McClellan asked about before, is that confessions are going to be "out" one day altogether, unless a statement is made or a confession is made in open court, or perhaps before a magistrate with a court stenographer present, the trend is to eliminate confessions completely, and I think Mr. Justice White comes to that view, and the trend, if we are to exercise judgment and wisdom on where

the trend is going, the trend is to eliminate them completely, and I think they are going to move from the curbstone to put them out altogether, and that may emphasize the necessity of this kind of a hearing to see where we are to make a judgment as to where social policy lies, because none of these cases have been the end of this kind of litigation, and the path stretches to excluding confessions completely.

Senator McCLELLAN. Based on your experience, what would you say would be the consequences of completely outlawing all confessions?

Mr. SPECTER. I think we will lose a lot more cases. We will lose a lot more cases.

Senator McCLELLAN. When you lose cases, if a man is guilty who suffers?

Mr. SPECTER. Senator McClellan, we all suffer. There is no question about that.

Senator McCLELLAN. That is the point I am making. That is the point I am trying to emphasize, which it seems that the Court sometimes forgets. It is society, all of us, who have something at stake in these decisions.

Mr. SPECTER. Senator McClellan, what the Court is always doing on those scales, they are saying that as a matter of national policy it is more important to elevate the rights of the suspect in custody, and they are going to elevate those rights and the societal rights come down.

Now that may lead us to a situation where we ought to really take a hard took at what goes on in terms of the opportunity a suspect has for reasonable protection of his rights, without all these warnings. That hasn't been done. I think that may be an area that the committee will want to look into, because the opinion of the Court in *Miranda* takes a few textbooks on interrogation practices and uses the Mutt and Jeff example, and some other practices which are not desirable, really. They are undesirable.

The question is what really goes on in the police stations around the United States. So that I think they need more information.

If they had more assurances that you didn't have to go so far as the four *Miranda* rights to give the suspect his due, I think it would be a lot easier for us to make a case on the other side.

Senator McCLELLAN. It is your hope, then, if we make such a record here, that they will take cognizance of it?

Mr. SPECTER. I think they will. I think they could not really quote two or three text books on interrogation if a congressional committee has investigated the field and has found contrary facts about police practices in according defendants' fair rights not to be overborne or intimidated, and I think in Philadelphia, the fact is that defendants were not overborne or intimidated prior to the *Miranda* case.

I cannot speak with equal assurance about every other part of the United States, because I don't know, but that is something this committee can find out.

Senator SCOTT. I think the Court has been a little naive in taking the position on this reality of words, almost reaching an assumption that before *Miranda*, all interrogations were bad. After *Miranda*, all interrogations are acceptable, provided they meet a standard which the Court accepts. Now, this flies in the face of human experience and of logic.

To give you one illustration of it, the Court, suspicious of police interrogation, citing some very horrible examples, and always recognizing that there have been horrible instances, seems completely unaware of the fact that in dealing with the reality of words, that a police interrogator sufficiently embued with a desire to get away from *Miranda* could rattle off these four warnings so rapidly that an unsophisticated defendant would never know the questions asked, and quickly, in his desire to satisfy the police, would say yes.

There you would have sworn testimony from the police that he was asked every one of these questions, that in every case he gave the due and proper answer, that the requirements of *Miranda* have been met. With such an unsophisticated defendant, if he does gain a lawyer later, he may not even tell his lawyer, may not even know enough to tell his lawyer that they rattled this off very rapidly to him, "And I said yes to a lot of stuff, counsel, that I don't know what I said."

But that is not a very good defense. It seems to me that the Court, by relying on the rule of a reality of words, the temporary transient reality of such words as "five to four" deem a more or less magic formula, will have to as you say some day step aside from that difficult standard that they have established, especially in the fourth *Miranda* guideline. But, will you go ahead.

Mr. SPECTER. Yes, Senator Scott. The other comment that I want to make relates to the Safe Streets and Crime Control Act, and I think that that act is a piece of splendid legislation. I think that our experience in Philadelphia shows that we do need comprehensive plans to coordinate and improve the operation of the various law enforcement agencies.

My office, in conjunction with a leading civic agency, the Greater Philadelphia Movement, is now undertaking a survey of criminal justice under the direction of Prof. Paul Bender of the University of Pennsylvania Law School, and our preliminary findings to this extent, to this time, already show that Philadelphia has essentially the same areas of problems as recently spotlighted in the report of the President's Crime Commission, so that I think that the availability of Federal funds to help on such projects as we are starting to undertake in Philadelphia is a very valuable cause, and we are heartily in favor of that proposal.

Senator SCOTT. The program generally contemplates very large Federal aid programs ultimately, as I understand it. In your judgment, are there presently the necessary programs and resources in Philadelphia to carry on this program without Federal aid?

Mr. SPECTER. No, Senator Scott.

Senator SCOTT. It couldn't be done.

Mr. SPECTER. There are not those resources available, by comparison, say, to the work of the National Crime Commission, which has been a very fine project, a very expensive project, to find that kind of experience, staff, consultants; or the District of Columbia Crime Commission, which published an excellent report, spent funds which are substantially in excess of what can be appropriated to do the job in Philadelphia, and I think it is an excellent idea to have those funds available, because it will stimulate our own city council, it will stimulate private citizens' group to put up the money, knowing that they will get help on the project, and it is a splendid piece of legislation.

Senator McCLELLAN. I spoke awhile ago about some of the manuals that the Supreme Court quoted from in the *Miranda* case. Are you familiar with those manuals?

Mr. SPECTER. Generally.

Senator McCLELLAN. Are they in use as a guide to police in your jurisdiction?

Mr. SPECTER. I think that they are present. I recall seeing one in the district attorney's office, one of the assistants who had one, and we used to read it, and it was an impressive book. But I can never recall carrying out any of those slick tricks that they put there, you know, things about putting the other fellow at a disadvantage in the light of the sun or a Mutt and Jeff approach.

I think those are really fine theoretical devices. Their practical application, I have great question about, even if people set out to do those things.

Senator McCLELLAN. Do you know whether they are in practice, being practiced, in your jurisdiction?

Mr. SPECTER. I think they are not being practiced in Philadelphia as a general rule. I think there are some individual cases of excessiveness. I think we do have those on an individual basis.

I think you can't eliminate a problem completely anywhere, but I think the general prevailing standards for police interrogation are standards of fairness. They ask a man if he wishes to make a statement, and they do not subject him to relay interrogation.

They do not keep him away from a comfortable situation. They do not keep food from him. They don't keep him for a protracted period of time. We don't have the problems that *Brown* v. *Mississippi* raised on the question of beatings.

I think that we have come to the extent where prior to *Miranda*, prior to *Escobedo*, an effort was made by a police officer to find out if the man had something to say or would make an admission, but I think it was within the bounds of what is proper, that there was no overbearing.

I think the practices in Philadelphia have been realistic and fair. We have had many test cases on whether confessions were coerced, and I have participated in those myself in prior years, and the defendant would take the stand and say that he had given a coerced confession, and the question would be, "Were you struck," and the man would say, "No."

Well, what were you worried about?
I was afraid I was going to be struck.
Were there any threatening gestures made toward you?
No.
Did anybody say he was going to hit you?
No.

So, when you come right down to it, even in the testimony of many of the cases, you are well within the traditional line of Supreme Court decisions on voluntariness.

Senator McCLELLAN. The Court in the *Miranda* case said that the Congress should continue to search for some way of dealing with this problem. Do you know any better way to do justice between the accused and society than to submit all of the attending circumstances to the trial court to ascertain whether a confession was voluntary, and then

in turn, after the judge finds that it is admissible, to submit it to a jury and let them weigh every factor?

Do you know any fairer way to both sides?

Mr. SPECTER. I think that is a sound approach. I think *Miranda* seeks to go beyond, by mechanical rules. Senator Scott was pointing out the difficulty of applying a mechanical rule.

I think perhaps the Supreme Court would say—I am just speculating now—that if you had a tape recorder or a motion picture, so that every part of the exchange between the suspect and the officer was recorded, so that nobody could doctor it, then you wouldn't have to have specific warnings, or specific waivers, because there the record would be so easy to see in its true context that you could judge whether or not there was overbearing, and what they are really trying to get here is some very rigid mechanical rule which they conceive to be sufficient.

Senator MCCLELLAN. Couldn't that be questioned? Couldn't that be challenged if you didn't show all the film, if you did have a camera on all the time? I don't know any perfect way to do this.

Mr. SPECTER. In human affairs, it is very difficult to get perfection in any line.

Senator MCCLELLAN. I am sure there have been instances of policemen or law enforcement officers exceeding the bounds of propriety, maybe even coercing or intimidating by threat or by violence, getting an extorted confession. I am sure that has happened.

I am also quite confident that many excesses have been engaged in by courts, by prosecuting attorneys, by defense counsel. We are human and we are not going to find a perfect answer.

But I do feel that with all of the protections that a defendant has now, all of the rights guaranteed to him that are very much in his favor, far more, I think, than he will find in most other civilized countries, that it would be fair to submit all of the facts to a jury after the trial judge has screened them and satisfied himself as to the voluntariness. After all, jurors are empowered to bring in a verdict that would deprive the defendant of his liberty, if they are competent to do that, I would think they are competent to weigh the issue of whether a confession was extorted or whether any unfair means were used to obtain it.

I know of no fairer way to do it. I still like the old-fashioned way of letting the court and the jury see the defendant and hear him, observe his demeanor, and take into account the whole atmosphere that prevails and everything that occurs.

Senator SCOTT. I think once in custody, it is highly desirable that the suspect be informed that he is entitled to counsel, that he is entitled to have counsel obtained for him if he can't afford it. I think that is a protection, a just protection of the person's rights.

But these particular standards I think are what concern all of us. They are the reasons for these hearings. It seems to me there must be a better way to restore the societal balance that you referred to.

Senator MCCLELLAN. Very well, any other questions? We thank you very much, Mr. Specter. I hope that our labors here will some day bear fruit that will restore this balance that is essential, I think, to preserve law and order in this country and do justice between society and those citizens who are accused of crimes.

Mr. SPECTER. I appreciate the invitation. I think the record is now set straight that I am not a judge, although I appreciate the compliment, as well, which you gave me at the start.

Senator MCCLELLAN. Very well. Maybe you should be a judge, and on the Supreme Court at that.

Senator SCOTT. Keep that a part of the official record.

Senator MCCLELLAN. Yes. I didn't want to strike it. It is not off the record.

The next witness is Mr. Koota. Will you come around, please, sir. For the record, I might say to you something you may already know: that when the Senate is in session, there is interesting debate and important issues are under consideration, and it is difficult to get attendance at a committee meeting in the afternoon.

Mr. KOOTA. I understand, sir.

Senator MCCLELLAN. We set these hearings, we scheduled a limited number of witnesses in the hope that we could get through with them in time, so that most of the members could be here, even when the Senate is not in session.

(Whereupon, there was a short discussion off the record.)

Senator MCCLELLAN. We are very grateful to you for your presence here and for your willingness to cooperate with us and let us have the benefit of your suggestions and recommendations.

I will have inserted in the record at this point a brief statement of your experience, and so forth.

(The information above-referred to, follows:)

Aaron E. Koota, *District Attorney, Brooklyn, N.Y.* In the practice of law for almost 40 years; since 1950 continuously in the office of the District Attorney in Kings County. 1950 joined office of District Attorney as temporary assistant to investigate Harry Gross bookmaking activities. In 1955 became a permanent assistant in charge of Rackets Bureau; 1963 appointed chief assistant to the District Attorney. *In 1964 was elected as District Attorney* to fill unexpired term of predecessor; 1965 re-elected for full 4-year term.

STATEMENT OF AARON E. KOOTA, DISTRICT ATTORNEY OF KINGS COUNTY, N.Y.

Mr. KOOTA. Mr. Chairman, I should like, realizing the lateness of the hour, nevertheless, to read my statement, because I intend as I go along to interpolate, and if you will not deem me immodest, perhaps to respond to some of the questions that you put to Judge Lumbard and Mr. Specter.

Senator MCCLELLAN. Very good. It will be perfectly all right. You may proceed and I will follow you. I may interrupt for clarification or for emphasis at times.

Mr. KOOTA. Certainly, sir.

First, as to my relation to law enforcement in the State of New York, as this honorable committee probably knows, New York State is divided into 62 counties. Each county elects its district attorney.

The city of New York embraces five counties within its periphery. One of these counties is Kings County, otherwise known as the Borough of Brooklyn, and I am the elected official, elected district attorney of Kings County. Kings County has a population of some 2,650,000 people, and crime is not altogether a stranger to Kings County.

My office numbers approximately 300 in personnel and I have 90 assistants, and I daresay that my office is either the second or third largest law enforcement office; that is, the district attorney's office or prosecutor's office, in this country.

I, myself, have been in the district attorney's office continuously for 17 years last past, and I have occupied various positions. I have been an assistant district attorney. Then I was placed in charge of the rackets bureau. I became chief assistant district attorney and I was elected district attorney in 1964, and reelected in 1965.

I welcome this opportunity to raise my voice in behalf of the victims of crime and in behalf of an inarticulate society, of our majority of lawabiding citizens, whose safety and welfare have been jeopardized by a welter of judicial opinion defining the rights of criminal suspects.

The prime responsibility of government is to assure the peace and to afford safety and security to its citizens. Our armies stand ready and alert to discharge this duty and to repel the invader and the enemy without. But what of the enemy within our borders.

His existence and pernicious impact upon our communities is attested to by the ever-increasing incidence of crime in every category. Of what avail is it to withstand the onslaught of the enemy on our border but to yield to the insidious incursions of criminal elements in our society? The damage in either case is devastating.

As the district attorney of Kings County, having a population of more than 2½ million, it is my sworn duty to prosecute crime of every nature. My concern is not only with attacking the sophisticated type of violations of law, such as racketeering and the infiltration of organized cirminal syndicates into legitimate businesses, but to deal vigorously with the day-to-day lawlessness in our streets.

The causes of crime are many and varied. Substandard housing conditions, slums, the absence of adequate educational and economic opportunity, are contributing factors to crime. While I am deeply concerned with the elimination of these causes, this is essentially a long-range proposition and is within the special area of competence of other organs of government.

My immediate concern is with punishing the racketeer, the murder and rapist, and making our streets safe for the community. No useful purpose is served in providing more parks, when men and women are afraid to frequent them.

The housewife, in mortal terror, will not leave her home at 10 o'clock in the evening to go to the corner store to buy a newspaper, for fear of attack. We build more playgrounds, but the mothers are fearful lest their children come to harm in those areas.

A former deputy commissioner of police of the city of New York, one Richard Doughtery, writing in the Los Angeles Times, Sunday, February 19, made this very pertinent observation. He said:

> We will hear a lot of harsh-sounding talk. We will be told that the answer to the crime problem in our cities lies within our grasp, if we will only get rid of our slums and recruit our cops from Harvard. We will be told that crime has to be attacked at its roots. Meantime these sounds that we hear rising nightly from the streets of our cities, sounds of splintering glass, squealing tires, stifled screams, and ugly thuds will assure us that the burglar, the car thief, and the mugger are still going about their appointed rounds with a minimum of inconvenience.

What we need is to get our system of priorities straightened around. Attacking crime at its roots through slum clearance, education, social justice, and a better life for all, is going to take a long time. Our problem is a clear and present one, to make life in New York, Los Angeles, Chicago, Detroit, all our cities secure and free from lawlessness.

The facet of street crime has changed in recent years. We are confronted time and again with evidence of unspeakable cruelty and violence. Only the other day in Kings County, two young men robbed an innocent citizen and after having taken his money, needlessly and viciously stabbed and cut their victim.

Yes, it is this enemy within who has received comfort by virtue of judicial hypertechnical decisions which have weighted the scales of justice heavily in favor of the criminal suspect to the deteriment of law-abiding citizens.

In some instances, our courts have usurped the classic function of our legislatures and, in addition, through judicial process, have effected constitutional changes. As an example of the former, I cite the recent *Miranda* decision of our Supreme Court—*Miranda* v. *Arizona* (384 U.S. 436) decided June 13, 1966.

Historically, the function of a court is to determine the issues sub judice on the record of the case before it, but in *Miranda* the Supreme Court established guidelines for future police action. Confessions, no matter how voluntary, judged by ordinary theretofore traditional standards, are to be inadmissible on the trial of a criminal defendant unless certain warnings are given to him prior to this confession.

The Court not only decided the issue before it, but in effect enacted a law concerning the admissibility of evidence in the future. True, the Supreme Court, within the ambit of its supervisory power over Federal courts and procedures could, I assume, impose the warning concept on Federal officials, but its injunctions in *Miranda* apply with equal force to State procedures, over which the Supreme Court does not possess supervisory authority.

The curious conclusion of *Miranda* flows from an incorporation of the fifth amendment privilege against self-incrimination into the fourteenth amendment due process clause, which under *Malloy* v. *Hogan* (378 U.S. 1, 84 Sup. Ct. 1489) and *Murphy* v. *Waterfront Commission* (378 U.S. 52, 12 Law Ed. 2d 678) became strictures upon the States. Thus, where it has established guidelines for future police action, the Supreme Court, I submit, has usurped the legislative functions.

But what of amendment to the Constitution by judicial fiat? Again, a notable example is the fifth amendment privilege against self-incrimination. In 1908, *Twining* v. *New Jersey*—211 U.S. 78, 29 Sup. Ct. 14—held that this Federal guarantee was not applicable to the States. As recently as 1961, in *Cohen* v. *Hurley*, 366 U.S. 117, 81 Sup. Ct. 954, this principle was reaffirmed. These interpretive decisions, by implication, constituted an addendum to the privilege clause of the fifth amendment.

However, more than 50 years later, the Supreme Court repudiated this doctrine in *Malloy* v. *Hogan*, supra, and held the fifth amendment to enjoin contrary State action.

In effect then, by divided court, the Supreme Court has amended our Constitution.

I would suggest at this point that it is hardly necessary for me to say that as a citizen of this country, as a lawyer and a prosecuting official, I intend to obey the strictures and injunctions of the Supreme Court. That goes without saying. I am bound by the law, as are all of us. But that doesn't deprive me, I think, of my duty and responsibility to the citizens of our community to speak out against what I term as an injustice to the people, by virtue of decisions of our courts.

Senator MCCLELLAN. Has is occurred to you, if I may interrupt, that those who today disagree with the President, and the Commander-in-Chief, as to the conduct of the war, assert the right to dissent?

Mr. KOOTA. Precisely.

Senator MCCLELLAN. I wonder if some of them will accord to us the right to dissent and make our position known with respect to some things that are happening in this country from within.

Mr. KOOTA. I am very dubious about that, Mr. Chairman.

Senator MCCLELLAN. I wonder.

Mr. KOOTA. I wonder.

It is a truism that criminal investigation from its inception through a trial is a search for the truth—did the defendant or did he not commit the crime alleged. Disraeli said that justice is truth in action. But the primary objective in law enforcement today perforce the decisions of our courts, is not the ascertainment of the truth as to whether the defendant was the perpetrator, but rather as to police methods in obtaining evidence.

The exclusionary rules enunciated by the Supreme Court have subordinated the cardinal principle of the search for truth to an examination of police procedures. The enemies of the people are not the police, but the criminals. When the criminal escapes the just consequences of his acts in order that a police officer, who unwittingly may have invaded some constitutional right of the malefactor, may be disciplined, it is the society, the law-abiding community, which suffers.

Mr. Justice Cardozo, then Judge of the New York State Court of Appeals, in *People* v. *Defore*, 242 N.Y. 13, in 1926 reaffirmed the principle of the *Adams* case established more than 20 years prior thereto, that even though a search and seizure by the police was unlawful, the evidence was nevertheless admissible.

Judge Cardozo said:

> No doubt the protection of the statute would be greater from the point of view of the individual whose privacy had been invaded if the Government were required to ignore what it had learned through the invasion. The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the *Adams* case strikes a balance between opposing interests. We must hold it to be the law until those organs of Government by which a change of public policy is normally effected, shall give notice to the courts that the change has come to pass.

The Congress and State legislatures, not the courts, are the organs of Government envisaged by Judge Cardozo.

It is a remarkable phenomenon of our judicial process that one judge of the Supreme Court can alter the course of legal history and chart new avenues in the administration of criminal justice. Witness the 5-to-4 decision in *Miranda*.

A judge who dons the robe of judicial office does not suddenly become invested with divine omniscience, or lose his characteristics as an individual. He is the ultimate product of his environment. He brings to the court the sum total of his education and experiences in life. The entire Nation may face new eras in law enforcement depending upon the attitude of this one justice.

Perhaps this is the genius of the American judicial process—because it is now unavoidable, it must be accepted.

But, if the Congress has the power under article 3 of the Constitution to control the appellate jurisdiction of the Supreme Court, perhaps a statute requiring a vote beyond a bare majority in cases affecting public security might be the sober subject of legislative inquiry.

I would return briefly to *Miranda*. There the divided Court established an inflexible, inexorable rule that no confession was admissible unless the prescribed admonition had been given to the criminal suspect. Thus, even a confession of a professor of criminal law to a crime would be excluded from the jury's consideration unless the warning had been given, despite the fact that this professor probably knew the legal principle of *Miranda* infinitely better than his neophyte police interrogator.

Now, what has *Miranda* accomplished? Mr. Justice Harlan, dissenting from the majority, expressed his belief that the *Miranda* decision would entail harmful consequences for the country at large. The experience in my office vindicates the integrity of his prediction.

In Kings County prior to *Miranda*, in crimes such as homicide, robbery, rape, and felonious assaults, approximately 10 percent of the suspects refused to make statements.

From June 1966 to the end of September 1966 the percentage of suspects in these categories of crime increased to 41 percent. Specifically, between June of 1966 and September 30, 1966, of 316 suspects interrogated in these categories of crime, 130 refused to make any statement. I estimate that in these instances of refusal, sufficient evidence to arrest and prosecute the criminal suspect, without a confession, existed in 30 cases.

Consequently, 100 individuals, potential murderers and rapists, are walking the streets secure in the knowledge that they cannot be punished for their crimes, and free to continue to jeopardize the safety of law-abiding citizens.

I have been compelled to dismiss many cases where arrests have been made, because the confessions obtained were inadmissible under *Miranda*.

Senator McClellan. Can you give us any number?

Mr. Koota. Approximately 100. Approximately 100 cases were dismissed, but these are not only in categories of the more serious crimes, but are relatively minor crimes as well.

Senator Ervin. And most are cases where there was really, on the merits, no doubt of the guilt.

Mr. Koota. Yes.

Senator Ervin. And they were cases you had to dismiss notwithstanding the fact that the individual voluntarily confessed he was guilty of that crime.

Mr. Koota. That would depend upon what you mean by the term, "voluntary," Senator. Under old standards, it was voluntary.

Senator ERVIN. In other words, they had to be dismissed regardless of whether the person who confessed that he had committed the crime did so voluntarily or not——

Mr. KOOTA. Yes.

Senator ERVIN. You couldn't even go into that question.

Mr. KOOTA. You couldn't go into that question because the prescribed warnings weren't given under *Miranada.*

Has *Miranda* really settled the law? Prior to June 1966, the issue of confessions was limited to voluntariness. Had the police through cruel, extorsive, and brutal methods extracted the confession? An issue of fact was raised in each case, to be resolved by the court and jury.

Miranda recognizes that a confession may be admissable in evidence even though no warning is given, if the criminal suspect is not in police custody when his statement is made or if he waives the right to counsel and to remain slient. *Miranda* then has simply substituted one set of issues of fact for another.

But in this process of substitution, confusion has become increasingly confounded. The *Miranda* principle is applicable only to custodial interrogation. My office has been bombarded with police requests for opinion as to whether in a given state of facts, the suspect is in custody.

A police officer stops an automobile driven by a 16-year-old boy who acts suspiciously. His explanation as to the ownership of the car is dubious. At what point is this youth in police custody, and at what point must the officer issue a *Miranda* warning before the youth's confession to operating a stolen car can be introduced in evidence upon a subsequent indictment for larcency?

A woman complains to the police that she was raped by her son-in-law. A detective accompanies her to the home of the son-in-law and inquires of the latter whether he had raped his mother-in-law. He admitted that he had had sexual relations, but with her consent.

Upon a pretrial hearing to determine its validity, the confession was held to be inadmissible because at the time that the statement was made the suspect, the court rules, technically was in police custody and no *Miranda* warning had been given. Furthermore, whether a criminal suspect waived this right to counsel and the privilege against self-incrimination depends upon varying factors resulting in disputed issues of fact which must be resolved by a court or jury and again becomes the object of piercing judicial scrutiny.

Senator MCCLELLAN. Those are the questions I asked this morning. What is custodial interrogation? When does custody attach?

Mr. KOOTA. It is impossible to define it.

Senator MCCLELLAN. It is a question of fact.

Mr. KOOTA. In each case. Whether under the peculiar circumstances of this case, this suspect is in police custody or not.

Senator MCCLELLAN. These are cases that were under *Miranda.*

Mr. KOOTA. These are actual cases in my office.

Senator MCCLELLAN. Where the son-in-law raped his mother-in-law?

Mr. KOOTA. Yes.

Senator MCCLELLAN. The officer went with her?

Mr. KOOTA. Went with her.

Senator MCCLELLAN. And the officer asked questions?

Mr. KOOTA. Simply one question: "Your mother-in-law says you raped her. Did you?" And he answered, "I had relations with her, but it was done with her consent."

Now, the court inquired of the police officer, as follows: "Would you have arrested this son-in-law had he not made this admission?"

The officer said, "Yes, on the mother-in-law's complaint."

Therefore, the court ruled, since in the secret recesses of the police officer's mind, he would have arrested this defendant, this son-in-law, therefore, he was in police custody.

Thus, in a sense the *Miranda* rule has opened new areas of litigation.

Again, in March of 1965, the New York Court of Appeals, establishing the law in that State, held in *People* v. *Gunner*, 15 N.Y. 2d 226, that a confession is admissable in evidence despite the failure to warn a suspect of his rights. *Miranda* was enunciated on June 13, 1966. But between March, 1965, and June, 1966, the police in New York, obedient to the authority of *Gunner*, received confessions without issuing a prior warning.

In *Johnson* v. *New Jersey*, 384 U.S. 719, 16 Law Ed. 2d 882, the Supreme Court held *Miranda* not to be retroactive but to apply to all cases where the trial commenced after June 13. The New York police, acting in good faith and relying on *Gunner* sanction, now found their efforts at crime detection and prosecution frustrated, since confessions were rendered sterile unless the particular persecution had proceeded to trial before June 13.

Only a few days ago, I was compelled by *Miranda* to dismiss an indictment against an individual named Suarez, who had confessed, not only to the police but to an assistant in my office, to the killing of his common law wife and five of her children, ranging in ages from 1 year to five years. The confession antedated *Miranda* by but a few weeks and was valid under the New York law then prevailing.

The dismissal of this indictment has agitated responsible citizens throughout the country. Only the other day, I received a letter from a resident of Milwaukee, Wis., complaining against what he regarded as a miscarriage of justice. His letter concluded by saying:

> I plead with you, Sir, to help us in this cause by devoting some of your valuable time to a Citizen's plea. Show the American People that the Halls of Justice have not slammed shut their doors in subtle apathy, for the challenge is ever apparent, and complacency has no place in a Democracy.
>
> I love it here in the USA, and I would especially like to see practiced, another basic right—that my family and my neighbors might walk the streets without fear.

In a radio editorial over station WEJF in Scranton, Pa., February 27, 1967, entitled, "Travesty on Justice," the speaker said:

> People have a right to be indignant when a confessed slayer of six persons is allowed to walk out of a courtroom a free man. It happened in New York, where a series of similar travesties on justice occurred earlier, and New York is not the only locale of such incidence.
>
> Two confessed murderers are said to be walking the streets of Philadelphia because of a ruling last year by the Supreme Court of the United States. Law-abiding citizens have reason to wonder if their rights are not being tramped upon as a result of the extreme concern of the High Court over the questionable rights of criminals.

Men and women who respect the law are entitled to equal protection, but they are being deprived of that protection, when killers are let loose by misguided officers of justice.

The United States Supreme Court has weighed the scales of justice heavily in favor of the criminal suspect, as Brooklyn Attorney Aaron E. Koota and countless citizens echo his opinion.

Again, the cause of public justice suffered a body blow.

Bearing in mind that one aspect of the philosophy underlying the exclusionary rules established by the Supreme Court was to discipline the police and, putting it bluntly, to teach them a lesson, would not that purpose have been accomplished and the cause of justice spared disservice if *Miranda* were applied not to trials commencing after June 13, 1966, but to confessions given after that date. Perhaps, legislative action in this area might not be subject to constitutional infirmity.

I should like to advert parenthetically to a statement made by Under Secretary of State Nicholas deB. Katzenbach, Chairman of the President's Commission on Law Enforcement and Administration of Justice, according to the New York Times of last February 20. Mr. Katzenbach characterized as "unutterable nonsense" the assertion that crime is increasing because the courts are not doing their job. I agree with him.

The decisions of the Court in *Mapp* v. *Ohio*, *Miranda*, *Escobedo*, and others, have not caused an increase in the crime rate. An individual bent on robbery, burglary, or a rape, does not have one eye cocked on Washington and an ear to the latest pronouncements of the Supreme Court. But these decisions have had an impact upon law enforcement in this regard:

The confusion and uncertainty generated by *Miranda* and cognate decisions has weakened the most effective deterrent to crime, namely, the speedy apprenhension of the criminal followed by equally prompt prosecution and condign punishment. While *Miranda* is not the cause of crime, it has militated against effective prosecution.

Perhaps, in the unforseeable future, when the deleterious impact of the exclusionary rules announced in such decisions as *Miranda* and *Escobedo* upon law enforcement may clearly be demonstrated, the Supreme Court, in light of practical experience, may be inclined to different views.

They manifested that in another area of litigation involving the right of an attorney to plead the fifth amendment in disciplinary proceedings instituted against him, or general investigations by the courts which have supervisory powers over lawyers. In 1961, in the case of *Cohen* against *Hurley*, the Supreme Court held that a lawyer may be disciplined and may not in such type of inquiry plead the fifth amendment.

Yet in 1966, in *Spivak* against *Klein* just a few weeks ago, the Supreme Court reversed itself and said that a lawyer may not be disbarred because he pleads the fifth amendment. And so, with such auguries, it may be possible that the Supreme Court, in the light of practical experience, may change its position.

Now again, I noticed an air of pessimism and resignation in some of the questions put by members of your distinguished committee to Judge Lumbard and to Mr. Specter. You were concerned with the pos-

sibility that Senate 674 might be declared unconstitutional by the Supreme Court. Well, that is possible, but let us look at it from the practical aspect.

The Supreme Court does not have declaratory judgment procedures. Now, I am not a prophet, nor the son of a prophet, but I dare say that 674 will not be enacted into law and signed by the Chief Executive tomorrow morning, and there is no procedure whereby, if it is signed into law, someone may walk over across the street to the Supreme Court and say to the Justices, "Now, gentlemen, here is a law we have just enacted. Is this constitutional, or is it not?"

According to our judicial process, a case must arise on an actual prosecution. It may take a year or two before such a case reaches the Supreme Court. And it may be a year or two before the Supreme Court is called upon to pass on the constitutionality of 674, and perhaps the companion bills to which I will allude in a moment.

During that time the Supreme Court may have before it actual experience of prosecutors and police officials throughout the Nation, and will see what an impact, practically, *Miranda* may have upon law enforcement, and they may, as I hope they will, see the light of day, so to speak, and change their opinion.

Senator MCCLELLAN. That is what I said this morning.

Mr. KOOTA. Precisely, sir.

Senator MCCLELLAN. That we probably could establish a record here that will enlighten the Court to the peril it has created by these decisions.

Mr. KOOTA. And not only by the testimony adduced at these hearings, but before 674, if it is enacted into law, can reach the Supreme Court, it will have before it figures of actual experience of law enforcement officials throughout the country.

What did the Supreme Court rely upon in its *Miranda* decision? They quoted at length from a pamphlet issued by Professor Inbau of Northwestern University. There he outlined police procedures which in a sense were really shocking. The assumption was that these are followed in every station house in the country, I, in the 17 years I have been in office, have never seen those pamphlets. They have no place, they have never made any appearance at any station house in the city of New York

Senator ERVIN. May I interrupt at that point. Do you have any reason to suspect that any of the police procedures that were cited in the majority opinion in writings like that were in the record that went up to the Supreme Court?

Mr. KOOTA. I don't think so, sir.

Senator ERVIN. It would have been inadmissible, wouldn't it, in the trial court?

Mr. KOOTA. Certainly, it would be inadmissible.

Senator ERVIN. Instead of trying the record as made in the trial court, they try it by a whole lot of writers, by people who were not witnesses in the case, and who weren't subject to cross examination, and who weren't even mentioned in the case when it got to the Supreme Court.

Mr. KOOTA. Yes, sir. The second case that he cited was the case arising in my own jurisdiction. There, two hoodlums were convicted of

first degree murder in the course of the robbery of the wholesale tobacconist. They killed two detectives. They were aided in their escape by an individual named Melville.

Melville was apprehended by the police and according to his testimony, he was unmercifully beaten by the police so that he implicated these two defendants, who were arrested, indicted, and convicted. Upon the trial of these two defendants for murder, Melville testified that he was beaten by the police, but that what he was saying at the trial implicating these two defendants—of course, in the trial there was no coercion exercised against him—was the truth.

Our Court of Appeals, in confirming this conviction, said that if what really happened to Melville was the truth, this is a terrible thing, and the law enforcement authorities ought to do something about it.

Now, I did something about it. I began a Grand Jury investigation, and while the confidential nature and secrecy of Grand Jury investigations prevent me from disclosing the evidence, I will say that in that proceeding the Grand Jury voted a no true bill, meaning that there was no basis for any criminal action against anyone.

Senator ERVIN. I would like to ask you about the record in the *Miranda* case—I mean, the one case from which the decision takes its name.

The record showed, the evidence indicated, that a girl had been kidnapped and raped.

Mr. KOOTA. Yes.

Senator ERVIN. The record showed that the police officers went out and arrested the defendant on suspicion, and brought him to the police station. He was kept there about 2½ to 3 hours, and no coercion was predicted on him, and at the end of 2½ to 3 hours, he voluntarily confessed that he was the man who had kidnapped and raped this girl. Then the officers gave him some writing materials and asked him to sit down and write out in his own handwriting the details of the crime he had confessed to, and he did that. He wrote it out. And then all of these facts were in the record when he was convicted, and it came up to the Court.

Mr. KOOTA. Yes.

Senator ERVIN. And instead of deciding the case on the basis of the record made in *Miranda*, it was decided on a whole lot of writings by some professors and some other people discussing real or fancied activities of police officers that were not in the record, and had nothing whatever to do with the case on trial.

Mr. KOOTA. Sir, may I make this observation. The Supreme Court does not need a defense. It certainly doesn't need a defense from me. But it is a recognized practice of the judicial process that all courts will take judicial notice of conditions existing about the country.

They do not, when they become Justices of the Supreme Court, fail to see what the average citizen in the street sees, so that there is justification in my estimation for the Supreme Court relying on statistics from reliable sources. But I say that the statistics that they had were not reliable sources, and did not show a general pattern of police brutality.

To finish this *Melville* thought, the Supreme Court cited this *Melville* case in its *Miranda* decision as an instance of police brutality,

but they don't know that the police denied that they exerted the slightest pressure upon Melville, the witness.

Now the Supreme Court has grandly assumed that this is an accepted instance where the police have exercised brutality, even though the record facts show that the police had denied they exercised any brutality.

As I have said, maybe in the unforeseeable future, the Supreme Court may change its opinion.

But what of the present? What assurances can be given to the people that our lawmakers have not abdicated the responsibility to protect innocent citizens? The keys to unlock the handcuffs that bind the criminal are easily available; but where are we to find the keys to free the shackled hands of law enforcement officials?

I suggest that it lies in the prompt enactment into law of Senate bills numbered, respectively 674, 675, 676, 677, and 678, introduced by the chairman of your subcommittee, Senator McClellan.

Perhaps most important are S. 674, relating to confessions, and S. 675, which, among other provisions, permits the interception of telephonic communications in State criminal investigations when authorized by State statute. I shall comment briefly on these bills.

Senator McCLELLAN. Before you go to those, I was interested in one statement you made when you commented on the remarks of the former Attorney General, who said it is "unutterable nonsense" to contend that these decisions were having any impact on, or affecting the increase in, crime in this country.

Do you believe that the probability of detection and punishment is in any sense a deterrent, or to any degree a deterrent against crime?

Mr. KOOTA. Without any question. That is where the frightful impact of *Miranda* appears.

Senator McCLELLAN. Let me follow that up with one other question.

Mr. KOOTA. Yes.

Senator McCLELLAN. If there is a reasonable certainty or probability of detection and punishment, if that is a deterrent to crime, then is it logical to conclude that the absence of that deterrent stimulates, possibly, an increase in crime? It makes it more probable that there will be more crime?

Mr. KOOTA. In that sense, sir, I will agree with you, but perhaps we are engaging in semantics here, or I am, at least.

Senator McCLELLAN. I just couldn't conceive of anybody believing that turning criminals loose, known criminals, wouldn't have any impact on the increase in crime in this country.

Mr. KOOTA. It might have, in this sense.

Senator McCLELLAN. If that is true, then, the whole theory and premise of punishing people for crime to serve as a deterrent is a false premise. We are on the wrong track.

Mr. KOOTA. What I have in mind, sir—we are definitely on the right track—what I have in mind is this: Crimes are caused by impulses which are not generated, necessarily, by judicial opinion.

Crimes are caused by poverty, lack of opportunity, and so forth, but in this sense:

That where it has removed a deterrent, an effective deterrent to crime, these opinions, they are indirectly the cause of crime, because

I wouldn't walk into a police station, for example, with seven policemen around, all with guns, and proceed to commit a robbery against those police officers. In that sense, that crime wouldn't be committed.

But I had in mind the underlying causes of crime, rather than a cessation or decrease in crime caused, or increase in crime caused, by removing a deterrent to crime, which the Supreme Court decisions have done.

Senator McClellan. I think if we convinced people that crime doesn't pay, that there would be less of it.

Mr. Koota. There isn't any question.

Sentaor McClellan. And if people are convinced that crime is profitable, there will be more of it. I think it is just that simple.

Mr. Koota. I quite agree with you. Our experience indicates that in our jails, our local jails in the city of New York, the Supreme Court decisions are dealing with people who have already been arrested and charged with a crime. These decisions seep down. There are so-called lawyers in these jails who advise each other as to what the law is. They know precisely how to proceed at a trial.

I have had any number of instances where defendants have discharged their attorneys and have asked that another criminal who is held in jail on another charge sit with them and advise them as to their constitutional rights. That is a case with which I have had actual experience.

Now, when that repeated itself in two or three cases, I instructed my assistant to take this individual and move his trial—he was held for robbery—immediately, so as to get this jailhouse lawyer away from the other suspects. But I agree with you, sir. Perhaps the choice of my language was unfortunate.

The decisions of the various courts do not cause crime in the sense that poverty does, lack of educational opportunities, and so forth. But they are the cause of an increase in crime because they remove the deterrent to crime.

Senator McClellan. Very well.

Mr. Koota. First, as to S. 674, relating to confessions. Under the inexorable, inflexible rule of *Miranda*, a confession is not admissible in evidence under any circumstances if the requisite admonition is not given the criminal suspect, unless he has waived his right.

No matter how guiltless, how unintentional, or innocent may be the failure of the police to warn, the confession is aborted. We do not countenance or condone a flagrant or malicious violation by the police of a criminal suspect's constitutional rights. We abhor brutality and overt coercion and any official conduct which shocks the conscience.

We do not advocate a return to the days of the Stuarts and the Tudors, when, it has been said, it was much easier for police to sit in the shade of an apple tree rubbing vinegar in the eyes of a suspect to extract a confession than venture into the hot sun in search of evidence.

We condemn and deplore the tactics of the savage. When such conduct is manifested, of course, a confession should be excluded; but what if there has been an unintentional or venial violation of a defendant's right? Should not the legal consequences in the latter instances differ from the case of a physically coerced admission?

There have been occasional instances of overreaching by the police, which must be condemned. These individual cases can be dealt with in

the appropriate forum, but should these sporadic infractions reasonably have generated the *Miranda* rule of universal application?

We hear now and then that a police officer, off duty, intoxicated and in a bar and grill, draws his revolver, fires at random and injures an innocent patron. Does anyone suggest that all police should be deprived of their guns?

I believe that each case should be treated on its own facts; that the totality of circumstances surrounding the uttering of the confession in the particular case should govern its admissibility into evidence and the sole test thereof should be simply its voluntariness.

This is the purport of Senate bill No. 674. In a speech before the Senate, your chairman, Senator McClellan, referring to this proposed law, said that "the test of admissibility should, therefore, rest upon the circumstances in each individual case."

This, in substance, is the judge's rule prevailing in England. No one will suggest that England is a backward, uncivilized nation, less zealous of safeguarding the rights of an individual than are we.

This purport of No. 674 is the rule also suggested by Mr. Justice Clark in his opinion in *Miranda*, wherein he stated in part:

> The rule prior to today—as Mr. Justice Goldberg, the author of the Court's opinion in *Escobedo*, stated it in *Haynes* v. *Washington*—depended upon "a totality of circumstances evidencing an involuntary . . . admission of guilt." 373 U.S., at 514. . . .
>
> I would continue to follow that rule. Under the "totality or circumstances" rule of which my Brother Goldberg spoke in *Haymes*, I would consider in each case whether the police officer prior to custodial interrogation added the warning that the suspect might have counsel present at the interrogation and, further, that a court would appoint one at his request if he was too poor to employ counsel. In the absence of warnings, the burden would be on the State to prove that counsel was knowingly and intelligently waived or that in the totality of the circumstances, including the failure to give the necessary warnings, the confession was clearly voluntary.
>
> Rather than employing the arbitrary Fifth Amendment rule which the Court lays down I would follow the more pliable dictates of Due Process Clauses of the Fifth and Fourteenth Amendments which we are accustomed to administering and which we know from our cases are effective instruments in protecting persons in police custody. In this way we would not be acting in the dark nor in one full sweep changing the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society. It will be soon enough to go further when we are able to appraise with somewhat better accuracy the effect of such a holding.

It has been said in some quarters that confessions are not necessary in most criminal prosecutions, but I ask, "necessary to what?" They may not contribute to a prima facie case of guilt, upon which a charge or indictment is to be predicated, but they are indispensable upon the trial of such indictment where guilt must be established to the satisfaction of a jury beyond a reasonable doubt.

Who is there to say what quantum or quality of evidence will convince a particular jury of 12 men and women of guilt beyond a reasonable doubt?

Senator ERVIN. I will ask you whether, as a matter of actual practice, a confession of guilt is not in many cases the difference between an acquittal and a conviction, even in cases where you have witnesses that are able to connect the accused with the commission of the crime, because when you have evidence against a defendant, and then you

have a voluntary confession made by the defendant, where the evidence would otherwise be in doubt as to the identity of the perpetrator of the crime, that is what is conclusive in a high percentage of cases, in the minds of the jurors?

Mr. KOOTA. Precisely, sir. We had a case the other day where a man was arrested, charged with the robbery of a woman when she was walking down the street. The defendant approached her and put his arm around her in what we colloquially call a mugging. He stole her purse and threw her to the ground, and she was injured.

She had a fleeting glimpse of him through the corner of her eye. She examined some rogue's gallery or police photographs of individuals and pointed out, "This is the man who did it."

The police apprehended him and she identified him. That was enough to get an indictment. He denied any implication in this crime. There was enough evidence before the grand jury to procure an indictment. He was promptly indicted for robbery.

Now the case proceeded to trial before a jury of 12 men and women, and there was a lawyer present in the courtroom, and it develops on cross examination that she doesn't see too well, that she observed him out of the corner of her eye, had never seen him before, but for a fleeting moment. The light in the street was very dim. That jury was out 5 minutes and acquitted the defendant. We couldn't persuade them beyond a reasonable doubt that this was not a case of mistaken identity. But suppose we had a confession in that case? That jury would have been out 5 minutes and convicted him.

Senator ERVIN. I was impressed with the report made by J. Edgar Hoover about burglaries, for example. I don't remember the exact percentage, but he gave the percentage of burglaries that are committed by people in areas where they do not live.

He said, for example, of all burglaries committed in the suburbs, a tremendously high percentage—he gave the percentage, which I don't remember—were committed by people who did not live in the suburbs. They are usually committed in darkness and under circumstances where the victims of the crimes have difficulty identifying them.

You are making the point that in cases of that kind, the most convincing evidence as far as persuasion of a jury to return a verdict of guilty is concerned, is a confession.

Mr. KOOTA. Precisely. Your observation, Senator Ervin, suggests another thought.

My recollection is that in *Miranda*, the Chief Justice referred to the experiences of the FBI, and said the FBI customarily gives warnings, and they have been receiving confessions.

But the distinction between the responsibility of local police and the FBI is a very substantial one. The FBI, generally speaking, deals with the more sophisticated type of crime, violation of the Sherman Act, income tax violation, where confessions are really not necessary to conviction. But unlike our local police, the FBI does not enter the area of the day-by-day street crimes such as muggings, and rapes, and robberies. And furthermore, there is an obligation imposed upon our local police to prevent crime, and that is where the *Miranda* rule has a great impact on the prevention of crime; and the FBI is not charged with that responsibility.

Senator ERVIN. I think you have made an extremely valid point there. I have practiced in the Federal courts, and also in the State courts.

Mr. KOOTA. Yes.

Senator ERVIN. The State courts have to rely in a very high percentage of their cases, that is the prosecution has to rely in a very high percentage of their cases upon the testimony of what we would call just ordinary run-of-the-mill people.

Mr. KOOTA. That is right.

Senator ERVIN. The Federal courts normally, in the first place deal only with a restricted number of crimes; whereas the State courts deal with a whole category of crimes. And, in the second place, these crimes are usually fully investigated before the defendant is ever arrested, and they are investigated by highly intelligent people who are specialists in the particular field in which they operate, such as the income tax or the antitrust laws. The Federal Government rarely brings a prosecution until they have got a pretty good case already as to the evidence of the crime, and also evidence as to the identity of the defendant.

Mr. KOOTA. Precisely. This is what happens to us in our local cities. The police officer is walking down the street at 2 or 3 o'clock in the morning. A woman leans out of an apartment building and screams, "Help, murder, stop that man," and he sees a man running out of the building.

Now that man may not have committed any crime at all. What is the police officer to do at that point? Must he take out the latest decisions of the U.S. Supreme Court and carry the statutes under both arms and examine the books to see if he has a right to apprehend that man? If it turned out that that man had been a murderer and he didn't stop him, he would have been derelict in his duty. But if it turned out that that man was innocent, then he has made a false arrest.

These are the perplexing decisions that must be made by the police officer on the beat, and which the FBI does not have to make.

Although the proposed S. 674 bill affects Federal prosecutions only, its impact upon State procedures would be immediate. Underlying the *Miranda* rule is the fifth amendment privilege against self-incrimination, which is now binding upon the States. In *Malloy* v. *Hogan*, the Supreme Court declared the Federal standards for the determination of the scope and interpretation of this privilege shall be adhered to by the States. Senate bill 674 establishes criteria of confession admissibility which would perforce be followed by State legislatures or their judiciary.

May I, at this point, suggest the possibilities of an amendment to 674 in this area. In *Jackson* v. *Denno*, our Supreme Court said on the question of admissibility of confessions that the State legislatures are free to adopt either the Massachusetts rule, or what is known as the orthodox rule.

In the orthodox rule, the judge in the first instance finally determines the voluntariness of the confession, and then submits it to a jury to determine its credibility.

Under the Massachusetts rule, the judge in the first instance determines beyond a reasonable doubt in his own mind the issue of volun-

tariness, and then he submits it to the jury to determine that very issue. That is the procedure under *People* v. *Huntley*, which prevails in New York today.

The reason for it is that our Constitution says that in every criminal case the defendant shall have the right to trial by jury, and it be of questionable constitutionality whether a judge has a right to remove from consideration of the jury this very important issue of fact.

Senator McClellan. We don't do that in this bill, do we?

Mr. Koota. I think we do, sir; because you submit only the weight to the jury. Our sixth amendment, of course, guarantees the right to a jury trial to every criminal defendant, and I think your bill might be amended, unless I am mistaken in reading it, to provide that the judge in the first instance determines the issue of voluntariness and then submits it to the jury to determine it as a question of fact, but as I read 674, it has applied the orthodox rule, where the judge is the final arbiter of the admissibility of the confession, submitting only its weight and credibility for a jury determination.

Senator McClellan. I appreciate your suggestion. We will examine that aspect of it.

Mr. Koota. Then it avoids any possible conflict with the sixth amendment right of the criminal suspect to a trial by a jury.

Senator McClellan. What I have in mind is to get all of the facts.

Mr. Koota. I understand, sir.

Senator McClellan. Every situation that existed at the time of the confession, at the time the statement was made, and let the jury determine whether it was voluntary, and what weight should be given to it, along with all the other evidence in the case.

Mr. Koota. I may be sounding an alarm unduly because the Supreme Court in *Jackson* v. *Denno* recognized that either one of these procedures would be acceptable. It didn't condemn the procedure outlined in Senate 674, but I think the bill would be more palatable, if you will forgive that expression.

Senator McClellan. Very well. I appreciate this.

Senator Ervin. I notice now you are going to another bill.

Mr. Koota. Yes.

Senator Ervin. I have one or two questions I would like to ask about the *Miranda* case. I practiced law very actively for 19 years. During that time I defended, but I never did represent the prosecution, except in isolated cases.

Mr. Koota. That was a loss to the prosecution of this country.

Senator Ervin. I defended men, and I would say that I was left with the impression that the great majority of men I defended already knew they had a right to get a lawyer. Otherwise, I don't think they would ever come to me.

I was also impressed by the fact that they realized that what they said to the officers could be used against them in incriminating them. I also was impressed with the fact that most of them knew they didn't have to say anything.

Now, J. Edgar Hoover's report shows that something like 48 percent of those who are convicted of violations of the criminal law and sentenced commit another crime within a period of about 2 years after their release.

Mr. KOOTA. Recidivism.

Senator ERVIN. I don't like to just snatch figures out of the air, but I think a person with your experience can make some estimates about what percentage of the serious crimes that you are called on to prosecute are committed by repeaters?

Mr. KOOTA. Our statistics indicate that about 75 or 80 percent are recidivists; are repeaters.

Senator ERVIN. Now, what percentage of that 75 percent do you think haven't already got intelligence enough to know that whatever they say will be used against them; and to know that they don't have to say anything unless they want to; and to know that they have the right of the services of an attorney?

Mr. KOOTA. An infinitesimal number of those, very minor.

Senator ERVIN. So the overwhelming majority already know virtually all of these things that the *Miranda* case requires a police officer when he takes them into custody, to tell them about, before he interrogates them?

Mr. KOOTA. Certainly, and not only that, sir, but in view of the advent of television and radio, and the mass media of communication, almost every man, women, and child hears and reads about these things, that a person doesn't have to speak, that he is entitled to a lawyer. They may not know their precise legal rights, but the knowledge that they are entitled to a lawyer, it is a classic phrase that anything you say can be used against you. They all know that.

Senator ERVIN. Millions of Americans have seen such programs as Perry Mason and the Defenders?

Mr. KOOTA. Exactly.

Senator MCCLELLAN. Under the *Miranda* decision, I ask if this is not the practical operation of it. Today, under *Miranda*, we are having self-confessed murderers, rapists, and robbers turned loose merely because the arresting officers failed to tell them something that they already knew.

Mr. KOOTA. I think that is a very fair and reasonable observation, Senator.

I shall now advert to S. 675, which prohibits wiretapping except in certain instances, one of which is wiretapping in any State which by statute authorizes this procedure, and bearing in mind that I am a State prosecuting official, the right to intercept in State crimes is of immediate importance to me, although the Federal aspect is important, but more immediately the State procedures.

Section 605 of the Federal Communications Act forbids the interception and divulgence of any telephonic communication. A violation thereof constitutes a crime. The New York State Constitution, article I, section 12—since 1938—supplemented by the New York Code of Criminal Procedure, permits wiretapping.

This morning I heard Judge Lumbard say that it was in 1944 that we had wiretapping, in response to a question by your chairman. Our Constitution, which permitted telephonic interceptance, was amended in 1938, but the implementary statute was not passed for a year or two thereafter.

In *United States* v. *Benanti*, 355 U.S. 96, the Supreme Court ruled that no State may legislate in contravention of section 605; but the Federal courts nevertheless have denied applications to enjoin the

introduction of evidence obtained through wiretapping in a State criminal proceeding. Thus, while it is legal to wiretap in New York and the Federal courts will not enjoin us from utilizing the evidence thus obtained, nevertheless the introduction thereof in a State criminal trial constitutes immediately a Federal criminal offense in violation of section 605.

The proposed bill No. 675 would resolve the intolerable an anomalous conflict and would permit the interception of telephonic communications in the State of New York.

Another suggestion was made by Judge Lumbard with respect to a question posed to him, as I recall, by your chairman. He would extend the statute 675 to provide that not only in these areas of specific crimes would interception of telephone communications be admissible, but any crime discovered as the result of listening to it, even though that particular crime may not be mentioned in the categories set forth in 675.

I had a very practical experience with that the other day, where police officers were investigating a robbery, and in the course of that investigation, we had wiretaps authorized by our State statute inserted in the office of a garage, and over these telephone communications we heard three men conspiring to kill an informant who was giving information to the Federal authorities in the field of narcotics, as the result of which the United States Attorney in Manhattan, Mr. Morganthau, broke up this ring, convicted them and sent them to jail.

Now, these men were out to kill this informant. They planned every step of this murder. One gave instructions to the other. They were going to a certain store, and in the back of the store there were three steps leading down, and that they were to call the proprietor, the man they were interested in was Freddie, the florist—I mention the name because this is now a matter of record in our courts.

When Freddie the florist came out, they were to tell him to kneel down, and then they were to fire bullets in his head and kill him. They were then to go out, get into the automobile, but they were to be careful in the confusion not to get caught.

One was to go to the driver's seat, the other in the seat opposite the driver. They were then to proceed down a certain street, over another street, down another street. They were then to come to a subway station, and one of them would get out and go into the subway. The other would ride down three or four more streets, specific directions, and then abandon the car and escape.

Now, the police could not possibly, in order to prevent this murder, ascertain who it was. But within a week after that, the police found a dead body in a florist shop and there were stairs leading down. The father of the deceased, Freddie the florist, told the police that two men came in. They made them both come to the stairs, kneel down, and these two men fired shots and killed Freddie the florist, the son of the owner of the store.

The two men then ran out. As they ran out, a young man spied them and was able to identify them. An automobilist, who heard shots which sounded like firecrackers, then followed this automobile, and it went down the very streets that had been planned according to the telephone communications that we had overheard.

But when they came to a deserted area, the automobile which carried one—oh, yes, this automobile stopped and one of the men got out, went into a subway, just as they had planned, and the other went on. When they came to a deserted area ,this young man who followed them in his car was fearful of his life, or that harm might come to him, and he went off.

We indicted these three men for murder. That indictment is about to be dismissed because the lower court judge held that our State procedures permitting telephonic interception violated the fourth amendment to the Constitution, search and seizures, and we are now on appeal in our lower courts.

It occurs to me that it would be a remarkable achievement in the cause of law enforcement if perhaps some day we could develop a declaratory judgment procedure as we have in civil law. In civil law, if I want to build a house on my lot and you, my neighbor, say I will be encroaching on your property, I don't have to build and wait for an ejectment action. I can walk into the appellate division, or one of our courts and say, "This is what I contend, this is what my neighbor contends; will I be violating his rights if I build this property," and we can get a ruling on that. You can't do it in the criminal law.

Now, wouldn't it be a wonderful thing if in this case I just cited, I could come down to Washington with the case and walk into the Halls of Justice across the street here, and say to the Chief Justice and his associates, "Gentlemen, these are the facts of the case. Are we right about this?"

I have got to wait 2 or 3 years before I get a decision from the Supreme Court. And what happens to law enforcement in Kings County in the meantime? Do I continue with wiretapping, or do I not continue with wiretapping?

If I continue with wiretapping, some very important investigations may subsequently prove abortive, if the Supreme Court, in a case, for example, which it now has before it, the *Berger* case, decides that wiretapping is in contravention of our fourth amendment.

When one talks about wiretapping, and certainly when one is for it, he finds himself in a "semantic trap." To altogether too many people who know little or nothing of the tough problems of law enforcement, "wiretapping" is a dirty word.

When District Attorneys, who are law enforcement agents, use the word "wiretapping," they mean intercepting telephone conversations of persons engaged in criminal activities and let us always keep in mind that their victims are almost always lawabiding citizens.

Shakespeare once said, "Strong reasons make strong actions." While there maye be those who think wiretapping is a "dirty business," who will deny the fact that murder, narcotic peddling, labor racketeering, larceny, bank robbery, burglary and extortion are far dirtier businesses? These are strong reasons for strong action. Such crime must be eradicated not only for the sake of preserving our democratic way of life, but also because of its corollary effects.

The criminal element avails itself of modern means of engaging in nefarious practices, and in avoiding apprehension and detection. Is law enforcement to be prohibited from similarly employing up-to-date methods of combating the constant increase in crime?

What are the principal arguments of those who oppose affording law enforcing agents the right by court order to intercept the telephone conversations of persons engaged in criminal activities: They are:

(1) If we allow wiretapping, it will destroy the sacred right of privacy of our citizens.

(2) It is not needed in the war against crime.

Let us examine these arguments:

The first is an emotional appeal based on naught but a lively imagination and unfounded speculation. The facts are studiously avoided.

Let us look at these facts.

For over 25 years in New York State, with a population of over 16 million persons, with 62 district attorneys using wiretaps in their fight against crime, not one instance of abuse could be cited.

A joint legislative committee on privacy of communications was created in New York State in February 1955 as the joint legislative committee to study illegal interception of communications, and its functioned for 7 years, to March 1962. It went most carefully into the entire problem of wiretapping, both by law enforcement agencies and by private unauthorized persons.

Far from being critical of any law-enforcing agency, the committee stated, in its final report, dated June 12, 1962—pages 16 and 17:

> In the first of these cases, the *Benanti* decision of 1957, the Supreme Court issued a new interpretation of an obscure clause in the Federal Communications Act of 1934, in which it said that Congress "did not mean to allow" the system of law enforcement wiretapping authorized by the New York State constitution since 1938. The disclosure of wiretap evidence was thereby construed to be a Federal crime. As detailed in our previous reports, this interdiction has had a most deplorable effect on the prosecution of crime. It has forced our prosecutors to turn loose apprehended criminals of the most sinister sorts * * *. Some hope still remains that Congress may act on legislation before it, permitting the States to wiretap against criminals under authority of a court order—the procedure originated and proved satisfactory by the State of New York.

This same committee stated in 1957:

> We know of no instance in which illegal wiretap evidence has been offered by any prosecutors since law enforcement wiretapping was regularized in 1938.

Irresponsible claims have been made that tens of thousands of telephones are tapped each year under the New York statute requiring a court order. Nothing could be further from the truth. In the year 1963, there were only 451 wiretap orders obtained by the New York City Police Department, and in 1964 there were 671 such orders obtained. This, in a city of some 8 million residents and over 4 million telephones. Can anyone honestly suggest that overzealous police have abused their authority in this area?

In my own county, with a population of almost 3 million people, and almost 1 million telephones, our office obtained a total of only 47 wiretap orders, covering a total of 72 telephones, for the first 11 months of 1966.

Is this abuse by law enforcement?

Senate bill 675 is indispensible to the effective prosecution of organized crime and racketeering in the State of New York.

Not too long ago, arrests were made in my county stemming from the indictment of 19 top level narcotic suppliers involving an alleged $90-million narcotic ring. Were it not for information obtained from

court authorized telephonic interception, this result, and many like it, might never have been achieved.

I should like to avert again to the statement made by Mr. Dougherty, appearing in the Los Angeles Times on Sunday, February 19, in which he said:

> Myer Lansky and scores of other racket bigwigs can live like kings in Miami and get written up by the Saturday Evening Post. Organized crime, already flourishing, will flourish all the most, if wiretapping is eventually restricted to cases involving the national security only, as Mr. Johnson has recommended.

One of the most serious problems confronting us today is the infiltration of racketeers and organized crime into legitimate business enterprises. In October 1965 I began a frontal assault upon these malefactors by instituting a grand jury inquiry which is still in progress.

According to a New York newspaper, the World Journal Tribune, of February 21, 1967, the Federal Justice Department Organized Crime Section has begun a nationwide attack on organized crime. Among its named targets is one Joseph Colombo. I subpenaed Mr. Colombo, together with the others, including the Gallo brothers and one John Oddo—also known as Johnny Bath Beach—before our grand jury as witnesses.

They refused to testify and thereupon each was punished for contempt of court, fined and imprisoned. I am told that this is the first time that Colombo has seen the inside of a jail. In addition, each of these individuals was indicted for the crime of criminal contempt and it now awaiting trial. If I were deprived of the right to wiretap, I would be compelled to close our books on this investigation, vital to the security of the community.

The top notch racketeer insulates himself from detection by various lower echelons of cohorts. The man who actually peddles narcotics does not know the identity of the head of this ring. The boss never carries a gun, narcotics or illegal contraband on his person and is therefore not amenable to street arrest. He employs the telephone to conduct his various nefarious activities.

He can be attacked by law enforcement authorities only if they are permitted to use the same device, the telephone. If Senate bill 675 is not enacted, law enforcement will have been dealt a serious blow. Organized criminal syndicates would immediately avail themselves of the immunity thereby granted to them in the use of telephones and would extend their tenacles into every city, village, and hamlet in this country.

I should like to make this parenthetical observation. Our President stated in a message to the Congress that the prosecution of crime was essentially a local matter, and yet he advocated the abolition of wiretapping, except in cases involving national security.

We, in New York City, need wiretapping. If we don't have wiretapping legally permissible, I might as well close my books on the most serious criminal activities, organized crime, labor racketeering, narcotics rings, and similar types of activity.

Of course, in the ordinary street crime, like a street robbery, or a mugging, I don't need wiretapping. But in the most serious activities of criminal conduct, if we are not permitted to have wiretapping, we can close our books on those investigations.

Now, it may be, if crime is a local problem, why shouldn't we in our State, if we think, our citizens think, we require wiretapping, why shouldn't we be permitted to have it? Perhaps in some Midwest State or village or hamlet in some Midwest State, where perhaps the most serious crime is some youngster breaking into a gasoline station and stealing a tire, they may not need wiretapping, but because they don't need it out in that State, why should we, in States such as New York or Illinois or California, which have large megalopolises there and large urban areas, where organized crime spreads its tenacles, why shouldn't we be permitted to have it because some other State in the Union, not having these problems, does not require it?

That is the purport of S. 675. It allows wiretapping where, by State statute, the State legislators and the people think they require wiretapping.

Senate bill 677 permits a grant of immunity to witnesses before a a witness to prevent his imparting of information as to the violation of any criminal statute would constitute a criminal act. Our experience over the past years indicates that the intimidation of witnesses is one of the most potent weapons available to the malefactor to prevent official investigation.

Senate bill 677 permits a grant of immunity to witnesses before a grand jury in investigation of certain serious crimes. This privilege accorded to the Attorney General or the U.S. attorney is essential to an attack upon organized criminal syndicates. Criminal conspirators can be detected most effectively if the testimony of some underling in the conspiracy may be compelled. The grant of immunity will aid in this objective.

Senate bill 678 has the salutary purpose of outlawing organized criminal syndicates. I would offer a mild amendment. I would eliminate the term "Mafia."

We in law enforcement are aware of the existence of loosely knit, informal, but powerful criminal confederations. We have received no proof, however, that any of them bears the title "Mafia" or "Cosa Nostra," to which I have noted repeated press references. The use of such appellations tends to stigmatize an entire ethnic group and is unfair to the vast majority of decent, law-abiding Italians.

I know of no evidence indicating that only Italians are involved in organized crime. Such intimation that I have in my office tend to establish that no one race or ethnic group enjoys a monopoly in the area of illegal activities.

To conclude, Senate bills 674 and 678 constitute a comprehensive plan to provide law-enforcement officials with effective tools to combat serious crime. In my opinion, they do not impinge on the constitutional rights of any individual nor are they unfair or unreasonable.

The people of our country cannot expect its duly constituted law-enforcement officials to hunt elephants with peashooters. The proposed legislation would arm us with more formidable weapons. The powers requested in these bills are not granted to us in law enforcement as some private weapon to be used in the vindication of a personal right. These are powers that would belong to society and to the people. If our citizens will not arm our police and prosecutors with effective weapons, then as a matter of elemental fairness, they ought not to

complain if we cannot discharge our responsibility to the community more effectively.

Yes, the scales of justice are now heavily weighted in favor of the criminal suspect to the detriment of decent law-abiding citizens in our communities. Prompt enactment of the proposed legislation would serve as a first but vital step to the restoration of a proper balance. I urge their speedy enactment in the interests of the safety and security of our society.

Senator MCCLELLAN. Thank you very much. I appreciate your very fine statement.

Mr. KOOTA. Thank you, sir.

Senator MCCLELLAN. It will be very helpful to us, and I certainly appreciate the suggestions you have made. I think they have merit. I propose to give them some study and thought.

Senator Ervin?

Senator ERVIN. I want to commend you on an excellent statement.

Mr. KOOTA. Thank you, sir.

Senator ERVIN. You bring the committee great help, because you come here not only with a knowledge of the constitutional and legal implications involved, but the practical application. After all, that is the purpose of the criminal law, to try to protect society and the victims of crime, and prevent crime down to the localities where people live.

Mr. KOOTA. Precisely, sir.

Senator ERVIN. Just one question. The *Miranda* case is said to be based on the self-incrimination clause of the fifth amendment; is it not?

Mr. KOOTA. Yes.

Senator ERVIN. And that clause says that no person can be compelled to be a witness against himself in any criminal case.

Can you see how, with due regard to the meaning of the words in which that law is couched, do you see how it could possibly apply or be intended to apply, to voluntary confessions, where there is no element of compulsion present?

Mr. KOOTA. I cannot.

Senator ERVIN. Thank you, sir.

Mr. KOOTA. And, may I just make this one observation. I have been quoted widely in the press throughout the country as having said, about 2 or 3 months following *Escobedo*, that a criminal suspect should be given an attorney in the station house when he is arrested. But that expression was taken out of context. If you will permit me, perhaps this may not be the forum, but I should like to correct that misimpression very, very briefly.

The sixth amendment to the Constitution states that in every criminal prosecution, a defendant shall be entitled to counsel for his defense. Now, if we read the sixth amendment, in a commonsense manner, as any ordinary person would read it, it deals with the right to a speedy trial, the right to a trial by jury, that a defendant is entitled to be informed as to the nature of the charges, confrontation of witnesses, that he have compulsory witnesses in his behalf, and then that he is entitled to counsel for his defense.

This amendment is instinct with the idea that a criminal prosecution commences when a judicial proceeding is instituted. There is rea-

son for it because, especially in 1791, our procedures were surrounded with all sorts of hypertechnical problems, and the defendant would find himself floundering around in the morass of legal uncertainty, and even if he were innocent, he might be convicted if he didn't know the difference, for example, between a demurrer and a motion to dismiss.

So the framers of our Constitution said that once a man comes into contact with the judicial process, he ought to have a lawyer who understands what the proceedings are and what the law is, and so forth. That is how I would interpret it.

Regrettably, there is a higher authority in the judicial process than the lowly district attorney of Kings County. That is the Supreme Court. The Supreme Court, in *Escobedo*, said, "Oh, no, in our opinion, a criminal prosecution may commence in a station house under certain conditions."

Senator ERVIN. But isn't there a higher authority than that; namely, the Constitution?

Mr. KOOTA. Yes; that is even higher than the Supreme Court, but I take it, the Constitution means what the Supreme Court says that it means.

Senator ERVIN. But it is supposed to be interpreted according to the words the Constitution uses.

Mr. KOOTA. I should think so, according to the normal standards of interpretation. Therefore, I made a statement that the decision in *Escobedo* is, of course, binding upon me, and if the Supreme Court has said that a criminal prosecution begins, not with the institution of a judicial proceeding but commences in the station house, then any distinction between a man who knows his rights, who may be wealthy, have a lawyer, knows he is entitled to a lawyer, and some poor, ignorant individual who doesn't know that he has a right to a lawyer, is an invidious distinction, and under these circumstances, bound as I am by *Escobedo*, we should notify a suspect in criminal court as to his right to counsel, but fundamentally I disagree with the interpretation of the sixth amendment by the Supreme Court.

Senator MCCLELLAN. Just one question. Wasn't the New York statute amended to extend eavesdropping to electronic devices?

Mr. KOOTA. Yes, it was, sir, 3 or 4 years ago we enacted a new statute to our penal law, called eavesdropping, and there are two types of eavesdropping. One is the interception of telephonic communications, and the other is what we colloquially know as "bugging," that is, listening to a conversation between persons vis-a-vis.

Senator MCCLELLAN. Is that legalized now under the same process for wiretapping in your State?

Mr. KOOTA. That is. In the State of New York, that is legal. There are some ramifications.

Senator MCCLELLAN. I am wondering if we shouldn't amend this bill so as to cover that aspect of interception?

Mr. KOOTA. To answer your question specifically, I heard Judge Lumbard say to you this morning that wiretapping differs from bugging in the sense that wiretapping is affected by the interstate problems, whereas, bugging is almost entirely local. But I should like to disagree in one minor respect from Judge Lumbard.

Where he spoke of allowing wiretap interceptions not only in specific areas of crime, but also in the other crimes that might be disclosed, I would limit those other crimes to felonies, and not to include any type of crime that might be disclosed.

Senator McCLELLAN. Thank you very much.

Mr. KOOTA. Thank you for the privilege of appearing.

Senator McCLELLAN. Hon. James T. Wilkinson, commonwealth attorney, Richmond, Va. Will you come around, please. I am sorry we are so late in getting to you.

HON. JAMES T. WILKINSON, COMMONWEALTH'S ATTORNEY FOR THE CITY OF RICHMOND, VA.

Hon. James B. Wilkinson, Commonwealth Attorney, Richmond, Va. L. LB. University of Richmond. Began private practice in 1952; served as Assistant Commonwealth Attorney 1960–1965; Commonwealth Attorney 1966.

Mr. WILKINSON. That is perfectly all right, sir.

Senator McCLELLAN. We do the best we can in scheduling witnesses. We certainly cannot foresee what the situation will be, how many questions may be asked or how much we will be delayed. We do appreciate your presence, and we are grateful to you and all others who are willing to take the time to come here and assist this committee in what we believe is a very vital undertaking. I believe you have a prepared statement.

Mr. WILKINSON. Yes, sir.

Senator McCLELLAN. Will you please give us a brief background.

Mr. WILKINSON. I will introduce myself, yes, sir.

My name is James Wilkinson and I am the Commonwealth's attorney for the city of Richmond, Va. Richmond is the State capital of Virginia. I have had over 7 years of experience in law enforcement either as an assistant Commonwealth's attorney or as Commonwealth's attorney. My jurisdiction covers all crimes committed in the city. The city population is a little bit in excess of 220,000 persons.

Of course our city is surrounded by two very large counties, but they do not come in my jurisdiction of criminal prosecutions. We try possibly 2,000 criminal cases a year in our court of record, which would be the court where you would have your juries and so forth. About 600 recividist cases are in the State penitentiary, and untold number of misdemeanors in the lower courts.

During the term of my office a revolution has taken place in the criminal justice of this country. The U.S. Constitution has become an instrument that changes from day to day and the stability in its interpretation which was one of the cornerstones of our Republic is a thing of the past. Lawyers and laymen alike are afraid to hazard a guess of what change will come next.

Every prosecuting attorney has an obligation to prosecute all persons justly accused of committing criminal offenses within his jurisdiction and also to see that each and every defendant so charged has a fair and impartial trial free from outside pressures.

I think that perhaps the Supreme Court overlooked the duty on the prosecuting attorney. Most prosecuting attorneys that I have met take this duty very seriously, to see that the defendant gets a fair and

impartial trial. The latter duty to me is as important as the former and in my jurisdiction we conscientiously endeavor to perform these duties to the letter and spirit of the law.

If for any reason we did not perform this dual duty, our able judges would reprimand us without hesitation. The men who serve my community on the bench are of the highest caliber and integrity and demand that the Commonwealth prove its case as required by law. It is an honor and privilege to practice before the bar of these courts. I speak of both the State courts and the U.S. district court. To my knowledge, the judges of these courts have never permitted any accused to be abused by either the Commonwealth's attorney or the police.

The revolution in the criminal justice of this country, which I have spoken of, commenced in 1961 with the case of *Mapp* v. *Ohio*. It has since progressed to the point where both the safety and well-being of the American people now face a clear and present danger. People are afraid to go out at night without the protection of a weapon of some description.

Gentlemen, we hear that in our locality. I am pretty active down there. I belong to a lot of fraternal organizations and clubs, and people off the street that I know come up one after the other and ask, "How can we protect ourselves against the crime that is going on?" The safety and well-being of the American home is constantly being threatened because of the crime rate in the Nation. More and more people are requesting permits to carry concealed weapons for their own protection.

To carry a weapon in my jurisdiction you have to get permission or a permit from the circuit judge. We have noticed an increase of people asking for concealed weapons, that have to carry money at night, and so forth.

We read in the national publications where persons are organizing into groups for their self-protection. If we are not careful, the victim of a crime, a member of his family, or the community will not leave the trial of an accused to the courts but will take the law into their own hands. There is no doubt that this would be a step backward for civilization and human dignity.

Senator McClellan. Lack of confidence in the court, in the judicial process, and in the integrity of law enforcement, does it not tend to lead to anarchy?

Mr. Wilkinson. Yes, sir.

Senator McClellan. Speaking about people, they are not going to leave it to the courts and to the law enforcement officers when they feel they are wrong.

Mr. Wilkinson. In my opinion, Senator, we are rapidly approaching that position in this country.

Senator McClellan. There is a danger as well as to the individual victims. Certainly when we leave it to the lynch mob, mob justice, so to speak, far more innocent will suffer under that kind of a situation than under law and order, where occasionally some mistake is made and some who are innocent might be convicted. There is no way of achieving perfection.

Mr. Wilkinson. No, sir.

Senator McClellan. But there would be far less harm coming to the innocent, if we observed law and order, and if we enforce the law

and punish the criminal and try to deter crime. If we overemphasize individual rights and continue that course overzealously, it is likely to lead to anarchy in this country.

Mr. WILKINSON. I agree with you, sir.

Frankly, the American people are becoming gravely frightened over the rise of crime and for their own safety.

The people look to Congress and State legislatures for a solution to this ever-increasing problem. The U.S. Supreme Court has also requested aid from these august bodies in meeting this challenge. Gentlemen, it is your responsibility not to fail the people on a matter of such magnitude.

Perhaps some will interpret my following remarks as being critical of the U.S. Supreme Court. I do not mean them to be taken as such. It isn't my public duty to criticize courts. But I do feel that legislation must be passed to assist in the orderly administration of the criminal justice in our Nation and that certain judicial decisions be either limited or reversed.

I think it is a proper function of the legislative branch of the Government, if a court decision is contrary to the elected representatives of the people, they have a perfect right to reverse that decision by legislation. It has been done time and time again in this country.

Senator MCCLELLAN. What makes it difficult here is that the premises are rooted in the Constitution, the courts interpretation of the Constitution. We disagree with their interpretation and undertake to legislate, and they are still in a position to rule that the legislation is unconstitutional. That is just one of our problems.

Mr. WILKINSON. Yes, sir.

Senator MCCLELLAN. That is why we have reached a point where there is one of three remedies that we have discussed here. The fourth alternative is to do nothing. If we do nothing——

Mr. WILKINSON. The latter I think would be a mistake.

Senator MCCLELLAN. I hate to think of what the consequences would be.

Mr. WILKINSON. Yes, sir.

Trial lawyers, both for the prosecution and defense, are the soldiers in the field representing their respective clients.

I mean by that we have to meet these issues first. We want to know what the law is, so we don't convict a man who is guilty, and then some new rule is announced which will later let him go, because we all know that the further you put off a criminal prosecution, the more difficult it is to convict the defendant, if he is guilty.

The trial lawyer is the one who has to make a quick decision for his client—one which will be passed on years later by the appellate courts giving it many hours of study, research, and deliberation. On many occasions, the issue involved in a particular case will be decided by a split court of 5 to 4. We want to know what the law is in order that our advice can be reasonably relied on by our respective clients. There will always be some difference of opinion among lawyers as to the law, but a law enacted by the legislative branch of the Government, after careful study and consideration, is much more effective than a course laid down by the judiciary branch.

To state that persons don't think about the *Escobedo* and *Miranda* decisions before committing a crime is to be naive and not understand

the facts of life. These decisions not only lead to and encourage crime in the streets, but they also spawn the organization of criminal syndicates and organizations. Since these decisions, many persons state to the police when they are arrested, "I know my rights, so you don't have to tell them to me."

We are getting that more and more as *Miranda* and *Escobedo* are getting out to people who are actually arrested on the street. "Don't bother about that. I know what my rights are." But they are instructed to read them to them anyway.

In fact, we have a card which they carry with them, and the other day I was told—and this is a rather strange thing—there was an arrest for a felony, but the man went around the corner and got out of sight of the officer. He caught him. He had his pistol in one hand, and explained his rights, in the card, in the other hand, so there would not be any violation.

In fact, some criminals have changed the very nature of their criminal acts just because of the difficulty of proving certain criminal offenses without a confession. For instance a burglar will change from this type of crime to forging checks because the chances of apprehension in the latter case are more difficult and benefits to the offender are greater.

Crimes such as murder, rape, robbery, and burglary are not usually committed in the daytime, with many witnesses standing by. Usually in the aforementioned cases, only the accused and the victim are present, and on many occasions the victim is unable to testify because he or she was killed as a result of the crime.

Crimes of this nature cannot be solved without some form of interrogation of the accused.

I would like to point this out. The only method that we know of communicating with each other at this present date of civilization is by talking or sign language. This committee is trying to find facts by listening to and asking witnesses questions. Our whole system of judicial progress is based on asking people questions, interrogating people to try and find the facts. Well, when the Supreme Court cuts this instrumentality off from proper law enforcement, then we no longer look for facts, but probably for error.

At this point, I would like to state emphatically and without reservation that no one wants or desires an involuntary confession. However, a voluntary one is both desired and needed in solving many criminal offenses.

One of the most serious murder cases I have participated in was solved solely by a voluntary confession made by the accused. There were two men involved in this particular crime and each blamed the other for the murder. There is no reservation or doubt in my mind, or the jury's, I might add, that these were the two men who perpetrated this crime.

Under *Escobedo* and *Miranda*, these confessions would have never been obtained and the guilty persons never punished for this serious and heinous crime. In most serious felony cases, a statement from the accused is a necessary element in the fair prosecution of his case. The jury wants to hear what the defendant has to say and what part, if any, he took in the crime.

On some occasions, a voluntary statement can be beneficial to the accused, because if he gives an alibi this may be investigated to see if he is telling the truth or not. If the accused is telling the truth, it will keep him from being charged and put on trial.

A lot of times an accused will give a statement to a police officer. We had a case in my locality, it wasn't in my jurisdiction, it was the best circumstantial evidence case I ever heard of a man committing murder. But he did talk to the police and he gave an explanation. The police continued to investigate until they found the guilty man. So the idea that the police are purely for conviction I think is facetious. Police officers are dedicated men to the service of their country and community. The purpose of a criminal trial, and this I think *Miranda* overlooks, is to find the truth, not to exploit the minor mistakes of law enforcement officials in this country.

Senator McCLELLAN. Today, in many instances, the High Court is not concerned with truth, but with whether the police followed some kind of procedure that according to its latest judgment and wisdom should be followed.

Mr. WILKINSON. Senator, that bothers me in many ways, when we take the truth out of the criminal trial.

We cannot obtain justice for anyone unless we first endeavor to ascertain and find truth.

Senator ERVIN. In other words, under the *Miranda case*, the officer having the man in custody must emulate the parrot and repeat this set formula to the man and then interrogate him, the man having waived these rights, and then the truth is permitted to come in?

Mr. WILKINSON. That is right.

Senator ERVIN. But if he doesn't emulate the example of a parrot, and recite this artificial formula to a man, then the truth is excluded.

Mr. WILKINSON. Yes, sir. Justice weighs on both sides of the scale, for the accused and for society, and if through some technicality where a man's confession is left out, I don't think that is justice. You are not trying the case on justice.

The truth is the rock upon which all justice is built, but under the technical rules now laid down by the courts we find the edifice on which our system of criminal justice is built is but a foundation of sand. Upon this foundation, true justice cannot survive.

Most police are fairminded and do not want to see the innocent convicted any more than do the judges. In our city, we have a fine group of men on the police force, performing their duty in a proficient and professional manner.

We have endeavored in our community to comply with every rule that has been laid down by the Supreme Court. We get the Law Weekly. It is announced on Monday. We get it Wednesday. We read it, and if there has been a change, we advise our police officers by Thursday morning. I am personally proud of them and thankful that they are on duty 24 hours a day, 365 days a year, protecting my family, home, friends, and myself. If the courts continue to handcuff these men with technical rules, they will soon lose their usefulness to our community. The expression "that the guilty go free because the constable blunders" does not punish the police, but society as a whole. It lets the guilty go back into society to commit another crime against

some innocent victim—perhaps your child or mine. The American people have an absolute right to be protected from this abuse and Congress has a delegated responsibility to assist them in this endless battle. We can no longer sit back and let someone else assume our responsibilities.

I bring up at this point the Federal Bureau of Investigation because it was brought up by the previous witness. There is an entirely different field of law enforcement from the Federal police, the State police to the local police. *Miranda* did not take this into consideration. Perhaps the further the police are from the people, the more regulation they should have from their duly elected representatives.

The Federal Bureau of Investigation is an organization for which I personally have the highest respect and admiration and its leader, Mr. J. Edgar Hoover, is truly a great American. They occupy a position which is entirely different from that of local law enforcement officials. The Federal Bureau of Investigation has many facilities at its command and, in most instances, works on major crimes against the Federal Government. They do not, however, have to deal with the routine matters confronting local authorities. My office has always received the utmost cooperation from the Bureau and I feel that this cooperation will continue on a bilaterial basis in the future.

The agents of the Bureau do not have the daily problems of a minor nature that face the local policeman. The local policeman on his beat has to be priest, preacher, adviser, lawyer, psychologist, doctor, friend, and protector of his community. After all the police in the community are the symbols of authority.

In certain instances, he has to make a snap judgment in apprehending an accused for the protection of the community he, the officer, serves. Under present rulings of the Supreme Court, he must make a decision in protecting the rights of the accused which the Court itself cannot agree on. The decision made by the officer will be either confirmed or reversed by the appellate courts months, or years, later, and finally by a split decision of 5 to 4. Under any stretch of the imagination, this is not fair to a law-abiding community.

The scientific evidence we hear so much about is not as reliable as television would make one believe. Most criminals do not leave fingerprints, murder weapons or other evidence behind to be examined by the experts. The criminal takes all of this evidence with him when he leaves the scene of a crime. Juries are reluctant to accept scientific evidence alone to convict a person. They usually demand more than this.

We have found recently under *Miranda*, which was done before, that some of the scientific evidence you think you can get is not as scientific as we were led to believe. Ballistics as far as firearms are concerned, the weapon can change from time to time.

It is contended by some that the percentage of convictions are not dropping off because of the two decisions known as *Escobedo* and *Miranda*. This is probably true. However, we read almost daily how the crime rate is soaring and the number of arrests are dropping. Apparently, there is some reason for this and I submit that these two decisions, although maybe not the whole cause of this condition, are adding heavily to it.

The only statistic I have that we keep, we don't keep statistics in our office, because we sort of feel that it might not make us look too objectively at the defendant or to the prosecution, but in checking the court records, after *Escobedo* came out, the number of indictments returned by our grand jury dropped 10 percent. After *Miranda* came out, the number of indictments dropped a total of 20 percent, making the past 2 years a total drop of 20 percent in indictments. With crime rising, I think that the police are still doing an excellent job, but with crime rising, it would look like they would increase. So there must be some reason for this, and I think that these decisions are adding heavily to it.

The *Escobedo* decision certainly handicapped proper law enforcement procedures, but I submit the rule is much worse in the *Miranda* case and is unworkable in our present-day society.

The press is constantly reporting cases in which a confessed murderer, rapist or robber is dismissed for the reason of a ruling in the *Miranda* decision. Some national publications have had lead articles on this point. It is the duty of a free press to report and make comments relative to a situation such as this. They are rendering a public service by keeping the public alerted to a growing danger. However, when our young people read these accounts, they are bound to become confused about the rules of right and wrong that a parent endeavors to teach.

We hear quite a bit in our society today about our young people, but when you try to teach a child right and wrong, and the child reads in the newspaper where a confessed murdered goes free, it is rather difficult to punish that child for going around the corner to the drugstore, disobeying the parents' order. In fact, when an 11-year-old—and I happen to have an 11-year-old daughter—asks "Daddy, he killed a man and is not going to be punished for this?" the whole is both clear and present. I ask, how can you answer this question with any degree of reason? It is submitted that you cannot.

The guilt or innocence of a person accused of a crime has now become secondary to the paramount issue in the trial—on what technicality the accused will be freed again on society. Under these rules, witnesses become afraid to testify in a criminal trial because they feel the accused will be set free on a technicality and will in some manner return to hurt them. People are beginning to distrust our judicial system because of the technicalities raised by the appellate courts for the protection of the accused and to the detriment of society. I again repeat, honest, hard-working people have rights also and they must be protected against crime.

I fully realize and appreciate, in our zeal to protect society, that the rights of an accused must be respected and protected by the courts. I do not advocate that we disregard the rights of an accused in our diligence to reduce crime in this country. My position is that we reestablish truth as the goal in a criminal trial and that the voluntary admissions of an accused be made available to the trier of facts. Senator McClellan's bill, known as Senate bill 674, accomplishes this without taking any rights of any accused away. This bill reestablishes the faith of Congress in our system of criminal law, which has served us so well and faithfully over the years.

I do think that this bill, 674, does exactly that. It reestablishes the voluntariness of a confession to come in. It gives the court the right to pass on it, the jury can hear the facts, and weigh them. Every other issue we have in any trial we submit to the jury. Why are we afraid to submit this? In fact, I believe it is a problem of some people showing a weakness in our system, which I think has served very well and has proven to be good.

Senate bill 675, entitled the Federal Interception Act, is also a good instrumentality for law enforcement, necessary in certain areas to aid in enforcing the criminal laws of our Nation. This bill sets up many safeguards for the public and, at the same time, gives the police the right, under certain specified situations, to investigate criminal offenses by wiretapping. This bill would be very beneficial in practically all vice investigations, such as prostitution, gambling, narcotics, and whisky.

Also on the Federal level, they have other Federal crime, espionage, and so forth. I agree with the judge who testified this morning. If you have a right to get a search warrant to go into a man's house to find evidence, if you have good probable cause, you go to the judge, the judge says that it is good probable cause, we are going to give you the right, there is no distinction.

I both recommend and urge the passage of these two bills to the Congress of the United States.

The other bill that has been presented really I don't know. There is nothing in my jurisdiction about that. But I would like to read you, if I may, it is very short, a paragraph. The gentleman who wrote this article in the Virginia Police Journal, the Honorable T. Gray Hatton. He was a commonwealth's attorney in the city of Richmond for 32 years. I didn't fill his shoes, but anyway, he retired and I ran and was elected.

But I don't think that you will find any prosecutor anywhere in this country who was more respected by people both from the defense and from the prosecution than Judge Hatton. He has been a student of the law and studied it for many years. He said, "In my experience during my term of 33 years as commonwealth attorney of the city of Richmond, I do not know of a more lethal blow that could have been given to the prosecution and conviction of the most vicious crimes than this decision has." That was reported in the Virginia Police Journal, volume 1, No. 4, 1966.

I am happy to report that in my jurisdiction, Senate bill 678 would have no application and, therefore, I do not feel that I am in a position to comment on it, one way or the other. I leave that to the other witnesses who will testify before this subcommittee.

I trust that I have made my position clear. It is both my desire and duty to see that every person charged with a crime within my jurisdiction receives a fair and impartial trial on the issue of guilt or innocence. The only way that this can be accomplished is by the presentation of competent evidence from the prosecution and defense and not by making the truth in a criminal trial secondary to technical procedure matters. I would like to point out that in the *Miranda* decision, the court stated that the new rules laid down today (June 13, 1966) would assist both the prosecution and defense in ascertaining

the truth. This is simply not a fact of life in a criminal prosecution because any lawyer who told his client to confess to the police would more than likely be condemned by the same court for being incompetent.

It is my sincere hope that the Congress of the United States and the legislatures of the various States will enact laws to put the rights of an orderly society back in proper perspective, as against the rights of an accused. The American people have a right to demand this and the great instrument revered by us, the Constitution of the United States, demands it. I trust that the legislation this Congress passes will again let the courts in criminal prosecutions look for the truth and not error.

I thank you, gentlemen, for your time and patience, and for extending me an invitation to testify before you on this crucial matter. May your final decision be, and I feel confident that it will be, in the best interest of the American people. I thank you.

Senator McCLELLAN. Thank you very kindly, sir. Senator Ervin, any questions?

Senator ERVIN. Just a few. I will try to make them short. There was a great Virginian named John Marshall, who was Chief Justice of the Supreme Court of the United States, and he said this with reference to interpreting the Constitution: "The wise men who framed and ratified our Constitution must be deemed to have meant what they said."

Mr. WILKINSON. Yes, sir.

Senator ERVIN. Do you think there is any other safe rule for the interpretation of the Constitution than that?

Mr. WILKINSON. No, sir.

Senator ERVIN. The *Miranda* case is allegedly based upon the self-incrimination clause of the fifth amendment, is it not?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And the self-incrimination clause is couched in these very simple English words: "No person shall be compelled to be a witness against himself in any criminal case."

Isn't it your judgment, if you take Chief Justice Marshall's rule for the interpretation of the Constitution, that those plain English words of the fifth amendment have no relevance whatever to voluntary confessions?

Mr. WILKINSON. I think that is true, sir.

Senator ERVIN. And wasn't it decided in virtually all the Federal courts that have had the occasion to pass on the question, and every State court that had the occasion to pass on this question, that the self-incrimination clause of the fifth amendment and the comparable self-incrimination clauses in State constitutions have no reference whatever to voluntary confessions?

Mr. WILKINSON. That is correct, sir.

Senator ERVIN. And they held that on the grounds in the first place that the self-incrimination clause of the fifth amendment only applies to compelled or coerced testimony.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And they held that in the second place it only applied where a man was called upon to be a witness.

Mr. WILKINSON. That is right.

Senator ERVIN. And the man who is merely being questioned by police is not a witness; is he?

Mr. WILKINSON. No, sir.

Senator ERVIN. I will ask you, in the third place, if they didn't hold that the self-incrimination clause only applied where there was some judicial proceeding which was either criminal in nature or was calculated to bring forth evidence that would result in a criminal prosecution.

Mr. WILKINSON. Yes, sir; that is my understanding.

Senator ERVIN. So on these three grounds, assigning the plain English words of the self-incrimination clause to the fifth amendment, there is no basis whatever, is there, for the decision in the *Miranda* case?

Mr. WILKINSON. No, sir. I think the Chief Justice said the new rules we lay down today.

Senator ERVIN. Yes. I call your attention, on that point, first to this: Is it not true that the fifth amendment was ratified and became a part of the Constitution in 1791?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And for 170 years the self-incrimination clause of the fifth amendment was construed by all the courts, including the Supreme Court of the United States, not to have any application whatever to voluntary confessions?

Mr. WILKINSON. Yes, sir.

Senator, I believe it was *White* v. *Maryland* where they said the statements made in the preliminary hearing, he was entitled to counsel at that stage, and then they came up with *Escobedo*, and I believe Mr. Justice Goldberg said when it goes from the investigatory to the accusatory, they extended it to the police court, to the police station, or to anywhere that the man was at, and then *Miranda* came along and that crucial question—when is a man in custody?—then you have to do it.

In fact, a material witness probably would have to be warned.

Senator ERVIN. The *Escobedo* case, of course, is based upon the provision of the sixth amendment which says that in all criminal prosecutions the accused shall enjoy the right to the assistance of counsel for his defense.

Mr. WILKINSON. Right.

Senator ERVIN. And prior to the *Escobedo* case, it was held for 170 years that that right to counsel did not arise until there was a criminal prosecution instituted either by the issuance of a warrant or the issuance or filing of an information or the return of an indictment or some other form or method of charging the crime.

Mr. WILKINSON. Yes, sir; that is right.

Senator ERVIN. Didn't the *Escobedo* case hold, in effect, that the right to counsel preceded the bringing of the criminal charge, and it arose whenever there was a suspicion created in the mind of the arresting officer that the man he had in custody had committed a crime he was investigating?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. Now the Court substituted for a certain point that clearly marks the beginning of a prosecution, the very uncertain factor

of the arising of uncommunicated suspicion in the mind of an arresting officer?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. It establishes a rule of chaos rather than a rule of reason.

Mr. WILKINSON. Yes, sir; many officers ask under *Escobedo*, "When do we advise them?" I said, "When you have in your mind subjective thought that this man is guilty, then you have got to advise them." But that is the trouble. I don't know what the officer is thinking.

Senator ERVIN. And this suspicion doesn't have to be disclosed to anybody in the world.

Mr. WILKINSON. No, sir.

Senator ERVIN. You leave the law enforcement officers uncertain, and the courts uncertain.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. I would like to ask you if the ruling in the *Escobedo* case is not totally incompatible with the very simple English words that say in all criminal prosecutions the accused shall enjoy the right to have assistance of counsel for his defense.

Mr. WILKINSON. Yes, sir; I think they do.

Senator ERVIN. I call your attention to this statement in the *Miranda* case. At the time this statement was made, the fifth amendment had been in the Constitution for 170 years:

"The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant."

Do you not construe that to be a voluntary confession by the majority of the Supreme Court in writing that opinion, that they were creating these warnings, the necessity for these warnings, and the necessity for these warnings, and the necessity for this waiver on the 13th of June, 1966?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. If there had been a proper interpretation of the Constitution, this would have been in 1791, wouldn't it?

Mr. WILKINSON. I think so, yes. I think the majority acknowledges that they are new rules.

Then on page 39 of the opinion the same thing: "The principles announced today"—that is June 13, 1966—they said apply in all cases.

Now, I know lawyers don't like to say things like this, but just facing the naked truth, isn't that an act of five members of the Supreme Court changing the meaning of a constitutional provision which for 170 years had no application whatever to voluntary confessions?

Mr. WILKINSON. I think so, yes, sir; no question about that. The Supreme Court changes the Constitution constantly.

Senator ERVIN. And under the Constitution, does anyone have the right or the power to change the meaning of the Constitution, except Congress and the States?

Mr. WILKINSON. That is the way in that document it says it should be amended, sir.

Senator ERVIN. The Court has the power to interpret the Constitution, doesn't it?

Mr. WILKINSON. That is right.

Senator ERVIN. And interpreting the Constitution is ascertaining what the Constitution means.

Mr. WILKINSON. Right, sir.

Senator ERVIN. And the power to amend the Constitution is changing the meaning of the Constitution.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And so on the 13th day of June 1966, five members of the Court, over the dissent of four members, absolutely changed the meaning of the self-incrimination clause of the fifth amendment, which under its own language and under all of the interpretations of the Court up to that moment had no application whatever to voluntary confessions.

Mr. WILKINSON. Oh, yes, sir. I think on June 13, which happened to be the day I qualified in that Court, they did away with 171 years of law and announced a new rule.

Senator ERVIN. Isn't it true before you can convict a man of a crime in any Federal or State court in the United States, that you know anything about, that you have to prove two things beyond a reasonable doubt?

First, that the crime charged in the criminal accusation had been committed, and second, that the defendant is the person who committed it?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And you have to establish the first of these propositions by independent evidence, that is, evidence independent of the confession of the accused that the crime was committed.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And you have to do that beyond a reasonable doubt?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And then you have to prove beyond a reasonable doubt that the defendant committed the crime, and in so doing under the law before the *Miranda* case, you could offer as proof on that question, and on that question alone, the voluntary confession of the accused that he was the guilty party.

Mr. WILKINSON. Yes, sir. It is rather unique but we have to prove beyond a reasonable doubt by unanimous verdict of the jury, but yet the Supreme Court in a decision 5 to 4 can make major constitutional issues.

Senator ERVIN. Don't you agree with me that the great majority of persons who are charged with serious crimes, I am not talking about misdemeanors, but felonies, serious crimes, already know that they don't have to say anything against themselves when they are arrested, and already know that anything that they do say that is incriminating in nature can be used against them, and already know that they have the right to obtain the services of a lawyer?

Mr. WILKINSON. Oh, yes, sir.

Senator ERVIN. And I will ask you today as a practical application of the *Miranda* cases, in the courts throughout the country, if the people who are self-confessed murderers and self-confessed rapists and self-confessed robbers are not being turned loose to prey upon the public, merely because of the failure of a police officer to tell them something they already know?

Mr. WILKINSON. Yes, sir; undoubtedly that is true.

Senator ERVIN. Don't you think that most people who are arrested, especially those who have not been up for other crimes, have a tendency to talk?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. I know when I practiced law on the side of the defense for 19 years, that a lot of my clients would have been cleared if I could sew up their mouths. But don't men have an almost irresistable impulse to talk about what they are thinking?

Mr. WILKINSON. Yes, get it off their conscience.

Senator ERVIN. And so when a man has committed a crime, he has an impulse to talk about it, doesn't he?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And a great majority of convictions in the courts can be had because of this tendency of people to talk about what they are thinking, and they tend to talk about the crimes they have committed.

Mr. WILKINSON. Yes, sir. I think so.

Senator ERVIN. And don't you think that if the smartest people in world had attempted to find some method by which to keep any man from ever making a confession of his guilt, they couldn't have adopted a more effective method than that laid down in the requirements which the Supreme Court attempted to write into the Constitution by a 5-to-4 majority on June 13, 1966, in the *Miranda* case?

Mr. WILKINSON. Yes, sir. In fact it makes some defendants scared to talk. They might want to talk, but when you talk about the lawyer and the law, they get involved in that and they wonder.

We have had cases where people have called our officers down to the jail. They have been in custody. I just talked about this the other day. They called them down and told them, "I want to make a full disclosure of everything. I want to start new."

He had a lawyer and they asked me and I said, "You have to make an appointment with his lawyer to go down there." They went down, talked with the lawyer. The lawyer talked with the man. The man came back and indicated he would still like to talk, and his lawyer said, "If I were you I wouldn't say anything."

Senator ERVIN. Under the *Miranda* rule, the man has to be given an opportunity to have a lawyer present before he can be asked anything, to be interrogated at all, didn't he?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And don't you know that if interrogation is to be had, the lawyer is not going to be willing for his client to say anything until he, the lawyer, has had an opportunity to investigate the case himself.

Mr. WILKINSON. That is right.

Senator ERVIN. And so when he gets the lawyer, if the lawyer has enough intelligence to get out of the legal rain, he is going to tell his client to keep his mouth shut.

Mr. WILKINSON. I think if he didn't tell his clients to keep their mouths shut, the same court that laid down the rules in *Miranda* would hold that he was not represented by proper counsel, and that counsel was inadequate, and reverse it.

Senator ERVIN. Do you recall in the dissenting opinion in the *Escobedo* case that Justice White said that the case showed an inclination or a purpose on the part of the majority of the Court, which also was a 5-to-4 majority, to prevent the admission of any kind of confession, voluntary or not?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And don't you think that the *Miranda* case was the fulfillment of the prophecy that Justice White made in the *Escobedo* case?

Mr. WILKINSON. Yes, sir. We can see the day coming when I believe confessions will be ruled out altogether, unless Congress and the State legislatures take some appropriate action to stop it.

Senator ERVIN. Isn't the primary purpose of the criminal law to afford protection to society?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And do you not agree with me that we not only should see that justice is done to the accused, but that justice is also done to society and to the victims of crime?

Mr. WILKINSON. Yes, sir, very definitely.

Senator ERVIN. And don't we make it as certain as humanly possible under the laws that existed long before the *Miranda* case was decided, that no innocent person should be convicted? We give the defendant the presumption of innocence. We give him the right to counsel. We give the right of compulsory production of witnesses in his behalf. We give him to the right to confront and cross-examine his accusers, and require that his guilt be established by evidence which fully substantiates the truth of the charge.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. Don't you think that those rules were sufficient to make it as certain as humanly possible that no innocent person be convicted?

Mr. WILKINSON. Yes, sir. I will say this. No system is perfect. I will say that our system has reached the point of perfection that man is capable of at this point in civilization.

Senator ERVIN. Can you think of any more convincing evidence of the guilt of any person charged with a crime than his own voluntary confession that he committed the crime?

Mr. WILKINSON. I don't think there is any better evidence.

Senator ERVIN. And on this question of people talking and confessing their sins, don't you know that psychiatrists say, just like the Scriptures, that an honest confession is good for the soul?

Mr. WILKINSON. The first step in repenting.

Senator ERVIN. So the *Miranda* case not only handicaps law enforcement, not only weighs the scales of justice in favor of the criminal and against society and the victims of crime, but, by discouraging the making of confessions, it even denies the man the benefit of the therapeutic value of an honest confession.

Mr. WILKINSON. That is right. I think this, too, Senator. Under the President's crime report on rehabilitation, if a man is found not guilty, he is certainly not going to go out and say he committed that crime or give any reason for it, but if he has made a voluntary statement, then the specialists in that field, through studying these confessions, maybe we might get to a cause of crime one day.

Senator ERVIN. Didn't the Court in a case 1 week after the *Miranda* case in *Johnson* v. *New Jersey*, refuse to apply the doctrine of the *Miranda* case to cases tried prior to the *Miranda* case?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And wasn't that a voluntary confession by five of the Justices who joined in the opinion that they were changing a constitutional provision which had been there for 170 years?

Mr. WILKINSON. Yes, sir; I think so. I never had any question in my mind that the Court admitted on June 13, 1966, that these are new rules.

Senator ERVIN. In other words, for 170 years, according to the decision of a majority in the *Miranda* case, the self-incrimination clause of the fifth amendment had no application whatever to voluntary confessions, but then starting at noon or shortly thereafter on June 13, 1966, it changed and did apply to voluntary confessions along with a whole lot of requirements that can't be found anywhere in the Constitution.

Mr. WILKINSON. Yes, sir.

Senator ERVIN. Thank you.

Senator MCCLELLAN. Not only new rules, it is a new Constitution, is it not?

Mr. WILKINSON. Yes, sir; under the new rules.

Senator MCCLELLAN. As adopted by the Supreme Court.

Mr. WILKINSON. I think in fairness, Senator, the people on a local basis like myself, we want to know what the rules are, how we have to apply them, and apply them. If Congress says we have to do this, we are perfectly willing to submit to that. But we don't want them to come out in 1965 and say this is what you have to do under *Escobedo*.

We make a lot of arrests and follow *Escobedo*, and then come out in June of 1966 and make an entirely set for us to go by, because we act relying on them, and I think stability in the law is the greatness of our law.

Senator ERVIN. One other question.

The Constitution is supposed to be, was intended to be, the most stable of all legal documents in this country, wasn't it?

Mr. WILKINSON. Yes, sir.

Senator ERVIN. And starting with the *Mapp* case in 1961 down to date through *Escobedo* and the *Miranda* case, it is as constant as a quivering aspen leaf.

Mr. MCCLELLAN. Thank you very much. The committee will stand in recess until 10 o'clock in the morning.

(Whereupon, at 4:40 p.m., the committee was adjourned, to reconvene tomorrow, Thursday, March 9, 1967, at 10 a.m.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

THURSDAY, MARCH 9, 1967

U.S. SENATE, SUBCOMMITTEE ON
CRIMINAL LAWS AND PROCEDURES OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan, Ervin, Hart, Kennedy of Massachusetts, Hruska, and Thurmond.

Also present: William A. Paisley, chief counsel; James C. Wood, assistant counsel; Paul L. Woodard, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order. We resume our hearings this morning on a number of bills that the committee is considering.

We are very happy to welcome Judge Holtzoff, one of our distinguished judges here in the District of Columbia.

Judge, we have some serious problems, we think, and we feel that you can be helpful to us. Therefore, we have extended to you and a number of jurists, and several distinguished law enforcement officials throughout the country, invitations to come and testify on the bills before us.

I note that you have a prepared statement. Would you like to read it? Very well, you may proceed.

STATEMENT OF HON. ALEXANDER HOLTZOFF, U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Judge HOLTZOFF. Mr. Chairman, I appreciate your gracious invitation and your introduction. I am here in response to your invitation; I would not have considered it appropriate to be here on my own initiative. But, on the other hand, I would feel I was lacking in a spirit of cooperation if I did not appear in compliance with your invitation to testify concerning the bills that you have under consideration. My testimony is given in my personal individual capacity and not in any representative capacity.

Of the various bills before the subcommittee, I feel that I may be in a position to discuss S. 674, entitled, "A bill to amend title 18, United States Code, with respect to the admissibility in evidence of confessions." The purpose of the bill is to abrogate the so-called rule

of the *Mallory* case, 354 U.S. 449, which excluded any confession, even if it is voluntary, from being admitted in a court of the United States if the defendant making the confession was not brought before a committing magistrate after his arrest without unnecessary delay, and if the confession was obtained during the period of the delay. This doctrine was predicated not on any constitutional principle, but merely is a procedural matter as a sanction or a means of enforcing rule 5 of the Federal Rules of Criminal Procedure, which requires an arrested person to be brought before a committing magistrate without unnecessary delay. Since this rule is not based on any constitutional principle, it can be changed by legislation.

As is well known, of course, prior to the decision of the Supreme Court in the *Mallory* case, the test of admissibility of a confession was whether it was voluntary. A coerced confession, whether the coercion be physical, mental, or moral, was excluded. This doctrine still remains. In addition the *Mallory* rule excluded even voluntary confessions if there is unnecessary delay in bringing a defendant before a committing magistrate and the confession is made during the period of the delay.

One great difficulty with the rule has arisen out of the differences with which it is construed and applied in the various circuits. Some circuits apply it very reasonably and liberally, while others administer it very narrowly and exclude confessions that other circuits would admit. Perhaps the narrowest construction has been placed on it in the District of Columbia Circuit. This has created serious difficulties because in the District of Columbia local felonies, such as murder, rape, robbery, housebreaking, and burglary, are tried in the Federal court, whereas elsewhere they are tried in the State courts and only Federal crimes go into the Federal courts.

In the second circuit, which has its headquarters in New York, it has been held that it is reasonable to question an arrested person and then to take the time to reduce the statement to writing. The conclusion in the second circuit is that the time taken for these purposes does not constitute an unnecessary delay and, therefore, a statement procured in this manner is admissible. This was held in *United States* v. *Ladson*, 294 F. 2d 535 and *United States* v. *Vita*, 294 F. 2d 524.

On the other hand, the District of Columbia Circuit takes an extreme position and practically holds that an arrested person must be taken to a magistrate immediately, even in the dead of night, subject to necessary time to make a record of the arrest, fingerprinting the defendant, and similar mechanical processes. This is illustrated by the case of *Alston* v. *United States*, 121 U.S. App. D.C. 66, 348 F. 2d 72, in which the conviction of a self-confessed murderer whose guilt was not in dispute, was reversed. The facts are startling. The defendant was brought to police headquarters at 5:30 a.m. He was questioned by the police for about 5 minutes and then immediately confessed on the advice of his wife who had accompanied him with the police. It was held by the court of appeals that the arresting officers should have taken the defendant before a committing magistrate immediately and that the questioning, even for 5 minutes, was not permissible—the conviction was reversed. It is my understanding that the indictment thereafter was dismissed on the motion of the U.S. attorney in view

of the fact that he felt that without the confession he did not have sufficient evidence to convict.

Another case that attracted considerable public attention was *Killough* v. *United States*, 114 U.S. App. D.C. 305, 315 F. 2d 441. The defendant was charged with first degree murder of his wife. He made several confessions all of which were voluntary; the voluntary character of the confession was not disputed. There were two trials in succession. In each instance the conviction was reversed, in the light of the *Mallory* rule, and finally the case was dismissed and the self-confessed murderer was turned loose.

There is no doubt whatever that in the District of Columbia at least, many criminals whose guilt was either admitted or was not seriously in dispute have been turned loose because of the manner in which the rule of the *Mallory* case has been interpreted and applied in this jurisdiction.

In my humble judgment, this was one of the contributing causes to the difficulty in enforcing the criminal law and in the increasing rate of crime. Washington has become a crime-ridden city. The grapevine of the underworld travels fast, and members of the underworld, while not familiar with the intricacies of the law, know the general tendencies, and the result is that they become bolder, feeling that there will be some technicality or other which will save them from punishment.

We get fewer pleas of guilty than we ever did before, because experienced and sophisticated criminals feel that, well, they will take a chance. The chances are very great that eventually, if they are found guilty, the conviction may be reversed.

Not only have we had a diminution in the percentage of pleas of guilty, but trials take longer, because instead of concentrating on the real issue of the case—namely, did the defendant commit the crime, that is what we should be trying—we have to try a great many tangential issues, such as did the policeman take his prisoner promptly enough to a magistrate. Should he have questioned him? Should he have searched him? And more time is devoted to these tangential issues than to the real issue that has to be tried.

The question of guilt or innocence becomes relegated to the background, because in many of these instances guilt isn't seriously in dispute. The only matters that are tried nowadays are these side issues. And I must say that sometimes I feel, when I am trying a criminal case, as though I am in a topsy-turvy world—I am not trying the accused, I am trying the policeman—did he break any rule?

In view of these considerations and in the interest of public safety and law enforcement, legislation such as is embodied in S. 674 is highly desirable and I hope that it will be enacted.

In the commendable desire to be extremely fair to all persons charged with crime, the law has begun to lose sight of the rights of the public and the rights of the victim of the crime.

After all, the victim or the potential victim of the crime is entitled to greater protection than the man who has robbed him or attacked him. As Mr. Justice Cardozo said many years ago in the leading case of *Snyder* v. *Massachusetts* (291 U.S. 97, 122), "* * * justice, through due to 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."

I was very much interested, Mr. Chairman, that in one of your speeches you quoted the words of Judge Learned Hand. I think those words bear repetition again and again, and if I may, I would like to close my remarks by quoting them again. He said in *United States* v. *Garsson* (291 Fed. 646, 649):

> Under our criminal procedure the accused has every advantage. While the prosecution is held rigidly to the charge he need not disclose the barest outline of his defense. He is immune from question or comment on his silence; he cannot be convicted when there is the least fair doubt in the minds of any one of the twelve. * * *. Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime.

Mr. Chairman, I want to thank you and your colleagues for inviting me here and giving me the opportunity to present my views. I appreciate your courtesy.

Senator McCLELLAN. Thank you very much. I appreciate and the committee appreciates your willingness to come and give us the benefit of your wise judgment, your long experience.

We have a problem in this country. Crime is on the increase, at a rate that cannot long be tolerated. Something must be done. I think it behooves every agency of Government, the three branches of Government, to manifest some interest and assist in finding a solution.

Would you like to bring a chair around here where you can hear us a little better?

Judge HOLTZOFF. Oh, yes.

Senator McCLELLAN. I am very interested in many of your comments and I have already expressed my appreciation to you. I was particularly impressed by one statement that you made—today, in a criminal trial, the issue is no longer whether he is guilty or innocent.

Judge HOLTZOFF. That is right.

Senator McCLELLAN. The question of technicalities, whether every little rule was complied with in the process of his arrest and prosecution, becomes paramount, and not the question of truth as to guilt or innocence.

Judge HOLTZOFF. It is really amazing, for the trial judge to see himself diverted to trying these issues instead of the guilt or innocence of the defendant.

Senator McCLELLAN. You stated, I believe, that it is your observation that there are far less pleas of guilty now.

Judge HOLTZOFF. Yes.

Senator McCLELLAN. That has some significance, of course. But are there, in your judgment, far more guilty people escaping the penalties of the law?

Judge HOLTZOFF. Oh, yes. I have no doubt about that. I have no statistics, but I do know that a great many guilty persons are turned loose on these technicalities. Sometimes they aren't even prosecuted because the U.S. attorney realizes that because of some technicalities he can't make a case.

Senator McCLELLAN. Because of the barriers that confront him in these decisions? He can't hurdle the barriers of these decisions.

Judge HOLTZOFF. He can't overcome these barriers.

Senator McCLELLAN. There has been a statement made by a former Attorney General that it is "unutterable nonsense" for anyone to contend that these decisions to which you have referred tend to contribute to the increase in crime. What is your judgment about that?

Judge HOLTZOFF. I emphatically disagree with that statement. Of course, that is not the sole cause of crime.

Senator McCLELLAN. No.

Judge HOLTZOFF. Causes of crime are deep seated. But these considerations add to the number of crimes, because it makes the underworld bolder. They know that the chances of their being caught, convicted, and punished are very greatly decreased as a result of these technicalities.

Senator McCLELLAN. In other words, a part of our purpose in punishing a criminal is to make it a precedent and a lesson to others?

Judge HOLTZOFF. Oh, yes.

Senator McCLELLAN. As a deterrent to others.

Judge HOLTZOFF. As a deterrent, and as the percentage of cases in which convictions are had decreases, the deterrent likewise decreases, and the friends and acquaintances and other members of the underworld become more bold.

Senator McCLELLAN. As the chances of apprehension and punishment decrease, in proportion crime increases?

Judge HOLTZOFF. Oh, yes. I have no doubt about that. And the frightful increase in the percentage of crime in the District of Columbia I think demonstrates that.

Senator McCLELLAN. Would you agree with me that when men like the defendant Killough, the cases you referred to—and there are a number of cases that have already been cited in this record, and we see headlines of them daily in the press throughout the country—known, guilty, confessed, undisputed criminals, murderers, have to be turned loose because of some technicality—there is something wrong with our system of justice that needs to be corrected?

Judge HOLTZOFF. I certainly do. I agree with you fully, Senator. I think the way our administration of criminal justice and criminal law has recently developed, there is something radically wrong with it, and it needs correction.

Senator McCLELLAN. One other question. Have the *Escobedo* and the *Miranda* decisions aggravated an already unhappy situation by reason of the *Mallory* rule?

Judge HOLTZOFF. The *Escobedo* and the *Miranda* cases, of course, present a different aspect. The *Mallory* rule relates to delay in bringing the pirsoner to a committing magistrate.

The *Escobedo* and *Miranda* rules do discourage confessions. There is no doubt about that in my mind.

Senator McCLELLAN. The comment was made by my distinguished colleague here—judge Ervin, and witnesses responded to it—that actually, practically every defendant, every citizen, already knows that he has a right to be silent, that he has a right to counsel. What would be your observations and judgment about that after your long years of experience as a trial judge?

Judge HOLTZOFF. I think it is true that a sophisticated criminal, and most criminals have been in trouble before, because they usually

started with petty offenses, knows his rights, but given this warning encourages them, reminds them of their rights and encourages them to exercise them. I have no doubt about that.

Senator McClellan. So if an arresting officer, by oversight or inadvertence happened to fail to give them even just one of those warnings, notwithstanding he may know it, notwithstanding he may have been convicted before and have been in court and had the warnings may times before and understood them, still he is entitled to be released?

Judge Holtzoff. Yes.

Senator McClellan. If the confession is the evidence upon which you must sustain a conviction.

Judge Holtzoff. Of course, the *Escobedo* and the *Miranda* cases are in a different class in one important respect. They are based on the Constitution. They hold that the Constitution requires these warnings. Therefore, it would take a constitutional amendment, unless the Supreme Court overrules itself, whereas, the *Mallory* rule being purely a procedural rule, can be changed by legislation.

Senator McClellan. I understood they premised their decision in the *Miranda* case upon a constitutional ground.

Judge Holtzoff. Yes.

Senator McClellan. But there are only five of the nine judges that so held. I wonder if it is a forlorn hope, in view of the consequences of this decision, that one of them at least might be persuaded that they have gone a little too far.

Judge Holtzoff. Of course, in recent years the Supreme Court has overruled its prior decisions more often than it has before.

Senator McClellan. That does give us a little encouragement.

Judge Holtzoff. Yes.

Senator McClellan. A little hope. Do you think this bill that you refer to, S. 674, is constitutional.

Judge Holtzoff. Oh, yes.

Senator McClellan. I don't think there is any question about that. But if it became law and was taken to the Supreme Court, and the five still felt that under its previous decisions it is unconstitutional, it would still only take one wise man of the five to change his mind.

Judge Holtzoff. Yes.

Senator McClellan. And sustain this legislation as being constitutional, and thus bring us back to some measure of equity and justice, strike some fair balance between society and the murderer, the robber and the rapist; isn't that true?

Judge Holtzoff. Yes, indeed.

Senator McClellan. Senator Ervin.

Senator Ervin. And if the Supreme Court would forget just two cases, the *Miranda* case and the *Escobedo* case, and return again to the scores and scores and scores of cases that the Court handed down between 1791 and the 13th of June 1966, we wouldn't need any legislation at all on this subject, would we?

Judge Holtzoff. No, you wouldn't.

Senator Ervin. Judge, I believe the *Miranda* case is based upon the self-incrimination clause of the fifth amendment, and that clause says no person shall be compelled to be a witness against himself in any

criminal case. Just from the standpoint of the English language, do you think that the English language would permit one to say that the self-incrimination clause had any application whatever to a voluntary confession?

Judge HOLTZOFF. I don't think so.

Senator ERVIN. And yet, that is the trouble today in the *Miranda* case, isn't it? The court took some plain, simple English words that were supposed to express the meaning of those who framed and ratified the Constitution, and gave them an interpretation which is wholly inconsistent with what those plain English words say; is that not true?

Judge HOLTZOFF. I think so. I have often thought in my humble judgment that the privilege against self-incrimination has been carried far beyond what the Founding Fathers must have intended.

Senator ERVIN. In the first place, the privilege against self-incrimination only applies to compelled evidence.

Judge HOLTZOFF. Yes.

Senator ERVIN. And it only applies to evidence where a person is required to be a witness.

Judge HOLTZOFF. Yes.

Senator ERVIN. Is required by the law or the rule of court to testify.

Judge HOLTZOFF. Yes.

Senator ERVIN. And it only applies where he testifies originally in a criminal case.

Judge HOLTZOFF. Yes.

Senator ERVIN. In some judicial proceeding.

Judge HOLTZOFF. Yes.

Senator ERVIN. I think your statement emphasized very well the point that there are three groups or individuals that are concerned with administration of the criminal law—one is the accused, the other is the victims of the crime, and the other is society itself.

Judge HOLTZOFF. Yes.

Senator ERVIN. And your statement emphasizes that the criminal law, as I understand your statement, should pay due regard to the rights of each one of the three parties concerned. In other words, the criminal law should see that justice is not only done to the criminal, to the accused rather, but is also done to the victims of the crime and to society.

As I understand it, and I believe your statement reflects the same thought, that you do justice to the accused when you insure that he shall have a fair trial, and that his guilt shall be established beyond a reasonable doubt in the testimony before he is convicted. Does not the law now, prior to these decisions, raise the presumption of innocence in favor of the accused, and require that he be specifically notified of the charge against him? It gives him the right to counsel. It gives him the right to compulsory process to obtain witnesses in his own behalf. It gives him the right to take the stand in his own behalf or refrain from taking the stand in his own behalf, and forbids comment upon his failure to testify.

It gives him the right to confront in person or by counsel the witnesses against him. He can cross-examine them. And it gives him the right to be tried by an impartial judge, an impartial jury in an atmosphere of judicial calm, and it requires also that his guilt be

established beyond a reasonable doubt in the minds and consciences of each one of the 12 jurors.

Do you not think that those rules that I have enumerated make it as certain as can be made humanly possible that no innocent person shall ever be convicted?

Judge HOLTZOFF. I most emphatically agree with that statement.

Senator ERVIN. And don't you think that in establishing and enforcing those rules, that the law not only gives justice to the accused, but in effect almost leans backward to do so?

Judge HOLTZOFF. I think it does. I think even the old requirement of reasonable doubt sometimes saved a guilty person from conviction, and that is salutary, because we don't want to run the risk of convicting an innocent person. But I think these additional rules that we have been discussing don't aid the innocent against erroneous convictions. They only aid the guilty in escaping punishment.

Senator ERVIN. Aren't these rules in a sense, in the ultimate sense, unfair and unjust to the victims of the crime and unjust and unfair to society?

Judge HOLTZOFF. I think so.

Senator ERVIN. And do they not only prevent the vindication of the rights of the victims of the crime, but to a very substantial degree, deny society the power to protect itself against crime?

Judge HOLTZOFF. Oh, yes. I don't suppose there is any city in the Western World where there are more street crimes than there are right here in Washington, where women especially, and many men too, are afraid to go out after dark.

Senator ERVIN. Judge, do you not agree with me that the rules laid down in the *Miranda* case are very unrealistic and fail to take note of human beings as they are constituted?

Judge HOLTZOFF. Yes. Of course, in a sense, the *Miranda* case changed the Constitution, because it redefined what due process of law is. It put new requirements on due process of law. It is almost an amendment to the Constitution.

Senator ERVIN. I just wonder if you will agree with me in the proposition that the five justices who agreed to the majority opinion in the *Miranda* case made a voluntary confession that they were changing the Constitution when they handed down that opinion in that two or three times they referred to the rules as, "the requirements we lay down today."

Judge HOLTZOFF. Yes.

Senator ERVIN. So that is one voluntary confession that hasn't been excluded from testimony as far as this committee is concerned. Do you think, from your experience in the administration of criminal justice, which in my judgment is second to that of no man in the United States, that there is any stronger evidence of the guilt of the person charged with a crime than his voluntary confession that he committed the crime with which he is charged?

Judge HOLTZOFF. I most emphatically feel that way. I think that a voluntary confession ordinarily is the strongest type of evidence there can be. Religion encourages confessions.

Senator ERVIN. And does this not also go against human nature? It is human nature normally for a man to talk about what he is think-

ing and if he has committed a crime, in most cases, unless he is a rather sophisticated criminal, he wants to talk about it.

Judge HOLTZOFF. The average person isn't going to confess to a crime that he didn't commit. It isn't human nature, unless he is trying to shield somebody, and that is very rare.

Senator ERVIN. Don't you think that the *Miranda* case will for all practical intents and purposes virtually outlaw the use of voluntary confessions?

Judge HOLTZOFF. Pretty much. Certainly the percentage of confessions will be reduced to almost—well, I don't like to say to zero, but to a very small figure.

Senator ERVIN. Now when a man is in custody and the officer wants to interrogate him, under the *Miranda* case he must defer the interrogation until a lawyer is present, if the suspect wants one. Wouldn't the normal lawyer under those circumstances, being called in as a matter of precaution and as a matter of duty to his client, not having had an opportunity to investigate the case, wouldn't he advise his client not to say anything?

Judge HOLTZOFF. Oh, a lawyer would naturally, and quite properly, advise the suspect, "Don't say anything."

Senator ERVIN. That is exactly what I would do under all circumstances unless I knew exactly what the case was about.

Judge, I wish to say this—that if all the judges in the Federal and State courts in the country, the trial courts, had held the scales of justice as even and as impartially as you have, justice would have been done in virtually all the cases tried, and if all of them had adhered as faithfully to the law as you have done in presiding over the courts of the District, we could certainly say that we have administered justice under law, and equal justice under the law.

Judge HOLTZOFF. This is very generous and gracious of you and I appreciate it greatly. What you have said is beyond my just desserts.

Senator MCCLELLAN. We all feel that way.

Judge HOLTZOFF. Thank you, Mr. Chairman.

Senator MCCLELLAN. I want to read you a telegram. I want you to know that you are not by yourself. I want you to know that citizens throughout this country are alarmed and distressed. I read excerpts from a telegram I just received. This is one of many that come daily, letters and telegrams, pleading for relief, for protection, for the Congress to do something. Here is one, he says:

> This is directed to you in your capacity as Chairman of the Judiciary Subcommittee. My concern is by virtue of being a justice of the peace, parent, citizen and lawyer. As a JP in this West Texas community of 10,000, with eight cross-roads of nine arterial highways, I meet head on constantly with the damaging affectations of the *Miranda* case. Law enforcement in the grade of felony has run up against a blank wall. No longer can a mere suspect be questioned. If some change is not made soon, enforcement will be at a a standstill. As a father and citizen, I recognize that the criminal suspect has a greater protection than my children. No longer does the mad dog get shot, but the pets are to be locked up while the former roams the streets with slobbering impunity.

Judge HOLTZOFF. That is good.

Senator MCCLELLAN. I think that is a pretty good statement. Senator, any questions?

Senator THURMOND. Mr. Chairman, I don't have any questions. I would just like to express my sincere appreciation to the distinguished

jurist for testifying here today. I feel that this matter of confessions is the most important question upon which we could take action. I feel that more guilty people are turned loose today because of the *Miranda* and *Escobedo* decisions, and also the *Mallory* decision, than on any other three decisions of the Supreme Court, and I hope that this Congress in this session will take action to remedy this situation.

I realize of course too, this does not relieve the President of the importance of selecting the right people for high judicial posts, and I think one of the most important qualities that he could consider would be to obtain trained jurists somewhat like we have had here this morning, to serve on the Supreme Court, rather than to appoint lawyers without any judiciary experience whatever.

Senator McCLELLAN. Thank you very much.

Judge HOLTZOFF. May I thank you. I want to express my gratitude for a very edifying and rewarding experience this morning.

Senator McCLELLAN. Thank you kindly, sir.

Judge HOLTZOFF. I appreciate what you are doing for the good of the public.

Senator McCLELLAN. Thank you, sir. Judge Kreider, will you come around please, sir. Have a seat, Judge. We appreciate your interest and cooperation with this committee. We welcome you this morning. We would be glad to have you give us the benefit of your views.

STATEMENT OF HON. HOMER L. KREIDER, PRESIDENT JUDGE, COURT OF COMMON PLEAS, HARRISBURG, PA.

Judge KREIDER. Thank you, Senator. I deem it a very high honor to be invited to express my views to this distinguished committee, in regard to Senate bills 674, 675, 678, and 917.

I am heartily in favor of the passage of all of those bills.

Senator McCLELLAN. Give me those numbers again.

Judge KREIDER. S. 674, S. 675, S. 678 and S. 917, the first relating, as you all know, to the confession in evidence subject, the second to wiretapping, the third to outlawing the Mafia, and the fourth to the bill to grant aid to the various local governments to strengthen their law enforcement agencies.

The subject of Senate bill 674 is the admissibility in evidence of confessions. It amends chapter 223, title 18, United States Code (relating to witnesses and evidence) by adding at the end thereof a new section 3501 entitled: "Admissibility of Confessions," as follows:

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

I consider this very important as incorporating into this bill due process provisions which are referred to in the *Miranda* decision.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant

making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The urgent need for this bill was clearly demonstrated by Senator McClellan in his address before the Senate on January 25, 1967. At that time he stated that the test of the admissibility of a confession in evidence should "rest upon the circumstances in each individual case and should be applied upon the circumstances in each individual case and should be applied by those best able to make the determination—our trial judges and juries who hear and see the witnesses." Moreover, the distinguished Chairman of the Senate Judiciary Subcommittee on Criminal Law and Procedures, pointed out that "the majority of opinion in the *Miranda* decision[1] actually 'encourages' Congress and State legislatures to enact legislation on the subject which would safeguard the rights of the accused while promoting efficient enforcement of our criminal laws."

May I say that I have been on the bench 15 years as a trial judge in our common pleas court at Harrisburg, Pa., and that prior to that time I had a general practice of law, and tried a number of cases in the criminal courts representing the defendant, and I was so engaged as a trial lawyer for 27 years before going on the bench.

I say to this distinguished committee that I firmly believe that juries, who are given the awesome power and responsibility of determining the guilt or innocence of a defendant charged, for example, with murder and who in Pennsylvania are required by law, if they find a verdict of murder in the first degree, to fix the penalty at death or life imprisonment, are also qualified and should have the right to determine whether a confession was in fact "voluntarily given."

Senate bill No. 674 amply protects the defendant by requiring, as stated, that "before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness" and to withhold the confession from the jury if he finds that it was involuntary. If, however, the trial judge determines that it was voluntary, that is not the end of the matter, because he may not express his opinion and must let the jury decide how much weight it feels the confession deserves under all the circumstances, with the power in the jury to disregard it if it so determines.

These provisions, in my judgment, fully protect the defendant and apply the due process rules announced by the Supreme Court of the United States in *Jackson* v. *Denno, Warden*, 378 U.S. 368 (1964). One of the wholesome provisions, and there are many, of this bill, is that a confession having been found voluntary by the trial judge and thereafter to be trustworthy by the jury, could not be set aside automatically by an appellate court solely because some policeman at the station house or elsewhere failed to give one or more of the four-point warnings now required by *Miranda v. Arizona*. No longer, if this bill

[1] *Miranda* v. *Arizona*, 384, U.S. 436, 490, decided June 13, 1966.

is enacted into law, would it be mandatory that "the criminal is to go free because the constable has blundered" as stated by Mr. Justice Cardozo, who was one of the great and liberal jurists of our time.[2] In other words, the totality of the circumstances would determine whether or not the confession should be admitted in evidence. This was the time-honored rule, as Judge Holtzoff has told us this morning, which was followed by our courts prior to *Escobedo* v. *Illinois*, decided June 22, 1964 and *Miranda* v. *Arizona*, June 13, 1966, and it should be reinstated.

As pointed out by Senator McClellan and Senator Ervin, this was the rule which was followed since our Government was established, and I agree it should be reinstated.

Recently the press reported a story concerning Police Commissioner Edward J. Bell of Philadelphia.[3] I looked at your list of witnesses, and I learned this morning that he was scheduled to be in attendance. This article related to two confessed murderers who had to be set free by reason of the recent U.S. Supreme Court rulings. Commissioner Bell stated the police had warned one of the suspects of his rights but had neglected to tell him "we would furnish him with a lawyer if he wanted one." Bell said this happened a year before *Miranda*. The case, however, came to trial after that decision, and as a result thereof it was nol prossed and the murderer "is on the street." Because of these decisions, Commissioner Bell continued, "the chances of a successful prosecution have dropped off tremendously."

The tragic story of a man in New York City who had killed his wife and five children and was set free because he had not been meticulously informed of his rights as outlined in recent U.S. Supreme Court decisions, was reported in my hometown newspaper, the Harrisburg (Pa.) Evening News, February 21, 1967, in a front-page eight-column headline. I assure the distinguished members of this committee that the Evening News is not a tabloid. It is a fine, high-grade newspaper.

What prompted this headline of such magnitude, which I never saw in the paper before, was the fact not only of the viciousness of a crime in which the defendant had killed his wife and five children, but that three other murderers had been liberated in New York City a few months previously for similar reasons, the lack of giving these meticulous instructions to the defendants before taking any statement from them.

At the present time in Harrisburg, a city of only 79,000 inhabitants, we have three unsolved cases involving the robbery and murder of three small merchants, all within approximately 1 year. These cases have been pending for several years and may never be brought to trial if the present rules which greatly hamper criminal investigation remain in effect.

Senator McCLELLAN. Those are cases in which the crime occurred before these decisions?

Judge KREIDER. Yes.

Senator McCLELLAN. Where they were indicted and due process was in operation. And these decisions have in effect made it impossible to proceed with the prosecution, because some warning was not given the defendant prior to the time he confessed.

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[2] *People* v. *Defoe*, 242 N.Y. 13, 150 N.E. 585, 587 (1926).
[3] The Philadelphia Evening Bulletin, Feb. 22, 1967, p. 3.

Judge KREIDER. Senator, if I may say so, by reason of these decisions, and I beg leave to limit my statement to these general words, the district attorney, and the police after thorough investigation feel that they are not able to charge anyone at the present time with the commission of any offense, and I respectfully ask your leave to limit my statement in that regard.

Senator MCCLELLAN. That is all right. I just wanted to get the import of what you were saying.

Judge KREIDER. Yes.

Senator KENNEDY. You just said the district attorney. Are you saying all district attorneys?

Judge KREIDER. Yes, Senator.

Senator KENNEDY. Are you aware of the report of the district attorney of Los Angeles County, which came out last year, in which the district attorney in a rather comprehensive study, reached a contrary conclusion?

Judge KREIDER. I read that, Senator.

Senator KENNEDY. I am just trying to put your statement in the proper context. I am wondering if you could tell us what you think its strengths and weaknesses were.

Judge KREIDER. I think there was a sharp divergence of opinion between the district attorney of Los Angeles County and the late honored and highly respected Chief of Police Parker of Los Angeles, who passed away within the last year. I think they disagreed very strongly on that.

Senator KENNEDY. Well, you say the district attorneys, law enforcement officers, and police officials feel that way. I have been trying to find out in the time we have been having these hearings the reasons upon which those feelings are based. It appears to me that recent statements by district attorneys and law enforcement officials increasingly reflect the opinion that the decision has not resulted in the extraordinary hindrance that was initially expected.

I thought that the report of the district attorney of Los Angeles County was one of the most comprehensive reports dealing with the subject that we are discussing that I have seen and I think it would be helpful to consider what the district attorney in one of the largest counties in our country, has said concerning the relationship of *Miranda* to law enforcement problems.

I only mention that because I know you wouldn't want to leave the impression in this committee that all district attorneys and all law enforcement personnel are in universal agreement as to the effect of the decision on law enforcement.

Judge KREIDER. I have read newspaper accounts, magazine articles with respect to the gentleman to whom you referred, Senator. I know of no other district attorney who agrees with him. But nevertheless that is a factor, as you stated.

Senator ERVIN. I might state my understanding is that the Los Angeles district attorney made that statement based on 3 weeks' experience only, and I had the privilege of addressing the North Carolina State bar last October, and virtually every district prosecuting attorney, we call them solicitors in North Carolina, was there, and every one of them told me that they were seriously handicapped by the

Miranda and *Escobedo* cases in prosecuting their dockets, and as a result of it, that hundreds of parties who were self-confessed criminals had to be turned loose.

And I would like somebody—I have been interested in this matter too—I would like for somebody to bring up some statement from some district attorney other than the Los Angeles district attorney taking such a position. There are just thousands and thousands and thousands of them in the United States, and that is the only one I have seen anywhere in the paper. I have seen some comments on this. Outside of that, I haven't seen a single one, and there are exceptions to all rules.

Senator McCLELLAN. All right, you may proceed.

Judge KREIDER. Thank you, Senator.

Truly, as Lord Shawcross, the eminent former Attorney General of Great Britain and prosecutor in the Nuremberg war crimes trials, said in an address before the Chicago Crime Commission October 11, 1965: "The Criminal is living in a golden age." [4]

Law enforcement, as we all know, is a two-way street and a fundamental duty of the Government is to protect the lives and property of all of its citizens. Under our Constitution, all law-abiding persons have rights which must be respected and safeguarded if our democracy is to survive on the homefront.

My colleagues on the bench and I have had the painful duty under recent U.S. Supreme Court decisions to take from the jury murder cases which could not be made out by the Commonwealth for lack of sufficient evidence, after we had been required to exclude the defendant's confession under those Supreme Court decisions.

The jurors and the public in general were literally dumbfounded and the judges were questioned by the press and were stopped on the street by well-meaning and intelligent citizens who respectfully inquired, sometimes in almost hushed tones, how these startling results came about.

Having personally undergone such an experience, I concluded that in the public interest—and in self-defense—it was necessary to acquaint the people with the reasons for our actions. This I endeavored to do in a series of addresses to women's and service clubs, fraternal societies, church and business groups, school teachers' institutes, as we used to call them, and other professional organizations. Invariably, the reaction was one of keen interest, pained surprise and shock that the scales of justice had been tilted, usually by a majority of only one vote in the Supreme Court of the United States, against the long-established rules of criminal procedures which had given a substantial measure of protection to our citizens since the Federal Government began to function under our Constitution in 1789.

I say to the distinguished members of this committee that I find this public interest in criminal law enforcement is more widespread than ever, that it is vigorously and often vehemently expressed, not only by men but women as well, and that it is increasing in intensity.

Senator McCLELLAN. Judge, in Pennsylvania, can the State appeal from a decision of the trial judge excluding a confession under the *Miranda* rule?

[4] Reported in U.S. News & World Report, Nov. 1, 1965, pp. 80–82 and quoted in the "Additional Views of Messrs. Jaworski, Malone, Powell, and Storey" in the Report of the President's Commission on Law Enforcement and Administration of Justice, p. 307 (February 1967).

Judge KREIDER. No.

Senator MCCLELLAN. In other words, the State has no appeal.

Judge KREIDER. It has no appeal.

Senator MCCLELLAN. You feel bound in your duty as the trial judge by the *Miranda* decision?

Judge KREIDER. Yes.

Senator MCCLELLAN. Being the mandate of the Supreme Court, you have found it compulsory under the circumstances, to dismiss a confessed murderer, and the State has no appeal?

Judge KREIDER. In my opinion it has not.

Senator MCCLELLAN. I think the public should understand that.

Judge KREIDER. That is very important.

Senator MCCLELLAN. I think we should make that known too, that the State government can't appeal, because the prisoner has once been put in jeopardy, and the double jeopardy provisions of the Constitution would apply.

Judge KREIDER. There are certain exceptions, if the judge has made a mistake allegedly in the interpretation of the statute.

Senator MCCLELLAN. Yes.

Judge KREIDER. And in that very narrow limited category there is an appeal, but for all practical purposes, no, there is no appeal on the part of the Commonwealth.

Senator MCCLELLAN. I think the record should reflect that.

Senator HRUSKA. Will the Senator yield?

Senator MCCLELLAN. Yes, I yield.

Senator HRUSKA. In view of the fact that there is no appeal, how can a case ever get back up to the Supreme Court so we can have a reconsideration of this question, and possibly some enlightenment hit that very fine, reverent and very fine body, and correct it? How can an appeal be gotten back?

Judge KREIDER. At the present time I cannot answer that. I don't see how it can be at the present time.

Senator HRUSKA. Would the passage of a bill like this one before us, introduced by our chairman, would the testing of its constitutionality be one way that we could get it back before the Supreme Court?

Judge KREIDER. Yes, that might be.

Senator HRUSKA. Maybe you will cover it in your statement later, but have you given any consideration to the constitutionality of S. 674?

Judge KREIDER. Yes, I have, Senator.

Senator HRUSKA. Will you comment on it later?

Judge KREIDER. I do not cover that in my statement. I think it is constitutional under article 3 of the U.S. Constitution, which governs the appellate jurisdiction of the Supreme Court in all cases except where they have original jurisdiction, suits between States and affecting ambassadors, consuls and so on.

Senator HRUSKA. Thank you, sir.

Senator MCCLELLAN. All right, proceed.

Judge KREIDER. The report of the President's Commission on Law Enforcement and Administration of Justice filed in February 1967 (p. 127) states: "Courts can be only as effective and just as the judges and prosecutors, counsel, and jurors who man them." This is true in-

deed, but these public servants cannot function effectively if vital evidence is to be suppressed by narrow and hypertechnical restrictions that thwart the legitimate purpose of all trials, which is to discover the truth.

Senate bill 674 would also relax the stringent *Mallory* rule [5] which requires undue haste in arraigning the defendant and thus cuts off further detention and immedate police investigation of persons suspected of having committed vicious crimes such as murder, kidnaping, rape, burglary, and robbery.

The passage of Senate bill 674 also would remove another substantial roadblock to law enforcement. As pointed out by Professor Warden, of Vanderbilt University: [6]

> In the latest publicized, but in legal effect perhaps the most important portion of the *Miranda* opinion, the Court placed the burden of proving the voluntary nature of the confession squarely upon the prosecution. This burden of proof will not be met by showing silence on the part of the accused when informed of his right.

Chief Justice Warren, who wrote the 5-to-4 opinion in *Miranda* emphasized that:

> A heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.

I think the trial judge and jury who see and hear the defendant are best qualified to determine whether this "heavy burden" has been met. This bill, S. 674, resolves that question in my humble opinion.

Former Judge W. Walter Braham, of New Castle, is one of Pennsylvania's most outstanding and highly respected jurists. Until a few weeks ago he was president of the Pennsylvania Bar Association. In a memorable address, delivered at Philadelphia, entitled "In Aid of Judges," delivered to that body on January 19, 1967, he stated:

> It is time that some one thinks of the police in this brave new world. *Miranda* lays down a code of conduct for policemen which is almost impossible of performance.[7]

I pass now to just a few comments on Senate bill No. 675 which relates to wiretapping.

The wiretapping bill, known as the Federal Wire Interception Act, should be enacted into law. I agree with the sponsor's statement that wiretapping should be prohibited except when used under strict court supervision to apprehend persons when there is reasonable cause to believe they are about to commit serious crimes. As stated in S. 675, section 2(c):

> (c) Modern criminals make extensive use of the telephone and telegraph as a direct instrumentality of crime and as means of conducting criminal business. In some circumstances, interception of wire communications in order to obtain evidence of the commission of crime is a necessary aid to effective law enforcement."

This committee has effectively demonstrated to the Nation during the past few years that there is urgent need for such legislation. Every clear thinking, law-abiding citizen who witnessed its dramatic prob-

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[5] *Mallory* v. *United States*, 354 U.S. 449 (1957).
[6] Warden, "Miranda, Some History, Some Observations and Some Questions," 20 Vanderbilt Law Rec. 39, 53, December 1966.
[7] Braham, "In Aid of Judges," the Legal Intelligencer, Philadelphia, Jan. 23, 1967.

ing into the shadowy precincts of the powerful criminal syndicates could not fail to be awed by the magnitude of their domain. There is no reason why, in this day when our Government is trying to land spacecraft on the moon, our law enforcement officials should be restricted to horse and buggy methods, and thus enable affluent and arrogant bigtime criminals to smugly thwart the law by using their jet-age scientific methods to operate.

The proposed bill permits wiretapping only in exceptional circumstances which first must be set forth in a written application upon oath or affirmation by an investigative or law enforcement officer and thereafter approved by the court which may require the applicant to furnish additional testimony or documentary evidence in support thereof. Moreover, each order of court granting leave to intercept any wire communication shall specify, inter alia, the period of time during which such interception is authorized. I think it is 20 days in this bill.

With these safeguards, it appears to me there is no real danger in permitting the interception of wire communications in exceptional cases.

The bill also provides that if the law enforcement agencies need additional time, and if they can make out a case before the judge that they do need that additional time, he is authorized to extend it. The point I make, and what I like about the bill, is its specificity, and its requirements before one can get a court order to permit wiretapping.

Senator McCLELLAN. Don't you think under this bill the judge to whom the application is made can so write his order as to keep absolute control of it?

Judge KREIDER. He certainly can.

Senator McCLELLAN. There is no reason for any abuse, if the judge is honest and has integrity.

Judge KREIDER. None whatever, and I understand that they have a wiretapping bill in the State of New York and that it is working.

Senator McCLELLAN. Have had it for years, and it is working successfully.

Judge KREIDER. Yes.

Senator McCLELLAN. And if we come to a point where we are so skeptical we can no longer trust the integrity of the judges over the courts of our land, in a matter where we are undertaking to enforce the law, then we have reached a point of desperation so far as our civilization is concerned.

Judge KREIDER. I certainly agree with that statement. May I continue?

Senator McCLELLAN. Yes, you may.

Judge KREIDER. I thank you.

The same sordid conditions which necessitate court authorized wiretapping, more than justify the passage of Senate bill No. 678 which would outlaw the Mafia and other organized crime syndicates. Your committee, through hearings in the past, of which the whole Nation knows and commends you for your splendid work in that investigation, has obtained a vast and valuable storehouse of information disclosing the operations of the Mafia which is undoubtedly one of the most vicious organizations operating in the United States today. The

bill, if enacted into law, would go far in exterminating an ominous menace to the public safety.

Mr. Chairman, before concluding, I prepared a two-page memorandum which is incorporated in my statement with respect to the harassment of the courts and the harassment of the district attorney and the clerks of the courts and all the personnel of the law-enforcement agencies with respect to repetitive habeas corpus petitions. I do not want to lengthen my statement. If you will permit, I will read it rapidly or I will incorporate it, as you so desire, whichever you prefer.

Senator McCLELLAN. I would be glad for it to be incorporated in the record.

(The material referred to follows:)

HABEAS CORPUS

In his Pennsylvania Bar Association address Judge Branham also discussed the deplorable situation resulting from the wholesale abuse of habeas corpus by the filing of frivolous and repetitive petitions under the Pennsylvania Post Conviction Act of 1966.[8]

Time does not permit extended discussion of this enlightening address and the remedies proposed but I invite the committee's attention to it and respectfully request that it be included by reference in my statement.

In a laudable attempt to bring some order out of chaos, the Pennsylvania Act provides for a uniform type of petition in which are printed 13 reasons most frequently given to support a habeas corpus petition. The prisoner is expected to check off only those reasons applicable to him. Unfortunately, the plan has not worked as well as expected because prisoners frequently check off many irrelevant "reasons," thus leaving it to the judge to determine the proper category, if any, in which to place the meager factual averments which are alleged in support of petition. The latter are frequently untrue or highly distorted.

Statistics supplied by the district attorney of Dauphin County, LeRoy S. Zimmerman, disclose that 80 postconviction and habeas corpus petitions have been filed in our county during the period 1965–66. This is a large number for a county of 222,000 inhabitants.

These petitions follow the national pattern. Mr. Justice Clark has stated that at least 98 percent are without any merit whatever (*Fay, Warden* v. *Noia*, 372 U.S. 391, at p. 445, 1963). Nevertheless, when received they must be docketed, receipt acknowledged to the petitioner, copies prepared and sent to the district attorney and the attorney general. Thereafter, the court issues a rule on the district attorney to show cause within 20 days why the petition should not be granted. The case file must be consulted and the notes of testimony read.

If the judge grants a hearing, counsel must be appointed for the petitioner, who usually will have to be brought about 100 miles from the correctional institution near Philadelphia to Harrisburg. Two deputy sheriffs are required for the round trip.

But the end is not yet.

[8] The act of 1966, Jan. 25, Public Law ——— (1965), No. 554, effective Mar. 1, 1966 (19 Purdon's Pennsylvania Statutes Annotated, sec. 1180–1, pocket pt.).

If the writ of habeas corpus is not granted the petitioner usually files an informal appeal to the superior or supreme court. The judge is required to file a memorandum opinion within 30 days stating the reasons for his order of dismissal. The district attorney likewise must file a brief and orally argue the case in the appellate courts which meet only once a year in Harrisburg. More than likely the case will be transferred for argument to Philadelphia or Pittsburgh.

Almost every week my four common pleas colleagues, Judges Herman, Shelley, Bowman, and Lipsitt, and I are harassed by frivolous habeas corpus petitions which must be given precedence over serious and important matters. While each of our judges has had more than his full share of such work, Judge James S. Bowman holds the record in this area. In one case a petitioner had been sentenced in 1943 after pleading guilty, without counsel, to snatching purses on four separate occasions from elderly women attending market. After serving about 1½ years he was paroled but recommitted on various occasions after committing new crimes. He was granted a new trial following *Gideon* v. *Wainwright* and again convicted and sentenced in 1963. Then followed to the present time a series of 17 papers in the nature of motions for new trial, petitions for writs of habeas corpus, and miscellaneous petitions, the last of which the court has indirectly learned was a habeas corpus petition of unknown nature filed in the U.S. district court.

The words of Mr. Justice Harlan, dissenting in *Fay* v. *Noia*, 372 U.S. 391, at p. 476 [9] are most appropriate:

> The orderly administration of justice requires that even a criminal case some day come to an end.

I have asked Judge Bowman to give me his views on habeas corpus and suggestions for improvement. Accordingly, he prepared a brief memorandum which I now ask permission to have incorporated in the record.

I simply want to add that Mr. Justice Clark of the U.S. Supreme Court stated in *Fay* v. *Noia* that 98 percent of these habeas corpus petitions are utterly frivolous, and our experience bears that out. We have had a great number of headaches in this. We have been required to set aside important matters simply to take up these frivolous habeas corpus petitions.

It has gotten so bad now that usually the petitioner accuses his own lawyer of being incompetent, and in some events in our county has sued his own lawyer, and even the judges, in one instance, for $15 million. He didn't collect it. He didn't get a judgment either.

But that is the stock pattern, and we thought that passage of a habeas corpus bill setting forth the 13 reasons that could conceivably be alleged, that would channel the complaint into some semblance of regularity, but it hasn't worked too well, and Judge Braham discusses that beautifully in his address, and I respectfully ask permission to have that inserted into the record.

Senator McCLELLAN. Without objection it will be received for the record.

(The material referred to follows:)

[9] Quoting from *Larsen* v. *United States*, 275 Fed. 2d 680.

[From the Legal Intelligencer, 1967]

In Aid of Judges

(Address by W. Walter Braham, President of the Pennsylvania Bar Association, Delivered January 19, 1967, at the Opening Session of the Association's 71st Annual Meeting, Philadelphia, Pa.)

The rules of the Pennsylvania Bar Association provide that "the President in his address shall refer to any statutory changes of public interest and any needed changes suggested by judicial decision during the year." I propose to refer to one statute, only: the Post-conviction Hearing Act of January 25, 1966,[1] selected because it is the Pennsylvania involvement in one of the most important and potentially troublesome developments in the law in recent years.

At the center of our discussion will be the writ of habeas corpus, the most general, the most effective, and the most highly esteeemd of all legal weapons in the arsenal of freedom. It is the writ which commands one who deprives another of his liberty to bring the prisoner before the judge and show by what lawful right he holds him.

At common law there were certain advantages to the writ of habeas corpus. The judge was not bound by precedent. There was no statute of limitations. The applicant could go from one court to another until he found a judge willing to hear his plea. The whole case could be tried de novo; that is all over again. There was no limitation on the number of times when the same prisoner could use the writ.[2] The petition for post conviction relief—a modern variant of habeas corpus—can be brought only in the court which pronounced sentence.

In England, originally no appeal was allowed in criminal cases, then only a very guarded appeal. Habeas corpus was developed as a means of correcting trial errors. In modern times, ample appeal provisions have been provided for criminal cases, and the use of habeas corpus to review the legality of trial procedures has largely disappeared.[3]

In the Federal courts of the United States, no appeal in criminal cases was allowed for almost 100 years.[4] After appeal was available, it was the law that habeas corpus would not lie as a substitute for appeal.

How disturbing it is therefore, in these modern days to discover that, after the organization of definite channels of appeal leading to the Supreme Court of the United States, the use of habeas corpus has developed again in addition to, and almost as a substitute for, the ordinary processes of appeal, and certainly as a third level of inquiry in criminal cases.

In order to understand this development, it is necessary to appreciate a few facts about American constitutional history. When the United States Constitution was adopted, it contained no Bill of Rights. There was sufficient demand for a Bill of Rights to cause a compromise to be agreed upon, namely, that the Bill of Rights would appear as the first 10 amendments. It was understood, however, that the Bill of Rights was binding on the Federal government only.[5] This view continued long after the Civil War. In 1867 the Supreme Court was, for the first time, given the right to review state convictions. The 14th Amendment was adopted in 1870. It contained this pregnant language.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The traditional view that the provisions of the Bill of Rights did not apply to the states continued for many years, the United States Supreme Court considering that it had the right to review State convictions only to the extent of determining whether the State court had acted within its appropriate jurisdiction under the Constitution.[6]

The change to the view that the Bill of Rights applies directly to the State came gradually. I select two murder cases to illustrate this change. The first one

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[1] Act Number 544.
[2] R. M. Jackson, The Machinery of Justice in England, 4th Ed. 1964, Chapter III, Page 228 et seq.
[3] Jackson, op. cit. supra, page 230.
[4] *Griffin* v. *Illinois*, 351 U.S. 12, 100 Law Ed. 891, 900.
[5] Charles Warren, The Supreme Court In United States History, vol. III, p. 257; Slaughterhouse Cases, 16 Wall. 36, 21 Law Ed. 395.
[6] *Frank* v. *Mangum*, 237 U.S. 309, 59 Law Ed. 969, 979, 980.

was Frank v. Mangum,[7] decided in 1914, in which a poor Negro was convicted in a murder trial dominated by rioting both within and without the courtroom. The Supreme Court, reviewing the case in its traditional search for the jurisdiction of the lower court, believed itself powerless to intervene. Justice Holmes and Justice Hughes dissented; they believed that when the mob rather than the trial judge took over the trial, the defendants were denied that due process of law which is guaranteed by the fourteenth amendment.

In Moore v. Dempsey[8] decided nine years later, Justice Holmes' opportunity came. He was assigned to write the opinion in habeas corpus arising out of a murder case where the roar of the mob might be said to be discernible through the crackling phrases of Justice Holmes' opinion. The Supreme Court reversed its former decision and ruled that where the court was unable to control the mob and vindicate its own authority, the defendant had not had a fair trial, and that under the fourteenth amendment the court must intervene directly and grant a new trial.

Some months ago, J. Edward Lumbard, Chief Judge of the Court of Appeals for the First Circuit[9] said that an examination of the decisions of the Supreme Court for the past 40 years discloses two trends: one, an effort to widen and strengthen the civil rights of individuals, and the other, to limit and control the efforts of law enforcement officers.

The right of an indigent defendant in a criminal case to the assistance of counsel is one illustration of a widening of civil rights. The old rule was that the States decided the right to counsel and that the law was satisfied if a lawyer was appointed in time to prepare for trial. This has been changed. In *Powell* v. *Alabama*[10] it was held that a lawyer must be provided in every capital case. In *Gideon* v. *Wainwright* in 1962[11] it was held that a lawyer must be provided in every felony case. The real change came in *Escobedo* v. *Illinois*[12] where is was decreed that a lawyer must be available to the defendant after the police are no longer engaged in a general investigation, but have focused on the defendant as a suspect.

Closely connected with the right to counsel is the right not to be compelled in a criminal case to be a witness against oneself. In the old days, men were coerced by human torture. When a defendant refused to talk and the judge said "You may examine", he meant that the government's men might take a defendant to the torture room and put him to the "wheel" or the "rack" or the "boot" until he would talk.

In modern times, the guaranty of the Fifth Amendment has meant that no confession secured by violence, by threats or by promises was voluntary and that if voluntary, it could not be used against the defendant. In the Escobedo case, it was held that no admission or confession received after the defendant was a suspect could be used against him unless the police had informed him: that he need not answer; that what he said might be used against him at trial; that he had a right to a lawyer, and that, if he were indigent, a lawyer would be provided for him. This was held to be compelling him to give testimony against himself.

Miranda v. *Arizona*[13] went still further. There, Chief Justice Warren indicated that ordinarily the presence of an officer may of itself have so coercive an effect on a suspect that statements made by the suspect after the officers have arrived may not be used against him unless the warnings have been given.

Mapp v. *Ohio*[14] was a case where officers, looking for a "numbers" violation, were searching Mrs. Mapp's house. They had no proper search warrant. They found a quantity of obscene material and she was later indicted for the possession of unlawful material. It was held in the later prosecution that the unlawful objects so discovered could not be used against her in the trial.

Two recent cases, bearing on the functions of the jury require mention. In the majority of the States it has been the practice to submit to the jury the questions whether a confession was voluntary and whether it was true. This was

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[7] Idem.
[8] *Moore* v. *Dempsey,* 261 U.S. 86, 67 Law Ed. 543.
[9] J. Edward Lumbard. The Administration of Criminal Justice: Some Problems and Their Resolution, 49 ABA J. 840, September 1963.
[10] *Powell* v. *Alabama,* 287 U.S. 45, 77 Law Ed. 158.
[11] *Gideon* v. *Wainwright,* 272 U.S. 335, Law Ed. 2d 799.
[12] *Escobedo* v. *Illinois,* 378 U.S. 488, 12 Law Ed. 977, June 22, 1964.
[13] *Miranda* v. *Arizona,* U.S. 16 Law Ed. 2d 694.
[14] *Mapp* v. *Ohio,* 367 U.S. 643, 6 Law Ed, 2nd 1081.

held to be contrary to due process in *Jackson* v. *Denno*[15] and this case has been cited more than 150 times since 1964. The right of the trial judge to comment on the failure of the defendant to testify in his own behalf has not been recognized in our federal courts, although it is the general custom in Europe and it has been recognized in some of our States: the Constitution of California specifically allowed it, but this was held to be unlawful in *Griffin* v. *California*.[16]

Having widened the rights of individuals in the manner indicated, in another series of cases the Supreme Court pointed out the procedure by which these rights are to be vindicated. The three cases spoken of are *Fay* v. *Noia*,[17] *Townsend* v. *Sain*[18] and *Saunders* v. *United States*.[19]

The *Noia* case discloses the determination of the Supreme Court to assert its authority over all cases of federal civil rights tried in state courts. The prisoner's petition for habeas corpus was filed in the Federal courts 14 years after the date of his sentence. The Supreme Court voided the sentence and directed the prisoner's release unless he was granted an immediate new trial. *Townsend* v. *Sain* ruled that the District Court had to accord the prisoner a full trial of his case de novo, although more than five petitions for habeas corpus had been filed in the case, and it had been three times before the Supreme Court on certiorari. *Saunders* v. *United States* involved a federal prisoner; after losing in one hearing, he was allowed to allege other grounds and get another hearing.

The mischief of the Supreme Court's suggestion is that rather than requiring improved appeal procedures, it suggested habeas corpus procedures in the federal courts or the state courts. The effect of this is to put habeas corpus in competition with appeal and really in substitution for appeal in the State courts.

Before we leave the fourteenth amendment, allow me to put in juxtaposition two experiences with the amendment.

In my college days a favorite subject of debate was the recall of judges. Great indignation has been expressed against the ruling of the Supreme Court declaring void child labor laws, laws affecting women in industry, the great *Bake Shop* case, etc.

Two years ago my wife and I drove half the length of the State of California, observing from time to time the modern equivalent of the recall of judges namely, great billboard signs advocating the impeachment of Earl Warren. This, of course, is an unjust reflection on an able and good man, but it shows that in the eyes of the people, the Fourteenth Amendment can be abused by the liberals of the left as well as the conservatives of the right.

The Supreme Court has suggested that each state adopt a Post-conviction Remedies Act. Pennsylvania's Post-Conviction Hearings Act was passed pursuant to this suggestion. It lists 13 reasons for post-conviction relief, including almost anything which might be wrong with any sentence.

The net result of the court's opinions and of statutes such as ours has been to put the Supreme Court somewhere in the position of a camp cook in the cow country in frontier days, standing at the chuck wagon banging on a pan and shouting: "Come and get it".

No sooner were the decisions of the Supreme Court which we have cited released than word about them flashed through the dim, occult reaches of the penitentiaries, and the courts have been flooded with habeas corpus cases ever since.

The extent to which this process has increased the busienss of the Federal courts is appalling. The reports of the Standing Committee of the American Bar Association on jurisprudence and Law Reform affirm that the applications by state prisoners for writs of habeas corpus in the Federal courts grew from 127 in 1941 to 981 in 1961, and 4,664 in 1965. The proportion of increase was 675 percent from 1941 to 1961, and 3,750 percent from 1941 to 1965. The growth in the number of these cases has continued unabated in 1966.[20] It is estimated that about 30 percent of the business of the Federal courts derives from habeas corpus. From an opinion of the District Court for the District of Columbia, I cite the following:

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[15] *Jackson* v. *Denno*, 378 U.S. 368, 12 Law Ed. 2nd 908.
[16] *Griffin* v. *California*, 380 U.S. 609, 14 Law Ed. 2nd 106.
[17] *Fay* v. *Noia*, 372 U.S. 391, 9 Law Ed. 837.
[18] *Townsend* v. *Sain*, 372 U.S. 293, 9 Law Ed. 2d 770.
[19] *Saunders* v. *United States*, 373 U.S. 1, 10 Law Ed. 2d 148.
[20] American Bar Association Standing Committee on Jurisprudence and Law Reform No. 16, August 1966, page 3. Lumbard, op. cit. supra, page 841. Reports of the Judicial Conference of the United States, 1965, page 118.

"In five years the most extreme example is that of a person who, between July 1939 and April 1944, presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions, a third 24, a fourth 22, a fifth 20. One hundred nineteen persons have presented 597 petitions—an average of 5".[21]

The Standing Committee on Jurisprudence and Law Reform of the American Bar Association in its report in August, 1966, has this to say:

"The delay in the enforcement of the judgments of conviction in the state courts is perhaps the worst feature of the habeas corpus proceedings in the Federal Courts by state prisoners. It is a serious factor in bringing about the unfortunate delay of criminal justice in the United States that contributes to disrespect for the laws.

". . . In the *Chessman* case in California, the elapsed period was twelve years." (Citations given.)

"In the *Townsend* case in Illinois, eleven years have elapsed, and it is not yet clear whether the proceedings have terminated. Eight of those eleven years have been consumed in habeas corpus proceedings in the Federal Court . . ." (Citations given.)

"In the *Labat* case in Louisiana, over twelve years have intervened, and the case is not over yet. Eight of the twelve years of delay have been in connection with habeas corpus proceedings in the Federal courts, and the case is now in the Court of Appeals for the Fifth Circuit." [22] (Citations given.)

In these opinions, little or nothing is said about whether the defendant is guilty. Up to 12 years have been spent to determine preliminarily the civil rights of these defendants, to determine whether he is guilty of crime, has had to wait. If the defendant is ever to come to trial for his alleged crime, the witnesses will be scattered and the prosecution will probably fail.

All are agreed that most of the applications for habeas corpus are frivolous and without merit. Before the change in interpretation of the fourteenth amendment, about 2 percent of the applications were successful. After the change, the percentage of successful applications went to 2.25 in 1963, and to 3.84 percent in 1965.[23] The only figure I have for 1966 is about two percent.

What is the remedy? This suggests one of my favorite Lincoln stories. When Mr. Lincoln was on his way from Springfield, Illinois, to Washington, D.C., to take the oath of office, his inaugural address—the famous First Inaugural—was carried in a little black bag. He entrusted the bag to his son, Robert. When the train stopped at Harrisburg, Pennsylvania, somehow Robert lost the black bag. Lincoln became quite perturbed and took a hand in turning over the pile of baggage on the platform until he found the black bag. He opened it, took out the First Inaugural Address and put it in his pocket, saying that this reminded him of a man back in Illinois. This man deposited $1,500 in a bank, but the bank failed. Later he received a dividend of $150. He put this $150 in another bank, but that bank also failed. Ultimately he received a dividend of $15. When the man received the $15 he put it in his pocket, saying: "Now that I have this thing cut down to portable size I will just look after it myself!"

We must cut down to portable size, the abnormal and excessive use of habeas corpus, and at all costs avoid the erection of a third level of criminal proceedings. But let us take hold of the thing at the small end, where we can get hold of it. The size of the problem will increase as you shall see.

First, the Supreme Court should trust the people more and indulge them less. The defendant, after his conviction, should be required to state what was wrong with his trial. He should state all his complaints at one time and be limited to one petition, except in a case where there is real after-discovered evidence, just as the British now do, with great success.[24]

This is what the Federal Habeas Corpus Act [25] expects Federal judges to do anyway. It is out of date to suppose that the defendant in a criminal case does not know his rights.

Second, the court should put more trust in the lawyers of the nation. One of the anomalies of the present is that the Federal courts in habeas corpus will

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[21] *Dorsey* v. *Gill*, 147 Federal 2d 857, 862.
[22] A. B. A. Standing Committee on Jurisprudence and Law Reform, February 1966, pp. 4–6.
[23] A. B. A. Standing Committee on Jurisprudence and Law Reform, February 1966, pp. 4–6.
[24] Administration of Justice Act 1960, 8 and 9 Eliz. 2 C65, paragraph 14(2).
[25] Act of June 25, 1948, 28 U.S.C. 2244.

reopen an old case, reverse the conviction and set the defendant free because the lawyer who represented the prisoner long ago did not follow the law as the Supreme Court now states the law to have been then, although the nine wise men of the Supreme Court are themselves unable to agree with any unanimity on the law. In *Fay* v. *Noia*, 14 years had elapsed between the time of sentence and the time when the petition for Federal habeas corpus was filed. *Noia* had not appealed in the State courts because he feared the death penalty, but the Supreme Court overlooked this failure to exhaust State procedure because the decision had been made by the defendant's lawyer rather than by the defendant himself. Yet, in *Gideon* v. *Wainwright*, the court is emphatic that the lawyer must be available to make this kind of decision for the defendant.

Third, the court should trust the jury. The power to decide the facts must be lodged with the jury or with the judges. Until *Jackson* v. *Denno*, in the majority of American jurisdictions, the power was lodged with the jury, subject to some differing measure of review by the court.[20] This is especially important in cases which involve the conduct of investigating officers. The idea that juries always stick with the officers is eroneous. It never seems to occur to the critics that most of the confessions taken by officers are true. A common fallacy lurks in this situation. The critic wishes always to compare a good judge with a bad jury. But many of us can remember that not all Pennsylvania judges—even Pennsylvania Federal judges, have been good men, or good judges, and every trial judge can attest that many juries display surprisingly good sense, shrewdness, penetrating power and earthy wisdom.

During my years on the bench, I caused to be written on the wall of my courtroom—plain for the jury and all the world to see—two sentences from the first inaugural, taken from the black bag of Mr. Lincoln:

"Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world?"

The Supreme Court needs to consider that language before concluding that only the nine men in Washington can make wise trial decisions, and before it concludes that elaborate proceedings must be set up whereby judges and not the jury will decide the facts.

The fourth is that the court should be fair to the police. It is time that someone thinks of the police in this brave new world. Their right of investigation is almost denied by the *Escobedo*, *Miranda and Mapp* decisions. *Miranda* lays down a code of conduct for policemen which is almost impossible of performance.

The Supreme Court, in its desire to make uniform criminal procedure all over the country, forgets that the Federal officers are a corps elite, selected for their brains, and general superiority, and carefully trained for specific work under the federal statutes. Their duty may be in bankruptcy, counterfeiting, the FBI, or some other specific field.

The State officers are a different lot. A vast number of them, policemen, constables, sheriffs, and other state officers, have had little or no training. They must take on all comers, murderers, arsonists, rapists, thieves, kidnappers, burglars, robbers, as well as have part in prosecuting the Federal offenses mentioned.

The officer investigating a crime often does so in peril of his life. When, gun in hand, he follows a suspect down the devious ways of the criminal's world, he is entitled to know that the people and the people's judges are behind him. He wants to feel that when he gets information, it will be received thankfully and not thrown aside because someone in high places seems more intent to find improper conduct of officers than to detect and punish criminals. If police, already suffering from public indifference and the timorous determination "not to become involved," are also to be confronted with a hostile court, we soon will have no policemen worthy of the name.

Fifth, the judges should trust the ordinary processes of appeal. In England and America, the established appeal procedures are those evolved by generations of habeas corpus cases. Criminal appellate procedure is crystallized habeas corpus law.

If one will but examine the Pennsylvania Post Conviction Hearings Act, he will find that any one of the 13 causes for relief can be vindicated in the ordinary process of appeal. Of what utility is the third level of procedure in criminal cases?

Supra, 12 Law Ed. 2d 927, 925 et. seq.

Charles S. Diamond, Chief Judge of the State of New York, says that we are trying to make two parallel judicial lines meet.[27] One is the long ladder of State trial, State appeal, and then appeal to the United States Supreme Court by certiorari.

The other parallel line begins with the taking of the case at any level of the state trial into the District Court of the United States by habeas corpus, hearing it there and then proceeding, if necessary, to the Court of Appeals and on to the Supreme Court of the United States.

If all habeas corpus cases are begun in the federal court and proceed by appeal to the Supreme Court, the Supreme Court cannot possibly handle this burden. Their only solution is to find some way of trusting the State courts to make most of the initial decisions. The unfortunate thing is that by opening wide the doors of the Federal courts to habeas corpus, and by suggesting habeas corpus as a post-conviction remedy to the States, they have taken the vitality and usefulness out of State appeals in criminal cases.

There are only two alternatives. Either continue the present system, commission more federal judges, and build more Federal court houses to try and re-try convictions long past or place a larger measure of confidence in the State courts, accept their result whenever possible and compel civil rights complaints to be tried upon appeal.

The Supreme Court has begun to modify the extreme rigor of *Fay* v. *Noia*, *Townsend* v. *Sain*, and *Saunders* v. *United States*. In *Linkletter* v. *Walter*[28] it decided that the rule of Mapp v. Ohio[24] (evidence wrongfully obtained) is not retroactive; and in *Tehan* ex. rel v. *Shott*,[29] it decided that the rule of Griffin v. California[30] (wrongful comment on failure to testify) is not retroactive. The Supreme Court has also evidenced an increasing disposition to refer the habeas corpus cases back within the power of the existing case; sometimes to the trial court[30] sometimes to the state appellate court[31] and often to the district court.[32]

I make two suggestions, to bridge the gap between the two parallel lines. First, give the state appellate court the power to hear evidence in aid of their decision, as the British Court of Appeals does.[33] This might allow the State to put its case in better shape for review by the Supreme Court and in any event, has the merit of trying the cause rather than trying the record.

Second, since the Supreme Court of the United States has the power to refer to the district court any applications for habeas corpus presented directly to it[34] why not—by another statute, hold State prisoners to ordinary appeal but allow the Supreme Court to refer to the district court, a habeas corpus case coming to it upon certiorari from the highest State court.

I make one suggestion to the state courts. The pendulum swings and having swung, swings back. Lincoln said of the Dred Scott decision: "But we think the Dred Scott decision is wrong. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it."

The body of decisions which have so profoundly affected the true investigation and trial of criminal cases are now the law. If they are bad laws and mistaken public policy—as some believe—events will disclose. In the meantime, they must be obeyed. The state judges have not been guiltless, and they can help the situation by making better records of the appointment of counsel, the receiving of pleas, the admission of confessions in evidence, and the passing of sentence.

Professor Daniel J. Meador has very sensible suggestions to make along this line, in the Virginia Law Review.[35] He has also a good word to say for States establishing post conviction remedies.[36] Do not get me wrong. In the First World

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[27] Charles S. Diamond, Chief Judge, State of New York Federal and State Habeas Corpus, How to Make Two Parallel Judicial Lines Meet; A. B. A. J. Dec. 1963 Vol. 49, page 1166.

[28] *Linkletter* v. *Walter*, 381 U.S. 618, 14 Law Ed. 2d, 601.

[29] *Tehan ex rel.* v. *Shott*, 382 U.S. 406; 15 Law Ed. 2d 453.

[30] *Westbrook* v. *Arizona*, U.S. 384 U.S. 150; 16 Law Ed. 2d 429.

[31] *Griffin* v. *Illinois*, 351 U.S. 12, 100 Law Ed. 2d 891.

[32] *Rees* v. *Peyton*, U.S. 384 U.S. 312; 16 Law Ed. 2d 583.

[33] Criminal Appeals Act 1907, Edw. 7 c. 23 para. 9 Gerald L. Kock "Criminal Appeals in England" Journal of Public Law, Emory Kaw School, Vol. 13 p. 95, 97. The Court of Appeals which hears civil appeals has the same power (O. 58 r 9 (2)) Ann. "New Evidence in the Appellate Court," 56 Harvard Law Review 1313 (civil cases).

[34] 28 U.S.C. 2241(b).

[35] Daniel J. Meador, "The Impact of Federal Habeas Corpus on State Trial Procedures," 52 Virginia Law Review, 286.

[36] Daniel J. Meador, "Accommodating State Criminal Procedure and Federal Post Conviction Review" 50 A. B. A. J. 918, 930, Oct. 1964.

War, we had a song about reveille, always an unpopular bugle call which concluded:

"We will amputate his reveille
And step upon it heavily
And spend the rest of our lives in bed."

I do not response to amputate post conviction remedies. I only propose to step upon them heavily, because the true post conviction remedy is appeal.

"We do not think it impracticable in any part of this country to have trials free from outside control. But to maintain this immunity it may be necessary that the supremacy of the law and of the Federal Constitution should be vindicated in a case like this."

Justice Holmes suggests here a short remedy, change of venue, and a long view remedy, that the Supreme Court must maintain its right to hurl the thunderbolt of reversal at any court where gross disregard of the requirement of due process of law under the Fourteenth Amendment has been shown. In Price v. United States [38] decided March 28, 1966, indictments were obtained in a Federal court against State police officers and others, charging conspiracy to violate civil rights by releasing the victims from jail and then murdering them. The somber aspect of these cases is more apparent from an examination of the legislation involved, which consisted of two sections of a civil rights act passed in Reconstruction Days,[39] This is the big end of our problem, where it is hard to get hold of.

If the criminal elements of our population are to be brought under control, something rising above the civil rights of individuals must be considered. The Preamble to our Constitution reads thus:

"WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

The first duty of a government is to be strong and to be strong enough to govern. A government which cannot maintain the public peace is not a good government. The fathers of the Constitution put the need for unity strength and consistency of government before anything else. Their civil rights had to wait and were accorded the honor of being the first ten amendments.

Great wrongs have been done in the past, but this is no reason why we should hang the dead albatross of a great mass of unnecessary habeas corpus and post conviction cases about the necks of the judges of the present. Everything in the Federal Habeas Corpus Act indicates that the civil rights proceedings must be concluded rapidly. Section 2243 comments that "the court shall summarily hear and determine the facts and dispose of the matter as law and justice require". Section 2244 contemplates that the court shall be required to hear only one applicant and that the defendant must first exhaust his state remedies. 18 U.S.C., paragraph 241, 242.

Section 2245 allows the trial judge to send up a certificate setting forth the facts at the trial. Sections 2246-7-8 authorizes the use of affidavits, depositions or a hearing, or the use of documents to find the facts quickly.

A tremendous amount of law has grown up about the defenses to a writ of habeas corpus. The three principal ones are a waiver by the defendant, his failure to exhaust state remedies and the existence of an independent state procedure which might defeat his right. Unfortunately this subject has become one of the utmost subtlety and complexity. For example, the Supreme Court has decided that the defendant need not have followed the ordinary courses of state appeal so long as he did not try to by-pass these state procedures.

I have not the time to discuss this very intricate and technical question. The general weight, or as they would say in Washington nowadays, the general thrust of the federal habeas corpus practice is in the interest of informality and speed. When, therefore, the views adopted by the Supreme Court have produced a judicial tangle so complicated and so technical that as many as twelve years can be spent in an attempt to determine initially the civil rights of the defendant, leaving the criminal prosecution to die on the vine, we are justified in respectfully suggesting that some of the views expressed by the Supreme Court may require reexamination, and that some may be erroneous. In the meantime—like

[38] *United States* v. *Price*, U.S. 383 U.S. 787; 16 Law Ed. 2d 267, 270.
[39] Supra, 237 U.S. 66, 59 Law Ed. 969, 989.

good soldiers—we obey, try to furnish the court with proper state records, and hope that the mass of civil rights litigation may be in time absorbed once more into the ordinary processes of appeal.

In my humble opinion the American public and all the courts of the land should seriously ponder the concluding paragraphs of the statement previously alluded to which was approved by seven members of the President's Commission on Law Enforcement and Administration of Justice and appears at the end of the Commission's report under the heading: "Additional Views of Messrs. Jaworski, Malone, Powell, and Storey," at page 307. As we lawyers and judges know, Mr. Leon Jaworski is an outstanding lawyer in Houston, Tex. He is a former president of the Texas Bar Association, and the American College of Trial Lawyers. He also served as Special Assistant U.S. Attorney General. Messrs. Malone, Powell, and Storey are likewise emminent members of the legal profession. Each of them is a past president of the American Bar Association.[1] Now what did they say in their concluding paragraphs under this heading "Additional Views"? They say at page 307 of the report of the President's Crime Commission:

Whatever can be done to right the present imbalance through legislation or rule of court should have high priority. The promising criminal justice programs of the American Bar Association and the American Law Institute should be helpful in this respect.

And I may say that the emminent jurist who testified here yesterday, according to the press accounts, Chief Judge J. Edward Lumbard of the second circuit court of appeals, who is the chairman of the American Bar Association's project, which is preparing a report, has been laboring for over a year on this whole question. I am very sorry that I didn't arrive in time to hear him yesterday. They continue:

But reform and clarification will fall short unless they achieve these ends:

1. An adequate opportunity must be provided the police for interrogation at the scene of the crime, during investigations and at the station house, with appropriate safeguards to prevent abuse.
2. The legitimate place of voluntary confessions in law enforcement must be reestablished and their use made dependent upon meeting due process standards of voluntariness.
3. Provisions must be made for comment on the failure of an accused to take the stand, and also for reciprocal discovery in criminal cases.

The Philadelphia Inquirer in an editorial February 7, 1967, also hit the nail on the head:

The war on crime will not be won by harassment of police and keeping them on the defensive, while criminals are favored and their victims are forgotten.

Senator KENNEDY. Could I just ask, was the quotation that you are taking from the Crime Commission report, was that the minority or the majority holding?

Judge KREIDER. Senator, it is labeled "Additional Views of Messrs. Jaworski, Malone, Powell, and Storey." The report was prepared by these four eminent lawyers, and it was joined in by Thomas J. Cahill, the chief of police of San Francisco, by the district attorney general of Suffolk County, Mass., Hon. Garrett H. Byrne, of Boston, who is now, I believe, the president of the National District Attorney's Asso-

[1] Hon. Ross L. Malone, attorney at law, Roswell, N. Mex.; Hon. Lewis F. Powell, attorney at law, Richmond, Va.; and Hon. Robert G. Storey, president, the Southwestern Legal Foundation, Dallas, Tex.

ciation, and it was also joined in by Thomas G. Lynch, the attorney general of California. Those four joined with these views that apparently were prepared by the four men I mentioned.

Senator KENNEDY. It is my understanding——

Judge KREIDER. They don't dissent, Senator, from the Crime Commission report, but as we all know, the Crime Commission report did not deal with the subject that is now before this committee. And so they didn't deal with the matter of suppressing confessions. There was no dissent.

Senator KENNEDY. I see.

Judge KREIDER. The seven men joined. There is unanimity there. But they added their "Additional views." These are seven outstanding men, one of whom was awarded the American Bar Association's Gold Medal.

I think it was Robert G. Storey of Texas. He was formerly dean of Southern Methodist University Law School. Lewis F. Powell is an eminent lawyer of Virginia, and Ross L. Malone, an outstanding lawyer of New Mexico. I have already mentioned Mr. Jaworski. I consider their statement, it is only five pages, a perfect literary gem on this subject, and I have tried to read all the law journals that they cite, the leading ones which they rely on, which are articles written by what we would call liberal justices. I want to say here that I also heartily commend the able chief justice of Pennsylvania, the Honorable John C. Bell, Jr., whose views have been very emphatically expressed on this subject, and are in line with what I believe are the views of the majority of this distinguished committee.

Senator KENNEDY. I don't want to interrupt your thought, but directing our attention to the Crime Commission's report, it is my understanding in reading from page 94, that the Crime Commission did make these observations, and I would like to read from the report:

> Only recently has research commenced to assess police needs for confessions and the possibilities of establishing rules under which stationhouse questioning would be permissible. The Commission believes that it is too early to assess the effect of the *Miranda* decision on law enforcement's ability to secure confessions and to solve crimes.

That position was held by 12 members of the Commission, a number of whom have had prosecuting experience and who are deeply committed to law enforcement as well. I am sure that you would want the record to be complete with regard to the findings or statements of the Crime Commission on this subject.

Judge KREIDER. I would, Senator. May I say this too, before I conclude; that this statement under the heading of "Additional Views," page 307, the very end of the report——

Senator MCCLELLAN. As I understand it, they went beyond the purview of their report.

Judge KREIDER. That is right.

Senator MCCLELLAN. In order to state their additional views on this important issue.

Judge KREIDER. Exactly, and in so doing, they cite what I consider some of the finest literature on the subject: an article by the eminent chief justice of California, Roger J. Traynor; another by an equally outstanding jurist, Justice Walter V. Schaefer of the supreme court of Illinois, and a third by a member of the Court of Appeals for the

Second Circuit, a great legal scholar, Henry J. Friendly of New York. When you add all that and read those well written law review articles on this subject, the substance of it is that even though they have been very liberal in their respective jurisdictions, more so than in Pennsylvania, on this confession rule and related subjects, those eminent jurists have reached the point where they feel the pendulum has swung too far in favor of the criminal.

Senator McCLELLAN. While we are on that subject of what the Commission recommended, I believe a majority of the Commission does support your views with respect to wiretapping.

Judge KREIDER. Yes, Senator, they do. I thank you. That is correct.

Senator McCLELLAN. And the "additional views" are not necessarily contrary to the views of the majority of the Commission.

Judge KREIDER. No.

Senator McCLELLAN. But these were additional opinions.

Judge KREIDER. Yes.

Senator McCLELLAN. On the issue and the aspect of law enforcement not covered by the Commission.

Judge KREIDER. Exactly so, and the Commission stated in its main report that they weren't going into this question of voluntary confessions, and how it has been treated in *Escobedo* and *Miranda*, because of the very thorough studies that have been made and are now being made.

The studies were started, as I said, about a year and a half ago by a committee under the chairmanship of Chief Judge J. Edward Lumbard of the Court of Appeals for the Second Circuit. This committee includes some of the finest legal scholars in the land. There is also a similar committee of the American Law Institute on which are outstanding legal minds.

Senator KENNEDY. Could you tell us what happened at the meeting of the American Law Institute when it was brought up?

Judge KREIDER. Senator, I think there was debate. I cannot say definitely. It may be that it was voted down. I am not sure. Perhaps you have better information on that than I do. I am not sure.

I will say there is a very heavy sprinkling of law school professors in some of these, and I have great respect for them; but, as a trial judge, we are on the frontline with the shock troops, and we must carry out these commands of the Supreme Court of the United States, even though we really feel that they have gone too far.

Senator KENNEDY. Of course, there are some eminent trial personnel on the Commission, as well, who are in the forefront.

Judge KREIDER. Yes; that is true.

Senator KENNEDY. As you are.

Judge KREIDER. That is true; and one is former Attorney General Rodgers, I believe; Mr. Katzenbach, of course.

Senator KENNEDY. One of my impressions is that there isn't sufficient information at the present time to reach the more dramatic conclusions in this area. As you mentioned, there are a number of studies being made at the present time.

I am suggesting that there is a significant body of opinion that feels that it is just too soon to make a determination, that we just haven't got the statistics and the facts to take what many of us consider to be

an extraordinary step with regard to an individual's need to be aware of his rights, and his need to be represented by competent counsel in court.

Judge KREIDER. Of course; may I suggest, Senator, that that is covered in bill 674, where the trial judge who holds his preliminary hearing in secret, so to speak—or, rather, not in the presence of a jury—is admonished and is required under 674 to take all that into consideration: the warning and whether the suspect knows the nature of the charge against him, and so forth. I think that is a great addition, and I think that is an attempt to comply with what we were told to do in the *Miranda* decision.

May I conclude with this final paragraph:

In my opinion, one of our most urgent needs is the return to a practical, commonsense interpretation of the plain and simple words of the Constitution of the United States which has served us so well for the last 178 years. Only in this way can the alarming increase in serious violations of the criminal law be successfully overcome and the rights of law-abiding people protected against the highly organized, well-financed, and astutely represented professional felons who now enjoy a greater immunity from conviction of their crimes than at any time in the history of our country.

I want to thank the committee for inviting me to be present. It is a great honor.

Senator MCCLELLAN. Thank you very much. The committee will want to ask you some questions, I am sure. From the concluding remarks of your statement, and from your statement as a whole, you apparently do not agree with former Attorney General Katzenbach that it is "unutterable nonsense" for anyone to contend that the impact of these decisions contributes to the increase in crime?

Judge KREIDER. I must respectfully disagree with the opinion of the learned former Attorney General of the United States.

Senator MCCLELLAN. It seems to me, if I read correctly the dissenting opinion of the four Justices who did not go along with the *Miranda* decision, they predicted what the consequences of the decision would be in this respect.

Judge KREIDER. I think Mr. Justice White predicted that in *Escobedo*, in 1964, and his colleagues, the three who joined him in dissenting with him in making a four-man dissent.

Senator MCCLELLAN. So, the minority has been warning of the consequences of these decisions.

Judge KREIDER. Yes.

Senator MCCLELLAN. I will not question you further. I noticed one place you referred, on page 4, I believe you refererd to Lord Shawcross' statement, "The criminal is living in a golden age."

Judge KREIDER. Yes.

Senator MCCLELLAN. When you read that I thought of a book I had read, a book entitled "Crime Without Punishment." He wasn't able to do justice to the subject. My, my, now we have so much more material.

Judge KREIDER. Indeed you do.

May I ask your permission to include in the record, if the committee sees fit, not only Judge Braham's address to the Pennsylvania

Bar Association, but also the statement of my learned colleague, Judge James S. Bowman, a former member of the House of Representatives of Pennsylvania and former assistant city solicitor of Harrisburg, who has been bedeviled perhaps more than any other member of our court, and we have all had our fair share.

He has had 17 different petitions, motions, et cetera, presented to him by one individual long after the conviction took place, and it is still going on. Judge Bowman has compiled a concise two-and-a-half-page report of his views on what could be done by Congress to remedy this terrible harassment which we are all subjected to.

Senator McCLELLAN. You would like to submit it for the record?

Judge KREIDER. I would.

Senator McCLELLAN. Without objection, it will be received for the record.

(The material referred to follows:)

STATEMENT OF JUDGE JAMES S. BOWMAN OF THE COURT OF COMMON PLEAS, 12TH JUDICIAL DISTRICT, DAUPHIN COUNTY, PA., ON HABEAS CORPUS PROCEDURES

Of deep concern to me and to all trial judges, is the practical impact of recent United States Supreme Court decisions in the area of the constitutional rights of an individual involved in criminal investigation or proceedings upon the work of all litigation before them. It is to this problem that I would direct my remarks.

Inherent in our Federal-State form of government is a dual system of courts for the administration of justice. It has worked remarkably well over the years with minimal friction. Recently, however, this picture has drastically changed. Largely arising from the Fay and Townsend decisions,[1] which broadened the Federal judicial power to review alleged denial of constitutional rights in State courts, have been a flood of habeas corpus proceeding in both Federal and State courts which have seriously impaired their ability to perform all of their judicial responsibilities to all litigants. Repetitive and multiple petitions passed upon trial courts and reviewed by appellate courts in both systems have produced no end to justice rather than serving the ends of justice. The existing chaotic conditions demand prompt and serious consideration and an early solution.

The dual nature of our judicial system will require, of course, a dual attack upon the problem. In what manner any individual State should or would approach the problem and its solution, I cannot say. It would seem clear, however, that if Congress acted at the Federal level, the individual States would have little difficulty in enacting statutes or clarifying existing statutes or procedures which would substantially reduce, if not wholly solve, this perplexing and wholly unnecessary problem.

For example, in Pennsylvania there is some decisional and statutory authority permitting only one collateral attack by way of habeas corpus upon a criminal conviction and judgment of sentence imposed thereon. However, since most of the repetitive and multiple petitions collaterally attacking a conviction and sentence raise real or imagined constitutional issues, most Pennsylvania courts have ignored or hesitated to apply this body of law because of the ever present jurisdiction of the Federal courts to independently review a second, third or even tenth petition by the same individual. It would seem that in such cases, a State court, in giving anything less than full consideration on their substantive merits to these repetitive petitions, makes the State court's action suspect in the minds of the Federal judiciary. Hence, another reason for the roundelay of petitions.

If Congress would act in two areas, I believe we will have laid the groundwork for State action which would soon follow, and that the dual action of Congress and the individual States will lead to an acceptable solution to the problem. No other known judicial system affords to individuals convicted of crime such

[1] *Fay* v. *Noia*, 372 U.S. 391 (1963); *Townsend* v. *Sain*, 372 U.S. 293 (1963).

repetitive and multiple oportunities for reconsideration of their guilt and neither reason nor constitutional considerations require the present situation.

If Congress would proscribe the use of the Federal courts by persons alleging their constitutional rights to have been violated in State courts to one and only one proceeding in the Federal courts within a prescribed time limit after their remedies in the State judicial system have been exhausted (or perhaps within a prescribed time limit after conviction by the State trial court and on waiver of further appellate review in the State judicial system), a large percentage of repetitive and multiple petitions would be barred or discouraged at both levels.

Secondly, if Congress would proscribe the use of the Federal courts by such persons who collaterally attack in the State courts their conviction to one and only one proceeding in the Federal courts, and then only if the individual had not had Federal review of his conviction after direct appeal in the State courts (or waiver of appeal), an adidtional number of repetitive and multiple petitions would be barred or discouraged at both levels.

We commend legislation in this area as certainly not solving all of the problems now confronting both State and Federal courts as an outgrowth of the various U.S. Supreme Court decisions on the constitutional right of individuals and jurisdictional matters, but as a clear step in the direction of restoring reason to a problem which has been one of grave concern to all jurists who deal with it on a day to day basis.

Senator McCLELLAN. Any questions? Senator Ervin?

Senator ERVIN. Judge, Chief Justice Stone said that where courts deal as ours, with great public questions, the only protection you have against unwise decisions and even against judicial usurpation is careful scrutiny of their decisions and comment upon them, and this gives me license to tell the truth as I see it.

Judge KREIDER. Indeed it does.

Senator ERVIN. Now is not the *Miranda* case based upon—allegedly based upon interpretation of the self-incrimination clause of the fifth amendment?

Judge KREIDER. Yes, I think so.

Senator ERVIN. I would like to read that clause to you:

No person shall be compelled in any criminal case to be a witness against himself.

Assigning to those words their plain English meaning, can they linguistically speaking have any possible application to the voluntary confession?

Judge KREIDER. I don't think so.

Senator ERVIN. And the Supreme Court of the United States, and virtually every other Federal court and virtually every State court in the United States, didn't they hold from the time those words were incorporated in the Constitution in 1791 down to the date of the *Miranda* case, which was June 13, 1966, that they did not have any possible application to voluntary confessions?

Judge KREIDER. That is my understanding.

Senator ERVIN. The courts held that they only applied to the testimony which a man was compelled to give.

Judge KREIDER. In court.

Senator ERVIN. And he had to give it in the capacity of a witness.

Judge KREIDER. Yes.

Senator ERVIN. And he had to give it in a judicial proceeding which was either criminal in nature or was calculated to cause a criminal prosecution against him.

Judge KREIDER. That I feel was the law, until *Escobedo* and *Miranda*.

Senator ERVIN. Now the *Escobedo* case is based on this provision in the sixth amendment:

> In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense.

Now, wasn't that provision interpreted from the time that it became a part of the Constitution in 1791 down to the date of the majority opinion in the *Escobedo* case, to give a man the right to assistance of counsel only when a criminal prosecution originated?

Judge KREIDER. Absolutely correct.

Senator ERVIN. And is there any criminal prosecution in existence when a person is merely taken into custody and suspected by the arresting officer of having committed a crime he is investigating?

Judge KREIDER. I don't think a criminal prosecution is in effect at that stage when the police are simply trying to find out what they can about the activities of a suspect.

Senator ERVIN. As a matter of fact, until this decision interpreting the clause, it was held that the right of counsel did not arise until some formal accusation which set a criminal prosecution in motion was made.

Judge KREIDER. Yes, that is true.

Senator ERVIN. And aren't police officers incapable under the law of initiating a criminal prosecution in the sense of this provision?

Judge KREIDER. I didn't quite understand you, Senator.

Senator ERVIN. Does not the power under the law to begin a criminal prosecution reside in the prosecuting attorneys or other persons. rather than police officials?

Judge KREIDER. Yes, indeed, and that is all the more reason why the police officials should have some latitude in the first instance at the station house to question a suspect, and it may favor him. As pointed out by these eminent jurists in the articles I have referred to, he may clear himself, and innocent people who are picked up with him will be cleared and don't have to wait around until some lawyer comes for the suspect, until the innocent people are hurt.

Senator ERVIN. Now under the rights of counsel clause of the sixth amendment as it was interpreted before the *Escobedo* case, you have a point which could be demonstrated by objective evidence as to when the right of counsel arose; namely, the beginning of prosecution.

Judge KREIDER. Yes.

Senator ERVIN. Now under the *Escobedo* case, that right of counsel resides as soon as some kind of suspicion begins to be engendered in the inner side of the cranium of the arresting officer that the man in his custody might possibly have committed a crime the officer is investigating.

Judge KREIDER. Indeed.

Senator ERVIN. And there is no way that you can determine with any degree of certainty when that right of counsel now originates under the *Escobedo* case.

Judge KREIDER. That is absolutely correct. There was a cartoon in the Christian Science Monitor about 2 weeks ago, a newspaperman sent it to me. It shows a policeman with one hand chained to a post where the callbox is attached, and he is calling headquarters and saying, "But Sarge, I was explaining to him his constitutional rights." And the felon got away.

I thought it pointed up this whole business, it is a terrible burden, an impossible burden to place on a policeman who is chasing a felon. It may have been a man he thinks had kidnaped his neighbor's child. What is the policeman to do? Well, he has the right to make some investigation on the spot, but as you pointed out, Senator, when must he stop and say, "Now call your lawyer?"

Senator ERVIN. We hear a great deal nowadays about the conflict of interest.

Judge KREIDER. Yes, sir.

Senator ERVIN. Doesn't the *Miranda* case put the policeman in that kind of a situation because first he is supposed to be enforcing the law?

Judge KREIDER. Yes.

Senator ERVIN. And it compels him to be the legal advisor to the accused.

Judge KREIDER. Exactly so.

Senator ERVIN. I might state I have never been able to get an absolute divorce from my first love, which is the practice of law. I spent the first 19 years of my working life largely in trial work, and 7 years as a judge in a court of general jurisdiction. Over those 25 years I had a lot of opportunity to confront this question about voluntary confessions.

I would like to ask you as a matter of fact if you do not agree with me that when a man is willing to make a voluntary confession, that it has some therapeutic value on that man. In other words, as a lawyer, I felt that when a man made a voluntary confession of his guilt, there was more hope of his rehabilitation, and as a judge, I felt the same way about it, because psychiatry teaches us, and I think also religion, that more can be done to rehabilitate a man who is willing to assume responsibility for his own misdeeds.

Judge KREIDER. Yes. I am heartily in accord with your statement.

Senator ERVIN. Also I noticed that you were of the opinion that with respect to the overwhelming majority of accused persons, and especially those who have been in trouble before, which is usually the case in more serious offenses——

Judge KREIDER. Yes.

Senator ERVIN (continuing). That the average person coming into court or coming into conflict with the law knew that he had a right to counsel.

Judge KREIDER. Yes.

Senator ERVIN. Knew that he had a right to remain silent, knew that anything that he said derogatory to his cause could be used against him. What is your experience as a trial lawyer and as a trial judge on that?

Judge KREIDER. You are absolutely correct. And these habeas corpus petitions which we receive, written in longhand, have the latest decisions of the Supreme Court cited in there, and correctly as to volume and page, *Escobedo*, *Miranda*, et cetera.

Senator ERVIN. I might add that I get letters like that every 2 days from people in prison, who write me about it, and they seem to be better posted on it than I am.

Judge KREIDER. I wouldn't subscribe to that, Senator, but the criminal today who is incarcerated has in our State, I think, access to a

jailhouse lawyer as they call him. They get the court's written opinion, as the members of this committee well know. It is required that the court send a copy to the petitioner who is in prison.

Then of course these various prisoners try to make their case fit into that. Now they have got the theory all right. What they do, I think, is copy the syllabi of the reports or statements in the judge's opinion, but their facts don't fit into the legal generalization. But they know the law all right, and it is amazing to see, and I have no objection, but they do.

My objection is to these frivolous petitions that have no relevancy at all. I sentenced a man 10 years ago who had been convicted of murdering his wife. He was a butcher in the Swift Packing Co., and used his gutting knife that he used on animals on his wife. The jury found him guilty in the first degree. I sentenced him.

He filed a habeas corpus several years ago alleging the stock reasons. Now he has come up with the statement that I was disqualified to sentence him or to preside 10 years ago because I had taken an oath before Almighty God to do my duty, and he said that violates the first amendment of the Constitution of the United States. So we get all kinds of frivolous petitions.

Senator ERVIN. As a practical matter, isn't the result of the *Miranda* decision, and to some extent the *Escobedo* case, that self-confessed criminals, in some cases murderers, in other cases rapists, in other cases robbers, are turned free in the courts throughout this country, simply because the arresting officer failed to tell the criminal something he already knew?

Judge KREIDER. Exactly so. Commissioner Bell of Philadelphia illustrated that in the quote that I gave in my statement, where they gave him the three-point warning, three points out of the four, but they forgot to say "If you can't afford a lawyer we will get one for you."

Now they forgot that. As a result, as you and the other members of this committee have pointed out, the confession was invalidated, suppressed, and that was the end of the case, because the district attorney couldn't get any additional evidence.

Senator ERVIN. You brought out in your reference to the indiscriminate use, the repeated use of habeas corpus, you brought out the fact that it had gotten so that it is almost virtually impossible under the decisions of the Supreme Court of the United States ever to bring a criminal case to the end any more.

I will ask you this question. It is very elementary, of course.

When the prosecution prosecutes a man for a crime, and the prosecution loses a case, that is the end of the case forever as far as the prosecution is concerned.

Judge KREIDER. Right.

Senator ERVIN. And we used to say that every man and every party has a day in court, so the prosecution gets one day in court and he loses, that is the end.

Judge KREIDER. That is alsolutely the end.

Senator ERVIN. It used to be a rule of law that when a man was tried on a criminal charge, and he was convicted and sentenced, that subject to appeal and having his case reviewed by a higher court, that

his conviction and his judgment settled conclusively every issue which was actually litigated in the case and every issue which could have been litigated in that case; is that not true?

Judge KREIDER. That is true, and I think that the rule has been that, and it has been the rule in England, and is the rule today in England.

Senator ERVIN. I believe we judges used to call that res judicata.

Judge KREIDER. Yes, indeed.

Senator ERVIN. When the defendant had his day in court subject to his right to review, that that ended the controversy.

Judge KREIDER. It did.

Senator ERVIN. Then we came along with a set of rules under which certain rulings, particularly in cases originating in Illinois, where the Supreme Court set aside convictions and judgments in criminal cases, in many cases years after they were entered, and years after the witnesses had become unavailable.

Judge KREIDER. Yes.

Senator ERVIN. States had to pass what they call postconviction hearings.

Judge KREIDER. Exactly.

Senator ERVIN. To give a man a second day in court on constitutional questions. And so first you have this situation, first the court tried the defendant, and then under the postconviction hearing act the defendant appeared in court.

Judge KREIDER. Indeed.

Senator ERVIN. And then they gave the defendant the right to try his own lawyer after the trial in court.

Judge KREIDER. That is a stock procedure today.

Senator ERVIN. And then we hear of the case of the Giles brothers over here in Maryland, where they were not only tried in court, tried their own lawyers, but now they are going to try the prosecuting attorney to see whether the prosecuting attorney didn't dig up some evidence he could have drug up in behalf of the defendants. This has gotten to the point that it is virtually impossible, under these decisions, to ever get a criminal case to the end as far as the defendant is concerned.

Judge KREIDER. That is absolutely true, and in my judgment is a sad commentary on American legal procedure.

Senator ERVIN. We have people whose guilt was proven beyond a reasonable doubt who go to prison, and years later apply to the lower Federal courts for writs of habeas corpus, even in cases where the Supreme Court of the United States has refused to review the case originally on petition for writ of certiorari to the State court.

Judge KREIDER. Exactly.

Senator ERVIN. And then they go in there years after the crime was committed, years after the conviction was had and the judgments entered, and in many cases after the witnesses have died or their memories have failed, or they have become unavailable, and now these people are being turned loose under these decisions.

Judge KREIDER. We have that exact situation in our own court.

Senator ERVIN. It used to be that the contest between the prosecution and the defendant in a criminal case was whether or not the defendant could be shown to be guilty beyond a reasonable doubt.

Judge KREIDER. Yes.

Senator ERVIN. The contest is now degenerating into a lot of quibbling about these technicalities, artificial rules like those in the *Miranda* case.

Judge KREIDER. Absolutely.

Senator ERVIN. Can you think from your experience as a lawyer and as a trial judge that there is any evidence in the world which is more convincing of the guilt of a defendant than his voluntary confession that he committed the crime with which he is charged?

Judge KREIDER. I cannot, and I say that the voluntary confession has always been considered the highest form of evidence.

Senator ERVIN. And is not the effect of the *Miranda* case to make it very difficult even to permit a defendant who wants to make a voluntary confession to make that confession?

Judge KREIDER. I think so.

Senator ERVIN. Wouldn't virtually any lawyer who hasn't had an opportunity to investigate the case, or even one who has, feel he should advise his client not to speak?

Judge KREIDER. Yes.

Senator ERVIN. When he is called there by the police?

Judge KREIDER. That is correct.

Senator ERVIN. After arrest?

Judge KREIDER. That is correct.

Senator ERVIN. I might state we used to try these cases on the issue of guilt or innocence.

Judge KREIDER. Yes.

Senator ERVIN. And we tried them and the cases ended, unless he got a new trial for errors committed. Don't you believe that when the law gives the accused the benefit of the presumption of innocence, gives him the right of assistance of counsel, gives him the right to either remain silent or to take the stand in his own behalf, gives him the right to compulsory process to obtain the testimony of witnesses in his own behalf, gives him the right to confront and cross-examine his accusers, and requires that before he can be punished as a criminal that every one of 12 men shall be satisfied beyond a reasonable doubt from the evidence in the case that he is guilty, don't you think that afforts as much protection as the accused is entitled to?

Judge KREIDER. I certainly do. I can't see how he could get better protection than that.

Senator ERVIN. And do you not agree with me that the practical result of the decision in the *Miranda* case is that we are doing an injustice to society and an injustice to the victims of crime in the overzealousness to see that no innocent man is convicted?

Judge KREIDER. I certainly agree with you, and that is the reason I am here, to express the views of a humble trial judge who is on the firing line daily, with his colleagues.

Senator ERVIN. I was home some time ago, and I found that there was a 3-week term in the criminal court. They spent the first week trying new cases, charges of crime; they spent the last 2 weeks under these new decisions of the Supreme Court trying the court on postconviction hearing act and trying counsel.

Judge KREIDER. Yes.

Senator ERVIN. Retrying cases that had been tried before, and they are compelled to do it if a fellow just writes something on a postal card to a judge.

Judge KREIDER. We had a case where a man was convicted of murder. He chased the victim down a hill. The victim stumbled and fell, and the defendant jumped on him and plunged a knife into the victim's heart.

The case came to trial, and the defense was self-defense. The jury didn't believe the defendant, and they convicted him. He brought habeas corpus. First we have had two lawyers appointed by the court to represent him, at the taxpayers' expense, and rightly so.

Then we appointed another lawyer whom he requested, after the conviction, to look into this habeas corpus matter. That man, gentlemen, after reading the whole record, begged to withdraw. We granted that.

Then the defendant accused his own trial lawyers of incompetency, and said they told him he didn't have the right of appeal. We had to bring the prisoner up from Philadelphia 100 miles, hold a hearing on whether or not his own lawyers had told him he didn't have the right to take an appeal.

Well, any lawyer who would tell a defendant that could be disbarred, as we all know, immediately; so he has now had four lawyers, and that matter is now on appeal. It is being held under consideration by the Supreme Court. They referred it back to us for an evidentiary hearing on what his trial lawyers had told him or didn't tell him.

So as you say, Senator, the two lawyers had to be brought into court. They came voluntarily. They are able men. They had to take the stand and defend themselves and their professional reputation. For that hearing I appointed a fourth lawyer to represent the defendant.

Senator ERVIN. As a result—I am very much interested in this—I believe that the criminal law should be justice to the victims of crime as well as to the accused.

Judge KREIDER. Surely.

Senator ERVIN. I may say from all the information I obtained, and from all of my observations, that enough has been done for those who murder and rape and rob, and it is time for Congress to do something for those who do not wish to be murdered, raped, and robbed.

Judge KREIDER. I hope the Congress will do that.

Senator MCCLELLAN. We have a situation here where it is now 12 o'clock. I first thought we would try to conclude with you. I am sure there are other questions. Do you folks have any questions?

Senator THURMOND. I don't think so. I just wish to express my appreciation, Mr. Chairman.

Senator HRUSKA. I have one brief question.

Senator MCCLELLAN. We will try to conclude with you, and as to the other witnesses, the distinguished witnesses whom we have to hear today, I will announce that we will try to reconvene at 1:30, or shortly thereafter, and proceed for whatever time it takes.

All right, if there are brief questions, Senator, we will try to conclude with you so you won't have to come back.

Senator HRUSKA. Judge, we have already canvassed the idea that

the prosecution has no appeal ordinarily where the ruling of the court is against the prosecution in a criminal case.

Judge KREIDER. Yes.

Senator HRUSKA. Now Congress could pass a law giving an appeal to the Federal Government, providing for a pretrial testing of admissibility of confessions?

Judge KREIDER. Yes.

Senator HRUSKA. Would such a statute be constitutional in your judgment?

Judge KREIDER. I believe it would.

Senator HRUSKA. There would be no involvement of double jeopardy, would there?

Judge KREIDER. I don't think so.

Senator HRUSKA. Inasmuch as it is preliminary in character?

Judge KREIDER. Yes.

Senator HRUSKA. And not a final order?

Judge KREIDER. Yes, and under *Jackson* v. *Denno* the judge now has a preliminary hearing as we all know, in the privacy of his chambers, or at least in the absence of the jury, and the defendant can testify there. He must be there with his lawyer.

We take his evidence, and that isn't double jeopardy when later on if we deem the confession voluntarily given, we go back into the courtroom and let the confession go to the jury, and the defendant can take the stand. I don't think he can claim double jeopardy because of the previous—well, he can't because *Jackson* v. *Denno* holds that we must grant him that preliminary hearing.

Senator HRUSKA. Of course, these proceedings would be had before a jury would have been sworn.

Judge KREIDER. Yes.

Senator HRUSKA. So there can be no question of double jeopardy?

Judge KREIDER. Exactly.

Senator HRUSKA. There cannot be until at a point after the jury is sworn, isn't that correct?

Judge KREIDER. That is correct, and I think your point is a very interesting one, Senator.

Senator HRUSKA. It would serve to sort of balance this thing off a little bit.

Judge KREIDER. Yes.

Senator HRUSKA. And balance is what we are striving to get.

Judge KREIDER. Yes.

Senator HRUSKA. In these bills that we are considering.

Judge KREIDER. Indeed.

Sentaor HRUSKA. Thank you very much. I commend you for your statement also. It is an excellent one.

Judge KREIDER. Thank you.

Senator MCCLELLAN. Senator Hart.

Senator HART. Judge, I apologize for having been late in arriving, but I shall read your statement. I indicated in the opening days of hearings some concern that we might be overreacting, and I think I ought to make this comment before asking you one point.

I look to the Supreme Court to declare and to identify constitutional rights in specific cases; and this, as we now so well know, they did in a case called *Miranda*.

Judge KREIDER. Yes.

Senator HART. That was recent. You read the President's Crime Commission report. You pointed out the, as you say, magnificent language of the seven. But, isn't it correct to say that it could be read, and should be read, as indicating that 12 others did not feel that the time yet had arrived to react finally to the *Miranda* rule?

Judge KREIDER. Senator, in my humble opinion it would not be correct to so construe it.

Senator HART. How should it be construed, if seven say this and 12 don't say it?

Judge KREIDER. Well, then, that is a matter of——

Senator HART. Isn't that really what the point is?

Judge KREIDER. I don't think so, Senator. I get this impression: That the committee as a whole—I believe there were 17 or 19—decided that they would not enter into this vital area which is before the Senate Judiciary Subcommittee on Criminal Law and Criminal Procedure, and they specifically stated that this matter was being looked into by the American Bar Association's special committee under Chief Judge Lumbard of the second circuit, and also by the American Law Institute, and on that committee for the American Law Institute is Professor James Vorenburg of Harvard. He is their reporter, as is Professor Bator of Harvard, and both are very learned men.

Their articles in the Harvard Law Review are magnificent on this subject, and they are well balanced. And, so, I think the President's Crime Commission felt they did not have the time to devote to this subject, did not have as much time as the American Bar Association's committee, the Lumbard Commission, and the American Law Institute. So, they did nothing about it.

Senator HART. Judge, let me respectfully disagree. Not only did the 12 not sign what the seven said about *Miranda*, but the 12 said, "This Commission believes it is too early to assess the effect of *Miranda*"—too early to assess. I wonder if this isn't prudent counsel. One of these statistics that has developed since *Miranda* is the conviction of Miranda in another trial without a confession.

Senator MCCLELLAN. Without a confession——

Senator HART. Without the confession. It was rejected in the case that went up to the Supreme Court; is that correct? The rejected confession was not available, or used, in the second trial; and on the second trial Miranda was convicted.

Judge KREIDER. Yes, but there, if I may say——

Senator HART. And isn't this the kind of information that it is resonable to assume the Crime Commission wanted developed in the aftermath of *Miranda*? How can police enforcement authorities react? What procedures can be obtained?

Can we make better detectives by paying them more and training them better, rather than saying you can hold a fellow for just about as long as you want, or you don't have to tell him he needs a lawyer, or can have one if he wants him, and that he doesn't have to talk?

Rich men's sons know that. Poor men don't. But the right should be available equally to all. And these are the kinds of things, I think, that are involved in our response in this kind of very admittedly dramatic Supereme Court ruling.

But it is the Court, and it has reviewed the facts, and it has identified these as constitutional rights. After we decide how we ought to react, then we have got to decide how by legislation we overrule the Constitution.

Senator McCLELLAN. Any other questions?

Senator THURMOND. Mr. Chairman, I just want to express my appreciation to the distinguished judge who appeared here today, and who has testified at this hearing.

I was a circuit judge in South Carolina for 8 years prior to becoming Governor. In my opinion, unless we reverse the decisions of the Supreme Court on this question of confessions, we are going to continue to have more and more crime. I was very interested in your statement and your answers to questions, and I just want to commend you for coming here. You have made a fine contribution to this hearing.

Judge KREIDER. I thank you very much. If I can contribute anything to help you in your views, I feel amply rewarded. I know I am highly honored by your invitation.

Senator McCLELLAN. Thank you very kindly.

The committee will stand in recess until 1:30.

(Whereupon, at 12:10 p.m., the committee was recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

Senator McCLELLAN. The committee will come to order. Police Commissioner Girardin, will you come around, please?

Senator HART. Mr. Chairman, may I speak a word in introduction?

Senator McCLELLAN. Senator, this distinguished witness is from your State. We would be most happy to have you present him.

Senator HART. Thank you very much, Mr. Chairman.

Ray Girardin is a man who made a rare jump from newspaper reporter to police executive, and has a record of accomplishment in both fields.

A crime reporter in Detroit for some years, Mr. Girardin built a superb reputation for fairness and impartiality and understanding. It has often been said of Commissioner Girardin that he can understand human failings without towering, and that his discipline is never without compassion. He has, in short, been an excellent police commissioner since his appointment 3 years ago, because he is extremely sensitive in this matter of balancing these competing principles that we were listening to here for the last couple of days: society's right to protection and the individual's right to assurance of fair treatment.

Perhaps better than any other commissioner Detroit has known, Ray Girardin has been able to balance daily those two principles. This subcommittee, I am sure, will be able to listen to Mr. Girardin with interest. To me he is more than just a commissioner. He is an old and trusted friend, and I am delighted at the opportunity to present him to my colleagues.

Senator McClellan. Very well. Mr. Commissioner, we welcome you. We appreciate your cooperation with this committee. You have a prepared statement I believe. You may proceed.

STATEMENT OF HON. RAY GIRARDIN, POLICE COMMISSIONER, DETROIT, MICH., ON BEHALF OF THE U.S. CONFERENCE OF MAYORS, JEROME P. CAVANAGH, MAYOR OF DETROIT, NATIONAL PRESIDENT: ACCOMPANIED BY JOHN F. NICHOLS, DEPUTY SUPERINTENDENT, DETROIT POLICE; AND JOHN J. GUNTHER, EXECUTIVE DIRECTOR, U.S. CONFERENCE OF MAYORS, WASHINGTON, D.C.

Mr. Girardin. May I introduce first Mr. John Gunther, the executive director of the U.S. Conference of Mayors, and deputy superintendent of the Detroit Police Department, John Nichols, who are with me.

I have a prepared paper, if I may, Mr. Chairman.

I appreciate this opportunity of appearing in behalf of the city of Detroit, and the U.S. Conference of Mayors of which our mayor, Jerome P. Cavanagh, is national president. I wish to speak in support of the Safe Streets and Crime Control Act of 1967. I am a lifelong resident of Detroit, former chief of probation for criminal court, and have been the police commission in Detroit since December 1963. Consequently, I am very familiar with the problems of law enforcement and the administration of justice in large cities.

At the outset let me say I am in complete support of the Safe Streets and Crime Control Act of 1967 and the financial help and the prestige that goes with financial help from the Government of the United States.

Crime on the city streets long has been a major concern of both public officials and citizens. This concern has become increasingly acute as the incidence of crime in our metropolitan areas continues to rise. The President's Commission on Law Enforcement and Administration of Justice, in its excellent report, stated that 43 percent of the persons polled were fearful of walking city streets at night.

My experience indicates that this finding is accurate. The anxieties of so many may or may not be justified, but they are there. They are real.

Without question crime is a serious problem in the city of Detroit today, as well as most others. This is the situation in almost every large city in America. Our department and its executives constantly receive inquiries from citizens on how they can best cope with crime. Evidence of concern in crime problems is the ever-increasing attendance at community relations meetings held at our police stations. Audiences attending these meetings are not listening passively. They are articulately expressing their fears and seeking answers to the crime problem.

This keen interest is not confined to any particular group of citizens. It permeates every level of the community. At the commercial-industrial level there has been considerable evidence of a mounting concern, and action programs have been launched to counteract crime. The

news media have been exceptionally cooperative in disseminating information provided by our department. One newspaper in Detroit has instituted a reward program allocating considerable space and $100,000 in rewards to bring about the arrest and conviction of dangerous criminals.

The Greater Detroit Board of Commerce is backing a full scale police recruitment program. Industry has created a 24-hour-per-day program whereby public utilities and other commercial enterprises operating radio-equipped fleets notify police whenever a crime situation is observed by one of their drivers. Six thousand of these radio-equipped cars are on our streets. Detroit's sizable Negro community, along with other ethnic groups in the city, has been in the forefront of efforts to aid recruitment and encourage assistance and cooperation of citizens with our police department. Countless other civic and fraternal groups, aware of the problem, are extending all cooperation possible.

Tomorrow I shall join Detroit's Mayor Jerome P. Cavanagh in presiding over a 2-day crime conference in Detroit which is being attended by leading citizens and representatives from industry, education, churches, and citizens groups. It will consider means of combatting crime more effectively, and it will study crime problems in depth. Topics to be explored include (1) economic and social causes of crime; (2) constitutional problems relating to law enforcement; (3) community resources and correctional facilities; (4) citizens involvement with law enforcement; (5) crime statistics and reporting; and (6) police personnel and effective law enforcement.

The crime increase and general concern has stimulated the police department to develop new means of dealing with crime problems. In Detroit, over 18 months ago, we created a highly mobile tactical force to concentrate efforts in areas of highest crime incidences. Officers on the street have been equipped with small portable two-way radios providing instant communication at all times even when they are away from their patrol cars. A new police emergency telephone dialing system, incorporating a special telephone number for emergency calls only, has been created to provide the speediest response to citizen calls for police service.

Officers manning the emergency switchboard are specially trained to handle the calls expeditiously. Procedures have been modernized by the use of an electronic computer to analyze crime trends, to deploy personnel more effectively, and to make available instantaneous information about wanted criminals and vehicles. An officer on the street, by using his radio, is able to determine the status of a person or vehicle quickly and accurately within about 20 seconds. This results in two advantages—first, the investigation is rapid and thorough; and, second, the citizen is not delayed unnecessarily.

Police have been forced to give up nonpolice service which for years have been performed by the police, and for years the kind of thing that they have been performing.

In Detroit we have turned over to the State licensing of motor vehicle operators.

New procedures on maternity cases have relieved the police of transporting all but a few extreme emergency cases. The enforcement of

parking meter violations has been assumed by another city department. Persons involved in minor automobile accidents are requested to report them at district stations rather than calling a car to the scene.

A dramatic illustration of the relative importance of law enforcement problems is the fact that despite other pressing municipal requirements the Detroit police budget has been increased in the last 5 years from $48 million to $64 million.

Notwithstanding the efforts I have cited here, and many more, crime has continued to rise. In Detroit part is a paper increase due to much more accurate reporting of crime by our police. But part is a real increase. I know this upsurge is documented by reports from police agencies throughout the the country.

For many decades the Federal Government has recognized that certain problems are national in scope, transcending the limits of local boundaries. Thus it has engaged in active assistance to agriculture, interstate commerce, land reclamation, and reforestation.

In recent years, cities have been recognized as possessing unique problems, which are amenable to solution through Federal aid, such as housing, urban redevelopment, slum clearance, transportation, water and air pollution. I submit that crime on our streets is every bit as serious a national problem as these others which already receive attention from the Federal Government.

I would like to address myself to the potential which the provisions of the "Safe Streets and Crime Control Act of 1967" offer to the solution of this intense crime problem.

The grants which can be made available for planning under the provisions of the act will enable cities such as Detroit to formulate action programs for immediate and long-range reductions in crime incidence.

The proposed act provides for the development of new methods and equipment. Currently, in Detroit, under a pending grant from the Office of Law Enfrocement Assistance, we are working with Wayne State University's Center for the Application of Sciences and Technology to discover new ways in which data from the Nation's space program can be used to develop new hardware and techniques.

An electronic data processing computer has been used in our department since 1963. We have made specific law enforcement applications which were undreamed of by the manufacturer. A listing of stolen and wanted vehicles is printed by use of the computer and put in the hands of every officer in the field today. A computer modus operandi system which compares many characteristics of perpetrators with the characteristics of known criminals has led to the identification and apprehension of numerous persons wanted for serious crimes. This demonstrates that advanced technology can be applied creatively to law enforcement. We are confident that space age technology possesses unlimited possibilities for improvement of police services but large-scale innovations for crime control have not been developed. Why? Because of lack of funds. Local units of government just cannot afford these development programs.

The military services have made drastic changes in their techniques over the last 25 years. If they had no new weapons since basic World War II equipment, the results would be disasterous. Yet the Nation's

police are involved in a war on crime, and, for the most part, we have little but the old weapons.

This act provides the means for tapping our technological resources to benefit law enforcement's battle in controlling crime.

The manpower shortage is one of the more serious problems confronting police departments. Detroit and other major cities are facing a crisis in recruiting and retaining qualified officers.

The situation will become critical in the early 1970's when the many officers who were hired in the abundant postwar labor market of the late 1940's become eligible for retirement.

Senator KENNEDY. May I make a comment?

On the point that you were suggesting maybe two or three lines before about the need to stay abreast of the various techniques which are being advanced, I had a chance yesterday at the Illinois institute of Technology to attend the seminar that they are having with police commissioners and chiefs from around the country. At the seminar they were engaged in a discussion of many of the law enforcement techniques that have been recently developed.

Of particular interest to me was the fact that the Defense Department, the Air Force, and our military police have recently been working with law enforcement personnel in declassifying a number of important and significant gains that have been made within our Defense Establishment. New law enforcement techniques that have been developed are now being shared with local police officials. I thought that this was certainly encouraging.

I was unaware that restrictions on this type of information had previously existed to such a great extent, and I was most pleased to see that they are being removed.

Would you not agree with me that this kind of cooperation and assistance would be helpful in reaching the point which you suggest in your testimony, and that is the need for local law enforcement officials to be fully informed of the modern techniques which are being developed?

Mr. GIRARDIN. Yes, Senator, it would be extremely helpful, and now in the last few years we have been developing—science is developing—techniques that can come to the aid of law enforcement.

Actually 30 years ago they put a radio in a police car, and very little happened after that until the recent dates. I think we should be in a position to take advantage of everything.

Senator KENNEDY. Is it your understanding that the Armed Forces have developed a number of new surveillance and security techniques?

Mr. GIRARDIN. Under combat conditions.

Senator KENNEDY. I was thinking of surveillance and security techniques that are used to protect Minuteman installations and other sensitive locations and which might be adaptable to civilian law enforcement needs.

Mr. GIRARDIN. Yes.

Senator KENNEDY. As I understand it, it has taken a good deal of time for these developments to be declassified and made available to law enforcement personnel. Is it your opinion that this kind of cooperation would be extremely helpful to local law enforcement personnel?

Mr. GIRARDIN. Yes, I do, Senator, and frankly it has been so classified that I don't have a complete awareness of all the possibilities.

Senator KENNEDY. Would you urge the continuation of the declassification of this kind of material?

Mr. GIRARDIN. Yes, and undoubtedly this wouldn't affect national security at all. Yes, I certainly would.

Senator KENNEDY. Thank you.

Senator MCCLELLAN. Very well, you may resume.

Mr. GIRARDIN. Recognizing this problem, the manpower problem, Detroit has devoted full energies to recruiting applicants and retaining trained officers. The complete spectrum of current recruiting techniques has been employed. To make the position attractive for new recruits and to retain skilled officers the salary of patrolmen has been increased from $6,141 in 1962 to $8,335 this year. Despite the major efforts made the department is still 500 men short of its budgeted strength. Practically all cities are experiencing a shortage of qualified police officers.

In a study conducted by the National League of Cities last year involving some 284 police departments, 64.5 percent reported that they were operating below authorized personnel strength. This applies to large as well as small cities.

With Federal assistance Detroit could make a two-pronged attack on the personnel shortage: (1) present personnel could be trained to perform their duties more effectively; and (2) recruiting efforts could be intensified and new recruiting techniques developed.

We need—all police departments need—training, training, and more training. The work is more complex than ever. We are in a social revolution which is not yet resolved. The U.S. Supreme Court's recent interpretations of the Constitution require more skillful investigations. The sophistication of urban crime requires intensive training in human relations in order to secure the respect and cooperation of the citizenry. In this regard, past practices in law enforcement as symbolized by the patrolman walking a beat—comforting as he was to the neighborhood—are an anachronism.

Crime today is mobile and anonymous, and we must not only be mobile to fight it but computerized as well.

Industry and the Armed Forces have long recognized the value of continuing inservice training—and they have found methods of financing it, too. Police departments, however, have been frustrated in their efforts to supply necessary training. On one hand limited police budgets restrict the opportunity for training, and on the other hand police executives in chronically understaffed departments find it impossible to remove officers from the street to attend extensive training programs.

If Detroit were to receive Federal assistance for training—and I believe this applies to all cities—we would first develop programs of high impact to minimize the time officers must be away from their regular duties, possibly incorporating teaching by closed circuit television. Simultaneously we would develop training programs for which the officer would be paid during his off-duty hours. Federal assistance would permit the department to employ the services of highly skilled professional educators in structuring and implementing the programs.

The effect of training on recruitment cannot be overlooked.

Detroit's experience has shown that the existence of a well structured college degree program in police administration, such as that established at Wayne State University last fall, together with the program of tuition reimbursement which has been instituted by the city, is one of our best resources for inducing qualified persons to apply. A police department staffed with well trained, enthusiastic, professional officers is attractive to the type of recruit police departments require.

With greater resources available, recruiting efforts could be extended and better techniques developed and adopted. A comprehensive plan would insure the ultimate goal of police recruiting—that every qualified person in the total community be made aware of the opportunities, rewards, and satisfactions of a police career.

Today's police departments must adopt the most modern and best concepts of management and organization.

In Detroit we have introduced the output oriented budgeting plan which has proven so successful in the U.S. Defense Department. Our budget staff has had enough experience with this innovation to recognize the value of relating budgeted input to department goals and of comparing alternative methods of achieving desired results. We feel that expanded efforts in this area would result in greater control and better management decisions. But again our efforts are severely impeded by the need to use all available city funds in line activities.

Our city has an executive training program at Wayne State University. However, because the class is small and only a few persons from each city department can attend, the program fails to meet our needs. Indoctrination of new promoted top police officers and periodic training for other executives would result in a more efficient police force.

But sufficient funds cannot be diverted to finance the training. Management training would lead to better organization, administration, and coordination of police activities. It would enable our hard-pressed executives to function at a new and higher plane of efficiency.

Nationally, the experience we have watched during the past 2 years under the Economic Opportunity Act and the Local Law Enforcement Assistance Act has been promising enough to suggest that local initiative can be productive if it is stimulated and if funds are available. As I have indicated new ideas are being tried in police training, and in the use of new communications equipment, and in the deployment of tactical forces, to mention just a few. We believe this process should be extended. More local departments should become involved in trying new ideas, new techniques, and new equipment.

We believe the President is right in urging this.

We also wish to extend our endorsement to the objectives embodied in the Crime Commission report. From our point of view the most important contribution made by this Commission in its far-reaching and comprehensive recommendations is that it has clearly established the interdependence of the several components of a system of justice in combating crime. We at the local level know only too well the problems arising from archaic bail bond systems, inadequately staffed probation departments, lengthy delays in processing through our lower courts. We are acutely conscious of the impact which these shortcomings add to our own struggles to modernize and professionalize our working police forces. We believe the Commission's recommendations and the

"Safe Streets and Crime Control Act of 1967" will contribute to our local efforts in a decisive and constructive way.

There is only one aspect of the proposed legislation that will cause us difficulty in Detroit—and, I suspect, in most cities, be they large or small. The funding formulas for the special action programs and the construction of special purpose facilities may, at this stage, be unrealistic in terms of local capability. While we recognize the need for our cities to enlarge their own financial commitment to local law enforcement, we must point out that local expenditures in the police and public safety area have been skyrocketing during the past decade. According to the Commerce Department, between 1957 and 1962 local expenditures for police and fire protection increased about 40 percent—almost three-quarters of a billion dollars. Estimates for the period 1962 to the present indicate at least a comparable increase. Exclusive of public education these expenditures, which now exceed $3 billion annually, represent the largest single item in the budget of almost all our cities. I might point out that the funds requested by the President for this total program represent only a little over 1 percent of present municipal expenditures.

With regard to new special action programs described in section 202(a) of S. 917, we would therefore urge a funding formula similar to that authorized for planning—namely, a 90 to 10 percent, Federal-local sharing. These are new programs and new concepts which the legislation describes correctly as experimental. For this reason, and in light of our present heavy commitment, we urge that if these programs are to be started in the next year, Federal aid with a minimum amount of local money will be essential. Also we point out these programs must necessarily demonstrate their worth on a proven basis before the cities are asked to assume the major burden.

With regard to the construction of special facilities described in section 203(a) of S. 917, we would urge a funding formula comparable to the present formula in urban renewal—two-thirds Federal, one-third local. In planning for capital expenditures of this type our cities are under terrific pressures and limitations. The urban renewal formula has been successful in drawing heavy commitments from cities and could do the same in this area. Expecting or asking for a larger capital commitment will likely result in too low a priority being assigned these useful types of facilities in view of the terrific competing priorities for very limited local dollars.

My discussion up to this point has dealt with improving the capability of police departments, and, as I have indicated, there are many, many areas and opportunities for accomplishing this end. However, we must face the whole problem of crime. What good is the most efficient police department if the correctional part of the criminal justice does not rehabilitate offenders? This question is more important because the most depressing characteristic of our present correctional system is the high rate of recidivism of offenders. I am not unfamiliar with the problems faced by the courts, probation and parole departments, and penal institutions. As indicated earlier, before becoming police commissioner in Detroit, I was in charge of the Recorder's Court probation department having jurisdiction over all persons placed on probation by Detroit courts. The understaffed and over-

worked probation facilities throughout the country face an impossible task. I believe probation would work if given a chance. Probation officers everywhere have impossible caseloads. Frequently, they are unable to have even sporadic contact with their clients, much less do any supportive work. The courts, parole departments, and penal institutions are not adequately staffed and organized to provide effective remedial programs for offenders who come within their jurisdiction.

Detroit is proud of its reputation as a leader in community relations and as a city which thus far has avoided the severe racial explosions that have erupted in most major cities in the Nation. The police department has taken a major role in achieving this position. I cannot visualize a successful community relations program without the complete involvement of the police. For this reason, I was elated to see the importance attached to community relations in this act. The best police department imaginable could not fulfill its objectives in a hostile community. (I have attached to my statement a report prepared by the U.S. Conference of Mayors describing our highly successful experimental saturation training program funded by the Office of Economic Opportunity.)

And the acts of violence fomented by civil disturbances have the same end result in property damage, injuries, and deaths as the general run of crimes. I feel that police departments are as obligated to prevent civil unrest as they are to prevent crimes. Crime and civil unrest are community problems and solutions require complete community involvement.

Successful conclusion of any attack on crime must necessarily involve not only the crime itself but the multiple causes leading to it. Therefore, all parts of the act are important, because they are aimed at the complete structure of crime, its causes, its results. Because of its attack on the entire problem and because implementation of the Act would be a giant step toward a crime-free America, I unequivocally support this act.

If money were available tomorrow Detroit is prepared to implement progressive police developments in three areas: (1) a new generation computer to increase the capability of activities in this area; (2) completion of the final half of our personal two-way radio system, and (3) development of a highly trained special task force which could be directed against every phase of street crime.

Nationally, we know that other cities are equally prepared to use the resources which this act would make available. Let me cite again the 1966 National League of Cities Police Survey. The survey also showed these encouraging trends in urban law enforcement, and I quote:

> The readiness of most police departments to try new technologies and techniques. Improved communications, such as the portable radio for foot patrolmen, and the rapidly expanding use of electronic data processing equipment and other devices show the modern sweep of law enforcement on the municipal level.
>
> Increased emphasis on specialized training and college-level courses for officers.
>
> Better cooperation between municipal police departments and other law enforcement agencies.
>
> Willingness on the part of many cities to undertake independent studies of their police administrative and organizational procedures and to carry out the recommendations once the studies are finished.

The recognition of the need for more public relations programs to gain support for law enforcement goals, and the progress by many departments in establishing such programs.

Thus, there are signs that municipal police departments are making progress in their professional competence and administrative procedures. This comes at a time when law enforcement efforts must come to grips not only with rising crime rates but also the complexities of providing full protection under the law to all citizens.

The President's Commission report on the challenge of crime in a free society has made clear the scope of the problem of crime and what this Nation can and must do to control it. The Safe Streets and Crime Control Act is potentially one of the most important steps our Nation can take to combat this problem effectively. Detroit stands ready with the other cities of the Nation to take full advantage of the resources which this act will provide to take full advantage of your consideration and support of it as an invaluable aid to local units of government in our unceasing battle against the critical problem of crime in America.

Senator McCLELLAN. Thank you very much, Mr. Commissioner. Did you wish to comment on any of the other bills before the committee?

Mr. GIRARDIN. I have no further comments unless the members ask me questions.

Senator McCLELLAN. I notice you directed your prepared statement soley to the safe streets and crime control bill.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. What is your principal recommendation? If I followed you correctly, is it to increase the ratio of Federal aid that is recommended in the President's bill?

Mr. GIRARDIN. Yes, Senator, to increase it; because I am afraid the cities have just about reached the end of their financial capabilities, and this I wouldn't want continued for a long time. I think that we are on the verge of a breakthrough in many areas to combat crime, and I think we need help. I don't visualize that we are going to need this help for the rest of the existence of the cities.

Senator McCLELLAN. The next question I was going to ask you, whether you saw the need for this comparable Federal aid program for law enforcement throughout the country as a permanent program?

Mr. GIRARDIN. I believe I mentioned, Senator, I——

Senator McCLELLAN. You just said that. That was the next question I had in mind.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. Mr. Commissioner, what do you foresee will be the probable length of time that assistance of this nature will be needed by the cities?

Mr. GIRARDIN. Senator, that is a very difficult question, because I can't prophesy the results, nor can I say with any certainty when we will successfully have gotten at the roots of crime, the breeding ground of crime, and I think that this is a very dire need. We are doing something about the criminal, but what we are doing about him can't be too terribly successful when we consider that the rate of recidivism is around 70 percent in our State penal institutions. I think we are missing and not getting at the causes of crime, and I think perhaps with Federal funds we can make some inroads there.

Senator McCLELLAN. I am trying to ascertain whether you anticipate that, generally, municipalities are going to be better off and better able to take over the burden of financing, to keep police departments well trained, modernized in equipment, and so forth; they are going to be able to do that without Federal assistance in the future? I have been wondering about it. I support this bill, certainly all of its general objectives. I support it and I will study it with respect to any modifications that I might feel would be advisable.

But I am concerned, however, when we enter into a program of this kind with the Federal Government, our experience in the past has been that they have usually become permanent programs, and I am persuaded in my own mind that this is going to become a permanent program.

I don't mean to say I am apprehensive. I don't want to use that word. I am persuaded that it will likely become a permanent program. However, if a permanent program of this kind, on a reasonable basis, will bring about—will have the effect of producing or contributing to an arrest of the present trend in crime, or to reducing the incidences of crime, and contribute to an effective law enforcement program throughout the Nation, then I would supoprt it as a permanent program.

But the point here is this is an experiment we are entering into to a great extent, and I would express this view—I think we must enter into it with some measure of caution. In other words, there is no use going out and spending a whole lot of money and getting no results, and thus maybe become disillusioned with the idea. I think if we approach it gradually and make some tests as we go along, and then increase Federal assistance as we gain experience and determine the areas where it is needed and where it can be most effective, I think that would be a prudent approach to it.

I am not now passing judgment on the amount the President has recommended. So far as I know at this moment, that amount is satisfactory to me, if we can get testimony here from the right sources indicating how this money will be spent, and what programs it will support and what they expect to achieve. Although we are all concerned about this crime problem and want to do something about it, I think this is a good vehicle for us to make use of to try to do something about it. I think we need to try to study this as we go along and find out how this money, or any money, any Federal aid, can be used most effectively to achieve our goals. I don't think we can or should do it hastily.

And so I hope we will have testimony here from police commissioners, police chiefs and others to give us suggestions—concrete illustrations. Supposing this comes along and some of this money is made available to us. What will we do with it? Have you got any concrete statement now? You have covered it in part, but do you have anything further as to what you would do with your share of this money?

Mr. GIRARDIN. Yes.

Senator McCLELLAN. You wouldn't have to take it for every goal. I imagine one community might need it for one purpose and another community might need it for another.

Mr. GIRARDIN. I know the needs of our community.

Senator McCLELLAN. What would you give priority to in your community? What aspect of the program would you want to give priority to in your community?

Mr. GIRARDIN. No. 1, training.

Senator McCLELLAN. Training?

Mr. GIRARDIN. Yes. No police department can have enough training. We need training, training, and more training, both before the man becomes a police officer and while he is in service. I would say this would be No. 1.

Now, of course, we have a definite manpower shortage. We are about 500 men under our full strength, and this is a big problem for us. But, if the police officers are trained enough, and if we have the hardware—that is, the computer, the communications, and various things like that—we are not going to miss the manpower as much as we do with out it. One trained man probably is worth several untrained.

Senator McCLELLAN. This is the area I had in mind, where possibly we would move into a more or less permanent program of Federal assistance. The proposal to aid communities, or police forces and so forth, to get facilities and equipment, that might be temporary as compared to the other needs.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. I mean once you get them equipped that way, as you say, it should be kept up. But as for a training program, I envision something besides just a training program, or a source of training available just from the local community itself.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. I think by consolidating and taking in areas where you may establish institutes for training of local police, and applicants, and so forth; continuing schools, so to speak. I think in that area we may well anticipate the Federal Government is moving into something permanent, particularly to keep up with the technology and modern progress of the times.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. It is a continuous thing.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. It isn't feasible to just train for today, and then forget about it. I think through this legislation, in that area particularly, we may be moving to the establishment of something that will be permanent, where the Federal Government will have a continuing responsibility, perhaps. I don't want to use that word, but a continuing participation in law enforcement through the country in that area.

Thank you very much. Senator Hart?

Senator HART. Senator, if I could, I will yield to Senator Kennedy.

Senator KENNEDY. I appreciate it. Let me commend you for what I think has been an extremely helpful and useful statement. I must say that I thought it was extremely comprehensive. You have pointed up the importance of community relations and I am in complete agreement with you on this point. I think that you have highlighted the importance of it, and it was, I think, one of the most significant parts of your testimony.

Are you familiar with Mr. Vincent W. Piersante?

Mr. GIRARDIN. Yes. He was our chief of detectives until a short time ago.

Senator KENNEDY. How long did he serve as your chief of detectives?

Mr. GIRARDIN. Approximately 2 years.

Senator KENNEDY. What was his background in law enforcement?

Mr. GIRARDIN. He spent 25 years with the Detroit Police Department, and he retired when his time was up to go with the State attorney general.

Senator KENNEDY. As I understand it, he wrote an article that was published in the New York Law Journal, in which he made a comment about the *Escobedo* case and confessions in general. I believe he also addressed himself to the likely effect of the *Miranda* and *Escobedo* cases on confessions.

I am wondering if you are familiar with his general conclusions?

Mr. GIRARDIN. I believe I am familiar with his conclusions, Senator. I don't believe I read the particular article to which you refer.

Senator KENNEDY. Could you state his general conclusions?

Mr. GIRARDIN. I am just not certain of his general conclusions. If I may state mine, I will be happy to. That is, that I would like more time to determine whether this is going to work for or against society. The *Miranda* decision was handed down, I believe, in June last year. We had some preparation for it by the *Escobedo* decision. I think we saw the handwriting on the wall. But there is quite a difference between the two.

Now, I certainly don't have the impression that we have a revolving door at police headquarters as a result of the *Miranda* decision, but I still feel it is too soon to tell, because 6, 7, 8 months is not a decent length of time to draw definite conclusions as to whether it is good or bad, in my opinion.

Senator KENNEDY. I am delighted to have your expression, because of your extraordinary background in law enforcement. I believe Mr. Piersante would be in accord with those observations, and I think it is extremely useful to have what I consider to be one of the largest and most successful organization, which you head, testify on this matter before this committee. I appreciated your comments.

Mr. GIRARDIN. I thank you, Senator.

Senator KENNEDY. I thank the Senator from Michigan for yielding to me. I regret having to leave.

Mr. GIRARDIN. Thank you.

Senator MCCLELLAN. Senator Hart.

Senator HART. I, too, am grateful to have your impressions, suggestions, and recommendations with respect to the reaction to *Miranda*.

I would like to ask about another bill that has attracted considerable attention here, before concluding by commending you on the strong support you gave to the safe streets bill.

There has been much concern voiced about wiretapping. There is a bill here that would authorize it. I believe you are familiar with the general outline under so-called "safeguards." As a police reporter, as a probation officer, and as a police commissioner, what is your feeling with respect to wiretapping?

Mr. GIRARDIN. Senator, I am afraid of wiretapping unless it is very, very carefully controlled.

Senator HART. Why?

Mr. GIRARDIN. Because, in my experience people have become overzealous in the use of wiretaps—legally or illegally—and this invasion, I think, is a very dangerous situation. Now, I don't have personal knowledge of any great crimes being cleared by the use of wiretaps.

I can conceive of it being a shortcut in, for instance, a handbook operation. I can conceive of it working to the unwary. But criminals certainly are sophisticated enough, I believe, not to discuss their nefarious acts over the telephone. As I say, I don't have personal knowledge of any important case being cleared up that way.

But I am a little afraid that, if it isn't tightly controlled, and used only in certain cases with the tightest controls, it can get out of hand.

Senator HART. We have been told, or I have read, that organized crime finds as its most serviceable weapon the telephone, and the implication at least in that statement is that if you just permit police to tune in on the phone, organized crime would be severely reduced in its power. Do you buy that?

Mr. GIRARDIN. Senator, I just have a strong feeling that certainly around the country there must have been a lot of tuning in on the telephones of organized crime, and I think it is still with us. Whether this tuning in on their phones was legal or not legal, I don't know.

It probably is a shortcut. It takes the place of surveillance. But if it becomes a law, don't you think most people who are the most sophisticated criminals, would be the first ones not to use it at all?

Senator HART. If I can answer the question, "Yes." But I think it is a point that comes better from you.

Mr. GIRARDIN. Then pardon me for asking the question. I meant to state it as my opinion.

Senator HART. Yes, because your opinion means a lot more in the judgment of what we should do on wiretapping than somebody who has not been engaged in the field, which describes me.

Mr. GIRARDIN. Senator, under strict controls and for a limited use—I can conceive, for instance, of a kidnaping. Of course, in that instance it wouldn't be wiretapping so much as monitoring the call. Now we are getting into another area. This would be an eavesdropping type device, to monitor the call, and then to trace back its source as quickly as possible. There are certain emergencies of this kind where a life might be in danger. But it should be carefully controlled.

Senator HART. Your primary responsibility is protecting the public against crime and its effect. I asked you about wiretapping, and you express a great reserve about its use, and suggested several times that it be under very careful control. You haven't told us just how detailed that control should be, what areas of alleged crime it should be available in.

But the broader question, though responsible for law enforcement and public protection, why is it that you voice this great reservation about the use of it?

Mr. GIRARDIN. Well, I think No. 1, we can do our work pretty well without it. No. 2, it is the kind of invasion I don't particularly care for, because often innocent people, are ensnared in this business, innocently ensnared. As I say, I don't know that it has resulted in solutions, that its value has been so great.

But by the same token, I would increase the penalty against any person using it who is not using it legally, under perhaps a high court order, a Federal court. I would increase the penalty, because I think there is far too much of it being used by unauthorized persons.

Senator HART. You replied to Senator Kennedy with respect to your reaction to the *Miranda* case, and you said you didn't want the impression left that the front door of the police station was a swinging door as a result of it. Explain what you have directed be done in the Detroit Police Department as a result of *Miranda* and *Escobedo*, and in the general area of what counsel you give to somebody that is in custody.

Mr. GIRARDIN. Well, if the person is an accused person, we tell him his rights under the Constitution and his rights to an attorney, and that if he does not have an attorney, that an attorney will be provided for him. That attorney then is provided him, not by us but by the court. But we do this if he says he wants an attorney.

In the *Escobedo* case we felt we had the right to continue discussing the situation with him. But I think this might be significant, on whether this has had an effect on law enforcement in Detroit or not.

In the year 1966, we took 1,100 more criminal cases to recorder's court than we did in 1965, with roughly 200 less police officers in the department, and those who are in the department are a lot busier because our business has increased. Crime went up, but so did the others. I can't yet say we lost the possibility of taking Mr. X to court, whom we feel committed a crime, because of either the *Escobedo* or *Miranda* decisions. I think we should reserve some judgment until we have given it all a chance to work. It is a lot easier, of course.

Now instructions to investigate more thoroughly—and this is why we need to pay our officers higher salaries, to get more skilled men—to investigate more thoroughly, to find more circumstantial evidence, if it is there, to find more witnesses, if they are there. I think so often the prosecution is dependent largely on a confession. But I like to see a case where every element is in there and ready to be established.

Senator HART. Commissioner, before *Escobedo*, with its clear requirement of giving advice to the person in custody, what generally was the procedure when a person was in custody?

Mr. GIRARDIN. I just wanted to check with Deputy Nichols to be sure that my recollection was correct. The case would be discussed by the officer with the accused or with the suspect, whatever status he might occupy at that time, and if he admitted the crime, a rough statement would be taken, and he would sign it and usually would conclude by saying that this statement was given freely and voluntarily.

He would then be taken to the prosecutor's office for a formal statement, and at this particular time the assistant prosecuting attorney who took the statement would advise him of his constitutional rights.

Senator HART. Which, as you recall it, was that it could be used against him.

Mr. GIRARDIN. Yes. It didn't go much further than that, if I recall correctly, Senator, except that he had to give it freely and voluntarily, and that it could be used against him.

Senator HART. Pre-*Escobedo* and post-*Escobedo*, if you had a person that the community was convinced in its heart was a criminal, an

old pro, the real threat to society, what did he regard as his rights and what kind of talking did he do, whether it was with or without *Escobedo?*

Mr. GIRARDIN. A hardened criminal never told us anything anyway unless he was in such a position that he tried to make a deal. By a "deal" I mean if he would tell us something we didn't know, usually on someone else, we would go a little easier on him.

However, we are getting this and have been getting this reaction even from children. We have 12-year-olds who are accomplished burglars, and they tell us that we can't take them to court because it is a waste of time. They will just get W. & R., which means in the parlance, warned and released.

We have rapists at 14, stickup men with a gun at the same age. They won't tell us anything, and they haven't for many years.

Senator HART. This is the point. I was trying to determine whether it made any difference in your relations with that kind of individual, whether there was an *Escobedo* rule or a *Miranda* rule or not.

Mr. GIRARDIN. The hardened criminal? There is a saying, "Tell the truth and go to jail." This is very prominent among the underworld in the hardened criminals. This is their philosophy. If they say anything they are going to wind up in prison, so they say nothing, and this is not just current. This has been going on as long as crime.

Senator HART. Then what kind of person is it about whom it is now said that because he is warned, he is told of his rights, and that the rights include "You don't have to talk and you can get a lawyer"—what kind of a person is it that now you don't get a confession from, but you did before?

Mr. GIRARDIN. It is probably more often the casual offender than not. It is probably also the person who feels the need to talk about it. The ones that we are getting the confessions from or not?

Senator HART. No, I am trying to get at what kind of a fellow it is that because the Detroit police now tell him, "You don't have to talk, you can get a lawyer," who doesn't talk, but who would have.

Mr. GIRARDIN. For instance, Senator, if we have say a burglar and we have got a good case against him, he might be inclined, prior to then, say "All right, I will tell you about a lot of burglaries if you do so and so for me." He is less inclined to talk about anything at all now.

I notice in our reports—I have no way of knowing whether these persons who would talk about it or not, but I have noticed in reports, that I read day after day on our regular crime that a person who knifes or shoots another one—and usually this is a friend or a relative, a very dear friend or a relative, it is in a house, it is the kind of crime the police can't very well control—doesn't want to talk about it after he is told that. But usually the victim, if he lives, doesn't want to prosecute anyway because they are relatives or very good friends.

Senator HART. You have described the robber or burglar against whom you have a good case anyway. He might talk in connection with a deal.

Mr. GIRARDIN. Yes.

Senator HART. Is it fair for me to summarize my understanding of your testimony with respect to *Miranda*, that at this time you are not in a position to tell us one case you have lost because of *Miranda*,

and second, that you feel it is too early to make any firm judgment with respect to the course of action which you take?

Mr. GIRARDI. Yes, that is a fair summary.

Senator HART. Let me ask you this. The "slow ball" that is thrown at those of us who feel that it would be desirable not to over-react is this. They say that the crime rate is worst now than it was 5 years ago. Therefore, these cases which insist upon rights being explained to the accused must be responsible for it. They push it further to say that once upon a time, and it may well have been when you were covering the police beat, it wasn't just psychological duress that was involved. Maybe it never happened in Detroit, but some places in the country years ago they used a rubber hose. And the crime rate became worse after the police were told you can't use the rubber hose. Therefore, it was because of no more rubber hose. And isn't a beaten up criminal exactly what should be delivered up to protect the public.

Now, how do you react to that?

Mr. GIRARDIN. Senator, I think it is oversimplifying it, because crime has multiple causation. There are many, many, many factors. The rise in crime has been going up steadily and markedly for at least 15 years, but to attribute it to one thing like a broken home of an alcoholic mother of a father who doesn't understand or poverty or whatever, I think this is too easy and glib an explanation for crime, and it is too complicated for that.

This is one of the things that we have to know more about. What causes crime? What causes this person in the family to become a criminal, and his brother to join the clergy, and another brother to be a model citizen. Or what causes in the "culturally deprived"—if I may use the cliché—area, two boys in this family to be hauled up as murderers, and two boys living directly next door, under the same stresses, the same dynamics, the same pressures, to put themselves through college and become citizens who have something to contribute to society. We don't know. We just don't know those things.

And until we have some of the answers, we won't be able to say how much influence this factor has and how much influence that factor has. We have got to get the whole picture, and this is why I am gratified with the response, gratified with this bill, and also gratified with the National Crime Commission's report, in which they talk about getting at the causes of crime.

I think that if we realize that there isn't any simple answer, and put our collective energies and brains together, we will get at the source and cut it off there, and maybe throw a generation or two away in the meantime.

Senator HART. Commissioner, it is that last point that I want to conclude on, by thanking you for highlighting to us the primary importance that you give to the safe streets bill, and making clear to us the assistance the adoption of it would give you and other police departments across the country.

This is as Senator Kennedy has said, excellent testimony, excellent testimony. I think our chairman has wisely suggested the desirability of getting into this record specific examples of the means that would be used to avail of the authorized money.

I think that it would be useful, Mr. Chairman, to have the Office of Law Enforcement Assistance Counsel in here and tell us what has

been done with the so-called pilot programs that have been authorized under that Local Law Enforcement Assistance Act of several years ago.

I introduced that bill, and at that time I and others associated in that effort explained that we hoped it would enable us soon to expand the program, and that it would enable us to determine the effectiveness with which the Federal Government would contribute to local law enforcement. And clearly, testimony from that office should be helpful to the committee.

Thank you very much.

Mr. GIRARDIN. Thank you, Senator.

Senator MCCLELLAN. I was interested in one of your statements, your last statement that we have got to try to find out some of these things. What was it you said about a "generation or two"?

Mr. GIRARDIN. I said it might take us a generation before we know some of those answers, Senator. I talked about the 12-year-olds who are going out with guns and robbing people, and I don't know what you do about them. I don't know what you do really except get them off the streets.

Senator MCCLELLAN. What is a generation, 20 or 30 years?

Mr. GIRARDIN. Twenty years. I didn't mean to keep this program that long.

Senator MCCLELLAN. Do you know what the increase in the crime rate was, the average during the past 5 or 6 years?

Mr. GIRARDIN. Well, statistics differ so.

Senator MCCLELLAN. I am talking about those that are reported that we usually go by. You see them published in the paper. They come from the FBI, I believe.

Mr. GIRARDIN. The crime reports I estimate in 5 years is perhaps 18 percent on a general increase. I am not sure. I would have to check.

Senator MCCLELLAN. I had occasion recently to check on this. My recollection is I think it is 8.6 percent average increase annually. Now one year it went over 10, and another year it went below this, but the average for I think 5 or 6 years, as I made the calculation 2 or 3 weeks ago, it averaged eight-point-something percent as I remember. It is 8.6 or 8.9; I am not sure.

Did you ever make a calculation throwing away a generation?

Mr. GIRARDIN. No.

Senator MCCLELLAN. Did you ever make a calculation at 8.6 or 10 percent or some calculation like that; if crime continues to increase at that rate, annually, from now until 1975, how many crimes would be committed in this country by that time, or for 20 years or a little less, say to 1985—how many crimes will be committed by that time on an annual basis?

Mr. GIRARDIN. Yes. Senator, maybe I didn't make myself clear. I live with this 24 hours a day, and I believe in doing everything we can, and that is why I am so strongly in support of this bill.

Senator MCCLELLAN. I favor this bill, too.

Mr. GIRARDIN. But I say before we know the causes of crime, it might take that long, and in the meantime our efforts will be somewhat stopgap, but we have got to get these people off the streets.

Senator MCCLELLAN. We have got to get the criminal off the street.

Mr. GIRARDIN. That is right, that is what I am saying.

Senator MCCLELLAN. How are you going to get the criminal off the street except by detection and arrest and punishment?

Mr. GIRARDIN. That is why I want more training.

Senator MCCLELLAN. Building a deterrent where he will not have the inducement to commit crime.

Mr. GIRARDIN. There is no other way that I know of.

Senator MCCLELLAN. That is right. Now according to my calculations, and these are conservative, if I am not mistaken—I have lowered the rate—at the rate we are going now, we had 3 million crimes committed last year, that is reported crimes.

Mr. GIRARDIN. Yes.

Senator MCCLELLAN. And all of the statements are that there are two to three times and sometimes as high as 10 times as many committed as are reported, but there are over 3 million reported in 1966, and this crime rate—I haven't taken it for the last year or the highest year, but over a period of 5 or 6 years that I have made this calculation—that is the average.

Now, if crime increases that much each year, averages that from now until 1975, on the basis of our present calculations and on the basis of present reporting, there will be 7,500,000 crimes committed annually—major crimes—and if you project it on to 1985, which is a little less than a generation, it will be 15 million major crimes.

My contention is that we can't—our society can't tolerate that much crime in this country. I don't believe it can. I believe we will have absolute chaos. You talk about now having 12- or 14-year-old kids. They know what the law is. You can't do anything with them. Who will obey the law, when you get a condition like that? Who will respect it? Who will respect the institutions of law enforcement, when a condition like that prevails in this country? Nobody will.

You hear people talking today about taking the law into their own hands. Why? You hear people talking about getting guns to keep in their homes, who never kept a gun. Why? Just because of what you pointed out—fear. Fear of what? Crime. Why? Because we are not doing enough about crime. The criminal is still at large and is still on the streets.

You talk about this *Miranda* decision having no impact. Let me ask you this. Do you doubt that the *Miranda* decision is causing cases to be dismissed where the defendant is absolutely guilty?

Mr. GIRARDIN. Senator, as I said, I don't know of a case. It may, it may not. I would like more time to gather statistics and see what effect it has.

Senator MCCLELLAN. I assume we can take the opinion—I am not saying from now on, but I ask you, would you say now that there are no cases having to be dismissed, where the defendant is known to be guilty, has confessed his crime, simply because of the *Miranda* rule?

Mr. GIRARDIN. No, sir; I don't know. I did not say that. I don't know that that is true, but whether they have or have not been, and I wouldn't say they have not been——

Senator MCCLELLAN. Well, we have had testimony here and you have seen headlines in the paper.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. That give you concrete illustrations, about a man who murdered his wife and five children.

Mr. GIRARDIN. Yes.

Senator McCLELLAN. And being turned loose, and the same judge said—I think at the time he commented on it—that there had been two other similar cases like it recently in that jurisdiction. We hear of them everyday from policemen and from headlines in the newspapers and from judges who have testified here.

In view of that, I don't see how we can say, unless we disbelieve them, that the *Miranda* decision is not having some impact upon the crime rate in this country.

Mr. GIRARDIN. Senator, it may be having an impact on the crime rate. I think what I said was this. That I don't know of a specific outstanding case in my district where we could attribute it to the *Miranda* case.

I think that there are many factors that contribute. Maybe some people are walking the streets who shouldn't be. I have read about them—yes, who should not be—because of confessions that were made that were not in accordance with the law.

Senator McCLELLAN. What do you think the impact has been of these headlines portraying this all over the country about murderers getting loose on such a flimsy pretext—such as he wasn't told that he could have a lawyer—yet known by his own confession to be guilty? What impact do you think that has on people who are on the borderline of becoming criminals?

Mr. GIRARDIN. I don't know.

Senator McCLELLAN. It is not conducive to persuading them not to enter into a life of crime, is it?

Mr. GIRARDIN. No, it isn't, Senator. You are right. But I also think that the person who commits a crime doesn't think he is going to get caught.

Senator McCLELLAN. Well, they are beginning to have more reason for believing that these days, with the crime rate as it is and with less punishment for crimes.

Mr. GIRARDIN. That is right. Our prisons in Michigan have a 25 percent smaller population than they had 6 years ago.

Senator McCLELLAN. Notwithstanding the increase in crime since that time.

Mr. GIRARDIN. The population in the State has gone up and the rate of crime has gone up. Yet our prison population is down 25 to 30 percent.

Senator McCLELLAN. You can't attribute that to better law enforcement, can you?

Mr. GIRARDIN. No, I can't attribute it to that, not when we are taking more people to court than we ever did, Senator. But I think there is a more liberal parole and probation policy.

Senator McCLELLAN. The point I am getting at, when you get these hardened criminals they ought to be kept confined until they can demonstrate that they successfully have gone through a reformation and it is safe to turn them loose. When we turn them loose after they have been convicted of these henious crimes, before they have demonstrated that it is safe and that society will not be endangered by liberating them, I feel very strongly they ought to be kept confined.

Mr. GIRARDIN. Senator, it is very hard to get accurate statistics, but as near as I can come to it, 97 percent of the persons who go to a penal institution come back into society again.

Senator MCCLELLAN. How many?

Mr. GIRARDIN. About 97 percent is the closest I can come to it, come back.

Senator MCCLELLAN. What percentage of them go back to the penitentiary?

Mr. GIRARDIN. In our State prisons, and I think you will find this is true in a survey around the country in the State prisons, about 70 percent of the inmates have been in a penal institution before, either as a juvenile in a reformatory, so called, or in an adult installation.

Senator MCCLELLAN. Now one or two other questions. I understand you didn't want to testify on any of these other bills. That is my understanding, and I didn't ask you any questions about them. But you have gotten into other areas now, you challenged the wisdom of wiretapping. You say there ought to be a lot of restrictions on it, and I wholeheartedly agree with that word "restrictions."

I don't think it ought to be permissive as it is today under existing law. In the State of New York, as I understand it, there has been a wiretap law for quite some time, several years that they have used it. The officers who are coming down here testifying before us tell us they know of no abuses of it. Of course, I suppose there are always abuses in everything to some degree.

Mr. GIRARDIN. Yes.

Senator MCCLELLAN. But none of a consequence, from their experience, yet you say you don't know that authorized wiretapping helps law enforcement. The New York officials testified that it helps. They have had experience with it. Have you had any experience with it?

Mr. GIRARDIN. No. It is only hearsay.

Senator MCCLELLAN. I think maybe they would be better judges as to that issue.

Mr. GIRARDIN. I do, too.

Senator MCCLELLAN. New York law enforcement officials have been handicapped by a Supreme Court decision indicating that evidence is not admissible even if they get it, nor are the fruits of it admissible. They can't use it because of the interpretation the Court has placed on the Federal Communications Act. It is not admissible in court; to use the evidence they found would be a breech of the Federal law.

I take the position—and I am as much for protecting privacy as everyone else—and I am just as much for law and order—and I am just as much for disarmament, if it can be done safely.

But the thug, the robber, the burglar, the gangster carries a gun. I would rather see no citizen carry a gun. I would rather see policemen without guns. But I don't favor sending the policeman out after such characters without protection. We have heard testimony over and over, that these criminal elements, particularly the organized elements of crime, use the telephone extensively. The only contact the fellow who actually commits the crime has with the higher-ups, or "boss," is through the telephone.

Now if we are going to deny law enforcement agencies the use of the same tool that the criminal is using to promote his nefarious trade,

why then the criminal has an advantage. I think under certain circumstances that we can trust our courts and police commissioners like you, and district attorneys who are under oath and who are dedicated to law enforcement, to handle a tool, an instrumentality like this, without being fearful of abuse of this authority.

I know you say sometimes you hear an innocent conversation, something you ought not hear. That might be true. But you get a search warrant and go in somebody's home and you may see some things you didn't expect to see or want to see, and that nobody wanted you to see, when you go in there to search for stolen property.

I tell you today we are going to have to forget about some of these trivialities—worrying with all this sentimentality that somebody who is innocent somewhere some time might suffer a little injustice. But above all we are being told, let the criminals go, don't use weapons against them that are vital in this day—vital, essential, and indispensable if we are to compete with their tactics.

I hope you will consider that. If we enact this law, you don't have to use it, but those who want it and feel they can use it judiciously and effectively to enforce the law can use it and I believe we can trust them to do so. There may be an exception now and then. We have exceptional situations all the time. We sometimes have the exception of a policeman sometimes who takes a bribe. You have sometimes an exception in a lawyer who may become a crook. You have exceptions in all places.

But generally I believe you can trust and put confidence in our law enforcement officials, those with high responsibility, not to abuse or violate the use of an instrumentality of that kind that is so urgently needed.

Are there any other statements you wish to make?

Mr. GIRARDIN. No, sir.

Senator HART. Mr. Chairman, the Commissioner did, in reply, as he concluded, express a willingness to answer any questions with respect to other legislation.

Senator MCCLELLAN. I said I had understood that he didn't want to, and I didn't question him about any other bills.

Senator HART. Isn't it true that one of the problems of society is that the dishonest guy has a lead over an honest guy?

Mr. GIRARDIN. That seems to be one of our problems.

Senator HART. And the Bill of Rights somehow or other was intended to guard against using Government instrumentalities too vigorously to cut down the lead.

Mr. GIRARDIN. I believe that is why it was written.

Senator HART. That is what I believe.

Senator ERVIN. And when the dishonest guy wants to make an honest and voluntary confession, it doesn't help the honest people in society to deny him, to erect artificial inducements to keep a dishonest person from making an honest confession, does it?

Mr. GIRARDIN. No, sir.

Senator ERVIN. Thank you.

Senator HART. If he wants to make a confession hard enough, he can do it after you have told him.

Mr. GIRARDIN. This happens.

Senator McCLELLAN. In your experience, it is almost useless to interrogate anybody.

Mr. GIRARDIN. No.

Senator McCLELLAN. Well, they are not going to tell you.

Mr. GIRARDIN. Pardon? Oh, the hardened prisoners.

Senator McCLELLAN. The hardened criminal.

Mr. GIRARDIN. Senator Hart asked me if we got much cooperation from the hardened criminal. As a rule, no; because he feels he is going to put himself in trouble.

Senator McCLELLAN. If he already knows enough now not to cooperate, it seems to me that if the arresting officer happened by inadvertence not to tell him of his constitutional rights, and he did make some statement that might be incriminating, it seems to me that that would be a poor excuse to turn him loose, if he is guilty.

Senator HART. But that goes to the basic problem. The smart bad guy won't. He knows his rights and doesn't have to be told. What do we do about the stupid bad guy, for whom there isn't a right unless he is told about it?

Senator McCLELLAN. Take this man who killed his wife and five children, is that the illustration?

Senator HART. Is that the one with 100 stab wounds?

Senator McCLELLAN. I didn't see the count. Whether it was one or 100, they were dead.

Senator HART. My reaction when that was discussed, I wondered if they had any sanity hearing.

Senator McCLELLAN. They did, and found him sane, so the papers report. I say it is a sad commentary on our system of justice when a man can murder his wife and five little children, and admit it, and then be turned loose on a technicality—because somebody didn't tell him he was entitled to a lawyer. I think it is tragic.

Senator HART. It is tragic. It is a technicality that you couldn't use a rack, and we got away from that. I mean these are all technicalities intended to protect substantive rights, and this is the reason it isn't so easy to sit around here and write a general rule with respect to the protection of the Bill of Rights.

Senator McCLELLAN. We are forgetting about the right of the people who get killed, get murdered, get robbed and mugged. We are forgetting about that. They have some rights, too.

If a fellow confesses that he murdered a member of my family or murdered your child, how would you feel about him being turned loose because some policemen failed to tell him he was entitled to a lawyer, something he already knew anyhow?

Senator ERVIN. The trouble is not an inability to write a clear rule. There is a clear rule written on this point in the fifth amendment which says no person shall be compelled to be a witness against himself in any criminal case. That is about as clear and about as simple a statement as could be made in the English language.

Chief Justice Marshall said the people who drafted that and ratified it, it must be assumed that they meant what they said. The trouble is, in the *Miranda* case, five men, who had no authority to change the meaning of that expression undertook to rewrite it, and did rewrite it in a manner which is highly inconsistent with that statement of the constitutional principle.

Thank you.

Senator MCCLELLAN. I have a letter here from one of your colleagues, the chief of police of one of your cities in Michigan, speaking of the *Miranda* case, and he says, among other things:

"It has made police recruiting tenfold more difficult."

Mr. GIRARDIN. Recruiting?

Senator MCCLELLAN. Recruiting of policemen. I can understand why they are short of police. They are not well paid in the first place. They are not adequately paid at all.

Mr. GIRARDIN. No.

Senator MCCLELLAN. In my judgment, I think they ought to be paid more and they ought to be better trained. I am strong for it and I am going to support this safe streets crime control bill, because I think it is very, very important. But I can understand why people don't want to become policemen today.

They work their hearts out and take a chance with these crooks, expose themselves to danger, place their lives in jeopardy and go through all of that, and then after several months, the fellow is turned loose because somebody didn't tell him that he was entitled to a lawyer, and everybody who knows the law in this country knows he is entitled to a lawyer. The policeman has seen this and lived with it.

Of course they know they are entitled to a lawyer. We have received several letters from chiefs of police in your State who are supporting the position that something must be done about the effect of the *Miranda* decision.

Thank you very much. I appreciate your appearance. In discussing this with you, you are certainly entitled to your opinion and I appreciate your coming here.

I want to get the other side of it and see what can be presented in opposition to these bills. I want to get the most forceful arguments that can be made against them in this record.

Mr. GIRARDIN. Thank you, Senator.

Senator MCCLELLAN. Mr. Tamm, come around please. The previous witness submitted a report of police-community relations in Detroit. I am sure he wanted it to go in the record. It will be printed in the record at the conclusion of his testimony.

(The statement referred to follows:)

POLICE-COMMUNITY RELATIONS TRAINING IN DETROIT—EXPERIENCE REPORT 106—COMMUNITY RELATIONS SERVICE, U.S. CONFERENCE OF MAYORS

INTRODUCTION

MAY, 1966.

Of necessity, American cities are increasingly interested in effective police training in community relations. The need was indicated by the 1965 survey of 310 cities, jointly conducted by the U.S. Conference of Mayors and the International Association of Chiefs of Police. Less than a third of those cities had formalized police-community relations programs, and even in those having some community relations training, there was wide diversity of quality and type of programs.

Of the recently increased number of training programs, the most significant are those which can be adapted to the conditions and resources of other communities. Such an operation was undertaken in Detroit during the summer and fall of 1965 and is being reported here for the benefit of those Mayors seeking information on other cities' experience.

BACKGROUND

In a four-month period, 1800 of Detroit's 4463 policemen participated in a 20-hour, four-week training course which covered all aspects of police-citizen problems. The program was voluntary and was held outside regular duty hours. The officer was paid $3.50 per hour for attendance. The training involved virtually all officers of the inner-city precincts in which a majority of the city's low-income and Negro citizens live. These officers' work experience, feelings and frustrations presented both a challenge and an opportunity to the course planners and instructors.

Considering the difficulties, the program was unusually effective (in the opinion of close observers) because it *began* to change the police officers' perceptions—of themselves and their work, and of minority groups' problems and attitudes. And it gave them some increase in skill and confidence in handling daily problems.

If that judgment is accurate, credit should go to a course design which, in handling the most complex and emotional parts of police work, used real-life situations, enabled the men to talk and think freely about them, and kept the lecture portions of the program in a supporting rather than dominant role.

HOW THE IDEA WAS BORN

The starting point was a 1964–65 study by Greenleigh Associates, a management research organization, of the social services that deal with poverty in Detroit. (The study, a major part of Detroit's Community Renewal Program, was approved and jointly financed by the federal Housing and Home Finance Agency and the City.) One of Greenleigh's recommendations was that police be given special training in understanding and working with persons in low income areas; that they should learn to handle the problems of minority groups and other culturally deprived residents with whom they come in contact with deeper insight and tolerance. It was stressed that average officers who have a good understanding of their job have a great potential for bringing to bear practical delinquency and crime prevention programs.

FEDERAL AID SECURED

The Greenleigh recommendation moved Detroit police officials to seek a federal anti-poverty grant of $213,222 for police training, to be jointly operated by the Police Department, the Commission on Community Relations (CCR), and the local anti-poverty agency, Total Action Against Poverty (TAAP). The grant was approved in June, 1965, and from July through October, 1965, the 8-session course was repeated four times.

In establishing the need for the program, it was emphasized that the summer months in the City of Detroit are marked by rising unemployment and increases in certain types of crime. Based upon data supplied by the Michigan Employment Security Commission and the Detroit Police Department, unemployment averages 21% higher during the summer months while the number of assaults and reported cases of larceny are 13% higher. In precincts where the majority of low income families and minority groups live unemployment, the number of street crimes and police contacts are over twice the rate elsewhere in the city.

DESIGN AND CONTENT

Based upon an earlier manual developed in connection with a Philadelphia police training project (Arthur Siegel and Associates, *Professional Police-Human Relations Training*, Springfield, Illinois: Chas. C. Thomas Co. 1963) the project staff adopted both the format and the specific study materials to coincide with situations in Detroit.

The staff adapted new case material to local situations and to specific class needs as they emerged. Fundamental to the approach taken in the program was the belief that hostility to police is not caused so much by occasional incidents where excessive force may be involved, as by the chronic repetition of clumsy manners, insensitive and rude communications to citizens, and thoughtless indignities. This reminder ran throughout the materials.

In the Detroit course, each class period of 2½ hours was divided into (1) a specialist's presentation on a police-related subject, and (2) the role-playing of a real-life police case, followed by free discussion of it in small groups. Each group's ideas were then reported to the full class.

LECTURES

Typical course lectures ran as follows:

Challenges of Contemporary Law Enforcement—by a local judge.
Successful Police Work in the Light of Recent Court Decisions—by a lawyer.
Community Changes as It Affects Police-Community Relations—by the executive of the Citizens' Committee for Equal Opportunity.
Law Enforcement and Prejudices—by a psychologist.
The Police in Emergency Community Situations—by a police sergeant.
Professional Police Work in a Changing Society—by an Oak Park (Ill.) officer.
The Civil Rights Movement in Perspective—by an ex-director of the Michigan Civil Rights Commission.
Increasing Community Support for Police Work—by the Director of the Chicago Police Department's Police-Community Relations Bureau or by a staff member of the International Association of Chiefs of Police.

A question period followed each lecture, then a coffee break, during which tables were set up for the group discussion to follow.

DISCUSSING "REALITY"

With each class of 60 regrouped ten at a table, police "actors" role-played a typical episode depicting the more frictional and difficult aspects of police dealings with citizens. Other cases were read aloud prior to discussion. After the case presentation each table group argued how the police could have handled it better, and all groups reported their ideas in a quick general session. This was repeated with stage 2 and 3. In mimeographed case materials, discussion questions challenged the men.

This part was the life and heart of the training process. It gave each man the chance to tap his experience, say what *he* would have done, and defend his idea against the next man's. A mark of the effectiveness of this material was the continuing debates back in the squadroom. This stimulated considerable interest among the officers awaiting training in later sessions.

CASE SYNOPSES

Brief descriptions of the cases follow:

In "House Search" white and Negro vice squad officers, with search warrant, visit the Rossi's on a "numbers" tip. Mrs. Rossi's reaction, her reference to Negroes, the Negro officer's crack about Italians, the manner of the search, and the officers' apologetic departure—all this invited lively second-guessing.

"Argumentative Neighbors" involve police in two men's squabble about parking space; suddenly they must deal with an anti-Semitic insult, too.

"Molesting a Female" tests the officers' skill in dealing with an intoxicated white woman and a Negro man. Is she his common-law wife, as he claims?

"Crowd" begins with an illegally parked car, and police questioning its Muslim owner, but as a crowd forms and "brutality" remarks multiply, the situation becomes stickier.

"Street Loitering" involves Appalachian men at a corner on a hot night; ordered to move on, they return soon; when the police come by again, and frisk the men, resentment and blows result. How do you get along with hill folk?

"Fights and Riots" mixes liquor, a Mexican, three white men attacking him, police arriving, and a Negro in the crowd trying to tell an officer that the Mexican was blameless. Both minority men feel misunderstood and maltreated by the police reaction.

"Drunk" depicts an officer's urging a drunk to go home, then dealing with the man's collapse, and convincing the crowd that no "brutality" had occurred.

A FIRST IN THE NATION—CITIZEN PARTICIPATION

Almost unheard of in police training was the invited presence of citizens during the lecture part of each session. It was done to give them more understanding of the difficulties and problems of police work. Then during the coffee break the guests (usually three in a session, and different ones each time), had

their coffee in a nearby room with police coordinators and Community Relations Commission staff men. This gave the citizens a chance to comment on the lecture, air their views of police work, and to suggest how to improve police-citizen relations. They were invited and urged to help that process by reporting their experience back to their neighborhood groups and friends.

A number of the citizens were proposed by inner-city organizations, block leaders and neighborhood councils. Some were suggested by precinct commanders. An effort was made to find persons who could improve two-way communication. Before attending they were briefed by Community Relations Commission staff. They were paid $3.50 an hour from OEO funds.

At first some police participants were dubious if not suspicious of such attendance. But the 'outsiders' did not attend the group discussions where they might have been a distracting or inhibiting factor. Superior officers were generally convinced that civilian participation was a strong asset and aid to future benefits from the training. Among the officer-participants themselves there was general acceptance of the value of this type of citizen participation as the course progressed. It was agreed by all those connected with the program that this aspect of the course design made an important contribution to its impact and success.

SUMMARY OF KEY ELEMENTS IN DETROIT PROGRAM

1. The program was voluntary and was conducted on the officer's off-duty time with compensation.
2. The case approach and the real-life nature of the material was made as relevant to the working patrolman's experience as possible.
3. The experts' presentation, which provided timely information, were made less lecture-like when balanced with free discussion. Parts of each presentation could be related immediately to the case material.
4. Participation was built in, far beyond customary police training. Nearly half of the time the men were questioning the lecturers or discussing the cases in small groups. Following the role-played case or the reading of a case, the discussion groups compared ideas and reactions.
5. Identification of the case situations with the officers' own experience was given repeated emphasis.
6. The absence of 'right answers' in the case situations was deliberate: the officer was allowed maximum freedom of opinion—but then he had to defend it against comrades who disagreed. Group leaders stressed professional role of police.
7. The variety of ethnic and religious intergroup situations discussed conveyed the dimensions of low income status facing the policemen. Not just race.
8. Ventilation of police gripes against citizens was not prohibited. Recognition was given, however, to the necessity to uphold the law regardless of the attitudes involved.
9. Presence of civilians in the lecture section, though partly symbolic, was a healthy novelty, which the police acepted. The innovation was not lost upon neighborhood groups to whom the citizens reported.
10. "Saturation and contagion" effects were achieved giving this experience to nearly all policemen in the inner-city within four months. During that period the talk in squadrons reflected curiosity and questions among those who were taking or had completed the course. The talk indicated that new ideas were being stimulated and were getting attention.
11. The program cost $213,222 (10% city; 90% federal). This works out to about $118 per man. At $3.50 an hour, each officer participant was paid $70. Speakers fees, staff salaries, clerical services, and materials account for most of the remainder.
12. The program was coordinated by both the Police Department and the Commission on Community Relations, emphasizing community involvement. Key consultants were drawn from both academic and civic resources.

SUMMARY

While this program was undertaken initially as a demonstration training project, it is expected that it will be further developed and will be funded again this year. Meanwhile, course outlines, discussion guides and case studies are available for those who may be interested from the Detroit Commission on Community Relations, Water Board Building, Detroit, Michigan.

78-433—67——22

Senator McCLELLAN. Mr. Tamm, you are the executive director of the International Association of Chiefs of Police. You live here in Washington?

STATEMENT OF QUINN TAMM, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, WASHINGTON, D.C.

Mr. TAMM. Yes, that is correct, sir.

Senator McCLELLAN. You have a prepared statement?

Mr. TAMM. Yes, I do have.

Senator McCLELLAN. Very well, you may proceed to read it if you like. You may give us any other background that you feel should be in the record regarding your experience and qualifications to speak on this subject.

Mr. TAMM. I will say that I have had some 32 years experience, sir, in the field of law enforcement, including 6 years as executive director of the International Association of Chiefs of Police, and if I may be permitted, I do have a statement that I would like to make.

Senator McCLELLAN. Do we have copies of it?

Mr. TAMM. Yes, sir.

Senator McCLELLAN. You may proceed.

Mr. TAMM. Senator McClellan, on behalf of the 6,500 law enforcement executives who comprise the membership of our association, I first want to express to you and your colleagues our very sincere appreciation for the exemplary work you are doing in focusing attention on the growing restrictions upon the police and their ability to perform their duties effectively. These hearings are most welcome from this primary standpoint.

My colleagues and I have been greatly encouraged by the bills which you and other concerned Senators and Representatives have introduced in the 90th Congress to give some aid and relief to the dedicated, hard-pressed police officers responsible for protecting the lives, liberties, and properties of American citizens.

It seems to me we are living in an age of paradox. While we of the police, like all other citizens, are thoroughly in favor of the balance of power concept of our Republic, we admit to some confusion. We are confused because it seems that as greatly as the executive and legislative branches toil to help the police and to bring about a decrease in crime, the judicial branch (in the form of our U.S. Supreme Court) appears to be applying itself just as assiduously to stripping the police of their traditional, time-tested, and previously acceptable devices and techniques for combating crime.

I consider it no exaggeration to state unequivocally that we have the best trained, best educated, and most efficiently led policemen today that we have ever had in our Nation's history. I take particular pride, if I may say so, in the steps that the law enforcement agencies themselves have taken to improve their departments. I feel that law enforcement and police particularly have been the first to recognize the need for improvement.

The interest and concern that have been so thoroughly demonstrated by the congressional and administrative branches of our Federal Government promises that our capabilities will soon be aug-

mented with more modern scientific tools, equipment, and means of communication, all of which should add up to making it more difficult for the criminal to prey upon society with impunity. At the same time, however, as fast as we adapt modern technology and social concepts to police use, we find ourselves being denied the use of the simplest basic investigative techniques by virtue of Supreme Court decisions.

When he dissented in the *Miranda* decision, Justice Harlan said, "This Court is constantly erecting new stories in the temple of constitutional law, but temples have a way of falling when one story too many is added."

With this statement, I most heartily agree.

Almost 200 years ago, 55 Americans among them merchants, bankers, farmers, doctors, soldiers, lawyers, and educators met in a room in the city of Philadelphia. Some of them were rich; some were poor. Some of them were from the North; some of them were from the South. The bonds that drew them together were love of their new country and their fervent resolve to safeguard its people and its institutions. The results they achieved made them immortal. They were the framers of the Constitution of the United States.

I firmly believe that these men of vision and dedication foresaw the power and majesty of the Nation whose course they charted during those troubled days of 1787. I am equally convinced, however, that these men of vision never dreamed that the United States would one day be plagued by an epidemic of crime so sinister, so virulent, and so widespread that it threatens the well-being of every law-abiding citizen.

Those 18th century days were austere ones. They were days of hard work and sacrifice conducted in accordance with the Biblical concepts of an eye for an eye, a tooth for a tooth; swift, stern, and righteous justice in retribution for evildoing. I am certain that the framers of our Contistution never intended it to be distorted into a technical instrument for the benefit of depraved criminals.

I believe that the law-abiding merchants, doctors, lawyers, farmers, soldiers, and educators of today are generally as shocked and dismayed as their forefathers would have been at the execessive concern evidenced in recent constitutional interpretations with the well-being of the wrongdoer rather than the well-being of the law abiding.

Certainly no right-thinking man would condone the railroading of a fellow citizen through abuse of his God-given and constitutionally provided rights. On the other hand, responsible men must know that that nearly divine instrument which we call our Constitution cannot long be used to serve the criminal rather than the law-abiding citizen if our land is to endure as a place of peace and domestic tranquillity. Constitutional safeguards are for the good of all, not for the criminal minority alone. The law-abiding citizen wants and deserves his constitutional rights, but, he also wants and deserves the protection of the power of the laws stemming from the Constitution. We are in the inconsistent situation of seeing the Constitution used to negate the effectiveness of our laws.

Honorable Americans believe in the law. They do not fear it. As one great legal writer said, "To the law-abiding person a law forbidding robbery is no more felt as a restraint than is the necessity of wearing clothes."

I recently read what I believe is an apt delineation of Government's responsibility. I quote, "Government has no right to turn the cheeks of its citizens. Instead, it is gravely obligated by the very purpose of its existence to see to their protection." I am of the firm opinion that the majority of the decent people of this country have had about enough of a judicial system which allows criminals to roam the streets and commit vicious, depraved acts time after time after time. I believe our citizens are fully aware of the situation, and I predict that if there is not a turning point reached soon toward more realistic Supreme Court decisions we are going to witness one of the greatest surges of outraged citizenship that we have ever seen.

First, the populace must be informed and understand what is being done to them. Then, I believe, they will demand action to safeguard themselves and their families. I think the average man now knows what Supreme Court interpretations like the *Miranda* decision are doing to this country.

Senator McClellan. Would you suspend? There is a rollcall vote. We will return just as soon as we can. We appreciate your patience with us, but we can't help it.

(Short recess.)

Senator McClellan. The committee will resume. You may proceed, Mr. Tamm.

Mr. Tamm. In continuing my statement, Senator, in December 1966, CBS News posed a series of questions to a cross section of the U.S. population 18 years of age or older. Among these questions on current events was a query, with multiple-choice answers, concerning the *Miranda* decision. Sixty-two percent of the respondents knew what the *Miranda* decision dictated. According to the report, a majority in the country is apparently concerned about the consequences of this Supreme Court decision. Asked, "Do you think that the police should again be allowed to be tougher with suspects than they can be now?"—56 percent said "Yes." Asked, "Do you think that the present restrictions on the police are correct and fair?"—only 32 percent said "Yes." These responses held true for both urban and rural population groups, although responses against the *Miranda* decision were more pronounced among older people.

I do not intend to describe to this subcommittee certain specific and horrifying examples of distortion of the law because of recent Supreme Court decisions. You have heard testimony from practicing police executives who, I am sure, can do this much better than I. I will also leave to them the factual tasks of revealing to you how the *Miranda* decision has adversely affected their actions as law enforcement officers.

I do want to mention one aspect, however, which may not have been considered, and that is the effect of such Supreme Court decisions on police attitudes and morale. I submit that no man will continue to try to do the best job he can when, day by day, the means of performing that job are being withdrawn. Even a ditchdigger will lose interest if his tools are taken from him. The old so-called open-and-shut case is rare in this day and age. Crime is a complicated business. Coping with it is becoming even more complicated, and the police are now surrounded by such a murky atmosphere of court decision and judicial indecision that about the only type of crime they can

take decision action on is the crime of violence which occurs before their very eyes. An opaque curtain of judicial protection now cloaks the activities of the criminal, and it is becoming more and more difficult for the police to part this curtain. As a result, many of them are becoming understandably reluctant to even try. So, when we ask whether there are any statistical results as far as judicial restrictions on police are concerned, it must be borne in mind that there is such a thing as a "ghost" statistic which never comes to light.

The President's Crime Commission told us that there are many, many crimes which are never reported. Let me add that there are many, many crimes that may be detected by the police but which go unsolved because all avenues to solution have been blocked. The true effect of Supreme Court decisions is like the proverbial iceberg, where the great mass lies unseen beneath the surface.

Once again, I commend you to your task, and I respectfully urge you to act with unswerving vigor in bringing about the necessary legislation or constitutional amendment to strip the hoodlum of his power, and return it to the hands of the man who must enforce the law.

I should like to add that we are gratified with President Johnson's vigorous interest in helping the police fight crime. All in all, the report of the President's Crime Commission is a workable blueprint for building a sufficient force against crime. At the same time, however, we must eradicate the paradox. We cannot have one hand of Government turning the key on the criminal while the other hand opens the back door for his escape from punishment.

In this connection, with the appointment of the Honorable Ramsey Clark as Attorney General of the United States, I note that the distinguished Justice Tom C. Clark has indicated he will retire from the bench. The present composition of the U.S. Supreme Court has certainly not resulted in decisions generally evidencing understanding of the police problem as the 5-to-4 decision of late have indicated. I sincerely hope that when the President considers the appointment of the Justice to replace Justice Clark he will bear in mind the need to maintain at least as much balance as exists today. With crime on the rise, and the police increasingly restricted and made more impotent, this is no time to have the Supreme Court become even more one-sided in its interpretative philosophies.

Your statement, Mr. Chairman, in this regard as quoted in the Washington Post on Friday, March 3, 1967, sums it up most aptly and comprehensively: "I can only express my hope that the President will name a replacement who shares his (Ramsey Clark) father's philosophy that recent decisions are doing great damage to law enforcement." We of the police hope most fervently that you gentlemen of the Senate will use your influence and your voices in this matter.

I am honored and grateful to have had this opportunity to appear before this committee. I can assure you that you have the hopes and support of the members of our association in your deliberations on this vital problem.

Thank you very much.

Senator McClellan. Thank you very kindly, Mr. Tamm. I am going to defer to my colleague, Senator Ervin, who, I believe, has an appointment shortly.

Senator ERVIN. I appreciate it. From your experience, can you estimate the percentage of persons who are charged with serious crimes who already know that they have a right to remain silent when they are taken into custody, and who already know that anything they say derogatory to themselves can be used against them in court, and who already know that they have a right to counsel?

Mr. TAMM. I would say, sir, from my experience, that the large majority of criminals know that they don't have to say anything, that they have the right to counsel.

Senator ERVIN. I will ask you if you don't see, every day, some article where somebody charged with murder, or some other serious crime, is turned loose because the arresting officer failed to give him these instructions?

Mr. TAMM. This is becoming more apparent in the newspapers every day, sir.

Senator ERVIN. And so, as a practical matter, as a result of the *Miranda* decision, we have to free murderers, rapists, or robbers throughout the land, merely because the arresting officer did not tell them something they already knew?

Mr. TAMM. I think this is generally true, sir, with regard to crime in general, and crime as a whole, and I think you only have to look here in the District of Columbia to see that you are having a greatly increasing amount of crime. I believe, and I may be wrong, but I believe I read that crime increased in February of 1967 over February of 1966 some 42 percent. But also, and a very significant fact, is that the number of arrests and the number of cases that are being taken to court in the District of Columbia has been materially reduced.

Senator ERVIN. Do you agree with me that it would be very difficult for the wisest of men, after studying the problem, to devise any way that is more efficacious to prevent people from ever making voluntary confessions of guilt than what was done by the majority opinion in the *Miranda* case?

Mr. TAMM. I think from what I have been able to see of it, I would say it has been most effective.

Senator ERVIN. As a practical matter, most people who make a voluntary confession to an arresting officer normally make it when they are first arrested, don't they?

Mr. TAMM. Yes, sir.

Senator ERVIN. And they make it, you might say, at the stationhouse when they are just taken into custody?

Mr. TAMM. Very early in the proceedings, yes.

Senator ERVIN. And if a man, before he can be questioned at an early stage of the proceedings, has to have a lawyer present, the lawyer would ordinarily be one who has not had an opportunity to investigate the circumstances of the case, and as a matter of precaution he will tell the suspect to keep his mouth shut, won't he?

Mr. TAMM. If I were a lawyer, I would, and most lawyers do; yes, sir.

Senator ERVIN. And so as a practical matter, the decision in the *Miranda* case is calculated to prevent or at least to minimize the number of voluntary confessions that are made, and it will have that effect, won't it?

Mr. TAMM. Yes, sir, in my opinion, it will.

Senator ERVIN. Do you think that, at any time, men go around voluntarily acknowledging that they have committed a crime?

Mr. TAMM. No, sir.

Senator ERVIN. Do you know of any evidence which has more convincing force to prove that a man is guilty of a crime charged against him than his own voluntary confession that he is guilty?

Mr. TAMM. No, sir. A great number of the cases that go to court, and a number of the cases that were mentioned in the Supreme Court decision as being a decisive indication that so many cases going to court result in conviction, a very high percentage of these, it has been my experience, are the result of a guilty plea. You don't get a guilty plea without a confession, and you don't get many guilty pleas without interrogation.

Senator ERVIN. And as a matter of fact does not the prosecution, in a very high percentage of cases, offer in evidence voluntary admissions or voluntary confessions?

Mr. TAMM. In a very high percentage of the cases, yes.

Senator ERVIN. And it is particularly true, isn't it, that in a doubtful case, where the evidence of eyewitnesses or the circumstantial evidence is conflicting, the fact that they could offer in evidence voluntary admission or voluntary confession of the defendant that we was the guilty party is the difference in many cases between a verdict of guilty and a verdict of not guilty, isn't it?

Mr. TAMM. There is no question about it.

Senator ERVIN. And so, as a result of excluding voluntary confessions under these artificial rules created for the first time on the 13th day of June 1966, many people have voluntarily confessed that they are guilty will ge unpunished by justice?

Mr. TAMM. I think this is true.

Senator ERVIN. Do you not agree that the decision in the *Miranda* case weighs the scale of justice heavily on the side of the accused and against the victims of crime?

Mr. TAMM. I feel that very strongly.

Senator ERVIN. Do you not believe the victims of crime are entitled to justice just as much as are the accused?

Mr. TAMM. I think this is true. We should have justice for all.

Senator ERVIN. I thank you very much.

Senator MCCLELLAN. Senator Hart?

Senator HART. I am sure Mr. Tamm anticipates the question I will ask. For a great many years you were an effective representative of the Federal Bureau of Investigation, and I ask you what procedures have been developed with respect to counseling a man that he did not have to talk, that he could get a lawyer, and by 1964 if he could not afford one you got him one, how that crippled the FBI?

Mr. TAMM. May I say, sir, the policy of the FBI and of all of the Federal investigative agencies for many years was to include in the preamble of the statement or confession taken from an individual the fact that he could stand mute, that he did not have to speak, that he did not have to answer the questions, that he was entitled to counsel if he so desired it. This warning was included as a standard paragarph at the start of a statement which an agent of the FBI or of any other Federal agency might take.

At no time in the experience—and you must understand that I left the Federal Bureau of Investigation in 1961—at no time in my experience did I know of a special agent of the Federal Bureau of Investigation ever telling a man that he would go out and get him a lawyer. This was not done.

Senator HART. As I say, beginning in 1964 or 1965, that was done.

Mr. TAMM. I am not sure about the practices that are followed today.

Senator HART. I am not sure, though I base that on the statement in the *Miranda* case, which describes in some detail the procedures that have been developed down to the present. I think that while the opinion in full, I assume, has been ordered printed in the hearing record, Mr. Chairman, I would ask your unanimous consent that we have printed at this point in the discussion the narrative explanation given by the Director of the Federal Bureau of Investigation, Mr. Hoover, to the Supreme Court, together with the comment of the Court at this point.

Senator MCCLELLAN. That will be printed in the record.

Senator HART. The opinion in full is in, I assume.

Senator MCCLELLAN. The whole *Miranda* opinion, including its dissents, is to be printed in the record. At this point any excerpt from it which you wish to have inserted, Senator, may be inserted.

(The document referred to follows:)

Excerpt from *Miranda* v. *Arizona*, 384 U.S. 436 (1966)

Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay.[54] A letter received from the Solicitor General in response to a question from the Bench makes it clear that the present pattern of warnings and respect for the rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. It states:

> "At the oral argument of the above cause, MR. JUSTICE FORTAS asked whether I could provide certain information as to the practices followed by the Federal Bureau of Investigation. I have directed these questions to the attention of the Director of the Federal Bureau of Investigation and am submitting herewith a statement of the questions and of the answers which we have received.
>
> "'(1) When an individual is interviewed by agents of the Bureau, what warning is given to him?
>
> "'The standard warning long given by Special Agents of the FBI to both suspects and persons under arrest is that the person has a right to say

[54] In 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated:

"Law enforcement, however, in defeating the criminal, must maintain inviolate the historic liberties of the individual. To turn back the criminal, yet, by so doing, destroy the dignity of the individual, would be a hollow victory.

"We can have the Constitution, the best laws in the land, and the most honest reviews by courts—but unless the law enforcement profession is steeped in the democratic tradition, maintains the highest in ethics, and makes its work a career of honor, civil liberties will continually—and without end—be violated . . . . The best protection of civil liberties is an alert, intelligent and honest law enforcement agency. There can be no alternative.

". . . Special Agents are taught that any suspect or arrested person, at the outset of an interview, must be advised that he is not required to make a statement and that any statement given can be used against him in court. Moreover, the individual must be informed that, if he desires, he may obtain the services of an attorney of his own choice."

Hoover, Civil Liberties and Law Enforcement: The Role of the FBI, 37 Iowa L. Rev. 175, 177–182 (1952).

nothing and a right to counsel, and that any statement he does make may be used against him in court. Examples of this warning are to be found in the *Westover* case at 342 F. 2d 685 (1965), and *Jackson* v. *U. S.* 337 F. 2d 136 (1964), cert. den. 380 U. S. 985.

" 'After passage of the Criminal Justice Act of 1964, which provides free counsel for Federal defendants unable to pay, we added to our instructions to Special Agents the requirement that any person who is under arrest for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, must also be advised of his right to free counsel if he is unable to pay, and the fact that such counsel will be assigned by the Judge. At the same time, we broadened the right to counsel warning to read counsel of his own choice, or anyone else with whom he might wish to speak.

" '(2) When is the warning given?

" 'The FBI warning is given to a suspect at the very outset of the interview, as shown in the *Westover* case, cited above. The warning may be given to a person arrested as soon as practicable after the arrest, as shown in the *Jackson* case, also cited above, and in *U. S.* v. *Konigsberg*, 336 F. 2d 844 (1964), cert. den. 379 U. S. 930, 933, but in any event it must precede the interview with the person for a confession or admission of his own guilt.

" '(3) What is the Bureau's practice in the event that (a) the individual requests counsel and (b) counsel appears?

" 'When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, *Shulz* v. *U. S.*, 351 F. 2d 287 (1965). It may be continued, however, as to all matters *other* than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent. For example, in *Hiram* v. *U. S.*, 354 F. 2d 4 (1965), the Agent's conclusion that the person arrested had waived his right to counsel was upheld by the courts.

" 'A person being interviewed and desiring to consult counsel by telephone must be permitted to do so, as shown in *Caldwell* v. *U. S.*, 351 F. 2d 459 (1965). When counsel appears in person, he is permitted to confer with his client in private.

" '(4) What is the Bureau's practice if the individual requests counsel, but cannot afford to retain an attorney?

" 'If any person being interviewed after warning of counsel decides that he wishes to consult with counsel before proceeding further the interview is terminated, as shown above. FBI Agents do not pass judgment on the ability of the person to pay for counsel. They do, however, advise those who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, of a right to free counsel *if* they are unable to pay, and the availability of such counsel from the judge.' " [55]

Senator HART. Mr. Tamm, isn't it true that every time the Supreme Court has delineated constitutional rights which restrict the power of the police, that there has been concern voiced that the public's interest is being made subservient to the interests of the criminal? Isn't that a lesson of history?

Mr. TAMM. Generally speaking, yes. I would think the police and the public, possibly the public with which we come in contact, sir, feel that the Supreme Court is taking this position. The police take the position of course that the decisions which are being made by the Supreme Court, which so materially affect their work, are divided opinions, generally 5 to 4, and based upon that, we feel that we have a justifiable position in feeling that the minority may have an opinion with which we could agree.

Senator HART. Indeed one would never quarrel with that right. Mr. Chairman, may I offer for the record at this point then a message from

[55] We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver is necessarily high. And, of course, the ultimate responsibility for resolving this constitutional question lies with the courts.

the Director of the FBI, Mr. Hoover, which appears in the September 1, 1966, issue of the Law Enforcement Bulletin. It is just one page. It takes notes of this concern, but at the same time makes the point that there is little to be gained from just shouting protests and criticisms, and there is much to be gained from throwing our full resources and energies into the training of professional law enforcement in order to be effective within the framework of the current law.

Senator McCLELLAN. Very well, that will be included in the record and I would like to have Mr. Hoover's latest article in the March issue of the FBI Law Enforcement Bulletin printed in the record. It appears on page 2, I believe. They may both be printed in the record.

(The messages referred to, dated September 1, 1966, and March 1, 1967, follow:)

[Reprinted From the FBI Law Enforcement Bulletin]

MESSAGE FROM THE DIRECTOR

TO ALL LAW ENFORCEMENT OFFICIALS

SEPTEMBER 1, 1966.

There has been much "wailing and gnashing of teeth" in some law enforcement circles lately in response to developments in the criminal law, particularly confessions, interrogations, search and seizure, and various rights of the accused.

Historically, American courts have assumed the reponsibility of assuring that governmental power is not misused to injure the rights of individual citizens. Our courts are now committed to exercising supervisory control over law enforcement through the exclusionary theory whereby evidence obtained in violation of certain rules cannot be used in a criminal trial.

Various courts have been roundly criticized for recent decisions which some reviewers say reflect an unjustified and unprecedented concern for the lawbreaker; for illogical, shortsighted judicial policies which in effect legislate new laws to the detriment of society. They have been charged with handcuffing law enforcement by requiring impossible procedures which, it is said, will insure the release of the guilty while destroying the morale of the officer.

In reply, some critics of police declare that unless we have tight, restrictive control of law enforcement, police lawlessness will result. The extremes of both views tend to cloud the fact that the police and the courts should have a common objective: to develop and maintain a system of administering criminal justice which is fair, impartial, and effective. All will agree that this is an exceedingly difficult and complex task.

There is little to be gained from just shouting protests and criticisms, but there is much to be gained from throwing our full resources and energies into training a professional law enforcement corps to be effective within the framework of current rules of law and evidence.

We, as citizens, expect the business and technical segments of our society to keep abreast of the latest developments in their respective areas and to conduct research to foster progress. Our profession, dedicated to the preservation of America's basic freedoms, certainly cannot exempt itself from a similar demand from other citizens. A continuing, comprehensive research and training program, with a conscientious application of the knowledge gained therefrom, is the key to properly discharging our responsibilities to the people and the Nation.

Increased professional police training is no longer a desirable goal, no longer a matter of choice for United States law enforcement. It is an absolute necessity.

JOHN EDGAR HOOVER, *Director.*

MESSAGE FROM THE DIRECTOR

MARCH 1, 1967.

Could it be that 1967 will be remembered as the year the American people demanded respect for law and order and a halt to rising crime in our country?

While this hope may not fully materialize, there are some promising symptoms of growing public concern. In many areas, citizens are genuinely alarmed, and

rightly so, by increasing criminal violence. Indications are that more and more people want effective enforcement of the law and realistic punishment of those who break it. Federal, State, and local governments are initiating new and broader programs to aid law enforcement and to provide better training and equipment for the enforcement officer. Civic and patriotic groups are rallying to support police and are calling for citizens to obey the law and to help prosecute those who refuse to obey it. These are encouraging signs.

Actually, the American public is seeking, and sorely needs, a proven formula to deter crime. The people are growing tired of substitutes. Swift detection and apprehension, prompt prosecution, and proper and certain punishment are tested crime deterrents. As we have seen, however, this combination of deterrents can be ineffective because of breakdowns in one or all of its phases. That is why we cannot expect high-quality police service alone to bring full relief from the crime problem. If the hardened criminal is arrested but not punished, he is not long deterred from his criminal pursuits.

One State supreme court justice recently stated that it is completely unrealistic to say that punishment is not a deterrent to crime. "It is simply contrary to human nature," the justice explained, "not to be deterred from a course of action by the threat of punishment." This is the kind of reasoning and straight talk that makes sense to both the public and law enforcement. It is a refreshing contrast to the weak theories which rationalize criminal behavior and make villains of all policemen.

Coddling of criminals and soft justice increase crime; denials to the contrary have no valid support. Yet, these truths are still lost in the maze of sympathy and leniency heaped upon the criminal. Lame excuses and apologies offered for the lawbreaker are exceeded only by the amount of violence he commits. Meantime, law-abiding people who have a right to expect protection from criminals have this right abused and ignored.

Certainly, the American public must soon take positive action to curtail crime and violence. Good intentions are worthless. Funds for better law enforcement will help, but will not do the complete job. Community and civic authorities, educators, religious leaders, and prominent men and women from all walks of life must speak out, demand justice for law-abiding citizens, and unite the people in a forceful campaign against crime. There is nothing wrong with the clergy's warning against excessive compassion for the criminal at the expense of innocent victims. There is nothing wrong with educators' denouncing rabble rousers and agitators who disrupt the orderly processes of the academic community and defy authority. And there is nothing wrong with community and city officials' crusading to rid their streets of thugs, rapists, and robbers.

Law enforcement, of course, is gratified with the great strides that have been made in the profession in recent years. It is also appreciative of new efforts to make its fight against crime more effective. Law enforcement will take full advantage of all aid and assistance and meet its obligations with a determination to give the public adequate protection. Let the public remember, however, that detecting and apprehending criminals are not the whole answer. The criminal must know that his destiny also includes prompt prosecution and substantial punishment.

JOHN EDGAR HOOVER, *Director.*

Senator MCCLELLAN. Just one question and chief counsel would like to ask you a question too, Mr. Tamm.

How long have you been at the head of this International Association of Chiefs of Police?

Mr. TAMM. Since January of 1961.

Senator MCCLELLAN. And you have been in the law enforcement business for how many years?

Mr. TAMM. Thirty-two years. I spent 26 years in the FBI. I was an assistant director.

Senator MCCLELLAN. Have you sometimes had accusations of police brutality, of extortion, confessions, rubber strap, rubber hose, and so forth techniques? What is your judgments in all of your years of experience as to a great decline in the use of such tactics as that?

Mr. TAMM. It has been my experience and my very strong feeling, sir, that the accusations and charges of police brutality are extremely exaggerated, overemphasized, and actually in today's modern police department, they have no place. Thirty years ago, yes, but we are living in the present time, and if we have to go back 30 years to look for faulty police practices, then I question our thinking.

Senator MCCLELLAN. Is it prevalent now?

Mr. TAMM. No, sir.

Senator MCCLELLAN. Do you know any where in our country where it is prevalent? I don't mean to say that in isolated instances it does not happen. Isolated instances happen with many things, but I am talking about this as a practice, and whether it is condoned any more by reputable police departments. You are evidently in contact with all of the police departments in the country, most of them at least, as executive director of their international association, and I would like to have your full comment on it, whether there is any merit in that contention at all that it is necessary to impose these bars and restrictions on police to keep them from committing inhuman treatment on prisoners.

Mr. TAMM. Sir, I would like to just briefly, in answering this question, say that I have been engaged in teaching police officers for 30 of the 32 years that I have been in law enforcement, and my teaching has been based upon the constitutional rights of all people to fair and just treatment by all law enforcement officers, to the point where my remarks have been published in textbooks printed by the American Civil Liberties Union, and I have looked at this with a great deal of objectivity because of my intense feeling in this regard, and I can tell you without equivocation that this practice is not in existence to any degree in the law enforcement agencies of our country today.

Senator MCCLELLAN. You say that without any qualification?

Mr. TAMM. Without any qualifications at all. I would agree with you that there may be isolated instances of misbehavior on the part of a police officer, but the police agencies as constituted today and as administered have no place for an officer who does not treat his people or the people with whom he comes in contact with respect.

Senator MCCLELLAN. So there is no condition prevailing such as that?

Mr. TAMM. To my knowledge, no, sir.

Senator MCCLELLAN. You feel that the Supreme Court should not make new rules to correct something that doesn't exist?

Mr. TAMM. I don't think that these conditions exist to any extent whatsoever.

Senator HART. Mr. Chairman, as a followup on that point, I share with you the feeling, and I hope we are all right on this, that physical abuse is almost eliminated. I recognize that there will always be exceptions. But over a period of recent years, police authorities are surely against it. But isn't it fair to say and to recognize that that intense concern by police leadership to eliminate abuses was in response at least in part to the increasing concern and intrusion of the courts into this very area?

Mr. TAMM. The concern of the courts with regard to third-degree methods, yes, sir. But I also would like to believe that it is due upon the part of the police administrator to improve the operations of

his particular organization, and I think this has come about to a greater degree because of the education and training of police officers.

Senator HART. That may well be, but on balance it is more the concern of the leadership than the pressure of the courts?

Mr. TAMM. I believe this is true, sir.

Senator HART. But it is fair to say that it did coincide?

Mr. TAMM. It is fair to say there was pressure by the courts 30 years ago, yes, sir.

Senator HART. And now we don't have the physical abuse, but in the *Miranda* case, there is a description by an author taken from his work "Fundamentals of Criminal Investigation," where he describes the qualities which interrogators now should possess. Let me read it and then ask you if you think that this is the quality of investigative skill and attitude that should be commended:

> In the preceding paragraphs emphasis has been placed on kindness and strategies. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor, where emotional appeals and tricks are employed to no avail he must rely on oppressive atmosphere of dogged persistance. He must interrogate steadily and without relent leaving the subject with no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for the spell of several hours pausing only for the subject's necessities and acknowledging the need to avoid a charge of duress that can be technically substantiated. In a serious case the interrogation may continue for days with the required intervals for food and sleep but with no respites from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. This method should be used only when the guilt of the subject appears highly probable.

What is your view with respect to that technique?

Mr. TAMM. I am not too sure whether this is in Bond's book or not. It may be.

Senator HART. No, it is not Bond. It is O'Hara.

Mr. TAMM. I, 30 years ago, sir, taught interrogation and it is obvious where I taught it. These were accepted practices in those days, but not in today's day and age, no, sir. I don't think these are accepted practices, and I don't think these are the mark of the good investigator or a good interrogator. But 30 years ago, I taught this principle and it was accepted 30 years ago.

Senator HART. That was writen in 1959.

Mr. TAMM. Well, as I say, I taught 30 years ago, and I am not too sure that in 1959 I would agree with this concept. I definitely would not agree with the concept of day-after-day questioning. I would take exception to that. I don't think that any modern educated, properly indoctrinated, and properly trained police officer today would either. But these are accepted practices. We have had a great number of practices that have changed in the years, that have to do not only with police, but in many ways with our mode of living and the things we do, and the fact that we do progress and improve ourselves, and we are cognizant of the constitutionality and the rights of people I would think would indicate that law enforcement is meeting its responsibility, and all I am saying to this committee, sir, and to you, is that law enforcement needs help. This is all we want.

Senator HART. Like overruling *Mallory?*

Mr. TAMM. In regard to *Mallory* and in regard to a great number of these decisions, sir, may I say to you, and with full knowledge that

I do represent law enforcement, that bad cases sometimes make bad law, and that the feeling that I have with regard to the Supreme Court decisions in some instances, and especially in these 5-to-4 decisions that some materially affect law enforcement is that a poorly investigated and poorly presented case could be reversed by the Supreme Court with a single one-line sentence, without burdening all of law enforcement with the result of one faulty investigation, and I feel this way very strongly, and I feel that this is what has happened.

I think that in certain cases, and I have read some of these cases in the investigative background of the cases, and they would almost make you sick, but I don't think it is necessary for the Supreme Court or for the courts to burden law enforcement with the problem that is created by one poorly investigated case, and this is the way I feel. Otherwise, you would not have these split decisions.

Senator HART. I don't even know whether *Mallory* was five to four. I state that on the record. Is it your position that arrested people should not be advised of their rights?

Mr. TAMM. Absolutely not.

Senator HART. Of course not. And if the Supreme Court says as a constitutional principle they should be told one, two, three, and four, that is what the police authorities should do?

Mr. TAMM. Yes, sir. I think that they should be advised of their rights. I question the responsibility of law enforcement to provide them with a lawyer, and I do think that if we would look, if I may be permitted to say so, if we would look at some of the practices in European countries, in which interrogation periods are permitted to police, and we place the responsibility upon the law-enforcement officer to meet those periods and to conform to the law, I think we would be better off, and if the law-enforcement officer violates those regulations, then he can be punished.

Senator HART. A defendant who is not advised and will confess gives you a confession which you are comfortable with? That is not your position?

Mr. TAMM. I don't quite follow you.

Senator HART. A man who is not advised, and confesses, is here. The fellow who is advised and as a result of the advice does not confess, you have got these two situations. Would you feel comfortable in proceedings using the confession of the man who is not advised?

Mr. TAMM. No, because I feel that under the present circumstances, we have to conform to the law, we as law enforcement officers and that they should be advised, and if a police officer does not, then he should be subjected to administrative punishment. But I do have a doubt, sir, as to whether society is being served by barring that confession.

Senator HART. You doubt what?

Mr. TAMM. I have a doubt that society is being served when you bar the confessions of a guilty person, if you bar the confession.

Senator HART. For many years it was not barred.

Mr. TAMM. That is right, sir.

Senator HART. And you have the feeling that society was the better?

Mr. TAMM. I do, yes. I feel that way because I think that where it was not barred and where the man was guilty and he has so confessed, and he was taken off the street, so that he was no longer a menace to society, and I do not think this improved society.

Senator HART. I can pursue that by saying they should never let them out, because they repeat so frequently.

Mr. TAMM. No. In fact I feel that rehabilitation is a possibility.

Senator HART. I have enjoyed the exchange. Thank you.

Senator MCCLELLAN. If I understand you correctly, you don't feel society is served by the guilty going free on a technicality where a policeman inadvertently or otherwise has failed to advise him of a right that he probably already knew anyhow?

Mr. TAMM. I feel very strongly that this is a disservice to society.

Senator MCCLELLAN. Society is not to blame for one error of the police, if we do our best to train him.

Mr. TAMM. I don't feel that society should be punished because the law enforcement officer makes a mistake.

Senator MCCLELLAN. The law enforcement officer——

Mr. TAMM. Should be punished.

Senator MCCLELLAN. There may be a proper reckoning for him?

Mr. TAMM. That is right, sir.

Senator MCCLELLAN. Proper discipline for him, but here is a man who confesses to murder and there is no doubt about his guilt, but the policeman failed to do his duty, to advise him that he was entitled to a lawyer, something he probably already knew. In fact, there is the strongest probability that he already knew it. But society must suffer and become the victim. I just can't follow that as justice between society and the criminal, and between the criminal and the citizen. It seems to me the criminal gets the advantage.

Mr. TAMM. The police feel that way.

Senator MCCLELLAN. I believe the American people feel that way.

Mr. TAMM. I think so, too.

Senator MCCLELLAN. I don't think there is any question about it. I know we have to have standards, but there are degrees of errors, and some errors could be fatal, but that ought to be the ultimate goal and the primary objective of a criminal investigation and trial to get the truth, and upon that premise render judgment.

Chief counsel would like to ask a question or two, Mr. Tamm.

Mr. PAISLEY. Mr. Tamm, the courts in this country have always excluded confessions which the trial judge finds to have been coerced, isn't that true?

Mr. TAMM. Yes, sir.

Mr. PAISLEY. There has been some testimony before the subcommittee about the difficulty in police recruiting. Is that a general condition throughout the country in your experience?

Mr. TAMM. Generally speaking. We participated in a survey which Commissioner Girardin mentioned with the National League of Cities. I do not know of a major city in the country that is up to its full police strength, sir—its budget strength.

Mr. PAISLEY. Did you hear Mr. Girardin testify here today?

Mr. TAMM. Yes, sir.

Mr. PAISLEY. Do you recall how much below his authorized strength his police force was?

Mr. TAMM. I think he said 500 men, if I recall the figure.

Mr. PAISLEY. That is not an inconsequential number of police officials.

Mr. TAMM. Percentagewise, sir, it is rather typical of the country at the present time.

Mr. PAISLEY. To what do you attribute that condition throughout the country?

Mr. TAMM. There are a number of factors, as far as we can find out and as far as we can determine. One of the really tangibles is what I would call the police image, and the fact that law enforcement does not have the favorable endorsement of the communities in which they serve. I think, and I firmly believe this, that law enforcement and law enforcement officers are leaving, and the recruits are not coming in, because it is becoming more and more difficult to do the job and to do it properly. And then I guess the third factor that I would put in would be the salary.

Mr. PAISLEY. Salaries?

Mr. TAMM. I would say that that probably ranks third, and the difficulty in recruiting.

Mr. PAISLEY. Do you think these recent 5-to-4 Supreme Court decisions, excluding evidence which the police officers have gathered, have had anything to do with it?

Mr. TAMM. I would say it has had a definite morale factor upon the police officer, and the way you get recruits is just like you do in any industry, and that is by people who are employed telling people that they meet or friends of theirs, or talking about the assets of their job, and I don't think police officers are doing that today. I don't think that we have this type of spirit. I think that the police officer himself feels that he is in difficulty, and he is beginning to wonder whether it is worth it or not.

Mr. PAISLEY. Thank you, sir. That is all.

Senator MCCLELLAN. Are you familiar with the report of the Assistant District Attorney in Los Angeles? I think it has been referred to here today.

Mr. TAMM. You mean the statement by the District Attorney of Los Angeles County with regard to the *Miranda* case?

Senator MCCLELLAN. Evelle J. Younger, district attorney. Are you familiar with that report?

Mr. TAMM. Yes, sir; I have it in my office. Are you asking me to comment on it?

Senator MCCLELLAN. Yes, I would be glad if you would. I had not had a chance to read it. The impression I got this morning was that a 3-week survey indicated that the *Miranda* case was having no impact upon law enforcement. Have you read this?

Mr. TAMM. Yes, sir; I have. If I recall it correctly, in trying to recall it to my mind, I think that the district attorney stated that it was not necessary for law enforcement agencies to have confessions, that their survey indicated that confessions were not necessary in the prosecution of the cases, and my reaction to this is very simple. This in 3 weeks after the *Miranda* decision was made. It is based on an extremely limited number of cases, and I think it is premature.

I might mention that my association at the same time did a survey of the major cities to find out just exactly what effect the *Miranda* decision was having upon law enforcement in this country, and our findings were so one-sided in favor of the police that we decided not to

publish it, because we felt it was premature, and I don't think this is an objective approach to the whole problem.

We are now doing a survey somewhat nationwide in conjunction with a university, and we are getting some amazing answers again as to the effect that the *Miranda* decision has had on law enforcement. But until we have finished, we are not going to say. But we did do a survey that we completed at the same time as the district attorney in Los Angeles, and I just think this was premature. I don't think the results would have been conclusive, although as I say, there was a great deal of discussion on cases being lost.

Senator MCCLELLAN. I have just hurriedly glanced at this. This is possibly what was quoted in the record this morning. "The *Miranda* Decision is causing some problems in the prosecution of current cases filed prior to the decision, but should not create significant difficulties in the prosecution of future cases."

That is under paragraph 4 of the summarization of the *Dorado* and *Miranda* decisions and their retroactive application, which is signed by Mr. Younger, district attorney for Los Angeles County. That is one quote from it. That is in paragraph 4 on page 4 of the report, I believe. And on the next page—this is also on page 4, I guess. What I read to you was on page 3. Now, on page 4, I find this seemingly contradictory statement:

> These decisions can be harmful to law enforcement in a way that cannot be measured, by preventing a confession at the first confrontation between suspect and policeman, and depriving the officer of information necessary to make an arrest. However, arrest in Los Angeles County continues to increase at a consistent and predictable rate.

Without objection, I am going to make this document and a letter from Mr. Younger a part of the record at this point.

COUNTY OF LOS ANGELES,
OFFICE OF THE DISTRICT ATTORNEY,
Los Angeles, Calif., February 20, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Committee on the Judiciary,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I am in receipt of your letter of February 10, 1967, concerning my impression of the impact of the *Miranda* decision on the prosecution of criminal cases in Los Angeles County.

We have not done any supplemental research since the survey was conducted. However, our general overall statistics in this office do not indicate any marked change from the situation which prevailed at that time.

I can only reiterate my belief that the officers are following the mandates of the Supreme Court in the *Miranda* decision, and that insofar as we are able to observe from the prosecutors' viewpoint, this decision has not materially affected our ability to convict. However. I must state, as I did before, that we are not prepared to say that these decisions have not impaired the efficiency of law enforcement in areas which are at this moment not subject to accurate measurement.

Mr. Nedrud is slightly mistaken when he says that I have been appointed chairman of a committee, the primary function of which is to gather nationwide statistics reflecting the effect of the *Miranda* decision.

I have been appointed chairman of a committee on prosecution problems. This committee will undertake to study many problems which affect the prosecution of criminal cases and will try to identify what the major problems for prosecutors throughout the country are. However, at this juncture, it does not appear that the *Miranda* decision as such will consume a very large portion of

the committee's time. There are other problems which are deserving of attention and which appear to have more readily attainable solutions.

I will try to keep you posted of the work of this committee and contribute what I can to help your committee.

Yours truly,

EVELLE J. YOUNGER,
District Attorney.

RESULTS OF SURVEY CONDUCTED IN THE DISTRICT ATTORNEY'S OFFICE OF LOS ANGELES COUNTY REGARDING THE EFFECTS OF THE "DORADO" AND "MIRANDA" DECISIONS UPON THE PROSECUTION OF FELONY CASES, AUGUST 4, 1966

SUMMARIZATION OF THE "DORADO" AND "MIRANDA" DECISIONS AND THEIR RETROACTIVE APPLICATION

People v. Dorado (62 C.2D 338)

Holding

The Dorado decision holds that when (1) the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, (2) the suspect is in custody, and (3) the authorities are carrying out a process of interrogations that lends itself to eliciting incriminating statements, then the suspect must be effectively informed of his right to counsel and his absolute right to remain silent.

Retroactive application

In the case of *In Re Lopez* and *Winhoven*, 62 Cal.2d 368, the California Supreme Court held that the Dorado rule does not apply to convictions which became "final" prior to June 22, 1964, the date of the Escobedo decision. The definition of "final" as given by the United States Supreme Court is as follows:

"By final, we mean where the judgment of conviction was rendered, the availability of appeal is exhausted, and the time for petition for certiorari had elapsed before our decision in *Mapp* v. *Ohio*." *Linkletter* v. *Walker*, 381 U.S. 618, 622 fn. 5.

This definition was made applicable to California by *People* v. *Polk*, 62 Cal. 2d, 443.

Miranda v. Arizona (16 L. ED. 2D 694)

Holding

Miranda v. *Arizona* may be summarized as follows:

Whenever a person has been taken into custody by the police or otherwise deprived of his freedom of action in any way, he must be advised of the rights listed below. It should be noted that the opinion appears to indicate that a person need not be advised of these rights if the police are engaged in general on-the-scene questioning as to facts surrounding a crime without having taken a suspect into custody or in any other way deprived the person questioned of his freedom of action in any way. The opinion further indicates that if questioning were to be conducted by police officers visiting the residence or place of business of the suspect and there questioning him without taking him into custody, such specification of rights would also probably not be necessary.

The rights of which the person questioned must be forewarned in clear and unequivocal terms are the following:

1. That he has a right to remain silent.
2. That if he gives up this right to remain silent, anything he says can and will be used as evidence against him in court.
3. That he has the right to consult with an attorney and to have that attorney present during the interrogation by the police.
4. If he is unable to afford an attorney, he is entitled to have an attorney appointed to represent him during the course of the interrogation, free of charge.

Once the rights set forth above have all been explained to the suspect the police are not entitled to continue their interrogation of the suspect unless the suspect thereafter affirmatively clearly states that he understands and desires to waive the rights of which he has been advised by the police. If the suspect indicates in any manner, at any time prior to or during the questioning, that he wishes to remain silent or to have an attorney, the interrogation must cease unless an attorney is present. Even though the suspect may make some statements to the police which are either volunteered or made after being advised of these

rights and after knowingly and intelligently waiving these rights, the suspect has the right at any time to terminate the interrogation by indicating that he no longer desires to talk to the police or wishes to remain silent. A waiver must be entirely voluntary; any waiver of these rights which is obtained by means of inducement or trickery will be deemed to be an invalid waiver.

Retroactive application

In *Johnson* v. *State of New Jersey*, 16 L. ed. 2d 882, 892, the Supreme Court of the United States has determined what the retroactive effect shall be of the decisions previously rendered in *Escobedo* v. *Illinois*, 378 U.S. 478, and *Miranda* v. *Arizona* as follows:

"* * * Because Escobedo is to be applied prospectively, this holding is available only to persons whose trials began after June 22, 1964, the date on which *Escobedo* was decided. * * * The disagreements among other courts concerning the implications of Escobedo, however, have impelled us to lay down additional guidelines for situations not presented by that case. This we have odne in Miranda, and those guidelines are therefore available only to persons whose trials had not begun as of June 13, 1966. * * *"

DORADO V. MIRANDA SURVEY CONCLUSIONS

In an effort to determine to what extent, if at all, the Miranda decision has been harmful to successful prosecution of criminal cases in Los Angeles County, a survey was conducted by members of the staff in this office (see enclosure 1, memo dated 7–28–66). An earlier survey, similar but involving fewer cases, was made relative to the Dorado decision (see enclosure 2, memo dated 1–4–66). The results appear to justify the following conclusions:

1. Efforts by this office to assist the 48 independent law enforcement agencies in this county to understand and comply with recent decisions[1] have been effective. We are fortunate to have in Los Angeles County police officers who are intelligent and conscientious. When they know the ground rules, they will follow them.

2. Confessions are essential to a successful prosecution in only a small percentage of criminal cases.

3. The percentage of cases in which confessions or admissions were made has not decreased, as might have been anticipated, because of the increased scope of the admonitions required by Miranda.

4. The Miranda decision is causing some problems in the prosecution of current cases filed prior to the decision, but should not create significant difficulties in the prosecution of future cases. Similarly, Dorado created problems, some dramatic and some tragic (see enclosure 3, statement dated 7–14–66), with respect to pending cases; but should not be a major problem in future cases. The one thing we cannot cope with and the thing that disturbs most citizens in and out of law enforcement, is the fact that some of the changes become effective retroactively. If the Supreme Court wants police officers to sing "Yankee Doodle Dandy" to a suspect before taking a confession, we will do our best to see that every police officer in Los Angeles County learns the words and tune and sings at the appropriate time; but we can't anticipate the requirement.

5. In every human being, however noble or depraved, there is a thing called conscience. In some people the conscience is as small as a fly speck; in others it's as big as a grapefruit. Large or small, that conscience usually, or at least often, drives a guilty person to confess. If an individual wants to confess, a warning from a police officer, acting as required by recent decisions, is not likely to discourage him. Those who hope (or fear) these decisions will eliminate confessions as a legitimate law enforcement tool will be disappointed (or relieved).

6. These decisions have not made it impossible for law enforcement to successfully protect lives and property, but, presumably, have made it more

[1] Including regular meetings of our County Law Enforcement Coordinating Council; preparation and dissemination of monthly Criminal Intelligence Reports; preparation and dissemination of monthly Law Enforcement Legal Information Bulletins and of a Search Warrant Manual for Police Officers; maintenance of an around-the-clock legal advisory service; dissemination of a soon to be published investigative manual; and, within a few weeks, closed circuit TV training programs conducted weekly by our staff and transmitted to all local police agencies.

difficult for the police to ascertain the truth by curtailing their use of the important investigative devise of proper and reasonable interrogation of suspects. These decisions can be harmful to law enforcement in a way that cannot be measured—by preventing a confession at the first confrontation between suspect and policeman and depriving the officer of information necessary to make an arrest. However, arrests in Los Angeles County continue to increase at a consistent and predictable rate.

EVELLE J. YOUNGER,
District Attorney, Los Angeles County.

To: Lynn D. Compton, Assistant District Attorney.
From: Earl Osadchey.
Subject: Miranda Survey.
Date: July 28, 1966.

Pursuant to your direction after June 13, 1966, when the Miranda v. Arizona decision was delivered, a survey was undertaken to determine, if possible, the immediate effects of this decision upon the prosecution of current felony cases. This survey was conducted concurrently in the complaint, preliminary, and trial stages of prosecution in this department.

The attached survey questionnaires were distributed to the various divisions affected on June 21, 1966. Because of the normal delay in delivery of these forms via County messenger service, some of the Branch and Area Offices did not actually receive these forms for several days. Therefore, since the survey was ended on July 15, 1966, there was only approximately a three-week sample of cases obtained.

The questions asked on the forms were necessarily not too comprehensive in order to conserve the time of the deputies and to preclude the need for secretarial assistance in filling out the forms.

The following is my personal analysis of the results obtained. It should be borne in mind that the results obtained are subject to several interpretations and that since there is no similar survey available for felony cases processed prior to the Escobedo and Dorado decisions, no correlation is possible of the comparative effects of the pre- and post-Escobedo, Dorado, and Miranda restrictions upon obtaining extrajudicial statements.

As you recall, a "Dorado Survey" was conducted by this department for the week of December 13 through 17, 1965. Please note my memo to you dated January 4, 1966, evaluating the results of this Dorado Survey. I will refer to this Dorado Survey in this present analysis.

It should also be noted that since this present survey follows so closely upon the heels of the Miranda decision that in many of the cases surveyed in the preliminary stage and in most all of the cases in the trial stage the defendants were arrested prior to the Miranda decision when only the Dorado admonition was being given. Therefore, no assumption should be made that the trial of cases where defendants were arrested after the Miranda decision will present the same profile that these cases surveyed in the present preliminary and trial stages reflect.

With these considerations in mind, I respectfully submit the following results and my analysis thereof regarding this "Miranda Survey."

COMPLAINT STAGE

There were requests made for issuance of felony complaints against 1,437 defendants in this sample.

Seven hundred twenty-one, or 50 percent, of the defendants in this sample had made a confession, admission, or other statement. In the Dorado Survey (referred to previously), there were 40 percent of the sample that had made a confession or admission. It is interesting to note that the percent of such extrajudicial statements has not decreased, as might have been anticipated, because of the increased scope of the admonitions required by Miranda over Dorado.

Felony complaints were issued against 828 defendants, or 58 percent of the total defendants in this sample. This compares with our normal issuance and rejection rates.

Of the 828 defendants against whom complaints were issued, 471, or 57 percent, had made confessions, admissions, or other statements. In the previous

Dorado Survey, 46 percent of the defendants against whom complaints were issued had made a confession or admission. Of these 471 defendants against whom complaints were issued and who made extrajudicial statements, all but 38 had been given the new Miranda admonition. Of this group of 38 defendants who made extrajudicial statements without benefit of the Miranda admonition, the issuing deputies deemed that 27 of these statements were admissible even without such admonition being given. In the 11 instances where the statements were deemed not admissible, complaints were issued anyway, evidently because there was sufficient evidence without such statements.

When these 471 matters reach the preliminary and trial stages of prosecution, there should be no problems with the admissibility of these extrajudicial statements due to Miranda.

It is obvious from this sample of 1,437 defendants that the law enforcement agencies almost immediately after the Miranda decision was returned commenced complying with its requirements. The new Miranda admonition was given to over 1,100 of these defendants. Most of the balance of these defendants apparently were not as yet in custody when the request for a complaint was made and, therefore, no admonition could be given.

Of the 250 rejections of requests for complaints wherein extrajudicial statements had been made, in only 3 instances, or 1 percent of this category, were the reasons for such rejections the fact that the statement was not admissible because of Miranda and evidently insufficient evidence without such statement for the issuance of a complaint.

There were 357 defendants against whom complaints were issued even though no extrajudicial statement was obtained. Seventy-nine defendants of this group were not in custody at the time the request for issuance was made.

In the category containing 359 defendants wherein requests for complaints were rejected and no extrajudicial statement had been obtained, 224 defendants had been given the Miranda admonition. However, of this group of 224 defendants given the Miranda admonition, the reasons for the rejections of 106 of these matters was because of insufficient evidence or insufficient connecting evidence.

However, the argument that might be made that if the Miranda admonition had not been required in these 106 instances a confession or admission might have been obtained which would have satisfied the necessary connecting evidence is very weak, since it could be based only upon speculation.

I believe that the only valid conclusion that can be drawn is that police officers are complying with the new rules required by Miranda and that the extrajudicial statements which they are obtaining from defendants who have been arrested since the Miranda decision are admissible in evidence. There has been no decrease in the percent of complaints issued to those rejected or in the percentage of admissible extrajudicial statements obtained as compared to the Dorado Survey that was conducted in December, 1965. So it appears from this limited survey that we are in no worse a position with regard to the problems involved in processing cases because of the new ground rules laid down by Miranda than we were with the rules prescribed by Dorado.

It should be noted that since neither of these two surveys attempted a correlation with pre-Escobedo cases wherein confessions or admissions were obtained, it cannot be determined what effect these decisions are having upon the police departments' efforts in solving crimes. We only obtain those requests for complaints wherein the police officers are satisfied that they have sufficient evidence to establish the corpus and sufficient connecting evidence regarding the particular suspect. We cannot tell from this present survey how many cases we are not even seeing from the police agencies.

PRELIMINARY STAGE

There were survey forms completed on 665 defendants processed in the preliminary stage. Five hundred ninety-nine, or 90 percent, of these defendants were held to answer. This compares favorably with the 1965 figures published by the California Bureau of Criminal Statistics which show that 81 percent of the felony complaints issued resulted in felony filings in the Superior Court for Los Angeles County.

Of these defendants who were held to answer, 160 had made a confession, admission, or other statement which was admitted in evidence. Evidently, these 160 extrajudicial statements that were admitted in evidence involved defendants who were arrested subsequent to the Miranda decision or the statements did not come within the Miranda rule.

There were 16 defendants who were held to answer where their extrajudicial statements were offered but not admitted in evidence. Fifteen of these statements were rejected because of Miranda. We can only speculate as to whether lack of this additional evidence will reduce the chances of obtaining convictions when these 15 cases are tried in the Superior Court.

It is interesting to note that in the preliminary hearings of 422 defendants, or 70 percent of the total defendants that were held to answer, no confessions, admissions, or other statements were offered in evidence. This would indicate that most of the cases processed through the preliminary stage do not require extrajudicial statements for success in holding defendants to answer.

Complaints affecting 66 defendants were dismissed during the preliminary stage. With regard to 6 defendants, or 9 percent of these dismissals, there was an extrajudicial statement offered which was not admitted in evidence because of Miranda. However, 4 of these 6 dismissals involved complaints filed prior to the Miranda ruling.

There were also 6 dismissals where there had been an extrajudicial statement that was admitted in evidence.

It would appear from this survey that even though there were 6 cases where the extrajudicial statements offered were not admitted because of Miranda and the complaint was dismissed, that this problem will not continue in the future since the confessions and admissions now being obtained do comply with the Miranda rules.

The Miranda ruling does not appear to be affecting our success in prosecution at the preliminary stage.

TRIAL STAGE

There were completed survey forms returned on 678 defendants processed in the trial stage.

I would like to again caution against projecting the results obtained from this survey of the trial stage for the purpose of seeking a valid prognosis of future trial matters since almost all of these defendants were arrested and the complaints issued before Miranda was returned. The cases that will be reaching the trial stage from complaints issued after Miranda may well exhibit a different picture.

A total of 649 defendants had trials or entered pleas of guilty. There were 273 defendants that were convicted by jury or nonjury trials and an additional 273 defendants that were convicted by entry of pleas of guilty. One hundred three defendants were acquitted by jury or non-jury trials.

A comparison of convictions by trial and by pleas of guilty to acquittals shows an 80.4 percent conviction rate. The conviction rate computed on the same basis for fiscal year 1964–65 for this department was 90.6 percent. A reason for this significant difference may be that in 22 of the acquittals there were confessions or admissions excluded because of Miranda and the trial deputies evaluated these statements as being necessary for conviction. If the trials of these 22 defendants had not been lost, then a conviction rate of 87.5 percent would have been obtained which is closer to our normal average rate. Since each of these 22 cases was filed prior to Miranda, we can anticipate that this same problem will not occur when cases filed after Miranda reach the Superior Court.

Altogether there was a total of 40 defendants who had made a confession or admission that was not admitted in evidence and who were acquitted. However, only 31 of these extrajudicial statements were excluded because of Miranda and as indicated above only 22 were deemed necessary for conviction.

The significance of confessions or admissions in obtaining convictions is subject to varying conclusions. Of the 82 defendants who were convicted by trial, where an admission or confession was introduced in evidence, only in 33 cases, or 40 percent of this category, did the trial deputy feel that the statement was necessary for conviction.

There were 71 defendants who had made a confession or admission or other statement which was not admitted in evidence and who were convicted anyway as well as 120 defendants who made no extrajudicial statements but were still convicted. Of the 273 defendants who pleaded guilty, 173 had made a confession or admission, but the trial deputies indicated that only in 34 of such pleas was the extrajudicial statement necessary for conviction.

This indicates that in only 67 instances, or 10 percent of the 649 defendants having trials or who pleaded guilty, did the trial deputy feel that the confession or admission was necessary for conviction.

With respect to the 995 P.C. motions, it is difficult to draw any conclusions from this small sample, but out of 29 such motions, 19 were granted. However, in only 5 instances was an admission or confession excluded where the deputy felt the statement was necessary for a conviction. Also, since these complaints which were attacked by 995 P.C. motions were pre-Miranda, it is difficult to conclude that there will be a problem in the future.

Although it would appear that the Miranda decision is causing some problems in the prosecution of the current cases which were filed prior to the delivery of this decision, it would not appear that the Miranda decision should create any significant difficulties in the prosecution of future cases.

WORK SHEETS

Complaint stage

1. Number of defendants where confession, admission or other statement given and complaint was issued	471
(a) Miranda admonition given	433
(b) Miranda admonition not given	38
(1) Extra-judicial statement admissible even though admonition not given (13 of these defendants were not in custody when statements were made)	27
(2) Extra-judicial statements not admissible because of Miranda (complaints issued anyway)	11
2. Number of defendants where confession, admission or other statement given and request for complaint rejected	250
(a) Miranda admonition given	235
(b) Miranda admonition not given (one of these defendants was not in custody)	15
(c) Number of requests for complaints rejected because extra-judicial statement not admissible because of Miranda	3
(d) Number of requests for complaints rejected because of other reasons	247
3. Number of defendants, no confession, admission or other statement and complaint issued	357
(a) Number of defendants given Miranda admonition (Of the 143 no Miranda admonition given, 43 were in custody, 79 not in custody, and 21 no indication given whether Mirnada admonition was given)	214
4. Number of defendants, no confession, admission or other statement and request for complaint rejected	359
(a) Number of defendants given Miranda admonition	224
(b) Number of defendants given Miranda admonition and reason for rejection was insufficient evidence or insufficient connecting evidence	106

Preliminary stage

1. There was a "confession" or "admission or other statement" offered which was admitted and defendant was "Held to Answer"	160
2. There was a "confession" or "admission or other statement" offered which was not admitted and defendant was "Held to Answer." Reason not admitted: (a) Miranda (15), (b) Other (2)	17
3. There was a "confession" or "admission or other statement" offered which was admitted and complaint was "Dismissed"	6
4. There was a "confession" or "admission or other statement" offered which was not admitted and complaint was "Dismissed." Reason not admitted: Miranda (6)	6
5. There was no "confession" or "admission or other statement" offered and defendant was "Held to Answer"	422
6. There was no "confession" or "admission or other statement" offered and complaint was "Dismissed"	54
Total number of defendants in sample	665

TRIALS

1. There was a "confession" or "admission or other statement" which was admitted and defendant was convicted. Total 82.

Statement necessary:

19 confessions necessary.
14 admissions necessary.
5 not marked whether or not necessary.
44 not necessary.

Of statements:

45 admissions nonjury.
2 admissions jury.
33 confessions nonjury.
2 confessions jury.

2. There was a "confession" or "admission or other statement" which was not admitted and defendant was convicted. Total 71.

Of Statements:

39 admissions nonjury.
5 admissions jury.
26 confessions nonjury.
1 confession jury.

3. There was a "confession" or "admission or other statement" which was admitted and defendant was acquitted. Total 20.

Of Statements:

2 confession nonjury.
17 admissions nonjury.
1 admission jury.

4. There was a "confession" or "admission or other statement" which was not admitted and defendant was acquitted. Total 40 (all of these cases filed prior to *Miranda* decision.)

Of Statements excluded:

9 were for reasons other than *Miranda*.
15 admissions were excluded under Miranda. Of these 7 were not necessary and 8 were necessary.
16 confesisons were excluded under Miranda. Of these 2 were not necessary and 14 were necessary.

Of Statements:

13 confessions nonjury.
4 confessions jury.
22 admissions nonjury.
1 admission jury.

5. There was a "confession" or "admission or other statement" which was admitted and 995 P.C. was denied. Total 6.

6. There was a "confession" or "admission or other statement" which was admitted and 995 P.C. motion was granted. Total 6.

7. There was a "confession" or "admission or other statement" which was not admitted and a 995 P.C. was granted. Total 10.

Confessions excluded Miranda	6
Needed for conviction:	
Yes	3
No indication	2
No	1
Admissions excluded Miranda	3
Needed for conviction:	
Yes	2
No	1
No indication whether excluded because of Miranda	1

8. There was no "confession" or "admission or other statement" and 995 P.C. motion was denied. Total 4.

9. There was no "confession" or "admission or other statement" and 995 P.C. motion was granted. Total 3.
10. There was no "confession" or "admission or other statement" and defendant was convicted. Total 120.
11. There was no "confession" or "admission or other statement" and defendant was acquitted. Total 43.
12. Pleas of Guilty. Total 273.

With a confession or admission	173
Was confession or statement necessary?	
Yes	34
No	112
No indication	27
Without a confession or admission	97
No indication	3

Memorandum to: Lynn D. Compton, Assistant District Attorney.
From: Earl Osadchey.
Re Results of survey of the effects of the *Dorado* decision on complaints, city preliminaries, and trials sections (week surveyed, December 13–17, 1965).
Date: January 4, 1966.

Pursuant to your request I have supervised Law Clerk Steve Trott in the compilation of the material submitted by the Complaint, City Preliminary, and Trials Sections, regarding the effect of the Dorado decision upon the District Attorney's operation.

The attached summary sheets were prepared by Mr. Trott from the questionnaire forms returned by these various sections. I wish to caution anyone who seeks to draw a firm conclusion from this material by pointing out that the sample used in this study was comparatively small and that there appeared to be some misconception on the part of the deputies that filled in these forms as to what was desired. Many of the forms were incomplete or inconsistent and Mr. Trott attempted to resolve these problems by seeking out the deputy who filled in the form. However, this was not always possible because the name of the deputy who completed the questionnaire was not required on these forms. Also, the questions asked may not have been comprehensive enough to base definite conclusions as to the results which were obtained. Because no correlation has been attempted by this study with the processing of such cases prior to the Dorado decision, an evaluation of the comparative effect of this decision is not possible.

With these considerations in mind, I wish to point out some of the highlights of this survey.

COMPLAINT STAGE

In the complaint stage there was a total of 616 defendants in this sample of which 40% had made a confession or admission. Seventy-one percent or 438 complaints were issued of which number 46% involved a confession or admission. However, of the 178 rejections, only two of such rejections were predicated upon the reason that there was insufficient evidence without the confession or admission and that such confession or admission was inadmissible because of Dorado. This means that in this small sample only 1% of the complaints which were rejected were because of the problems presented by Dorado. Only 26% of the 202 complaints issued, wherein a confession or admission was involved, were evaluated by the issuing deputy as requiring such admission or confession in order to sustain a conviction. However, in each of these cases it was determined by the issuing deputy that Dorado had been complied with.

We might speculate that because 74% of the cases that were rejected did not involve a confession or admission that the main reason for such rejection was because defendants are now being informed of their right to remain silent and this causes difficulty in investigating the crime and obtaining sufficient evidence for conviction. I believe that the only valid conclusion that can be drawn is that police officers are complying with the ruling laid down in Dorado.

PRELIMINARY STAGE

In the preliminary stage there were 363 defendants processed. This survey questionnaire did not ask the question as to whether the defendant was held to

answer and therefore the effect of the confession or admission which was offered and not received in evidence is not known. In any event there were only two confessions or admissions which were offered in evidence and not received and those were excluded for reasons other than the Dorado problem.

There were 52 cases where defendants had made a confession or admission and this evidence was not offered at the preliminary hearing mainly because of the office policy of not offering such evidence if it is not necessary during this stage of the procedure.

There were 139 defendants processed through preliminary hearings against whom a confession or admission was received in evidence. Whether opposition to such introduction because of Dorado increased the length of time of such preliminary hearings is not ascertainable from this small check but may be a contributing factor to the congestion of the calendar in the Municipal Court.

If any conclusion can be drawn from this small survey it may be that the Dorado ruling has had little effect upon our success in prosecution at the preliminary stage.

TRIAL STAGE

In the trial stage of 318 defendants processed, 96 pled guilty. In 51% of these guilty pleas the defendant had made a confession or admission. Therefore, it would appear we obtain as many pleas of guilty accompanied by a confession or admission as we did without such additional evidence.

Of the 222 defendants who had either court or jury trials 85% were found guilty. Of those found guilty there were one-third who had made an admission or confession. Admissions were present in 45 of those guilty verdicts and in only two of these matters were the admissions excluded because of Dorado. The trial deputies indicate that in only three of those cases where they obtained a guilty verdict did they feel that the admission was essential in order to obtain such conviction.

There were no court of jury acquittals in which a confession was admitted. There were no acquittals in any case where there was a confession even though one confession was excluded because of Dorado.

There were four acquittals in cases where an admission was excluded but there were also seven acquittals wherein admissions were admitted.

Again because of the limited sample and the limited nature of the questionnaire it would be difficult to arrive at any significant conclusion except to venture the view that Dorado is not presenting a difficult problem in the prosecution of current cases.

If there is any further information or explanations of these figures that you desire, please let me know.

Confessions and admissions effect of Dorado

Complaint stage:	
(a) Total defendants	616
(b) Defendants no confession or admission	367
(c) Defendants confession or admission	249
(d) Complaints issued—no confession or admission	236
(e) Complaints issued—confession or admission admisible	202
(1) Sufficient evidence without confesion or admission to sustain conviction	149
(2) Insufficient evidence without confession or admission to sustain conviction	53
(f) Total rejections	178
(g) Rejections—insufficient evidence without confession or admission and confession or admission inadmissible	2
(1) Dorado	[1] 2
(2) Delay	0
(3) Involuntary	0
(4) Other	0
(h) Confession or admission admissible, rejection for other reason	45
(i) Rejection—no confession or admission	131

[1] One of these is not completely certain—information sheet incomplete.

Confessions and admissions effect of Dorado—Continued

Preliminary stage:	
Total defendants	363
Defendants no confession or admission	165
Defendants confession or admission	198
Confession or admission introduced and received	139
Confession or admission introduced and not received	2
(1) Dorado	0
(2) Delay	0
(3) Involuntary	0
(4) Other	2
Confession or admission not introduced	52
(1) Dorado	0
(2) Delay	1
(3) Involuntary	0
(4) Other [2]	51
Confession or admission and plea of guilty	4
Confession or admission and dismissal for refiling	1
Trial stage (1):	
Total defendants	318
Total pleas of guilty	96
(1) Accompanied by admission	18
(2) Accompanied by confession	31
(3) Unaccompanied by extrajudicial statements	47
Total dispositions of guilty, no confessions or admissions involved	126
Total confessions	49
Total admissions	74
Court or jury disposition of guilty accompanied by admission	45
(1) Effect of admission on guilty disposition:	
Surplusage	1
Enhance	36
Essential	3
Unknown	3
(2) Guilty disposition accompanied by admission excluded by Dorado	2
Court or jury disposition of guilty accompanied by confession	18
(1) Effect of confession on guilty disposition:	
Surplusage	0
Enhance	12
Essential	3
(2) Guilty accompanied by confession, excluded because of no intelligent waiver	1
(3) Guilty accompanied by confession excluded by *Dorado*	1
(4) Guilty accompanied by confession excluded by *Aranda*	1
Trials (2):	
Court or jury disposition of not guilty, no confessions or admissions	22
Court or jury disposition of not guilty accompanied by admission	11
Court or jury disposition of not guilty accompanied by admission admitted	7

[2] Most not introduced if not needed to hold defendant to answer—office time saving policy at preliminary level.

Confessions and admissions effect of Dorado—Continued

Court or jury disposition of not guilty accompanied by admission excluded	4
(1) Reason for exclusion:	
Aranda	2
Unknown	2
Court or jury disposition of not guilty accompanied by confession or confession *admitted*	0
Total confessions excluded	3
(1) *Dorado*	1
(2) *Aranda*	1
(3) No intelligent waiver	1
(4) Effect of exclusion on disposition	
Different result	0
No effect	3
Total admissions excluded	6
(1) *Dorado*	2
(2) *Aranda*	2
(3) Unknown	2
(4) Effect of exclusion on disposition	
Different result	[3] 4
No effect	[4] 2
Unknown	0

[3] *Aranda* and unknown.
[4] *Dorado.*

STATEMENT BY DISTRICT ATTORNEY EVELLE J. YOUNGER IN RE DAN CLIFTON ROBINSON

We have now tried the murderer of Lewis Grego three times. Grego was shot by confessed-murdered Dan Clifton Robinson in a robbery on February 3, 1962, at the Fox Hills Country Club. The first trial, Robinson was convicted and sentenced to death. The Supreme Court reversed because of an error in instructing the jury that Willie Hickman, a co-defendant, who did not appeal and is serving a life sentence, was an accomplice. Again, Robinson was tried and this time, the jury gave him life. He appealed and the District Court of Appeals reversed because the police did not advise him of his rights before he confessed. This time, the District Attorney was forced to go to trial without the confession and the jury acquitted him. The confession was voluntary and admissible under the law as it then existed. The defendant now goes free because the law was changed after the crime. The result is a by-product of the Supreme Court's tendency to change the ground rules and apply the new rule retroactively. Ironically, Robinson, who was the trigger man, now is free. His two accomplices (Willie Warner Hickman and Fred Guliex) are in prison, one serving a 20-year maximum, the other serving life.

Is there anything further?

Mr. TAMM. May I say something with regard to the increase in arrests, sir? I don't think this is really the key to law enforcement. I wonder as to the increase in court convictions.

Senator MCCLELLAN. The what?

Mr. TAMM. Whether there is an increase in convictions. There is an obvious increase in arrests, because there is more crime today and there are more people, and, as we become more and more an urban Nation and the people come closer and closer together, obviously, as crime increases, arrests are going up. As population increases, arrests are going up. But the arrest is not really the criteria. The finding of

guilt or innocence is the criteria, and this is what I think is the effect of the Court decision.

Senator McClellan. How about the lack of solution, failure to find a solution? Is that on the decrease for the number of crimes reported?

Mr. Tamm. The statistics, the available statistics that I have seen, yes, sir.

Senator McClellan. As I recall, out of the number of crimes reported, those that were resolved, or a solution found and arrests made, are on the decline percentagewise.

Mr. Tamm. I think this is true. The most recent statistics, as I say, that I have seen have been in the District of Columiba.

Senator McClellan. The population is rising; crimes are rising.

Mr. Tamm. And solutions are going down.

Senator McClellan. The solving of crimes ratiowise is decreasing, and the number of convictions is declining.

Mr. Tamm. That is correct, sir.

Senator McClellan. Any other questions? If not, we thank you again, very much, for your presence. The committee will now adjourn. As early as it can be conveniently arranged, the subcommittee will schedule another series of hearings. I cannot at this time predict how many series of hearings we may hold. From time to time we may be able to report out a bill, or bills, but I rather think there will be hearings on the overall problems from time to time by this subcommittee during this session of Congress. At an early date we hope to hear the Attorney General again, and have his views on a number of bills pending before us, but I cannot announce any definite time as of now.

Thank you. The committee stands adjourned.

(Whereupon, at 4:35 p.m., the committee adjourned, subject to the call of the Chair.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

TUESDAY, APRIL 18, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2228, New Senate Office Building, Hon. John L. McClellan (chairman) presiding.

Present: Senators McClellan, Ervin, Kennedy of Massachusetts, Hruska, and Thurmond.

Also present: William A. Paisley, chief counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

The Chair will make a brief statement.

Today, the Subcommittee on Criminal Laws and Procedures resumes hearings on proposed legislation to combat the rising tide of serious crime in this country.

On March 15, and subsequent to the last series of hearings conducted by this subcommittee, the FBI released its annual report on crime statistics which shows that in 1966 there was an 11-percent nationwide increase in major crime as compared to the number committed in 1965. It also showed that crimes of violence increased at substantially the same rate.

The Metropolitan Police Department recently announced that there were 2,631 serious crimes reported in the District of Columbia in February of this year—an increase of 633 or 31.7 percent above the number reported the month of February 1966.

Many other significant statistics could be cited to establish that we are moving swiftly toward a crisis with respect to lawlessness in this country and to emphasize the imperative need for legislative action.

There is, however, no longer any doubt about the gravity of the problem with which we are confronted. The Congress recognizes this, the President—the executive branch of the Government—is aware of and concerned about it, and I believe it is time for the Supreme Court to become cognizant of the prevailing conditions relating to law enforcement.

A number of bills dealing with crime and criminal procedures have already been introduced in the Senate, 17 of which have been referred to and are now pending in this subcommittee—including some that were submitted by and introduced at the request of the administration.

The subcommittee is undertaking to study and process these bills with due deliberation and proper expediency. For the next 3 days, we will hear testimony on a number of these measures. The testimony will be primarily directed to those bills listed in the notice of these public hearings given on April 12, a copy of which appeared in the Congressional Record of that date on page S. 4917 as follows:

NOTICE OF PUBLIC HEARING BY THE JUDICIARY SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

Mr. MCCLELLAN. Mr. President, for the information of the Senate and other interested persons, I announce the beginning of the second series of hearings by the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary. Attorney General Ramsey Clark will resume his testimony on Tuesday, April 18, 1967, at 10 a.m., in Room 2228, New Senate Office Building. The hearings will continue through Thursday, April 20.

The testimony will be directed primarily to the following bills which are now pending in the Subcommittee:

S. 674, to amend title, 18, United States Code, with respect to the admissibility of confessions—Senator McClellan.

S. 675, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and for other purposes—Senator McClellan.

S. 798, to provide compensation to survivors of local law enforcement officials killed while apprehending persons for commiting Federal crimes—Senator McClellan and Senator Scott.

S. 917, to assist State and local governments in reducing the incidence of crime, and for other purposes—"Safe Streets and Crime Control Act of 1967"—Senator McClellan, by request.

S. 1194, to define the jurisdiction of the Supreme Court and the inferior courts ordained and established by the Congress under Article III of the Constitution in criminal prosecutions involving admissions or confessions of the accused—Senator Ervin.

S. 1333, relating to the admissibility in State courts of certain evidence—Senator Ribicoff.

We have scheduled as our first witness the Honorable Ramsey Clark, the Attorney General of the United States. At our previous hearing, Mr. Clark testified in support of S. 917, the Safe Streets and Crime Control Act of 1967, and other bills that have been introduced at the request of the administration.

Today, the subcommittee will hear Attorney General Clark's further testimony on these measures and, if time will permit, may interrogate him and seek his advice and counsel regarding other measures pending before the subcommittee.

Do my colleagues have any statement or comment before we proceed?

Senator MCCLELLAN. General Clark, when you appeared before us earlier you had a prepared statement particularly supporting S. 917, the Safe Streets bill, that we will refer to. Have you any additional statement that you care to make on this measure before we proceed with the interrogation?

STATEMENT OF HON. RAMSEY CLARK, THE ATTORNEY GENERAL OF THE UNITED STATES

Attorney General CLARK. No, sir; I do not. I would only say that the administration hopes that the committee can give this most important measure its fair and speedy consideration.

Senator McCLELLAN. Very well. Have you seen a copy of the notice which was placed in the Congressional Record, listing the bills to which the testimony would be primarily directed at these hearings?

Attorney General CLARK. Yes, sir.

Senator McCLELLAN. We have six bills to which we hope principally to direct the testimony. Do you have any prepared statement with respect to these six or any of the other bills?

Attorney General CLARK. No. sir; we do not. We can respond to questions regarding them, and, if it would please the committee, we can submit a report on any, where it would be helpful.

Senator McCLELLAN. I believe you have a written request for a report on them, General Clark, and you may, at your convenience, respond to those requests.

(The material referred to was subsequently submitted as follows:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 19, 1967.

Hon. JOHN L. McCLELLAN,
United States Senate,
Washington, D.C.

DEAR SENATOR: In response to your request, I am pleased to submit these views concerning:

S. 674, to amend Chapter 18, of the United States Code, with respect to the admissibility in evidence of confessions;

S. 675, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses;

S. 678, to outlaw the Mafia and other organized crime syndicates.

S. 674

S. 674 provides that a confession shall be admissible in evidence if it is voluntarily given. It would also legislatively overrule the decision in *Mallory* v. *United States*, 354 U.S. 449 (1957), in which the Supreme Court held that if the arresting officer fails to comply with Rule 5(a) of the Federal Rules of Criminal Procedure requiring presentment of an arrested person "without unnecessary delay" any confession obtained during the period of "unnecessary delay" shall be excluded.

S. 674 would amend Title 18 by adding a new section 3501 entitled "Admissibility of Confessions". Subsection (a) provides for an initial determination by the trial judge as to whether the confession was voluntary and, if found voluntary by him, submission of relevant evidence on the issue to the jury. It also provides for an instruction that the jury may give such weight to the confession as it feels it deserves. Subsection (b) lists five specific factors which the trial judge is to consider in determining the issue of voluntariness. Subsection (c) provides that a confession shall not be inadmissible solely because of delay in presentment if the confession is found by the trial judge to have been made voluntarily. Subsection (d) is concerned with confessions made, without interrogation, to persons other than police officers and non-custodial confessions.

A review of S. 674 indicates a conflict with the 1966 decision by the Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436. That case holds that the prosecution may not use statements obtained during custodial interrogation unless there has been adherence to specific constitutionally protected procedural safeguards based upon the privilege against self-incrimination. Such safeguards are in addition to the application of the traditional test for voluntariness and are designed to protect against the potential for coercion inherent in custodial surroundings. If S. 674 is intended to dispense with the procedural safeguards established by *Miranda* or if it is designed to modify the constitutional standard of voluntariness, it would be in conflict with current constitutional requirements.

Miranda requires that before custodial interrogation can take place, the suspect "must be warned 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 the

right to consult with a lawyer and to have the lawyer with him during interrogation" and "that if he is indigent a lawyer will be appointed to represent him." The case also indicates that a suspect may waive his privilege against self-incrimination and his right to retained or appointed counsel.

Subsection (b) of S. 674 requires the trial judge in ruling on voluntariness to consider all the circumstances surrounding the giving of the confession including the five listed factors. Several of the listed factors deal with matters encompassed within the warnings required by *Miranda*. For example, 3501 (b)(3) requires the judge to consider "whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him." Similarly (b)(4) requires consideration of "whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel."

Subsection (b) only requires that the trial judge "shall take into consideration" such factors. *Miranda*, on the other hand, imposes a constitutional requirement that such warnings be given prior to any interrogation. If subsection (b) is intended to dispense with the requirement that such warnings be given and to substitute a flexible standard that the presence or absence of such warnings need only be *considered* on the issue of voluntariness, it fails to comply with the mandate of *Miranda* and would be deemed unconstitutional. Only if the *Miranda* requirements are read into subsection (b), or as a constitutional gloss to be added to the bill, would this provision survive constitutional attack. In such case, however, there is a serious question whether subsection (b) does anything more than restate existing law regarding voluntariness.

Subsection (c) would overrule the *Mallory* decision. Under that subsection a confession otherwise voluntary would not be barred solely because of delay between arrest and arraignment. But under subsection (b)(1), the trial judge in determining voluntariness is to consider the time elapsing between arrest and arraignment.

Prompt arraignment of arrested persons is necessary in a free society which values the fair administration of criminal justice. The decision in *Mallory*, excluding confessions obtained during a period of unnecessary delay between arrest and arraignment, is designed to withdraw the incentive which law enforcement officers may have to delay arraignment. It is intended to encourage them to bring an arrested person promptly before a judicial officer. It discourages prolonged incarceration and interrogation of suspects without giving them the opportunity to consult with friends, family or counsel.

An outright repeal of *Mallory* would withdraw the encouragement for law enforcement officers to arraign suspects promptly. It would leave the "without unnecessary delay" provision of Rule 5(a) of the Federal Rules of Criminal Procedure as a rule without any remedy.

There is an additional reason why legislative action dealing with the *Mallory* problem would be unwise at this time. The decision in *Miranda* v. *Arizona* was rendered on June 13, 1966. That decision obviously may have implications for the *Mallory* problem. In my judgment, it would be premature to take legislative action with respect to *Mallory* until we have had more experience with the *Miranda* requirements and see their impact on the course of future decisions under Rule 5(a).

S. 675

I believe that we are all agreed that the present state of the law on wire interception is unsatisfactory. Legislation is required. Section 605 of the Federal Communications Act (47 U.S.C. 605) is inadequate, and many legislative proposals on the subject have been considered over the past twenty years, including S. 675. While S. 675 has merit, it does not go far enough in safeguarding individual privacy. Wiretapping should be allowed only in national security matters, with a total restriction imposed in all other cases.

Of necessity, when a line is "tapped" a large mass of material is intercepted and recorded, the great preponderance of which has no relationship whatever to the purpose of the tap. A tap cannot be selective and must record all that goes over the wire. It is unlike a search warrant where an officer must specify what he is searching for. As Justice Brandeis suggested more than forty years ago, wiretaps are more serious infringements of privacy than general warrants.

Viewed in this light, wiretapping—whether by private individuals or public officials—should be generally prohibited. The needs of law enforcement can be met without reliance on such large-scale intrusions on personal privacy. At the

very least, proponents of judicially authorized wiretapping have a heavy burden of proof to meet to justify such intrusions, a burden which has not been met. Only when the national security itself is at stake, when the society itself is threatened, can such activity be justified.

S. 928, (the proposed Right of Privacy Act of 1967) in my opinion best meets the standards I believe necessary in this area. It also prohibits electronic eavesdropping which is an equally serious privacy problem. After consideration of all pertinent factors, the Department of Justice favors enactment of S. 928 in lieu of S. 675.

S. 678

S. 678 is a bill to outlaw the Mafia and other organized crime syndicates. I certainly wholeheartedly support the basic aim of this bill. Complete eradication of these corrupt syndicates, which prey on society and systematically subvert the processes of justice, is a goal we all share. Unfortunately I cannot agree that S. 678, if enacted, would accomplish its purpose.

This bill would make knowing and willful membership in the Mafia, Cosa Nostra, or any similar racketeering organization a federal offense punishable by imprisonment of up to twenty years and a fine of up to $20,000. Various factors are listed as relevant for consideration by a jury in determining membership or participation in the outlawed organization or as showing knowledge of the purpose or objective of such organization. In addition to problems of proof which would be involved in its enforcement, this measure raises a number of constitutional issues of substantial magnitude. Serious questions would be posed under the Due Process Clause of the Fifth Amendment, the privilege against self-incrimination and possibly the First Amendment. These problems would insure extensive litigation. Because of this I would prefer to rely on existing law which as detailed below appears to be generally adequate.

There are numerous Federal penal provisions dealing with activities generally associated with organized crime. In addition, 18 U.S.C. 371 makes it unlawful to conspire with another to violate any Federal law. Taken together the offenses described by present law are applicable to almost every activity in which the organizations listed in the proposal would be engaged. While no present statute would apply to membership alone, the conspiracy statute prohibits the conspiratorial activity associated with membership in such an organization.

Your efforts in support of the passage of anticrime legislation have been outstanding. I appreciate them as I do your sponsorship of S. 917, the proposed "Safe Streets and Crime Control Act of 1967", S. 916, legislation to establish the United States Corrections Service, S. 676, "To amend Chapter 73, Title 18, United States Code, to prohibit the obstruction of criminal investigations of the United States" and S. 677, "To permit the compelling of testimony with respect to certain crimes, and the granting of immunity in connection therewith." These proposals, if enacted, would be extremely helpful in combating organized crime.

The Bureau of the Budget has advised that there is no objection to the submission of this report and the enactment of this legislation would be in accord with the Program of the President.

Sincerely,

RAMSEY CLARK,
Attorney General.

Senator HRUSKA. Would the chairman yield?

Senator MCCLELLAN. Yes.

Senator HRUSKA. There is another pending bill, S. 1033, National Courts Assistance Act on which hearings are being started this morning. Inasmuch as this concerns matters which we are discussing today, would the Attorney General submit an analysis of that bill, together with relative coverage of that bill compared with this bill, S. 917, and any additional comments that you would like to make?

Attorney General CLARK. Yes, sir. We would be happy to do that.

Senator MCCLELLAN. Insofar as that bill is not pending before this subcommittee, we would not want to usurp the jurisdiction of another

subcommittee. Would that be for the purpose of making comparisons and of ascertaining whether there are overlapping provisions?

Senator HRUSKA. Yes, Mr. Chairman. It does deal with court structure and law enforcement agencies. This is also part of the material that is dealt with in S. 917.

Senator MCCLELLAN. Very well.

(The material referred to was not received for inclusion in this record.)

Senator MCCLELLAN. For the benefit of my colleagues to get the procedure here somewhat coordinated and have a continuity of the Attorney General's testimony, I suggest we take up these bills one at a time. And since he has already given a prepared statement on S. 917, I think we should proceed with that proposal and then when we conclude questions on it, we may turn to some of the other bills. I will proceed in that manner.

The Chair has a number of questions on this "safe street and crime control" bill. This is an innovation in the field of Federal assistance to States and localities to deal with crime. The bill has a number of facets which I think should be carefully examined, analyzed, and considered to the end we make it legislation that will be most effective in carrying out the general theme and general objectives of this bill. I will ask a number of questions and if my colleagues at any point during my interrogation have a question along the same line, I will be happy to yield. The important thing is to keep this record in continuity so it will be more instructive as one reads it.

Is the need for this legislation, General Clark, predicated upon the fact that our streets are today unsafe?

Attorney General CLARK. That is certainly a part of the predicate, Mr. Chairman. The act recognizes the very great need we have to perfect all the elements of law enforcement in every jurisdiction in the United States to provide for the public safety.

Senator MCCLELLAN. The crime conditions throughout the country are what necessitates, or are what suggest the necessity for legislation in this field, that is correct, is it not?

Attorney General CLARK. I think the provision in itself is desirable. Certainly crime conditions in the country today make it absolutely necessary.

Senator MCCLELLAN. When we speak of safe streets, we are speaking primarily, I suppose, of the metropolitan areas. But crime in this country today is not confined to the streets alone, it also extends into rural areas as well, does it not?

Attorney General CLARK. That is true.

Senator MCCLELLAN. But when we speak of safe streets we make it all embracive to include the whole crime spectrum, do we not?

Attorney General CLARK. That is true.

Senator MCCLELLAN. How will this legislation help create safe streets or control crime in this year, 1967?

Attorney General CLARK. It will first give law enforcement the encouragement that will arise from the fact that the Congress has said we must go forward with this major new Federal program to help State and local law enforcement protect the public. It will also provide them with an opportunity to engage in the planning that is necessary

to the successful execution of innovations and new programs in police and in corrections and in courts that can move toward that goal.

Senator McCLELLAN. In other words, it stimulates hope and gives some reassurance or some assurance to law enforcement agencies throughout the country that finally we are going to try and give them some help?

Attorney General CLARK. It shows two things. First, it shows congressional commitment to support law enforcement broadly with financial resources and guidance. Second, if enacted and if funds are appropriated in accordance with the administration request, it will create broad opportunities for title II action programs in the days ahead. It will also permit continuation of research and development under title III, which is a continuation of the Law Enforcement Assistance Act.

Senator McCLELLAN. Assuming we move reasonably expeditiously in the enactment of this bill, how long after its enactment before you feel you would be able to start making grants? I am speaking primarily of grants for planning.

Attorney General CLARK. To take the easiest part first, we would continue title III. We could implement research grants in a broader way. We would hope planning grants could be undertaken in a matter of months after authorization and appropriation. We feel it is important to have all the leadtime possible for planning. That is one of the reasons we are concerned with securing early passage of this bill.

Senator McCLELLAN. I understand. And it might take months after the bill is passed before you actually begin to carry out any plans. I was talking about making grants to get planning underway. Do you think it would take months after the bill was enacted?

Attorney General CLARK. Yes. I think realistically it will be a matter of several months before we could hope to secure applications, review applications, approve applications, and make grants on the basis of them. But planning can be done expeditiously. A good illustration of this, I know, is the massive work the District of Columbia Crime Commission, which in a period of 12 months made this intensive and comprehensive survey of criminal justice in the District of Columbia. That shows what can be done in a short period of time.

Senator McCLELLAN. Assuming this bill passes around the middle of the year, we finish legislative processes and get it enacted and signed by the President by the middle of the year, do you think it will be near the first of next year before planning grants could be made? You have said the plans have to come in for approval. I would hope if this bill were a law by Labor Day, you would be able to approve planning grants within a few months?

Attorney General CLARK. Shortly thereafter we could approve some planning grants. Some districts are already engaged in planning and plans could come right in.

Senator McCLELLAN. Some are almost ready?

Attorney General CLARK. Some are ready and partially executed. Some are in various stages of development; yes, sir.

Senator McCLELLAN. Was that due to the assistance given under the——

Attorney General CLARK. Law Enforcement Assistance Act. No, sir. Due primarily to the initiative of your better police departments.

Senator McCLELLAN. You have asked for $50 million, I believe, for planning. Do you think that amount is adequate?

Attorney General CLARK. We are anxious to move forward as fast and as effectively as we can. We feel, however, that this is a major opportunity the Federal Government will have to make a significant difference in the quality of State and local law enforcement.

We think, therefore, it is essential there be very sound and careful planning before we go forward. This is a major Federal Government program. Accordingly, I think we need leadtime for planning. We think that out of the $50 million, that $30 million for planning will probably be adequate to develop plans in the jurisdictions that will come forward under this act in anticipation of title II action programs.

Senator McCLELLAN. How many jurisdictions? I think those are limited to population centers of 50,000 or more, entities or combination of entities having populations of 50,000 or more. Is that correct?

Attorney General CLARK. Yes, sir. That is right.

Senator McCLELLAN. How many separate plans or entities filing plans do you anticipate within the first 12 months after the funds become available for planning grant purposes?

Attorney General CLARK. Both title I and II are limited to jurisdictions with populations of 50,000. Our statistics indicate that this will comprehend about 80 percent of the people of the country and about 73 or 74 percent of the ful-time policemen in the country.

Senator McCLELLAN. What percent is that?

Attorney General CLARK. About 73 percent of the full-time policemen in the country and about 80 percent of the people; all the people are in these jurisdictions with populations in excess of 50,000. We find by the more recent estimates there are about—this is the 1965 Rand McNally estimate and it can be checked—about 550 counties with more than 50,000 people and about 385 cities.

Senator McCLELLAN. So you anticipate some 385 applications?

Attorney General CLARK. No; I do not think that that would necessarily follow. That is the total number of cities with populations of more than 50,000. There are 550 counties. The counties, of course, would include these cities by and large. So, there is very considerable overlap between the two. We would hope that a very high proportion of the total eligible would apply. In addition, of course, States can apply on behalf of the jurisdictions that are not eligible because of the population limitation.

Senator McCLELLAN. Then a State could, in its application, as I understand you, embrace all of the areas or a number of smaller towns which would not qualify otherwise, except that the State embraces them in one overall plan?

Attorney General CLARK. That is correct. It could embrace all or some. Those otherwise ineligible could also combine themselves for purposes of planning so several counties, each with a population of less than 50,000 who when combined had more than 50,000, could join in a single application.

Senator McCLELLAN. What factors, in your judgment, have caused the lawlessness that has become a serious problem of national significance?

Attorney General CLARK. Oh, I think the factors——

Senator McCLELLAN. I am referring to the preamble of the bill which refers to the "lawlessness that has become a serious problem of national significance."

Attorney General CLARK. I think the causes are as many and as varied as all the dynamics of our society. There are the ancient ones that have always caused people to do wrong, human weakness and ignorance. I think Plato said that poverty was the mother of crime. I think we know today from statistics there is more truth in that than logic itself might indicate.

I think we know ignorance, lack of education, discrimination, lack of opportunity, the number of things that cause crime are just limitless.

Senator McCLELLAN. Mr. Attorney General, how do you explain the fact that you have less ignorance and less poverty in the country today than ever before and yet crime continues to increase?

Attorney General CLARK. Well, I would not prescribe more ignorance and poverty as the cure. I think, as I say, there are many causes and that these are among them. That to the extent that there is more crime there are other causes that are added to them. But ignorance and poverty themselves are relative things. And the poverty of rural Texas or North Carolina or Arkansas might be quite a different phenomenon than the poverty of a ghetto or central city where thousands of people live within a single city block.

And our urbanization has contributed to crime. The greater numbers of people that we have, all of these things contributed to cause crime. I think crime measures the character of a people.

Senator McCLELLAN. Well, I may be wrong. I think these are all contributing factors, there is no doubt, but I do not think the continuous recurring increases in crime can be attributed primarily to ignorance and poverty. We have had those things with us always, even on a greater scale than we have now. Yet, as we improve those situations crime continues to increase. So there must be some other factor that is very potent in this development, as well as these two. We all have different ideas about it. I think it helps to eliminate poverty and to educate our people. That is most commendable and most desirable. But that alone is not going to eliminate the crime problem.

How about it, do you regard all crime—this is also taken from the preamble—as "essentially a local problem that must be dealt with by State and local governments?"

Attorney General CLARK. Well, I think our country politically has always preached local law enforcement and fortunately we have always practiced it. I hope we always will. There are about 425,000 full-time law enforcement officers in the country. Of these, only about 23,000 are in the Federal Establishment. I think that is as it should be. That is not to say the Federal Government has no responsibility. Of course, it does. We are vitally and directly involved in the prosecution and control of crime in the United States. Looking at the thing in proportion, while there are 400,000 in prisons, only 19,000 are in Federal prisons which is less than 5 percent. That, too, is consistent with our tradition and our philosophy. That is the way we should keep it.

That is the reason why this bill is, in my judgment, an appropriate way the Federal Government can really make a major difference in

the quality of criminal justice in the United States, because in this way it provides to State and local law enforcement the resources and guidance to build excellence in each of the 40,000 police jurisdictions in the United States.

Senator McCLELLAN. Mr. Attorney General, I asked you simply to emphasize two areas of criminal activity in which the primary responsibility rests in the Federal Government. Crime is primarily a local problem and local responsibility. However, crime has become so prevalent I think it has become of national interest. Therefore, action must be taken. But I wanted to emphasize primarily the problems of organized crime. It is difficult for local crime enforcement officials to combat organized crime that crosses the State line and has a network of interstate operations that a local community maybe would have difficulty in dealing with. Do you agree with that?

Attorney General CLARK. Yes, I certainly think Federal responsibility in the area of organized crime is of higher magnitude than with respect to other crime. I think we cannot overemphasize the Federal effectiveness there. On the other hand there may be little we can really effectively do in cities or States where local law enforcement will condone organized crime.

Senator McCLELLAN. Of course, you have to have a great measure of cooperation with local law enforcement officials. In that area especially there must be cooperation between the Federal authorities and local authorities.

Attorney General CLARK. That is right.

Senator McCLELLAN. And in the area of national security there is not a whole lot local law enforcement can do.

Attorney General CLARK. That is correct.

Senator McCLELLAN. That is primarily, I would say, the responsibility of the Federal Government.

Attorney General CLARK. That is correct.

Senator McCLELLAN. Would this bill have any substantial impact, if enacted, on either organized crime or national security?

Attorney General CLARK. It would certainly have a substantial effect on organized crime because it would provide the opportunity for localities and States to move in with new techniques and new efforts to help combat organized crime.

In the national security field, except for what you might call police arrest help, something like that, this is an area the Federal Government has handled by itself and this bill is not really directed to that problem.

Senator McCLELLAN. Referring to the provisions in section 102. that no unit of local government or combination of such units shall be eligible for a grant unless it has a population of not less than 50,000, do you think that is too rigid and inflexible or do you think there has to be a cutoff somewhere and that 50,000 is the point at which you feel it would be expedient for the Federal Government to undertake to grant assistance?

Attorney General CLARK. Our judgment is that 50,000 is the population level. In section 102 we are only talking about planning grants and there are several things that bear there.

First, there is only so much planning that a small outfit can do. I think the average per capita police for the Nation is about 1.8 per

thousand, so that in a jurisdiction of 50,000 you would be dealing ordinarily with a police force of less than 100 men. How much planning is really feasible there? Also, when jurisdictions become that small there is need for coordinated planning with other jurisdictions. It is very desirable to keep pressure on for such coordinated planning in those areas.

Third, planning for such coordinated jurisdictions should not be a very expensive item and therefore is something they can come forward with themselves.

Senator McCLELLAN. I want you to understand, Mr. Attorney General, I am trying to analyze this bill so that when we go on the floor with it and get to debating it, we will have some answers in the record from sources of authority to questions I am confident would be asked at that time if we did not cover them now. The purpose is to get a complete analysis of this bill and how it will operate. So I ask these questions.

Would not this result in a multiplicity of plans in one State or one county which could well be ill-conducted or even be inconsistent.

Attorney General CLARK. Are you still talking about the 50,000 limitation?

Senator McCLELLAN. Yes. I just gave you an explanation as to why I am questioning into this. I think we ought to analyze this bill so we will have answers and so we will have facts upon which to base our recommendations.

Attorney General CLARK. I think the 50,000 limitation reduces the number of applications and therefore reduces the multiplicity if that was the direction of your question.

Senator McCLELLAN. All right. How can a unit or local government such as a city of 50,000 or 75,000 people adequately plan relative to all facets of administration or of criminal justice when it ordinarily has within it jurisdiction only one phase of this activity; that is, police. Courts are county. Correction is county and State. Prosecution is county. How can a city prepare much of a plan when they only have control of the police and do not have control of these other facets.

Attorney General CLARK. I think it is very important that the interdependence and the interrelationships between the police, courts, and corrections be carefully recognized and particularly by the people involved in each of these three activities. Therefore, we think it desirable, where reasonable, to have them plan together because they are engaged in different stages in the same process in a sense. If as a practical matter they cannot do it, then plans that provide for only certain aspects of the process of criminal justice are acceptable. But we would like to know that an effort was being made, where reasonable and where possible for joint planning to be engaged in because it would be more productive.

Also, another observation I should make is that the variety of our jurisdictions across this country is immense. We find many cities operating major jails, major court systems, as well as their police departments.

Senator McCLELLAN. Well, it seems to me it will be better, as you say, and we can express the hope that they will, county government, municipal government, these different political units, cooperate and submit a plan together.

If we can persuade them to do that, I take it it will eliminate some difficulties that may be encountered otherwise. That is what I wanted to emphasize, that a lot of interests within the areas of a county may submit joint planning. That might be even true for some court jurisdictions in judicial districts and so forth.

Have you had any inquiries or comments or complaints from smaller cities, smaller jurisdictions, about their being left out of this program?

Attorney General CLARK. We have not had any of any dimension, Mr. Chairman. I think that the House Judiciary Committee has received testimony from several organizations that are representing the smallest jurisdictions, at least a part of their membership, who have indicated some feeling that the 50,000 limitation would handicap the smaller jurisdictions.

Senator MCCLELLAN. They feel like, well, they are being ignored. I would not say discriminated against. They feel they would like to be included.

Attorney General CLARK. That is right. They would like to have the opportunity to apply directly regardless of size. But the degree of that expression has been very limited. We have heard very little.

Senator MCCLELLAN. Now, you have the same problem with counties. A county may have the courts but it may not have the police establishment like a municipality.

Attorney General CLARK. That is right. It varies, not only State to State, but within a State. In California the largest sheriff's office in the country is the Los Angeles County Sheriff's Office. But, in San Francisco, on the other hand, all the sheriff's office runs is the jail. The variety is just enormous.

Senator MCCLELLAN. What I am trying to emphasize is that it is going to require a lot of coordination at the local level—counties, municipalities and States—to get maximum results from this act if it becomes law. There is at lot to be done at the local level where the planning responsibility rests.

Attorney General CLARK. That is exactly right. For this law to be effective these jurisdictions have to coordinate.

Senator MCCLELLAN. Would you think, then, it might be more effective and desirable, for example, to require all local plans to conform to a statewide plan with possible exceptions where the State refuses to act or in the case of a large metropolitan area, either in one State or encompassing a multiplicity of State areas. In other words, if we could do it, would it be better to require a statewide plan where there are no large metropolitan areas?

Attorney General CLARK. I think that such a requirement would be much too burdensome, Mr. Chairman. It could result in very lengthy delays before a plan could be perfected. And also it overlooks the primary responsibility that local jurisdictions have had in police work.

Typically, throughout the country, the local police department has secured no assistance from State government—financial or supervisory. State government experience in local police work has been quite limited. More than 75 percent of all State police are highway patrolmen and in many States the highway patrol is really all the State police do and that is as much traffic control as any other function. So that local law enforcement is the primary place of focus for the police.

Now, for corrections, on the other hand, to a very considerable degree in most jurisdictions, the State tends to be the place of focus. What we really need is flexibility.

Senator McCLELLAN. Is there any assurance the State is going to make a plan in the field of corrections, let us say?

Attorney General CLARK. We hope each State will make a plan that will be comprehensive to all parts of criminal justice in the State. But the plan need not include all jurisdictions in it. We think that in most States, the State government has primary responsibility for corrections and for courts. That is where planning should be predominant.

Senator McCLELLAN. I am thinking about a State like mine. My thinking is we would get better results if we had a statewide plan as opposed to plans from the four or five or six counties or cities in my State that would be eligible under this 50,000 population criteria. Assuming they all make plans. Unless there is coordination between them and liaison between them, those smaller entities, it seems to me, will not get the full benefit of this legislation. That is my judgment. At the moment, I don't know how to establish it or require it by law.

I think, to get the full benefit we must have some kind of State-coordinated plans.

Attorney General CLARK. I agree a State plan is necessary to get the full benefit. On the other hand, to require a compulsory State plan involving local law enforcement would create many problems. I would assume a lot of localities have more police than the State has. New York City, for example, has 28,000 policemen. Not until recently did the State establish an office with two employees to work with local law enforcement and advise them on how to run their business. The place where the State would be the most effective in the police area is in setting standards and providing training opportunities for local police in your smaller jurisdictions—where there is not the opportunity or sufficient manpower to engage in either. I would suspect a lot of local police departments have much greater experience in law enforcement work than the State itself does.

Senator McCLELLAN. I would think that is true. I am not insisting and not trying to insist it would be the best all around for every State. I was thinking about sufficient flexibility to permit it to be done. In some areas maybe it should be encouraged to be done that way.

Attorney General CLARK. It should be encouraged in every area, I believe, because these jurisdictions have to know each other, these jurisdictions have to work and cooperate with each other and with the State government. It should be encouraged everywhere. Whether it can be made mandatory, this is a different question.

Senator McCLELLAN. I was not insisting it be made mandatory. But when the bill is marked up, I would like to see if we can strengthen it in this respect.

Now, some States already have entities which have made plans. Would they get assistance at once or would they have to wait until 1969? You said some of those plans were ready.

Attorney General CLARK. I am reasonably confident some of our most advanced police departments and other criminal justice jurisdictions have plans that would be presently adequate. We have not sought funds of dimension that would provide the opportunity to go forward

with those on a large scale at this time. The reason is we think it is so important to administer this act efficiently and effectively to encourage all jurisdictions to come forward, particularly those that have got the furthest to go, that a period of time be devoted primarily to planning so we can move forward intelligently and we would be more effective than if we were to go forward piecemeal.

Senator McCLELLAN. Would you ask them to hold their plans?

Attorney General CLARK. They will go right forward. Their stake in local law enforcement and their investment in local law enforcement would be much greater than ours. We would assume they would go forward in the public interest at all times.

Senator McCLELLAN. The $50 million you are requesting, do you regard that as realistic? Suppose you could get as much money as you consider absolutely necessary to get this act firmly underway after the first of the year following its passage, how much would you request? Do you think the $50 million is enough?

Attorney General CLARK. We believe it is a realistic figure if we are to wisely plan and expand these Federal funds. I think it is more important we do it right because we are beginning a new program that has immense promise. We do not wish to try to do too much too soon—we have had this experience from September 1965 in grants through the Law Enforcement Assistance Act, but it has been limited only to grants to a relative handful of the 40,000 police jurisdictions.

We think time, and it is not much time we are talking about, will prove more profitable than haste.

Senator McCLELLAN. I am not interested in spending a lot of money, but in this area I would be willing to make whatever expenditures are necessary to get results. I appreciate what you are saying, that this is entering into a new program, a vast program, an extensive program. I would not want to see waste occur or any inefficiency bog it down because we try to go too fast. I agree we ought to move as expeditiously as we can. In my judgment if we make a bad mistake in this program, if we find we are not getting results after all the emphasis placed on it, if we learn the program does not function as we planned, and the crime rate continues to rise, we will be confronted with a more serious problem than we now have. I hope we can establish a program under an act that will pretty much assure its success if legislation can assure its success.

Has any tentative determination been made as to what part of funds made available for the first year will be used for improvement grants under titles I and II, and how much for research and education grants under title III? Have you made any allocation of those funds as yet?

Attorney General CLARK. Yes, sir. We planned on approximately $20 million for title III and $30 million would be almost all for title I planning grants and a few title II action grants. The primary gain will result from the action grants. We would move more into high gear with title II grants in next year when jurisdictions already had a plan.

Senator McCLELLAN. As I understand you, there would be $30 million for titles I and II and $20 million for title III?

Attorney General CLARK. That is correct.

Senator McCLELLAN. Now, title III is research and education grants?

Attorney General CLARK. Research, demonstration, and special project grants.

Senator MCCLELLAN. Title III does not have training?

Attorney General CLARK. Yes, some demonstration and special training projects would be covered. It is the Law Enforcement Assistance Act continued, and we have engaged in a broad training grant program under the Law Enforcement Assistance Act.

Senator MCCLELLAN. Well, we can handle this when we get to appropriations. But I will be concerned about proper distribution of these funds and where the money goes. But we can settle that in appropriations.

Your idea of how the first $50 million will be spent, is that $30 million will be spent under titles I and II, and $20 million under title III?

Attorney General CLARK. That is correct. That will give us almost a threefold increase in the Law Enforcement Assistance Act plus $30 million for plans in fiscal 1968.

Senator MCCLELLAN. With respect to planning grants, how long a period of time will recipients have to make their applications, is there any deadline on that?

Attorney General CLARK. No. We will have looked at the jurisdictions and planning that has existed before they come forward, the size and complexity of the problems of the jurisdiction. We would hope they could all complete, even the biggest, most complex, complete their plans within a year. We would hope some would complete their plans in a matter of 3 months or less, maybe. When I say complete their plans, of course, planning is an ongoing function. We hope they will all be planning from now on, but complete their plans so they will be eligible for title II in 1969.

Senator MCCLELLAN. Section 201 provides it is the purpose of this title to authorize grants to States and units of general local government for new approaches and improvements in law enforcement and criminal justice.

Does the use of the word "new" exclude grants for approaches and improvements that are not new?

Attorney General CLARK. No, sir; it does not. We hope to emphasize innovation and the use of the best proven techniques. We think this is needed in criminal justice. But what we want is the best and where the best is not new, that is still acceptable.

Senator MCCLELLAN. What significance does the word "new" have, then?

Attorney General CLARK. These are the general purposes of the bill and it is a matter of emphasis and priority. We hope that many jurisdictions will move forward with innovations and new techniques, but we are certainly not going to scrap everything being done.

Senator MCCLELLAN. That does not exclude help and assistance in the fields where there are already established and proven successes?

Attorney General CLARK. No, sir.

Senator MCCLELLAN. Could you give me an example of a grant under section 201(a), "public protection, including the development, demonstration, and evaluation of methods, devices, equipment, and design to increase safety from crime in streets, homes, and other public and private places."

Give me an example of a grant under that section. Let us analyze this as we go along.

Attorney General CLARK. All right. The grants are actually made under section 204, and 201 just decribes in general terms the purposes of the grants.

Illustration of grants relating to 201(a) would include, for instance, many of the items that were described in the President's Crime Commission Report. Computer use, new techniques and communications, walkie-talkie radios for policemen, all the more recent developments in scientific uses among police departments. It can involve new techniques deploying manpower, tactical squads, things like that that have been developed. So there would be just an unlimited number of illustrations you could use, and we would hope the police departments would come forward with a number that we have not thought of yet.

Senator MCCLELLAN. I note subsection (b) starts off with "equipment." Is that a duplication or why is it necessary to have it in both?

Attorney General CLARK. I imagine we will find some of those words repeated through a number of items. The list is intended to be comprehensive, and we did not want to overlook anything. I think we are interested in techniques and in the utilization of science in law enforcement.

Senator MCCLELLAN. I cannot see any difference in the two, (a) and (b). What is it? I do not see a bit of difference.

Attorney General CLARK. Well, the purposes for which grants may be made under (a) include public protection against crime generally, and is not aimed primarily at equipment relating to the improvement of the police department or other law enforcement and criminal justice agencies.

Subsection (b), these are just general——

Senator MCCLELLAN. You have everything in (b) included in (a). That is the question I asked you.

Attorney General CLARK. I do not really think so, but these are just general descriptions. Subsection (a) is primarily talking about devices and other public protection methods; (b) is primarily talking about equipment used by law enforcement and criminal justice agencies. It would include equipment for courts, corrections, and police functions.

Senator MCCLELLAN. They seem to be about the same. I just wondered if these sections could not be rewritten into one to avoid any confusion. That would be something we could think about. That was the point I wanted to call your attention to. You might be able to help us to get it as concise as we can.

Subsection (c), "manpower, including the recruitment, education, and training of all types of law enforcement and criminal justice personnel." That seems to be different. That deals with personnel, does it not, training and personnel? That would be training given policemen, special training, is that correct?

Attorney General CLARK. That is correct. About 90 percent of your police budgets on the average go to personnel. It is a service, a profession. People give to its success. Certainly manpower, quality of manpower, standards for manpower, training, are primarily important.

Senator MCCLELLAN. Subsection (d). Give us an illustration under that.

Attorney General CLARK. The police, as well as the courts and corrections, need to be efficient.

Senator MCCLELLAN. Courts need to be efficient?

Attorney General CLARK. Courts, corrections, police all need to be efficient. We deal with them in great numbers. We are growing in everything we are doing and management and organization improvement in police departments are essential to their effectiveness. So that management studies for corrections, for courts, and for police to know we have the most effective organization for the particular jurisdictions are essential to their performance.

So, the purpose of this act is to provide funds to be sure that is so.

Senator MCCLELLAN. All right. Subsection (e), "operations and facilities for increasing the capabilities and fairness of the law enforcement and criminal justice, including the processing, disposition, and rehabilitation of offenders."

What do you mean by a "facility for increasing the capability and fairness of law enforcement and criminal justice"; what kind of a facility would increase the fairness and capability of law enforcement?

Attorney General CLARK. It could be any of a number of things. It could be a halfway house. It could be a community detention center that would provide opportunity for vocational training for a young fellow to continue in high school or work on a job.

Senator MCCLELLAN. Would that mean construction?

Attorney General CLARK. Construction is limited under section 203 in title II.

Senator MCCLELLAN. Does this mean construction?

Attorney General CLARK. The facility parts would refer to construction or remodeling or doing something with facilities.

Senator MCCLELLAN. It does include construction.

Attorney General CLARK. All of section 201 describes the purposes for which grants may be made under title II. Grants are not in fact, made under 201 but under 202 and 203. Construction grants are covered by 203, but the facility involved has to be innovative in its purpose.

Senator MCCLELLAN. I understand that the actual grant is not made under section 201, but is made under section 203. My question was, do the purposes for which grants may be made under subsection (e) include the construction of facilities?

Attorney General CLARK. That is one of the purposes of the act. Section 201 is the general paragraph stating the purposes for which grants can be made. To really find out about your grants for facilities you have to look over at section 203.

Senator MCCLELLAN. Subsection (f), "community relations, including public understanding of and cooperation with law enforcement and criminal justice agencies." Give us an illustration of this type grant.

Attorney General CLARK. Certainly one of the major needs of the public in law enforcement today is confidence and close identification with law enforcement officials. Good community relationships between police and public.

Senator MCCLELLAN. Give me an example of a grant program that will do that.

Attorney General CLARK. Well, some illustrations would be some of the grants that have been made under the Law Enforcement Assistance Act. Major police departments, such as the city of Memphis, have undertaken training of their police personnel in how they should act toward the community to insure and inspire confidence and respect so that they can work effectively with the citizens that they are hired to protect.

Senator MCCLELLAN. Would that not come under educating a policeman?

Attorney General CLARK. It is a phase of education.

Senator MCCLELLAN. Would that not come under training a policeman?

Attorney General CLARK. It is a very important phase of education and training.

Senator MCCLELLAN. Now we come to the next one, subsection (g), "public education relating to crime prevention, including education programs in schools and community agencies." That is to try to reach the public?

Attorney General CLARK. That is correct.

Senator MCCLELLAN. What kind of program would you have in mind that you would give a Federal grant for?

Attorney General CLARK. This could involve taking police officers into the high school classes or junior high school classes to talk to the students to explain to them their duties as policemen and their functions as policemen. Perhaps to engage in recruiting programs with them to help build understanding and respect between the community and the police.

Senator MCCLELLAN. I think it is very well to do that and I do not see any reason why they cannot do it. But I do not see why they have to have a special program for this. All they have to do is to go into the schools and present their program. Why does the Federal Government have to step in and finance it? You can have a policeman go to a school and talk to the students. I do not see much expenditure in that. I do not see why they have to have a Federal grant. The local police could have this type program any time they wanted to.

Attorney General CLARK. This would not be limited to the illustration I gave. We have to educate our young people to understand that the police are there for their protection and are their friends. The police have to understand this as well. It requires time and money and manpower, and the problem is that the police, most police departments, are short handed right now.

Senator MCCLELLAN. You are going to give them more policemen and you are going to give them more pay.

Attorney General CLARK. They need both.

Senator MCCLELLAN. Do you feel that this public education program would be justified?

Senator ERVIN. If I might inject, I would like to state that in North Carolina the State highway patrol has a program which it still maintains. They have a very personable and eloquent State highway patrolman who is available to go before civic groups, any kind of groups who will hear him explain highway safety laws and the necessity for observing them. He, I think, is a full-time man. That is all he does.

Attorney General CLARK. That sort of thing is very beneficial to the public and law enforcement alike. We ought to be sure we are investing enough in it because it can make a major difference.

Senator MCCLELLAN. Do the public schools anywhere offer these programs to their students now without Federal aid? It seems to me that it should be elementary in public schools to teach honesty, integrity, and law observance. Are we falling down in this area in this country today, do you think?

Attorney General CLARK. I would say we could use a little more of it.

Senator MCCLELLAN. I would agree with you.

Senator HRUSKA. On this point, Mr. Chairman, I would like to ask a question.

Senator MCCLELLAN. Yes.

Senator HRUSKA. By community relations in section (f), do you mean those community relations committees that meet and attempt to understand law enforcement and criminal justice agencies?

Attorney General CLARK. No. This primarily contemplates police-community relations and involves teaching and training of policemen themselves in community relations and also the community.

Senator HRUSKA. It does not say training policemen. Rather, it says community relations. Training policemen is taken care of in another subsection—subsection (c). Of course, public education with reference to public education programs in schools and community agencies is in subsection (g). I do not understand community relations. So often there are community relations committees with the poverty and other programs. I thought that was what you were defining.

Attorney General CLARK. No. This is a much narrower approach. We are talking here of community relations for justice purposes and certainly police community relations. It is one of the major problems today and it will be more of a problem in 10 or 15 years, we see very clearly. This is something different. This is a present problem we are addressing ourselves to, to endeavor to help with now.

Senator KENNEDY. On the question of police-community relations, I understand that under the Law Enforcement Assistance Act, money for this aspect of law enforcement has been utilized extremely effectively. This has been the kind of community relations worked out between the police and community and has been extremely helpful in the field of law enforcement.

Attorney General CLARK. It has been extremely helpful. They are essential.

Senator KENNEDY. You say this section would be utilized in trying to further this effort which is being initiated at the local level in law enforcement?

Attorney General CLARK. Yes, this has been implemented through the Law Enforcement Assistance Act to the point where we have given more than 15 grants to police departments for community relations. Many major police departments are developing an overall plan. For its operation to be successful it has to be concerned with direct efforts toward community relations.

Senator KENNEDY. This has helped establish greater confidence in law enforcement personnel and provides a greater sense of security in the community as well. These have been the results.

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Attorney General CLARK. Those are two results you would look for that have been secured in this sort of activity.

Senator KENNEDY. So, you would give this section a degree of priority?

Attorney General CLARK. This is an important section; yes, sir.

Senator MCCLELLAN. Give us some illustration of what you have experienced under the Law Enforcement Assistance Act as to community relations programs. Give us some illustration of where you have experimented with this type grant and give us some of the results.

Attorney General CLARK. The grants have been made. We can give you police departments, and the amount of money itemized if that would be helpful for you. The grants have helped these police departments to train their officers in an awareness of complete police community relations. This was done long before the Law Enforcement Assistance Act was passed. I remember Chief Parker of Los Angeles Police Department describing his technique with movies, and so forth, training his officers for good community relations, to be contantly aware that community relations are important and to so conduct themselves in the performance of their duty to secure the respect and confidence of the community. This requires thought and requires training. That is the purpose of these courses.

Senator MCCLELLAN. Mr. Attorney General, I do not disagree with that aspect of it. They should be instructed and trained in the matter of understanding that they have a responsibility in community relations, but I do not see why you have to spell it out in education and training. Those two words cover it. Certainly you do not spell out target practice and things like that, how to make out reports, you do not spell that out.

It seems to me training and education would be sufficient to embrace all these things referred to insofar as appropriate to develop a policeman, training and equipping him to perform his duties. I am not arguing with you, but it does seem to me you are getting so many things here and spelling out every detail so perhaps you ought to include target practice and calisthenics and other things, which would make better policemen.

Attorney General CLARK. We need that too. There are just seven little general paragraphs here. I do not believe we have overstressed community relations by specifying it because it is needed. Not only local police departments but police departments in major cities of the country today realize community relations are important.

Senator MCCLELLAN. I am not arguing with that. Do you propose to use grant money to finance so-called police review boards?

Attorney General CLARK. If police departments came to us with a comprehensive plan, including police review boards, it might be approved, yes.

Senator MCCLELLAN. You would not do it except when a police department initiated it, is that right?

Attorney General CLARE. That is right. There are no plans under here to institute police review boards.

Senator MCCLELLAN. Well, you hear a lot of suggestions from groups that establish their own police review boards.

What I am trying to find out is, are you going to spell this thing out to restrict grants to law enforcement agencies or are you going to use these funds for other groups that may be organized by communities to spend money in that area?

Senator KENNEDY. Is it not true that these community relations programs have been initiated at local levels and have been requested by these police departments?

Attorney General CLARK. That is correct.

Senator KENNEDY. There are really locally initiated requests for some kind of assistance. As I understand it, Chicago, Atlanta, and my own city of Boston recently requested and were given grants for the implementation of such programs. The need for this type of program, which is a relatively new kind of approach, has been especially evident over the course of the last few summers. And there is certainly an increasing degree of need for and acceptance of these programs.

But, as I understand, these requests issue from the local level and are not directly initiated at your level.

Attorney General CLARK. Yes. Let me say I think there is a need for profound police-community relations as well as police awareness of the great need we have in all the major police departments in this area. We do not make grants except on the basis of applications. If an application does not come in, nothing happens. If an application does not include a request for police-community relations programs, no funds are made available for that purpose. Because of the importance of this area we have made known our willingness to the police departments that we will make grants for these community relations programs.

Senator MCCLELLAN. They apply how?

Attorney General CLARK. They have an interest and they apply for a grant for improved community relations.

Senator MCCLELLAN. Have you had any requests under the Law Enforcement and Assistance Act for grants to set up police review board committees?

Attorney General CLARK. I am not aware of one.

Senator MCCLELLAN. Do you think the police departments will ask for grants and want to establish a police review board and ask for funds for that purpose? I am talking about citizens review boards, rather than one established in the framework of the police department.

Attorney General CLARK. We are looking for comprehensive plans. I think unquestionably many of the comprehensive plans will provide for a variety of techniques and review of police disciplinary action. Some include police-civilian review boards. Whether they will be old or new or whether they will ask for Federal funds for that purpose or not, I do not know.

Senator MCCLELLAN. Is there any authority which permits you to give a grant to a citizens police review board, established by citizens of the community, rather than a board that may be established and may be under the jurisdiction of the municipal government?

Attorney General CLARK. If it was not under the Government, I do not know what jurisdiction it would have. If it was just a bunch of people it would have no authority that I could see.

Senator MCCLELLAN. You are not seeking that authority?

Attorney General CLARK. No.

Senator MCCLELLAN. So, it would have to be governmental action you would respond to; in other words, the application would have to come from a government entity?

Attorney General CLARK. Well, there is some authorization for nonprofit corporations under title III. We can grant research and development for training and things.

Senator MCCLELLAN. Under section 302 it says:

> The Attorney General is authorized to make grants to, or enter into contracts with, institutions of higher education and other public agencies or private organizations to conduct research, demonstrations, or special projects which he determines will be of regional or national importance or will make a significant contribution to the improvement of law enforcement and criminal justice.

Do you think under these broad terms you would be authorized to make grants out of these funds to a citizens review board created by a group of citizens in the community?

Attorney General CLARK. As far as just pure authorization is concerned, if the standards of section 302, as you read them, were made we could make grants. I am not sure what they review, what they do; I am not sure I understand it.

Senator MCCLELLAN. You know what I am talking about, some kind of board set up to review the actions of the police. I am asking if a private group of citizens, a nonprofit organization, say, sets up a board like that and for that purpose come to you for a grant. Do you have authority under this bill as it is now written, to make that grant?

Attorney General CLARK. To qualify it would have to be of regional and national importance or make a significant contribution to the improvement of law enforcement and criminal justice. From the way you describe it, I do not know what contributions they would make.

Senator MCCLELLAN. The answer is that you have the authority, but you are not likely to use it; is that correct?

Attorney General CLARK. We would have the authority if it met the standards, yes; but the way you describe it I do not think it would be likely at all.

Senator MCCLELLAN. Then, there would be governmental authority. I have no objection toward any community, municipality, county, or State, where it feels it is needed in its community. There is no objection. But I am concerned. I do not want to authorize or fund programs here simply to assist some group of dissenters who are more or less antagonistic toward the police in the community, and who insist or demand there ought to be a review of all complaints, screened through their organization, who would come to the Federal Government to get money to carry on their work. I do not want us to fall into that sort of trap.

Attorney General CLARK. I just cannot visualize that happening. I do not want to exclude, however, all private organizations from any potential grant under the act.

Senator MCCLELLAN. Give me an illustration of the private organization to which you would grant assistance.

Attorney General CLARK. Well, in areas of research and education there are private organizations which might be able to make a better contribution; which have more experience, maybe; a scientific research

agency which had the experience and background to give them the opportunity to do more than anyone else could do in the same amount of time. And if these were excluded we would be excluding many opportunities for advancement of law enforcement.

Senator McCLELLAN. I am not implying that we exclude all research agencies who are competent and have capability. I am not implying that at all. But I think we need to look at this language and try to make certain we are not just opening the gates for grants to be made anywhere for anything at any time. We have got to watch this and be a little careful about the language here.

I invite your attention to this. Maybe you could help revise the language of the bill so it gives us better assurance the authority is to be exercised only for the prospect of benefits flowing from them. It is not a question of suggesting that is the intent at all. Once you get this law, if anything is in there for someone to get money, I expect you are going to be asked for the money.

I want to be sure there is some fortification here if it can be spelled out.

With reference to section 202, does this mean that the applicant must expend 5 percent more each year to qualify for a grant?

Attorney General CLARK. Yes, it does.

Senator McCLELLAN. Do you think that is too restrictive?

Attorney General CLARK. Our judgment is that the interest and the effort and commitment of local jurisdictions are essential to the effectiveness of this act. And therefore that should be shown by an increased effort financially. The annual increase in investment for criminal justice in the United States is about 5 percent; this is a national average. We would seek to at least maintain that average of increased investment at the local level. I do not think that is enough; I do not think it really affords them an opportunity to keep up, but we would call for that 5 percent as a base and over and above that Federal funds under title II would be available up to 60 percent for action programs.

Senator McCLELLAN. Mr. Attorney General, I am not saying this is not highly desirable if we can induce them to do it. That is not the point. But if assistance is premised on the basis of their spending 5 percent more in law enforcement in each year, then it seems to me a community could not make its plans beyond 1 year. Or if it would make plans beyond 1 year and then the 5-percent increase was not forthcoming from the fiscal resources, then the plan would have to be canceled or suspended or discontinued right in the middle of it. Do you anticipate you will have some problems that way?

Attorney General CLARK. No, actually I think the requirement would compel a jurisdiction to look down the road a bit further because it would realize it is embarking on a commitment that will fail if it does not maintain its level of advanced investment.

Senator McCLELLAN. Yes, I can understand it is easier to look down the road 5 or 10 years and make plans. But many plans are made in a municipality in which the mayors change and other officers change every 2 or 3 years. It would be difficult for one administration to commit another administration on how it is going to spend its money.

Attorney General CLARK. That is a political risk we have in this country even with Congress. But we have to go forward with the hope the programs will be carried out.

Senator MCCLELLAN. I would like to see it. I am not opposing it. I am talking about the problems you may encounter if you adhere to that too rigidly—if the community has to increase law enforcement expenditures by 5 percent each year. A municipality may be responsible only for the police and can increase its police budget by 5 percent. If the municipality entered in a statewide plan, then the State would have to spend 5 percent more each year. I assume that each entity in that plan would have to spend 5 percent more for that part of the plan which it administers. The State is responsible for State government. The municipality would have to spend 5 percent more for that part of the plan it is responsible for and if the municipality failed or the State failed then would the whole plan fail?

Attorney General CLARK. Let me point out first that the provisions on line 10, page 6, give some flexibility the first year.

Then let me say we have looked at 25 or 30 cities over a period of 3 or 4 years past, and most of them in recent years even without the Federal incentive, would have qualified because they would have been above the required 5-percent increase. Let me say we start out with the hope it can be done. We can change it next year or the following year if it is too onerous a burden.

Senator MCCLELLAN. You may have two or three communities that go together and supposing one community falls down on the 5 percent and the other two communities are able to make it. What would happen there?

Attorney General CLARK. That would be quite difficult. The other two would have to see if they could make it alone.

Senator MCCLELLAN. I can see problems in this area.

Attorney General CLARK. It is complex.

Senator MCCLELLAN. This is not a simple bill. It will not be simple to administer, either.

Attorney General CLARK. It is a difficult problem. It will be a challenge in its administration.

Senator MCCLELLAN. Mr. Attorney General, I have a number of other questions but there are other Senators here and I would like to suspend my interrogation and let them have the opportunity to ask you some questions before the noon hour. I have a number of questions I want to go through but I want to present the opportunity for any of my colleagues who have a question.

Senator Kennedy, do you have any questions?

Senator KENNEDY. Thank you very much, Mr. Chairman.

I would like to ask the opinion of the Attorney General on the question of confessions. Could I get the benefit of his——

Senator MCCLELLAN. Let me say this. I am not going to object. I undertook this morning to set up a sort of priority on this bill, S. 917, and I am trying to keep the testimony in continuity with respect to each bill.

Senator KENNEDY. During the course of the 3 days of hearings that were held a short time ago the question of confessions came up. Knowing the very strong and carefully considered opinions that a number

of members of this committee have on this question, I would hope that we could return to this subject at a later date. On that understanding, then, I will certainly direct my attention to the Safe Streets Act. I, for one, would like to see the act moved expeditiously. I, for one, believe we have had extremely compelling testimony in the report of the President's Commission on Crime. Obviously this legislation is a primary responsibility of this committee. I think that is why the questioning this morning is so important. Thus far the questioning has been very helpful to me and I am sure that it has been helpful to the other members of the committee.

So, if we could get some indication from the chairman how he would like to proceed.

Senator McCLELLAN. Senator, I announced this morning at the beginning of the hearing I would try to give preference to the safe streets bill with the idea that after we have all concluded questions on this bill, we would take up the other bills and go through them one at a time.

Senator KENNEDY. With the Attorney General?

Senator McCLELLAN. Yes, indeed. I want to ask him questions, too. I thought, Senator, we could make a better record this way.

Senator KENNEDY. I appreciate that. I agree with the chairman.

Senator McCLELLAN. I gave priority to the safe streets bill. That is the one the administration is vitally interested in and I am trying to be accommodating to the Attorney General in that respect. Very well, if that is satisfactory, we will proceed. Senator Kennedy, do you have any questions?

Senator KENNEDY. Yes, I do, Mr. Chairman.

Senator McCLELLAN. Very well.

Senator KENNEDY. I understand, Mr. Attorney General, that the Nation spends $7.1 billion on research for the Defense Department; $2.4 billion for NASA; and $1.41 billion for the Atomic Energy Commission. I was wondering if you have any estimate of what the Federal Government is spending on all programs of research, innovation, and experimentation in the fields related to law enforcement and criminal justice. Do you have any idea?

Attorney General CLARK. Well, nothing is done in this country in the criminal justice field which would compare with the expenditures for research and development in the areas you mentioned. The best illustration of that would be the fact we spend only a little more than $4 billion for all of the processes of criminal justice in all jurisdictions of the United States, Federal, State, and local. Just about $2.8 billion of that is for police law enforcement. About $1,030 million is for all of our correctional activities, State, local, Federal. Something over $300 million is for courts and prosecutors.

So you can see we spend only a tiny part of our national wealth and production for criminal justice. One of the underlying theories of this bill is that is not enough. Another theory of the bill is the greater part of what we do spend has to go to research and development to insure that we sufficiently utilize the facilities we have for crime detection and public protection. Actually, the estimate of the actual amount of money would be difficult, except to say it would be measured probably in the millions, maybe tens of millions, but surely not above that.

We secured the first year under the Law Enforcement Assistance Act, $7,249,000 for the entire program. We secured an additional $1,000 more in the current year or $7,250,000. Only a fraction of that goes to research and development. That would be proportionately proper but we need more resources for research and development. It will make a big difference in the quality of law enforcement when we do that.

Senator KENNEDY. You give the approximation of funds which could be usefully spent on research and development, in response to a question earlier by Senator McClellan on the current legislation.

I know there have been a number of estimates made as to the amount of money that could productively and usefully be spent in the field of criminal research. As I understand it, your best estimate would be that between $20 and $30 million could be used this year in this area?

Attorney General CLARK. We would seek approximately $20 million for such purposes under title III. That would be $20 million of the $50 million. That would be an almost threefold increase over the fiscal year in which we have had experience under the Law Enforcement Assistance Act. We feel we could efficiently and beneficially use that much. We think a substantial part would go to scientific research and development.

Senator KENNEDY. How do you see this research developing next year, with the $300 million request coming up? On the safe side, how would your research program develop? I am trying to find out the priority you place on it.

Attorney General CLARK. We place the highest priority on research. The $300 million for fiscal 1969 would be devoted in much higher proportion, however, to title II action programs than would be the case in fiscal 1968 where only $30 million would go to title I planning and title II action programs. Most of that is for planning. Even so, we would expect an increase in title III, which includes our research potential. It would probably at least double in the folowing year. There would also be some potential for research under the action programs in title II where police departments would be the proper research agent.

Senator KENNEDY. I know you and your Department have given a good deal of thought to the recommendations of the President's Commission as to how this research can best be organized and how it can be developed to make the most useful contribution.

I know the President also referred in his message to the Congress to two different ways in which he thinks it can be most usefully developed. I wonder if you would give us your own idea of how these funds should be appropriated and spent in order to achieve the results you desire.

Attorney General CLARK. Yes. I think we need flexibility. We need to apply the limited funds that we have to the places where our experience is the greatest. We need to be sure we do not have a single power strand of research that is divorced from the scientific community.

Let me give an illustration. Some of our major grants for research should be to universities which can tap the experience and expertise of scientists in those areas.

On the other hand, I think we should feel free to go to the aerospace industry as Governor Brown did in California and learn as much as we can about the occurrence of crime in major communities. I think we need to go to places such as the University of Wisconsin,

which has evidenced leadership in corrections, and gain not only from their experience but give them the opportunity to add to it, to the benefit of the country because they have been down that road.

As I say, we need flexibility. We need to know. We are tapping all the resources that are available.

Senator KENNEDY. Now, the President's Crime Commission recommended the establishment of a national research institute and the development of regional research institutes at universities. This has been an area in which I have had some interest. I wonder if you could evaluate these recommendations which were made by the President's Crime Commission and which the President discussed briefly in his message to Congress.

Attorney General CLARK. There has been recurrent interest both in the national institute and regional and research centers for a period of time. I think, and I should say that title III, and also section 405, I believe, of the act would authorize the Justice Department itself to involve the Government in direct research programs so that you have the legal basis and the capability there for Federal research itself. But I think on the basis of our present learning that flexibility will offer the most rewards. We need to know that we are reaching the people who have been in the field.

Just take communications. If we tried to set up our own research in police communications, which is so vital because the policemen need to arrive promptly at the scene of an accident or to make an arrest; if we went out and tried to undertake to develop communication equipment and train people to do research in the field, we would be years getting up to the point where people experienced in the field already are. This is true also in computer work. These are complicated problems and people with major experience in the field already have the potential for what we need. We need to be able to tap those sources.

Senator KENNEDY. Is there any reason why this could not be achieved through a national institute of criminal justice?

Attorney General CLARK. I do not know if that is just a name. If that were a name given under title III, that is exactly what it would mean. If national institute for crime means more than that, we would have to see what to see what it involved.

Senator KENNEDY. I spelled it out in S. 992, which is a bill I introduced in February. The bill fits very closely to the findings of the Crime Commission, and the institution was mentioned briefly during the President's message. I would appreciate, perhaps at a later time, receiving from you your views on that particular legislation, as well as on S. 993 which provides for establishment of regional criminal justice academies.

I am interested in your observations as to whether these bills would meet the goals outlined by the Commission and the President, and whether they would be achieved equally well through title III of the safe streets bill. From a practical point of view I am not completely convinced that the general type of research provided for in title III represents the best approach. I am wondering if we should not be more specific in outlining and providing for our research needs. The National Institute of Criminal Justice and the regional criminal justice academies which I have proposed represent such an approach to a more specific congressional mandate in this field.

Attorney General CLARK. That would certainly be something well worthwhile and we would hope it would be done in the context of title III. We would hope that it would not cause any significant delay in enacting this legislation. Programs under titles II and III have to be coordinated. The research and development grant program provides an anchor and foundation for the action grant program.

Senator KENNEDY. Could I request your comments on those two pieces of legislation. Thank you very much.

Senator MCCLELLAN. Senator Hruska.

Senator HRUSKA. Thank you, Mr. Chairman.

Mr. Attorney General, you gave some figures for overall national expenditure in the police field and you mentioned the figure of $4 billion. What is that for?

Attorney General CLARK. A little over $4 billion is the estimate contained in the National Crime Commission report for all of the processes of criminal justice. Of that, about $2.8 billion is for State, local and Federal police. About $1,030 million is for Federal, State and local corrections—all your prisons, all your jails, all other public involvement in prisons and corrections. Something over $300 million is the gross national expenditure for the criminal aspects of court activities plus prosecution. It is amazing how little it is when you consider the importance of the work.

Senator HRUSKA. Does $50 million go very far against such a corpus?

Attorney General CLARK. It is interesting to see how it goes. Let me skip to 1969, if I might. With a corpus of $4 billion, if you have the 5 percent increase required by the bill (which has been the national average) an increase of $200 million will be required before Federal dollars are available.

If you then have $300 million available for grant purposes on a matching basis, this would involve up to 60 percent to match to $200 million more from the States and local jurisdictions to be added to the $300 million that would mean an increased investment in that year of $700 million to be added to the base of $4 billion. In 1 year the increase would be three and a half times greater than our experience at the present time.

Senator HRUSKA. Was there any thought given to the idea of a Governor's veto over this particular type of Federal grant?

Attorney General CLARK. It is a subject that can hardly escape your attention in this general area today and it was considered. It is our judgment that the justification for that is much more difficult to find in law enforcement than in other areas. And the reason primarily is that law enforcement has been basically a local function. Police expenditures by local governments are about 2½ times police expenditures by States. The average State does not give any financial support to local law enforcement. It has really no experience in local law enforcement. The average State does not have an office to coordinate the activities of local law enforcement. There is no real basis for the Governor of a State in the exercise of his functions to say that a particular program is not sound since he has no experience in the field.

Senator HRUSKA. But are not, the cities and counties and all of their activities, creatures of the State legislature? They obtain their powers, tax bases, and a number of things from the State legislatures. And, of

course, the Governors often play a vital role in these functions. The attorneys general of the States have general supervision of all major criminal prosecutions and the trials. There is a very close supporting relationship between States and cities. For example, how can it be said that New York City is free and clear of State government and does not have any close ties or relationship in law enforcement. I cannot follow that reasoning.

Would you have a comment on this? It is not limited to New York, but, generally, I cannot see any difference between this field and any other fields.

Attorney General CLARK. I guess that police activities were the first function of cities if not of government itself. It has been a function we have left to the cities in this country. New York City provides an illustration. There are 28,000 policemen there. The annual budget of the New York City Police Department exceeds the budget of the U.S. Department of Justice by $400 million. As far as I know the State does not provide any funds for police protection in New York City. They supply no advice. Only last year they established an office in the State government involving one man and one staff assistant. What can they contribute to the mighty police department of New York City, which has protected the people for generations.

As far as the powers of the State attorneys generals are concerned, the average attorney general of a State exercises no significant criminal powers. Many have no legal authority in this area. Those that do have common law powers find it difficult to use them. A rare exception is the State of California where there is a department of justice but its functions, too, are limited. It tends to be on the prosecution side, rather than to involve police protection. And it exercises no control over the local district attorneys in their handling of prosecutions.

Senator HRUSKA. Your bill emphasizes that we are prosecutors of cases.

Attorney General CLARK. Yes.

Senator HRUSKA. Those claiming to be in the law enforcement part of justice make up a very small percentage.

Attorney General CLARK. Yes, very small.

Senator HRUSKA. In many of the Middle Western States the Attorney General prosecutes all appeals from trial courts and in many instances participates in the prosecution of cases and trials in State district courts.

Attorney General CLARK. There would be no need for a Governor veto there because he would be directly involved, presumably.

Senator HRUSKA. Of course, when we experience breakdown in a city police force due to either civil commotion or massive civil disobedience, the Governor steps in, does he not?

Attorney General CLARK. He has to sometimes, unfortunately.

Senator HRUSKA. In thinking of the Governor, I wonder if the fear of bypassing the State in a program of this kind would not grip the heart as much as other programs which they have discussed so vigorously.

Attorney General CLARK. My judgment is that it would not because police departments are old-line agencies with which the Governors have had a very minimal experience, connection, and relationship.

Senator HRUSKA. I do not know if you have convinced me. I just wanted to ascertain from you whether that had received any thought.

Such questioning is going to be raised on the Senate floor because there are many Governors who say you cannot be partners with the Federal Government.

The Federal Government is dealing out this money and after it becomes a substantial amount the municipality is hooked. If municipalities do not substantially comply with the plan, that money can be withdrawn and they have no alternative. They must run that department the way the Attorney General says they must, pursuant to that plan. Control then slips away from the municipality and goes into the Attorney General's Office.

Is that not about the size of it?

Attorney General CLARK. No. Not at all. That would be both a violation of the mandate and spirit of section 408. I think as a practical matter the Attorney General will not run the police department because they will not let him and because he does not want to. He would not even if he could do so.

And the amount of money contributed by the Federal Government will be a small fraction of the total investment and it could hardly be the controlling part.

Senator HRUSKA. You can go as high as 60 percent of these budgets for administrative improvement. The expenditure of 60 percent is a big percentage.

Attorney General CLARK. Sixty percent of the increase above 105 percent the first year, 110 percent the next year, 115 percent——

Senator HRUSKA. It is only to an improvement component which this 60 percent applies?

Attorney General CLARK. That is all.

Senator HRUSKA. Will it not in due time be a sizable amount?

Attorney General CLARK. It will become a large sum in some cases in due time.

Senator HRUSKA. Now you refer to section 408 which states that nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or agency of any State or local law enforcement and criminal justice system.

That is a most noble statement made in good faith. Yet the preceding section says:

> Whenever the Attorney General, after reasonable notice and opportunity for hearing to a grantee under this Act, finds that, with respect to any payments made under this Act, there is a substantial failure to comply with—
>
> (a) the provisions of this Act—

And (b) and (c).

Considering the vast discretionary power invested in the Attorney General in this act and its overwhelming discretion in connection with this program, any aspect of the plan that has been submitted and approved must be OK'd by the Attorney General. Thus, if he feels it is being maladministered and not substantially complied with, he will say, "Sorry, boys, the show is over. No more money."

Would that constitute control and supervision in your judgment? It is well intended and filled with the spirit of wanting improved law enforcement service and all of its processes, but is it not a pretty compulsive situation?

Attorney General CLARK. No. I think it is necessary to the integrity of the act that its provisions be complied with and its regulations be

complied with and the plans submitted be complied with. Otherwise, the very purposes of the act fail.

Senator HRUSKA. Exactly. As soon as that control is shifted over from the local or State level, it finds its way into the Department of Justice and the purposes of this act would fail; but there they would be controlled and supervised. Apprehensions are being raised about this aspect of it.

Attorney General CLARK. In my judgment, in view of the nature of how police departments function and the extent of the Federal contribution, the fears are unfounded.

Senator HRUSKA. They were not unfounded in a number of Governors this past year in the field of aid to dependent children, a field in which I had 8 years of personal experience.

They were not unfounded in medicare or the administration of the water and sewage for municipalities with their requirement of community planning. And in the field of education, the cry is becoming bigger and more vigorous as time goes on. More and more, the prerogatives of local schools are being taken away from them on the threat that unless they do thus and so, the plan will not be complied with and no more checks from Washington, D.C.

This is not my invention. This record has been made in other committees of this Congress. This is becoming increasingly well known.

I am confident it will not happen with the first $50 million. But what about the $300 million level? How long will that $300 million level obtain?

Attorney General CLARK. In my judgment, it will probably increase if the program is successful as we hope, at least for several years and then level off, and, hopefully, terminate at some time.

Senator HRUSKA. Do you think it will terminate if it reaches as high as $1 billion a year?

Attorney General CLARK. I think that depends on many factors. We cannot meaningfully predict now. In the last analysis, it involves the amount of resources which local and State revenues can contribute to law enforcement.

Senator HRUSKA. There are some 200 Federal aid grant programs now. The history of this country does not record many programs of a comparable nature having gone out of existence.

Would it reach as high as $1 billion in the near future?

Attorney General CLARK. This is speculation, but I think that it is conceivable that it may.

Senator HRUSKA. Then no longer would it be a relatively small percentage of expenditures by the communities.

Attorney General CLARK. It would still be less than that part of the iceberg now above the water.

Senator HRUSKA. But still a part.

Attorney General CLARK. That is State and local governments part.

Senator HRUSKA. That is the part of their's, subject to the winds of political activities and political philosophy.

Attorney General CLARK. Currents of the water are stronger than those of the air.

Senator HRUSKA. Yes; they are.

Now, repeatedly in the bill we do have specific references to section 204(a)(2). These plans shall "incorporate innovations and advanced techniques and contain a comprehensive outline of priorities for the

improvement and coordination of all aspects of law enforcement and criminal justice dealt with in the plan * * *."

Repeatedly, we come across the concepts of innovation, advanced techniques, and new and novel things. But what would be new in Butte, Mont., might be old hat in Brooklyn, N.Y., would it not?

Attorney General CLARK. It might be that way, and it could be just the other way.

Senator HRUSKA. It could be. When you use the words "innovations and advanced techniques," do you mean in a given community or in the world of——

Attorney General CLARK. No. It would be innovative in the jurisdiction applying.

Senator HRUSKA. To the particular jurisdiction?

Attorney General CLARK. Yes, sir.

Senator HRUSKA. That would be helpful, indeed.

Attorney General CLARK. If it is new, it is also something that should be tested and we would want to be cautious about using it.

Senator HRUSKA. Was that interpretation given to innovations and research in the Law Enforcement Assistance Act?

Attorney General CLARK. There is a different problem there because Grant Act emphasizes research and development. In title II we are talking about action programs for police departments, and obviously the interest in seeking innovations and research is primarily to develop strength in ongoing institutions through grants. That is the primary concern.

Senator HRUSKA. There you would resort to newness in innovations and techniques of criminal justice as opposed to——

Attorney General CLARK. I am not sure I follow you.

Senator HRUSKA. Under the Law Enforcement Assistance Act, would you consider something new if it had never been applied in Kansas City and the application was from Kansas City?

Attorney General CLARK. Well, the Law Enforcement Assistance Act, of course, is not an action grant program. It is a demonstration program, a pilot program, and a research and development program.

Senator HRUSKA. Even Kansas City would like a demonstration on how to maintain a better police department at times. They need it now.

Attorney General CLARK. For that reason in title II the purposes for which Federal grants may be made are defined broadly enough to cover activities of the entire department. Under the Law Enforcement Assistance Act, grants have been made, not to supplement ongoing activities, but to provide demonstration, pilot, and research potentials.

It might help you to read page 16, line (h), which I think is in line with my interpretation.

Senator HRUSKA. How is it used?

Attorney General CLARK. It is 501(h), which defines "innovative function."

"Innovation function" is a function which will serve a new or improved purpose within the particular law enforcement and criminal justice system into which it is introduced.

Senator HRUSKA. Yes, that is helpful as it distinguishes between the present act and this bill.

Attorney General CLARK. Well, actually, innovative function was not an important concept in the Law Enforcement Assistance Act.

The direction there was toward research, toward development, toward demonstration; whereas, title II here is a broad support program for all activities of law enforcement, and we want to be sure that they are innovative and forward looking and so forth in their total approach.

Senator HRUSKA. You have testified that $20 million will be devoted to title III out of $50 million requested; and $30 million to titles I and II, if and when this becomes law. When this amount becomes larger, say $300 million, what would be the division between those two categories?

Attorney General CLARK. I think we would want to continue to watch carefully, because surely we will have a better judgment later than now. Right now, of the $300 million we ask for, for fiscal 1969, we would allocate more than $40 or $50 million to title III in fiscal 1969. But I think we can make a much better judgment about that later than now. It will depend on how the applications come in from the police departments and how efficiently we are able to work with them and go forward with the grant program; and how productive we have been in title III with the activities that have already been undertaken.

Senator HRUSKA. What is the level of expenditure in the Law Enforcement Act?

Attorney General CLARK. $7,250,000.

Senator HRUSKA. That is your appropriation. Is it also your expenditure?

Attorney General CLARK. $10 million is authorized for 1967 and we have $20 million, I believe, authorized for next year.

Senator HRUSKA. Is that your authorization of appropriation?

Attorney General CLARK. Authorization.

Senator HRUSKA. It is seven and a half appropriation?

Attorney General CLARK. Yes. For this year.

Senator HRUSKA. And is there a backlog in the applications for further grants from this source?

Attorney General CLARK. Yes. We have a good supply of applications on hand, some of which carried over from last year. Some of these we have turned down. Part of the reason some were turned down was because the allocation of money for these did not seem rather as high as always.

Senator MCCLELLAN. Senator, would you yield?

Senator HRUSKA. Yes.

Senator MCCLELLAN. Mr. Attorney General, would you submit to this committee a complete report and breakdown of the Law Enforcement Assistance Act administration showing the amount of funds you received, how it was expended, grants made, amounts thereof, and to whom.

Attorney General CLARK. Yes, we will. We have just distributed to the Congress, dated April 1, the Annual Report of the Office of Law Enforcement Assistance, and I think that may contain the information you seek.

Senator MCCLELLAN. I would like to make that an appendix to this record, because it has been referred to. Maybe the report you already have will give a substantial part of this information. We will select representative excerpts to be made part of the record.

Attorney General CLARK. We certainly will.

(The excerpts of the report referred to are as follows:)

REPORT TO THE PRESIDENT AND THE CONGRESS ON ACTIVITIES UNDER THE LAW ENFORCEMENT ASSISTANCE ACT OF 1965

April 1, 1967

I. AUTHORITY

A. The Law Enforcement Assistance Act - General

The passage of the Law Enforcement Assistance Act of 1965 ("LEAA") constituted a national commitment to the proposition that crime can and must be controlled. The Act authorized the Attorney General to provide direct financial assistance to state and local agencies engaged in law enforcement, administration of the criminal law, correction of offenders and prevention and control of crime. Thus, a federal effort to help reduce crime and to make this nation safer for its citizens joined long-standing federal assistance programs in the fields of education, health, public welfare, housing, and employment.

LEAA began as a modest, experimental effort. It was designed to foster new approaches, new resources, and new capabilities for dealing with crime and criminals. The quest for innovation was not limited to the police function, for the Congress recognized that virtually all parts of the criminal justice machinery needed study and improvement. In recognition of these needs, the statute authorizes the Attorney General to make grants to, or contract with, public or private non-profit agencies to improve training of personnel, advance capabilities of law enforcement bodies, and assist in the prevention and control of crime. The Act also authorizes the Attorney General to conduct studies, render technical assistance, evaluate the effectiveness of programs carried out, and disseminate knowledge gained as a result of such projects.

The LEAA legislation was conceived as part of a larger and comprehensive program to increase federal participation in the nation's efforts to cope with the rising incidence of crime. Described by the President as a "creative federal partnership," it has involved the establishment of two Presidential commissions, intensification of federal law enforcement programs, development of a variety of crime-control legislative proposals, six-fold expansion of FBI training facilities for local law enforcement, and the launching of significant new correctional programs. Within the context of this larger program, and its strategy of unified collaborative action, LEAA was designed to make a many-sided contribution, but one largely centering on direct help and enlightenment to state and local law enforcement agencies.

B. Summary of LEAA Provisions

The Act was passed in September of 1965 with authorization for a first-year appropriation of up to $10 million. The President signed the law on September 22, 1965. Late in October 1965, a fiscal 1966 appropriation of $7.25 million was approved which became available for obligation on November 1, 1965. The fiscal 1967 appropriation was also $7.25 million.

As amended, the Act contains 11 sections which may be summarized as follows:

Section 1 cites the Act by name.

Section 2 authorizes the Attorney General to make grants to, or to contract with, public or private non-profit agencies for the establishment, improvement, or enlargement of programs and facilities for training of state and local law enforcement, correctional, and crime prevention personnel.

Section 3 grants similar authority for the support of projects designed to improve capabilities, techniques, and practices of state and local agencies engaged in law enforcement, administration of criminal laws, correction of offenders or crime control and prevention.

Section 4 authorizes the Attorney General to reimburse the heads of other departments or agencies for the performance of any of his functions under the Act, and to make appropriate delegations of his powers thereunder.

Section 5 contains directions to the Attorney General for the administration of the program, including a requirement, wherever feasible, that grant recipients contribute money, services, or facilities for carrying out projects.

Section 6(a) authorizes the Attorney General to make studies and to cooperate with and assist state, local, or other public or private agencies in matters relating to law enforcement organization, techniques and practices, and the prevention or control of crime, and section 6(b) authorizes him to collect, evaluate, publish and disseminate relevant information and materials.

Section 7 makes clear that nothing contained in the Act shall be construed to authorize federal direction, supervision, or control over the organization, administration, or personnel of any state or local police force or other law enforcement agency.

Section 8 authorizes the Attorney General to appoint technical or other advisory committees as he deems necessary and prescribes limits on the compensation of members.

The remaining three sections of the Act define the length of the program (as amended--to fiscal year ending June 30, 1970), authorize appropriation of funds for its implementation (as amended--up to $10 million for first year; $15 million for second year; $30 million for third year; and no specific figure for fourth and fifth years), and require submission of an annual activities report to the President and the Congress.

78-433 O—67——26

C. Second-Year Amendments

Based on first-year experience and plans for program expansion, as blueprinted in the President's 1966 Message on Crime, amendments of the Act were submitted to the Congress for action at its last session. These included an extension of the Act's duration from 3 to 5 years, specific appropriation authority beyond the first year, and legislative approval of (i) direct scholarship and fellowship assistance, (ii) awards for outstanding law enforcement service, and (iii) extension of National Defense Education Act loan forgiveness provisions to students accepting employment in law enforcement agencies. Only the 2-year extension and appropriation authorizations were acted upon (P. L. 89-798), the latter providing a $15 million authorization for the current fiscal year and $30 million for fiscal 1968.

II. DEVELOPMENT AND ORGANIZATION OF PROGRAM

A. Organization

For several months prior to legislative authorization and appropriation, a small complement of Department personnel was assigned to plan for the establishment of an office and recruitment of personnel to implement the Act. An Office of Law Enforcement Assistance ("OLEA") was constituted within the Office of the Attorney General, and on October 14, 1965, Mr. Courtney A. Evans, former Assistant Director of the Federal Bureau of Investigation, was appointed by the Attorney General as Acting Director of the new Office.

A table of organization was established for OLEA, providing for 15 professional and 10 clerical positions. This level was substantially achieved by the end of the first year (fiscal 1966), the professional complement reflecting a diversity of background and experience among the substantive fields within the Act's concern. It has since continued to provide the staff core for administration of the program and its expanding responsibilities.

Since October 1965, OLEA has been located in the Home Loan Bank Board Bldg., 101 Indiana Ave., Washington, D.C. In August 1966 a revised LEAA Grant Guide was published to meet the rising demand for information and to provide guidance to grant applicants. The LEAA Grant Guide (Appendix 4) contains information on the program, grant eligibility, application procedures, rules for administering grants as well as the text of LEAA, and a suggested outline for the submission of preliminary proposals.

The statute authorizes the appointment of advisory bodies to assist in the implementation of the Act. In recognition of the fact that LEAA is an affirmation of a federal-state-local law enforcement partnership and to insure that state and local viewpoints receive adequate expression in the administration of LEAA, advisory panels composed of outstanding law enforcement and correctional experts have been established. A 15-member Law Enforcement Advisory Panel, a 10-member Corrections Advisory Panel, and a 5-member Interim Criminal Justice Advisory Panel have contributed greatly to

the effective operation of the LEAA program.* Grant proposals are reviewed at periodic panel meetings at which time the panels provide guidance on substantive matters raised in the proposals and also address general questions of program policy and priority.

B. Program Objectives and Techniques

The Act's role in the effort against crime, and resulting federal partnership with state and local governments, has been seen as an experimental venture--in the words of the President, "to provide an infusion of ideas and support for research, for experiments, for new programs." Department strategy, therefore, has taken two courses:

(a) The support of individual studies, projects, or demonstrations designed to obtain needed information or produce and test new models, procedures, and approaches to law enforcement and criminal justice problems which hold promise and value for other agencies and localities. These are exemplified by the typical demonstration, research, or training grant approved in the first and second years of program operation.

(b) The stimulation of wide-scale improvement efforts in areas of special need. These are typified by the series of "special grant programs," formulated toward the end of the first year and substantially expanded in fiscal 1967, under which modest grants are made available to significant numbers of applicants for specifically defined purposes.** The "need" rationale has also been present in some of the larger individual grants, particularly in training, where program concepts of innovation and unique design have been somewhat tempered to permit serious gaps in services to be remedied on a state-wide or regional basis. In purusing assistance of this type, the Department has tried wherever possible to support the type of efforts which would strengthen the capacity of state and local agencies for self improvement and self-sustaining efforts after an initial infusion of federal aid; hence, the focus in most of the special programs on new mechanisms for improvement or new programs where none existed before.

Promising avenues in both of the foregoing areas, i.e., support of innovative demonstrations and research on the one hand and "seed money" for wide-scale improvement efforts on the other, have been identified even within the modest budget resources now available under the Act. The translation of these strategies into specific components of the LEAA program is detailed in Section III of the Report.

*See Appendix 3 for lists of advisory panel members.

**The five special programs now operative provide aid for (a) state planning committees in criminal administration, (b) state-wide police training and standards systems, (c) state-wide in-service correctional training systems, (d) police-community relations programs in larger metropolitan departments, and (e) police science degree programs in colleges and universities.

C. Grant Criteria and Standards

On individual demonstration and test projects, the Department has adhered to a set of standards and criteria designed to emphasize and implement the Act's "experimental-new methods" focus and its character as a demonstration rather than a subsidy effort. Briefly, these criteria call for projects embodying (i) new techniques and approaches, (ii) an action orientation, (iii) value to the nation as a whole, (iv) relatively short duration, (v) modest fund requests, (vi) a substantial grantee contribution, (vii) program balance in relation to the total LEAA effort, (viii) a potential for continuation after grant support ends, (ix) broad community sponsorship, and (x) some plan for objective evaluation of results. These are not rigid requirements or policies, nor do they apply to all types of projects, but have been viewed rather as having application in most situations presented for LEAA support.

Generally, a maximum period of two years' support has been set for grant projects, and a budget range from $15,000 to $150,000 has been established. These, too, are guidelines rather than limits, but they serve to assure that no single grantee will receive a disproportionate measure of support and that the program will be able to address the wide variety of needs and functions operative within the nation's crime control institutions. Similarly, the Department has sought, in screening and evaluation of projects, to achieve balance and proportion between urban and rural needs, and among the several basic types of activity: training, demonstrations, technological projects and developmental studies. The number of approved grants is now sufficiently large to begin to reflect this desired balance and Departmental goals in this respect will become even more apparent by the end of fiscal 1967.

As regards the special grant programs, specific criteria and requirements have been developed for each of the programs now operative. These indicate the conditions of eligibility, level of support available, program objectives, etc., and are tailored to the nature and goals of the particular program. Since the efforts supported under those programs will, in cumulative effect, provide the "experimental-new methods" focus required of LEAA programs rather than the design of the individual projects, the general criteria outlined in the preceding paragraphs are largely superseded by the applicable special program criteria.

III. PROJECT ASSISTANCE TO DATE

A. General - Extent of Aid

Since its creation, LEAA has provided $11.7 million in direct financial assistance for the support of 194 projects involving police, courts, corrections, and the over-all administration of criminal justice. The average duration of grants and contracts was 12.5 months and the average award amount, exclusive of a small number of OLEA-conducted dissemination and

technical assistance projects, was $61,050. Summarized by fiscal year activity, the record is as follows:

	Fiscal 1966	Fiscal 1967 (9 mos.)	Total to Date*
Funds awarded:	$6.96 million	$4.75 million	$11.73 million
Projects supported:	83	111	194

The bulk of the foregoing effort has occurred since the Department's first annual report to the President and the Congress, i.e., since April 1, 1966. At that time, the Office of Law Enforcement Assistance, after six months of operation largely involving the organization and staffing of a new operational unit, had made 23 grant and contract awards totaling $2.2 million in assistance funds. For this reason, and to provide a complete perspective of the LEAA effort, the discussion which follows will describe all assistance activity to date (including the earlier projects) with special commentary, where relevant, on first and second year activity and other developmental phases of the program. As regards the first year of operations--an 8-month effort dating from appropriation authorization--it will be noted that all of the fiscal 1966 appropriation available for project assistance was obligated against approved awards.**

Although the LEAA program has been one of experimental and demonstration proportions and thus has no specific mandate or structure for geographical allocation, awards have now been made to grantees in 47 states, the District of Columbia, and Puerto Rico. Grantee contributions to the costs of these projects, as reflected in approved applications, exceed $5 million. Set forth below are percentage distribution breakdowns for projects by substantive field, by nature of project, and by type of grantee:

Substantive Field	Awards	Monies
Law Enforcement (police)	69	68
Corrections (probation, parole, institutions)	12	15
Criminal Justice (courts and prosecution)	6	7
General Studies, Planning and Crime Prevention	13	10
	100%	

*These figures are inclusive of a small group of supplemental awards on previously approved projects and allocations for "technical assistance" and "dissemination projects" (for direct execution by OLEA) approved in fiscal 1967. See Appendix 2 grant lists.

**Since the appropriations include expenses of program administration, funds available for support of grant, contract, and other assistance projects have been less than the $7.25 million annual appropriation, i.e., $6.9 million in fiscal 1966 and $6.7 million in fiscal 1967, the lower amount in 1967 deriving from increased administrative costs of 12-month program operation.

Nature of Project	Awards	Monies
Training	46	31
Operations Improvement	41	59
General Studies, Planning and Crime Prevention	13	10
	100%	
Type of Grantee		
Governmental (state, local, county)	52	56
Educational (colleges and universities)	34	30
Private Agency (research organizations, professional associations)	14	14
	100%	

The involvement of law enforcement agencies in projects supported to date is considerably greater than that indicated by the percentages for types of grantees. Over 80% of the project awards to non-government grantees (e.g., colleges, universities, research and professional organizations) involve projects in which grantees are collaborating with specific law enforcement agencies, have been designated as grant recipients by such agencies, or involve direct services to law enforcement agencies or their personnel.

It will be noted that the preponderance of assistance funds has been allocated to projects involving police activity and the police function. This major focus has been consistent, we believe, with Presidential and Congressional intent. It is deemed sound in light of the larger scope and expenditures of law enforcement agencies,* the problems of public safety now confronting police departments, other federal aid currently available for corrections (manpower development, vocational rehabilitation, and mental health programs in the Departments of Labor and Health, Education and Welfare) and considerable self-stimulated activity within the legal profession in the criminal justice field.

While appropriations for the two fiscal years during which the Act has operated have remained constant ($7.25 million per year), a few differences in program direction merit comment. In fiscal 1966, 83 separate projects were approved involving average award amounts of $83,830; in fiscal 1967 with more than 70% of assistance funds obligated, over 100 grant and contract projects have already been approved. Award amounts average $41,177,

*The most recent and only thorough state costing study of criminal justice administration expenditures (state, county, and local) indicates allocation of 70% for police services, 6% for courts and prosecution, 23% for corrections, and 1% for miscellaneous auxilliary services (1965, New York). National estimates of public expenditures (state and local) for law enforcement and related functions (3.9 billion in 1964) indicate approximately 61% for police, 22% for corrections, and 17% for courts and prosecution (Bueau of Census, Division of Governments).

a considerably lower figure than for 1966, due primarily to the advent of the LEAA "special grants" designed to provide seed money support to large numbers of agencies. Additionally, two other program emphases have required less support in the current fiscal year. These were (i) the substantial number of studies developed in collaboration with the President's Crime Commissions (National and District of Columbia) to fill gaps in knowledge and provide the basis for formulation of LEAA program judgments, and (ii) a concentration of grant projects in the District of Columbia to provide the program's one demonstration of what a comprehensive assistance effort in one locality might achieve. In both cases, second-year award levels have been substantially below first-year allocations.*

Project proposals and applications have, throughout the period of LEAA operation, substantially exceeded resources. The Department had, as of the Report date, received over 600 requests for funds aggregating, inclusive of those on which awards were made, in excess of $45 million. A heavy percentage of these were received in the first year with some diminution as LEAA program materials narrowed the range and better delineated those areas and conditions under which proposals would be entertained. While it is true that funding has not been suitable for perhaps a majority of these by virtue of non-conformity with program criteria or project weaknesses, it has also been true that many worthwhile efforts could not be assisted in view of priorities which had to be established for allocation of LEAA's limited funds.

B. General - Scope of Aid

The scope of the Act is broad. It comprehends all facets of the law enforcement and criminal administration process. Yet within the constraints of the LEAA budget, virtually every major kind of need facing law enforcement has been addressed and received some attention--ranging across such areas as training and professional education; application of science and technology to law enforcement; experimentation with new operational methods and techniques; studies to fill gaps in knowledge and develop new answers, models and insights; efforts in crime prevention and crime prevention education; and strengthening of public understanding, support and cooperation. The Department has been able not only to provide support to individual studies and projects but, in the current fiscal year, to stimulate wide-scale improvement efforts in selected areas through small grants available to large numbers of agencies--a feature usually associated with larger subsidy programs.

*See Appendix 1, p. 15, for list of 1st year D.C. projects (14 projects--$1.5 million). Most of these, and all of the demonstration efforts, are still in progress. Only two additional awards have been made in the current fiscal year ($.2 million).

To illustrate the LEAA effort as really a complex of diverse programs and the level of funds allocated for each thus far, the following breakdown is instructive:

By Substantive Area	Millions
Law Enforcement	8.0
Corrections	1.7
Criminal Justice	.8
General crime prevention, studies, and planning	1.2
	11.7

By Type of Activity	
Training - law enforcement - general recruit and in-service	1.1
Training - law enforcement - command and management	.7
Training - law enforcement - special subject*	.3
Training - law enforcement - higher education	.5
Training - corrections (all levels)	.7
Training - criminal justice (all levels)	.3
Operations - law enforcement - general	1.8
Operations - law enforcement - info and communications system development	1.7
Operations - law enforcement - scientific and technological research	1.2
Operations - law enforcement - community relations and public support	.7
Operations - corrections	1.0
Operations - criminal justice	.5
General crime prevention and program coordination	.4
General studies (including their dissemination)	.8
TOTAL	11.7

While the foregoing categories present problems of classification, as would any similar group, their itemization helps lend meaning to the scope of effort implied by the concept of "law enforcement assistance."

C. Training and Professional Education--Law Enforcement

Professional personnel expertly trained for their work are, as in other callings, crucial to the effectiveness of law enforcement institutions. Aid for training and education, a mandate under Section 2 of the Act, has received particular attention. Program effort in this major field of concentration has focused on four broad areas: (a) general recruit and in-service training; (b) command and management training; (c) higher education for personnel; and (d) specialty and special subject training--most notably in the area of police-community relations.

*Including police-community relations.

In all, 89 training projects have received LEAA support and it is conservatively estimated that direct training for over 21,000 personnel will be made possible by these efforts. This is exclusive of ancillary training functions served by many LEAA operational demonstrations and the impact (in some cases quite broad) of projects limited to curriculum development or the production and distribution of training manuals and films for use by others. Of these training grants, 75% have been in the law enforcement field, providing the most comprehensive range of professional education support of all program areas.

1. General Recruit and In-Service Training. Numerous individual demonstrations have been launched in this area plus a special grant program available to any State for the development or operational expansion of state-wide police training and standards systems. These include:

--closed circuit television training available to all law enforcement officers in South Carolina

--open circuit television training available to all law enforcement officers in Georgia

--mobile unit training for smaller cities and rural communities in New Jersey

--regional training institutes for all law enforcement officers in Wyoming

--regional training center instruction--basic and advanced--for New York law enforcement officers

--quarterly training conferences for county and municipal police in Kentucky

--four-week training courses for supervisory level officers in Arkansas

--specialized in-service courses for law enforcement personnel in Oregon-Southern Washington

--in-service training for all departmental levels in the District of Columbia (executive, supervisory and line)

--academy and roll-call television training in Wilmington and surrounding communities

--cadet training integrated with the "cooperative college" plan in Cincinnati

--development of new state-wide police training and standards systems in Wisconsin, Kentucky, Maine, and Vermont (special grants).

--expansion of existing state-wide systems in Connecticut, Oregon, Washington, Texas, Ohio, Massachusetts, South Dakota, and Illinois (special grants).

2. Command and Management Training. This has always been viewed by the Department as a priority area for upgrading the quality of law enforcement, correctional and criminal justice performance. Given limited resources, few would question the special impact offered by training directed to the agency commander or key administrator which can then be translated to the remainder of the organization through (i) supervision and training directed to subordinates and (ii) institution of operational and administrative improvements based on the training experience. The growing size and complexity of the law enforcement mission, as well as societal and technical changes which bear on its function, make it essential to provide training opportunities to enable top-level and middle-management personnel to function effectively. A variety of such projects has been supported:

--top-level executive and management training for large city police chiefs at the Harvard Business School (to be repeated in fiscal 1967)

--management training courses for chiefs and command personnel on state-by-state bases (3 grants--Florida, North Carolina, Pennsylvania)

--a regional command training college for the New England State Police forces (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont)

--regional executive training courses by the International Association of Chiefs of Police (east coast, west coast and southern states) and by Michigan State University (north central states)

--expansion of on-going management and command training courses at leading regional training facilities

(a) Northwestern Traffic Institute, Chicago (doubling capacity of 5 short courses)

(b) Southern Police Institute, Louisville (doubling capacity of basic 12-week course) and;

(c) Southwestern Law Enforcement Institute, Dallas (25%-50% increase in capacity of 4 and 12-week courses).

3. Higher Education for Law Enforcement Personnel. In a nation where college education has become the norm for all skilled disciplines, the importance of college-level training for law enforcement personnel has received increasing recognition--most notably within the police field itself. LEAA has therefore sought to support higher education opportunities in law enforcement on both the graduate and undergraduate levels through programs developed in appropriate balance with other training expenditures.

Recognizing the importance of adequate pre-entry education to police professionalism, the hope that state and local law enforcement will attract increasing numbers of college-trained people and a growing trend toward at least junior college education as a standard achievement in the American

educational system, the Department moved promptly to develop degree education opportunities for officers in-service and new career candidates. Twelve months ago there were 30 states in which there were no existing junior colleges, colleges, or universities which offered a degree program (2 or 4 year) in police science or law enforcement. Today, stimulated by LEAA special planning and development grants, programs are being developed in 15 of these states and will, in most cases, become operative this fall. In 6 others, new programs will reach parts of the State not adequately covered by existing programs or will provide new types of degrees (e.g., 4-year degree in states which previously had only a junior college program). Continuation of this special program will make possible not only coverage of all "have not" states but offer limited assistance to other states in adding new degree programs to reach regions or population centers of the state where needed.

In addition, and on a pilot basis, LEAA has sponsored a program of graduate fellowships for in-service personnel with leadership and top administrator potential. This will permit a year of study leading to the master's degree in police or public administration for 30 law enforcement officers across the nation. The program will be initiated at 3 universities currently offering such degrees--eastern, central, and western U. S. institutions--commencing September 1967. It will offer the general range of stipend and educational expense support provided by comparable fellowship programs under the National Defense Education Act and the National Science Foundation and National Aeronautics and Space Administration programs. If successful, support will be expanded to other graduate program universities in future years.

A further advantage of the LEAA investment in higher education is the benefit it offers to other forms of police education, i.e., the existence of strong police science departments with qualified full-time faculties in the nation's 2 and 4-year colleges offers law enforcement a unique resource for quality in-service instruction, consultation, and research which can be provided to local police departments to strengthen their own activities. This may take the form of institutes, special courses, command seminars, or other assistance that might not otherwise be available, thus making the degree program schools valuable centers for increased professional excellence.

4. Special Subject Training--Police-Community Relations. Although a number of general training projects supported under the Act have included special course offerings, grants for specific types of in-service training have also been made to meet particular needs or gaps in personnel skills. Most prominent among these have been a cluster of LEAA police-community relations training grants, virtually all of them directly to and conceived by law enforcement agencies. These include training programs for police personnel in four cities (Newark, Washington, New Orleans, and Pittsburgh) and two special efforts--an institute in Hawaii involving criminal justice and welfare groups as well as police and a 1-month training course in Puerto Rico for command personnel of major U. S. cities with large Puerto Rican population groups. In addition, at least half of the LEAA "special grants" to large city departments for police-community relations planning and development efforts--of which there are now 18--include training as a major component.

Other grants with special purpose training goals are the LEAA-supported efforts to develop a radio communications officers manual (Associated Public Safety Communications Officers), a series of pamphlets explaining the legal and constitutional responsibilities of law enforcement officers (University of Pennsylvania Law School) and juvenile officer training provided under two school resource officer demonstration projects (Tucson and Minneapolis).

D. Law Enforcement - Operations Improvement

The second major area of LEAA program focus--mandated under Section 3 of the Act--is support for projects designed to test, develop and study new and improved methods and techniques for crime control and improvement of the capabilities of criminal justice agencies. The Department has supported a variety of efforts in this area with a total of 88 grants and contracts, representing $6.7 million in LEAA assistance funds. Of these, 90% have related to the law enforcement (police) function. The action programs, studies, and experiments supported under Section 3 constitute the Act's chief instrumentality for providing immediate, tangible assistance to state and local law enforcement agencies in their efforts against crime. They are discussed below in five major classifications, i.e., general demonstration projects, development of information and communications systems, other scientific and technological research, police-community relations, and studies and research.

1. General Demonstration Projects. Twenty-four general demonstration projects, representing $1.47 million in assistance funds, have received support. These include:

--experimentation in Los Angeles County with helicopter utilization for routine patrol operations

--computerized deployment of police patrol in St. Louis based on service call and preventive call needs

--computer simulation and modelling in New York City for determination of organizational needs, allocation of resources and effect of changing conditions on police department operations

--development of computerized crime prediction data banks in Philadelphia to aid in deployment of resources and formulation of action strategies for crime suppression.

--experimentation with placement of specially trained juvenile officers in junior high schools of Tucson and Minneapolis to work on crime prevention, law enforcement education and with teachers, counsellors and others in problem youth situations.

--police-conducted burglary and robbery prevention programs in Des Moines for owners, managers, and employees of local businesses

--video-tape recording of suspects in Miami (sight and sound) as demonstration in improved police identification techniques over traditional "mug-shot" file

--overhaul and improvement of police procedures for handling juveniles in Syracuse and development of early referral services on pre-delinquents.

2. Development of Improved Law Enforcement Information and Communications Systems. Help in providing police with modern and efficient information and communications systems has emerged as a priority area for LEAA "operational assistance." This is confirmed by both Departmental and National Crime Commission studies and the law enforcement world's self-assessment of needs. Thus far, 11 grants have been made and financial support in the amount of $1.72 million has been provided. Projects receiving support include:

--development of an integrated state-wide criminal justice information system in California to meet combined needs of police, courts, and corrections and serve as a national model.

--development of a model state-wide law enforcement information system in Ohio linking all state, county, and municipal police departments

--development of model metropolitan area law enforcement information systems in Phoenix, Arizona, Cincinnati (Hamilton County), Ohio and the District of Columbia

--development of a model police communications system in the District of Columbia

--development of integrated police information system in Los Angeles featuring correlation and retrieval capability for crime investigation data

--preliminary information and communications system improvement studies in Boston

--support for the FBI-administered national law enforcement information system (NCIC) in (a) the project's design and study phases, and (b) a current pilot test program, putting 15 state and local agencies "on line" for the stolen auto, wanted felon, and identifiable stolen property files to be initiated.

On information and communication system projects, LEAA support has been limited primarily to developmental and design work utilizing capabilities offered by modern systems analysis, data processing and computer sciences. This emphasis on original planning, analysis, and design will continue with expansion of support to new metropolitan, state and regional complexes. With a potential need for development of modern information systems for every state and major metropolitan complex, LEAA program levels have necessarily required selective support for those proposals deemed most sound and technically complete. Applications have continued to exceed budget allocations, even with allowance for regional and other pooling efforts and development work now underway solely on local initiative.

This LEAA role in aiding states, urban complexes and regions in the development of basic plans for new systems is consistent with both the "seed money" concept of federal support and resources now available under the Act. It helps provide state and local agencies with master plans and first-stage developmental support which can then be assessed in terms of cost, value, and need and accepted for financing and execution with local resources. Such support has precluded, with the exception of the FBI National Crime Information Center test project, the financing of equipment costs on anything but a nominal scale. The information system development grants are somewhat similar to "special grant programs" initiated in other areas. In many, innovation is regarded as less critical than stimulation of needed improvement in information system capabilities which incorporate modern methods and concepts so that states and communities can be helped in advancing from "have not" to "have" status.

3. Other Scientific and Technological Research. The informed opinions of scientists and law enforcement experts express a present and growing need for application of modern science, systems analysis, and technological know-how to law enforcement problems and operations. The legislative history of LEAA indicates that support for such projects is in keeping with the high priority accorded to the research function.

Aid in the development of information and communications systems and the application of systems analysis and operations research techniques to police work has been previously described. Other "science and technology" projects have also been funded. These have focused, in addition to general study efforts and important opportunities for dialogue between the scientific and law enforcement communities, on a cluster of specific crime solution techniques, hardware development work and laboratory capabilities improvement. Projects supported include:

--a comprehensive survey, using a team of systems analysts and scientists, of applications of science and technology to law enforcement and criminal justice problems and operations (now completed and to be reflected in the National Crime Commission reports)*

--a national survey of crime laboratory facilities, personnel, and training needs by the College of Police Science in New York

--arson research at the Washington State University (identification of accelerants in fire remains)

--developmental work, co-funded with the Atomic Energy Commission, in cataloging and forensic identification of substances through neutron activation analysis

*Includes important study components dealing with court operations, correctional programs, and total criminal justice system analysis as well major focus on police operations.

--developmental work in automatic license plate scanning equipment and retrieval systems for wanted-car identification

--two national symposia to introduce and interest the scientific world in law enforcement problems (June 1966 in Washington and March 1967 in Chicago)

--comparative evaluation of the techniques of mass source spark spectrometry and neutron activation analysis for identification of criminal evidence at the University of Virginia

An important point of departure for future programming will be the findings and recommendations of the comprehensive survey recently completed with cooperation of the Department of Defense (via its contract with the Institute for Defense Analyses) reflected in a special science and technology chapter in the report of the President's Crime Commission. This effort, commended by technologists from the President's Science Advisory Board, has suggested a much more ambitious program in a wide variety of areas along with specific mechanisms for implementation.

4. Police-Community Relations and Public Support Projects. Because civil disorder and large scale public violence stemming from rapidly changing social conditions has come to the fore as perhaps the greatest problem confronting law enforcement and public safety in our larger cities, the LEAA program has moved vigorously to assist with training, operational programs, and public education efforts designed to foster citizen understanding and support for law enforcement and to improve police-community relations.

A total of 27 awards have been made, some of which were previously mentioned in discussion of law enforcement training projects (pp. 12-13 supra). Viewed in total perspective, these projects include:

--a national consulting service for metropolitan police departments in community relations conducted by their own professional association (International Association of Chiefs of Police)

--specialized training institutes in police-community relations for police personnel officers, police-community relations unit heads, and training officers conducted by the largest university police science department in the nation (Michigan State University)

--demonstration training courses for police officers in human relations, community understanding, and citizen communication in 4 cities--New Orleans, Newark, the District of Columbia, and Pittsburgh

--pilot short course institutes aimed at community relations and minority group understanding in Hawaii (involving community personnel along with police) and Puerto Rico (involving command personnel from major U.S. cities with large Puerto Rican population groups)

--a demonstration police-community relations program seeking in three major cities to test new approaches which would utilize the influence of major professional and business interests and minority group associations (Lawyer's Committee for Civil Rights)

--18 small grant awards for planning and development funds to improve, expand and test new community relations training and operational programs in the nation's larger cities (cities of 150,000 or more--there will be 25 such grants before fiscal year-end). Recipients thus far include police departments in Boston, Richmond, Wichita, Gary, New Haven, Tucson, San Jose (Calif.), Omaha, St. Louis, Flint, Rochester, New York City, Dayton, Kansas City (Kan.), Elizabeth (N.J.), Oklahoma City, Des Moines, and Peoria, (Ill.).

Although accomplished with modest funds (under $1 million) the Department considers this an important start in addressing a major law enforcement problem and--in so doing--responding to needs and programs as proposed and developed by the police agencies themselves.

5. Law Enforcement Studies and Research. The development and productive use of new knowledge has been an important goal of the LEAA program. Working in close cooperation with the President's Commission, support has been given to a number of studies and surveys designed to assist in better understanding the nation's crime and law enforcement problems and to provide the factual basis for LEAA program planning and Commission recommendations. In areas where serious gaps in knowledge exist, the first step in an "action" program must be to gather facts and map solutions--hence the important and interdependent role of both study and demonstration efforts in the quest for operational improvement. the LEAA major study efforts (some of which are mentioned elsewhere) include:

--two studies of police-community relations (one a general survey of many cities by Michigan State University and the other an intensive 2-city effort by the University of California)

--pooling, consolidation and regionalization of police services (Public Administration Service, Chicago)

--cooperation between law enforcement and other agencies of municipal government (Illinois Institute of Technology)

--examination of police recruitment problems (Century Research Corporation)

--survey of the nation's correctional facilities, personnel and services (National Council on Crime and Delinquency)

--public survey measurement of the incidence and nature of unreported crime (National Opinion Research Center and Bureau of Social Science Research)

--study and analysis of police precinct operations in three cities, including impact on the citizen and his attitudes (University of Michigan)

--illicit traffic in narcotics and drugs and law enforcement methods for control and suppression (Arthur D. Little, Inc.)

--study of the "professional criminal" (Brandeis University)

--study of the characteristics of criminal offenders, both adult and juvenile, in the District of Columbia (Stanford Research Institute)

--study of felony court case processing in the District of Columbia (CEIR, Inc.)

--regional study of the office of sheriff (University of Mississippi--southern United States)

--major police organization and management problems--structure, specialization, development of resources, etc. (California State College at Los Angeles)

--police laboratory needs--equipment, manpower and training (College of Police Science, New York City)

--national survey of successful field operations programs and techniques of police agencies (Bio-Behavioral Research, Inc.)

--development of measurement and testing techniques to determine community tension and violence potentials for preventive action and agency planning (Rice University)

--study of critical factors in parole success and failure (University of California at Berkeley)

Most of these have been published or will be otherwise incorporated in the reports of the two Presidential Crime Commissions thereby achieving wide-spread dissemination of findings and results.

78-433 O—67——27

E. Corrections

A second major LEAA program area has been corrections--probation, parole, community services, institutions. Here, with much smaller expenditures than in law enforcement (about one-fourth as large), a nevertheless varied and promising program in both training and research-demonstration has been supported. Projects include:

1. Training

--series of 1-week national training institutes for top correctional administrators (state directors, superintendents, and wardens of major institutions)

--a long course regional training effort (17 central and midwest states) for middle-management correctional personnel and training officers (also includes graduate internships and short institutes)

--1-month executive training courses for correctional administrators (below state director rank but at key administrative level)

--development of training films, slides, filmstrips, curriculum materials, etc., to enrich training effectiveness (3 different grants)

--demonstration in the western states of new techniques of in-service training--traveling teams, college instructor residencies at institutions, and university-based seminars

--training materials development for correctional work in outlying and semi-rural areas

--short institute for mid-western states on management and treatment of the mentally disordered offender

--development of correctional training film on jail and the misdemeanant, including modern treatment techniques and practices

--presentation of short training institutes to acquaint college students with correctional careers

--two regional development efforts in correctional training; one a comprehensive study (New England Board of Higher Education) and the other a planning conference (Southern Regional Education Board)

--national program of training institutes for upper and middle-management probation personnel

In addition to its sponsorship of individual correctional training programs, OLEA has established a special grant program to develop comprehensive state-wide training systems for correctional personnel (parole, probation, and correctional workers). Three grants have already been made (Missouri, Kansas, and Rhode Island) and many others will be processed before the close of fiscal 1967.

2. Agency Improvement and Demonstrations

--a national survey of correctional systems, personnel, facilities, programs, workloads and financing designed to evaluate existing programs against new standards and directions in rehabilitation programs

--a 2-year comprehensive jail work-release program in Seattle

--a pilot demonstration in Denver relating to diagnostic and probation services at the misdemeanor court level

--establishment in Rhode Island of a model residential treatment facility for juvenile offenders as an alternative between probation supervision in the home and commitment to a state training school

--a model planning and research unit for correctional departments in the District of Columbia

--a misdemeanant offender rehabilitation project in Detroit featuring pre-release remedial education, job training, and family services

--a 2-year study and analysis of critical factors affecting the success and failure of adult parolees for development of improved parole methods and techniques

--development and testing in California of probation system models, programmed for computer, to aid in prediction of probation outcome, selection of programs, and agency decision making

In all, 23 correctional projects involving $1.7 million in awards have been approved to date. As in law enforcement, a training emphasis on administrative and management personnel, encouragement of state-wide in-service training systems, and a preference for regional as opposed to local training efforts has guided LEAA programming. On the operations side, a continuing focus on adult as opposed to juvenile corrections (in recognition of other aid available for the latter) and on community-based programs (work release, residential treatment, offender probation, particularly with respect to jails and misdemeanor court services) has provided major direction in project selection. Because of the program's modest resources, stress has been placed on areas and techniques relatively untouched by other corrections-related federal aid programs.

F. Criminal Justice

The smallest LEAA program area relates to courts, prosecution, and the criminal justice process. Applications have been fewer in this area and, despite OLEA receptivity and increasing attempts to stimulate worthwhile projects, grant output has been low. Even here, however, promising projects have been supported. These include:

--a 5-state training project offering 1-week institutes and development of state manuals for new prosecutors

--development of criminal law advocacy training films for prosecutors, defense counsel, and law students

--"student prosecutor" projects giving third-year law students trial experience in the actual prosecution of misdemeanor cases

--support for two detoxification center demonstration projects designed to steer the public intoxicant outside of the normal (and largely ineffective) prosecutive process (jail confinement, prosecution, fine, and release)

--support for a citizen's information service designed to demonstrate how minor family offenses and citizen complaints can be effectively handled outside the criminal justice process

--a conference of minor criminal court judges to define problem areas, needs, and suggested solutions for misdemeanor court problems

--data extraction and computerization of felony court records for study of case handling, identification of problem areas and development of recommendations for improvement

--training institutes for tribal judges in Montana coupled with law student internships on Indian reservations, in county prosecutors' offices, and in probation and police agencies

It will be recognized that several of these grant projects link with correctional and law enforcement as well as criminal justice concerns. Additionally, projects now in advanced stages of processing will experiment with (i) regional prosecutor offices (staffed by full-time professionals) to cover the rural and small population areas usually served by part-time prosecutors; (ii) modern systems analysis and automated data processing techniques to improve case handling and operational effectiveness of courts and court systems dealing with large numbers of offenders.

G. General Crime Prevention and Citizen Education

Despite the considerable attention to programs directly involving law enforcement and criminal justice agencies, it also has been possible to provide LEAA support for promising experiments in general crime prevention. These include:

--a national "lock your car and home" campaign of million dollar dimensions which will draw on the contributed time and services of the nation's advertising media and their clients (The Advertising Council with Criminal Division, Department of Justice)

--3 projects to develop and present course units to school children in crime prevention, respect for law and the role, value, and importance of our law enforcement institutions (Cincinnati junior high schools with police department, and University of Cincinnati, Maryland State Board of Education with selected elementary and secondary schools and Des Moines vocational high school course)

Many other LEAA projects, discussed elsewhere, have important preventive and citizen education dimensions, e.g., the "school resource officer" projects, police-community relations efforts, police-sponsored courses in property and business crime prevention, and measurement of community tension levels re potential outbreaks of public disorder.

H. The Special Programs

The "special grant" program format has assumed a major dimension in over-all LEAA activity. Nearly one out of every three grant awards has been under these programs which were designed to stimulate wide-scale improvement efforts through modest grants made available to large numbers of applicants. The first grants were approved in the last quarter of fiscal 1966 (7 grants--3 program areas). Five special programs are now operational and a total of 64 awards, amounting to $1.1 million in assistance have been made. The five special programs, briefly outlined, are:

1. State Law Enforcement Standards and Training Systems. This program offers support for development of state-wide police training and standards systems where non-existent (30 states--up to $15,000 for planning grants) and for the strengthening of those now in operation (remaining states--up to $35,000 for program expansion grants). The development of such systems--administered by legislatively authorized commissions, boards, or other agencies and charged with establishment and implementation of minimum, statewide training requirements (recruit, advanced, supervisory, etc.) and selection standards for police officers--is a significant movement in law enforcement today.* LEAA's 12 grants to date have set four states on the road to development of such systems (Wisconsin, Kentucky, Maine and Vermont) and have enabled 8 states to add new or expanded programs to their existing systems (Connecticut, Oregon, Washington, Texas, Ohio, Massachusetts, South Dakota and Illinois). The "standards and training grants" are a cornerstone for LEAA aid to recruit and in-service training for police officers. Increased aid levels are contemplated for program expansion efforts in the coming fiscal year (up to $50,000 with some scaling for size of state).

*At least 28 states now have legislatively authorized agencies administering police standards and training systems, almost half by virtue of statutes enacted within the past three years.

2. State Planning Committees in Criminal Administration. The goal of this program, announced in March of 1966 by letter to each of the State Governors, is to stimulate the establishment of state committees or bodies to assess local problems and plan integrated law enforcement and crime control programs spanning all areas of criminal justice activity (police, courts, corrections, citizen action, etc.). The need for such coordinated study and planning has long been recognized and most recently identified by the President's Crime Commission as a necessary condition for effective criminal justice improvement. LEAA funds (up to $25,000 in grant aid matched by equal state contribution in funds, services, or facilities) have thus far helped support the establishment and operation of 10 such committees--Wisconsin, Minnesota, West Virginia, Michigan, New Jersey, California, Iowa, Massachusetts, Florida and New York. Applications are under development in several other states which have established such offices.

3. Development of Degree Programs in Police Science. This program offers support for the establishment of college or university degree programs in law enforcement and police science in states or population centers where not now existent ($15,000 planning stage--$25,000 first-year support). To date, 21 grants have been made thereby insuring that 15 states will have at least one junior college, college, or university offering such a degree curriculum where none existed before and enabling six other states to expand coverage in terms of major population centers not presently served or types of degrees (2 or 4 year) not currently available. States in which higher education institutions have received degree development grants include Kentucky, Tennessee, Georgia, Pennsylvania, Virginia, Hawaii, Idaho, Minnesota, Mississippi, Nevada, Oklahoma, North Dakota, Illinois, Alabama, Oregon, Ohio, Utah, New Jersey, Texas, Iowa and Missouri.

4. Police-Community Relations Programs in Metropolitan Police Departments. This special program, instituted last summer, has received considerable law enforcement attention and support. It makes modest grant aid available (up to $15,000) to all metropolitan departments serving populations in excess of 150,000 for the planning and development of new efforts and programs in the area of police-community relations. These may relate to training or operations, to specific demonstrations or comprehensive plans, or to establishment of new organizational structures or mechanisms for police-citizen cooperation and communication. Eighteen grants have thus far been made to major departments throughout the country--Boston, Massachusetts; Richmond, Virginia; Wichita, Kansas; Gary, Indiana; New Haven, Connecticut; San Jose, California; Omaha, Nebraska; St. Louis, Missouri; Flint, Michigan; Rochester, New York; New York City; Tucson, Arizona; Kansas City, Kansas; Dayton, Ohio; Elizabeth, New Jersey; Oklahoma City, Oklahoma; Des Moines, Iowa; and Peoria, Illinois. This low-cost stimulus has supplemented LEAA's larger grants in police-community relations and helped spur central city departments in metropolitan areas serving more than 22 million citizens to reexamine and redouble efforts in maximizing citizen support for, understanding of, and cooperation with the law enforcement function.

5. State-Wide In-Service Training Programs for Correctional Personnel. This program, instituted in October of 1966, contemplates the development of comprehensive state-wide training programs for correctional personnel,

particularly those serving in line and lower supervisory capacities. Requiring (i) collaboration between all major state correctional agencies and a selected college or university and (ii) development of a system covering all personnel within the correctional process--parole, probation, community treatment, institutions--aid is available for initial planning and development (up to $15,000) and for first-year operations (up to $40,000). Three grants (Missouri, Rhode Island, and Kansas) have already been made and many more will have been processed by fiscal year-end.

6. New Efforts. New special programs are projected to meet other areas of law enforcement need: (i) The Department is about to launch a program of special grants (up to $15,000) to stimulate the establishment of full-time planning units in medium-sized police agencies at the municipal, county and state levels (programmed for 50 to 70 grants). The value of such units has received increasing recognition from law enforcement authorities and units now exist in virtually all of the larger departments but are relatively scarce in medium-sized agencies. (ii) A special effort to support the acquisition of audio-visual training equipment and materials for departments too small to have training units or officers will provide the first LEAA program of direct aid to small police departments. (Most small department support to date has been through the medium of regional and state grants providing services to many agencies.) This new program will provide low-cost in-service and roll-call training facilities for up to 1,000 small departments (matching contribution basis).

I. Technical Assistance

Despite limitations in resources and the kind of staff strength needed for extensive direct assistance activities, important steps have been taken to meet the Act's authorization for technical assistance services.

LEAA has begun to bring grantees together to enable them to exchange experience, obtain guidance, and generally avoid duplicative and misdirected activity. Thus:

(1) Last October, representatives of the state planning committees met at the University of Maryland (both grantees and prospective applicants) to discuss their work and problems.

(2) Earlier this month, OLEA brought together all project directors of its management training grants to discuss problems and better ways of structuring their programs.

(3) Similar meetings are contemplated with police science degree program directors and police-community relations project directors.

(4) An informal newsletter for police-community relations grantees has been initiated.

Additionally, a number of LEAA grant and contract projects are designed to provide "technical assistance" to law enforcement agencies. These include, for example, the grants to:

--the Associated Public Safety Communications Officers to develop, publish, and disseminate to all police departments a handbook on public safety radio systems

--the International Association of Chiefs of Police for a national consulting service on police-community relations programs

--the League of Kansas Municipalities for the dissemination of a law enforcement handbook to all Kansas peace officers

--LEAA's several training materials grants (films, slides, etc.)

Many study grants now in final stages of completion will serve technical assistance functions, e.g., suggested new police field operations techniques resulting from the survey of 2,200 police agencies for successful programs, action recommendations of the study efforts on pooling of police services, police-community relations, police organization and management, etc.

J. Dissemination

It was contemplated that technical assistance and dissemination activities would be built primarily on the basis of findings, data and models resulting from LEAA-supported projects.* Since few projects have been completed, it has not yet been possible to exploit the full potential of the LEAA technical assistance and dissemination function (Section 6 of Act).

LEAA's major dissemination investment for the current fiscal year is an important one--that of insuring the widest possible consideration for and utilization of the findings, recommendations and other output resulting from the work of the two Presidential crime commissions--most notably that of the President's Commission on Law Enforcement and Administration of Justice of which 40,000 cover report copies have been distributed to state and local governors, legislators, mayors, county heads, police chiefs, judges, correctional administrators, educators and civic leaders (National Crime Commission Dissemination Project 67-19 and D. C. Crime Commission Dissemination Project 67-20).

Apart from the intrinsic value of these landmark crime study efforts, the results of more than $1.4 million in LEAA-supported study projects (14 different grants and contracts) will be reflected in the Commission's report volumes--indirectly and by partial reference in the cover report and more directly by extended summary or textual reproduction in the Commission's eight task force and appendix volumes, LEAA dissemination support here constitutes, in effect, the publication and transmission to the nation of its first completed study projects.

*Although discussed separately, it will be noted that technical assistance and dissemination activities are closely related, often interdependent, and sometimes difficult to separate.

In addition, the following informational activities have been undertaken:

1. OLEA has financed separate publication of important materials (e.g., the LEAA-supported national survey of corrections and correctional agencies, a comprehensive police-community relations manual distributed to urban departments, and a new riot control manual developed by the Federal Bureau of Investigation in collaboration with the staff of the National Crime Commission).

2. All LEAA grantees are required to submit at least 25 copies of their final project reports and, in many instances, larger quantities have been authorized for broader distribution. At present, the LEAA library contains 20 completed reports which, to the extent not previously disseminated, are made available to interested groups or individuals on request.

3. Grant lists which include pertinent data and short descriptions of all projects funded have been issued periodically and are widely disseminated. These lists are revised and reissued at least quarterly and special subject lists have also been prepared (e.g., "special grant" awards, police-community relations awards, etc.).

4. A substantial segment of professional staff time has been devoted to reports on and discussion of the LEAA program at professional meetings, symposia, etc. Also, on completion of first year activities, OLEA held a unique briefing meeting for representatives of concerned national organizations to report on progress and activities and to solicit reaction to the program (August 1966). In attendance were directors or key personnel of the International Association of Chiefs of Police, National Sheriff's Association, U.S. Conference of Mayors, National Association of Counties, National League of Cities, American Correctional Association, National Council on Crime and Delinquency, and National Commission on Correctional Manpower and Training.

K. LEAA Coordination with Other Federal Programs

OLEA has had an active record of contact, collaboration and exchange of information with other federal assistance programs. This includes:

1. Distribution of notices to other federal grant agencies (Labor, HEW, OEO, HUD, etc.) of (i) all projects pending with the Attorney General for final action and (ii) recent grant awards. Although other programs circulate periodic grant lists, few provide notices on a pre-award project-by-project basis.

2. Briefing meetings, conducted last summer by OLEA, on its first-year program and activities for the benefit of key administrators of other grant programs. In attendance were representatives of the National Institute of Mental Health (HEW), Department of Labor, National Aeronautics and Space Administration, National Science Foundation, Office of Economic Opportunity, Vocational Rehabilitation Administration (HEW), Office of Juvenile Delinquency and Youth Development, and Office of Education (HEW).

3. LEAA has engaged in the following cooperative efforts:

--Labor. Grant to evaluate and provide consulting services to MDTA training programs (New York, Miami, Oakland, Los Angeles, and St. Louis) designed to help disadvantaged youths qualify for police service (also involves Office of Education)

--AEC. Joint funding with AEC of contract work by General Dynamics for developmental research in cataloging and in forensic use of neutron activation analysis to identify criminal evidence.

--NASA. Arrangements for a NASA technology utilization team to visit all OLEA "science and technology" grantees, review their projects, and then probe the extensive NASA science data bank for extraction of research and knowledge which might be of assistance to the LEAA grantees.

--VRA-HEW. Joint funding with the Vocational Rehabilitation Administration of a regional institute for southern states on manpower and training needs in corrections.

--VRA-HEW. Two LEAA correctional grant projects include, and were negotiated to involve, a contribution of local VRA staff services needed for the treatment portion of the project (Denver misdemeanant probation services and Rhode Island juvenile treatment facility).

--Defense. OLEA's comprehensive survey of applications of modern science and technology to law enforcement and criminal justice problems was arranged through the offices of the Department of Defense under its exclusive services contract with the Institute for Defense Analyses.

--Other. LEAA grantees are encouraged to utilize other federal aid and services, and have incorporated in their projects components provided by federal vocational education funds, OEO Vista Volunteer services, and the U.S. Employment Service.

OLEA has also made extensive contact with other federal aid programs to learn about their operations and explore cooperative activities. These include the Department of Housing and Urban Development, the Office of Economic Opportunity, the Office of Education, and the Office of Juvenile Delinquency and Youth Development. For example, at OLEA request, the Commissioner of Education designated a representative to participate in planning and review activities on the LEAA special grant program for development of college degree offerings in police science. Also, the Department has availed itself of the regional audit facilities of other agencies in arrangements for audit of grant and contract projects (Department of Health, Education and Welfare and Department of Defense).

IV. ADMINISTRATION

A. Staff and Advisory Panels

The LEAA program has been administered with an authorized staff complement of 25 positions (15 professional and 10 clerical) which includes supporting budget, fiscal review, and information office functions. The full staff complement (supplemented by the equivalent of one or two positions from part-time expert and consultant help) was achieved at the beginning of fiscal 1967 and has since been maintained. In spite of the fact that the second year appropriation (7.25 million) was the same as for fiscal 1966, the longer period of operation (12 months as opposed to 8 months in fiscal 1966), new grant monitoring, dissemination and technical assistance responsibilities not operative in the first-year program, and the trend toward greater numbers of smaller individual awards (60 percent more grants than in fiscal 1966) have strained staff resources, and will require early supplementation.

Office structure involves a division of work among grant managers in law enforcement, corrections, and criminal justice who are directly responsible to the OLEA Director. These are backed up by grant specialists, administrative and dissemination personnel. In addition, a pool of general program assistants has provided flexibility for the small OLEA staff operation--permitting them to assume more or less regular responsibilities in a particular program area while handling special assignments as dictated by program workloads.

OLEA now has two regularly constituted review panels--law enforcement and corrections. Each of these has met three times and the last two meetings involved a review of all pending grant applications except "special program" proposals. On projects classified as "science and technology" efforts, a sub-panel of the law enforcement panel has met with OLEA's science and technology consultants (from the Institute for Defense Analyses group) for grant review purposes. In criminal justice, the area of smallest program activity (12 grants), the Department has vested review functions in an ad hoc interdepartmental group of criminal justice professionals (Assistant Attorney General for Criminal Division, Director of Office of Criminal Justice, Chief of the Executive Office for U. S. Attorneys, and Director of President's Crime Commission Criminal Justice Task Force). A slate of candidates for a formal criminal justice panel, staffed by outside experts and professionals (prosecutors, judges, law professors, ancillary experts), is being finalized for an expanded criminal justice grant effort.

B. Grant Processing and Review

Under the LEAA review process as now constituted, potential grantees are encouraged to submit project ideas as brief preliminary proposals (3-4 pages) to permit an OLEA expression of project interest and appropriateness before expending the time and effort required to develop, document, and submit a complete application.

A number of proposals not within grant criteria or budget allocations are identified at this time, although even here grantees are given the opportunity to develop a formal application and obtain advisory panel review if they so desire. On projects deemed suitable for development, correspondence, telephone discussions, grantee visits to OLEA offices, and site inspections by OLEA staff are utilized to consult with applicants, raise questions as to completeness and budget adequacy, and evaluate applicant capabilities. Final applications are then submitted for advisory panel review and, where favorable, prepared for submission to and award action by the Attorney General. Award files contain both program and budget analyses for the Attorney General, staff recommendations, and the results of advisory panel review.

Commencing in October 1966, the Attorney General established a formal policy of panel review for all individual demonstration and training projects (a procedure which had previously been adhered to after the establishment and initial organizational meeting of each panel). The five "special grant programs" have been submitted for panel approval of program specifications and consideration of the total number of grants and amount of funds to be allocated to each. Based on this general approval, specific applications have been handled through staff negotiation and review and direct referral for award action. This was in recognition of the standard formats prevailing for these small grants and the fact that conformity with program specifications and application requirements was essentially a staff-level function.

On completion of award action, grantees are furnished with a Statement of Award and a copy of the application as approved, accompanied by pertinent special conditions and appropriate forms and instructions concerning fund requests and grant administration.

Although pre-award visits have not been possible on all applications, it is estimated that in at least 80 per cent of all individual demonstration and training projects a personal conference and review at OLEA or grantee offices has been possible.

C. Grant Conditions and Administrative Safeguards

Current LEAA grant conditions embody a number of administrative safeguards. They prescribe, for example, that (i) grant funds may be expended only for purposes and activities set forth in approved project plans; (ii) funds may not be obligated prior to the effective date or subsequent to grant termination dates; (iii) travel expenses must in general conform to those appropriate for the federal government and in no event exceed the grantee's established and consistently followed policies; and (iv) certain fund uses may not be considered, e.g., items not part of the approved budget, purchase or construction of land and buildings, dues to organizations or federations, entertainment expenses, etc.

There are also other administrative rules, including requirements for (a) written approval from OLEA for major project changes, (b) accounting for all

project income with return of unexpended balances at project termination, (c) susceptibility of all funds to audit and right of government inspection and access to grantee records, (d) application of grant conditions to third party (subcontractor) organizations involved in the project, (e) preservation of public rights to copyrightable materials and patentable inventions resulting from LEAA-funded efforts and (f) applicability of the Title VI provisions of the Civil Rights Act of 1964 (non-discrimination in federally-supported programs). Grantee report requirements are described in the next section.

D. Grant Monitoring, Completion and Audit

At the September 1966 LEAA appropriation hearings (Senate subcommittee--fiscal 1967) detailed questions concerning LEAA grant processing, review, monitoring, payment, reporting, fund accounting, and audit procedures were raised. Written answers were submitted for the record and these constitute a comprehensive record of LEAA monitoring and audit activities.*

1. Grantee Reports. Present procedures require that all grantees submit quarterly expenditure reports, quarterly progress reports, a final financial report, and a final project report, the latter due 90 and 75 days, respectively, after the project completion date. The quarterly reports, involving simple formats, have been particularly valuable in providing the Department with perspective as to the actual administrative experience of its several projects. Final submissions contemplate a detailed financial accounting of the project and a comprehensive narrative report, suitable for dissemination to interested parties, of the findings, conclusions, and accomplishments of the project. Special instructions are available for final report preparation. More comprehensive description and documentation is, of course, required for individual demonstration and test projects than for the small "special grants."

2. Project Monitoring. The OLEA staff has, notwithstanding a growing backlog of grants-in-progress, been able to maintain a good level of project monitoring. All quarterly financial reports are reviewed and each quarterly progress report is reviewed and responded to by the appropriate program monitor. In addition, over 160 grantee site visits have been made (pre- or post-award), usually combined with negotiation visits to other applicants or inspections of more than one grantee.

A visit to every grantee has not been possible. However, the majority (and all large projects) have been visited locally at some time and virtually all others have involved at least one personal conference with OLEA staff in Washington. The OLEA "technical assistance" conferences which bring together clusters of grantees in related project areas have provided additional opportunities for examination of project progress.

3. Project Completion. As of April 1, 20 grants and contracts had been completed, i.e., had reached project termination dates. Only one of these had received full final audit and a small number (five) were retired on "desk audit" (--mostly "fixed price" contracts or small grants with only a few budget

*Hearings on H.R. 18119 Before a Subcommittee of the Senate Committee on Appropriations, 89th Cong., 2d Sess., 26-61 (1966).

items where verification of expenditures could be made by correspondence). On completed grants, the grantee is accorded 90 days for closing accounts and for submission of its final financial report and detailed cost schedules. Since most first-year award activity occurred in the last quarter of fiscal 1966 and most grant projects extend for a year or more in duration, few projects have reached this stage; hence, the small number of audited grants. Also, a number of projects have received extensions to compensate for initial delays or permit additional work. It has been OLEA's experience that most grantees underestimate the lead time required to commence project operation.

4. Final Audit. LEAA audit arrangements involve use of the Department of Health, Education and Welfare's grant audit office and the Defense Contract Audit Agency's audit facilities, both of which maintain regional offices not now feasible for the Department under the small volume of work required for LEAA projects. In each case, after the grant or contract is referred for audit, the Department must secure a spot on the agency's audit schedule which in most cases involves some waiting period. The Department anticipates prompt and efficient service under these arrangements but recognizes the necessity of integrating its modest audit n needs with the larger programs administered by these agencies and the attendant schedule adjustments required to serve this purpose.

E. Grantee Contributions

The Act contains no specific matching formulas or grantee contribution levels to qualify for grant assistance--a not unusual feature for small programs of experimental and demonstration proportions. It does, however, require grantee contributions--in cash, services, or facilities--wherever feasible and the Department has sought to maximize such participation in grant negotiation. Some of the special programs were structured to require matching fund support or a grantee investment at least equal to that of LEAA (e.g., special grants for state planning committees and police standards and training systems). In other situations, OLEA has reviewed fund requests on an individual basis, requiring contributions appropriate to the type of project, the grantee's available resources, and the dimension of aid involved. Viewed collectively, grantee contribution levels have been substantial. By conservative estimate and based only on items which are assigned dollar costs in grantee contribution estimates, more than $5 million in grantee investment has been provided for the $11.7 million in LEAA awards thus far approved. Substantial grantee commitments such as the real costs of providing large numbers of salaried personnel with time off to engage in training projects are not ordinarily reflected in these contributions and yet have definite impact on current grantee budgets and resources.

To here

V. ASSESSMENT AND FUTURE PLANS

The LEAA program has had a wide and varied impact in terms of program coverage, types of projects supported, and diversity of recipients. In a manner perhaps unusual for a program of this size, major law enforcement and criminal justice agencies, universities, research organizations,

and professional associations across the nation have started work on projects of varying scope and dimension under the stimulus of LEAA aid.

Since the vast majority of projects remain to be completed, reliable assessment of the initial LEAA effort cannot yet be undertaken. Indeed, the possibility must be accepted that the program, with present resources, may not yet have achieved the "critical mass" necessary for the institutional change and improvement it was designed to spur. With estimated expenditures by all agencies of criminal justice at approximately $4.3 billion per year and the public cost of crime totaling far in excess of that amount,* it is clear that LEAA, even with the most imaginative utilization of resources, could hope for but limited results with the aid made available thus far.

Nonetheless, on the basis of activity to date, we believe the program has demonstrated a genuine value and achieved substantial results and impact. This contribution has these dimensions:

(a) In its own right, the program has made possible a variety of projects that will aid and advance law enforcement capabilities. In varying degree these will set standards, provide models, produce knowledge, and establish facilities (information systems, training centers, etc.) badly needed for a more effective response to the crime problem. Because this problem is so critical, the LEAA stimulus to movement and positive change in a field where change comes slowly may have been worth many times its dollar cost.

(b) The LEAA program has served as an excellent laboratory and preparation for the kind of massive grant-in-aid partnership contemplated by the proposed Safe Streets and Crime Control Act of 1967.** It has given the Department broad experience and perspectives in the methods and techniques of federal assistance, the problems and dilemmas of grant program administration, and the type of "client" it serves in dealing with state and local law enforcement. LEAA could have limited its activities to a few areas (e.g., training only), concentrated its funds accordingly, and perhaps have made a greater impact in such areas. Instead, it chose to address a wide range of the goals set for it and, in so doing, became involved in such diverse concerns as higher education; civil rights, as reflected in the community relations problem; the behavioral sciences; advanced computer technology; research and demonstration design; and many others. This experience has been invaluable.

(c) Finally, LEAA has been a moving force, though not the only one, in a process that has been preparing law enforcement to examine its problems and move vigorously toward their resolution. Our demands for "new approaches," "innovative projects," "carefully

*Currently estimated at $27 billion annually (President's Message on Crime, March 9, 1966)

**S. 917 and H.R. 5037 (with identical bills), 90th Cong., 1st Sess., February 8, 1967

> defined plans," and high standards in projects submitted for assistance have undoubtedly caused work, and perhaps some hesitation, but on the whole they have been accepted. Law enforcement today is progressive and aware of its responsibilities. It wants new solutions, new competence, and progress--certainly in greater degree than was apparent ten or even five years ago. This type of climate is an indispensable condition to the progress envisioned by LEAA and legislative programs to follow.

Virtually every large police agency has had some contact with OLEA during its 18 months of operation. This is also true of law enforcement's professional associations, many local governmental units, and hundreds of other groups interested in law enforcement and its problems. Similar links have been established with the world of corrections, despite a considerably smaller program investment. Progress was perhaps impeded by a dilemma which faced the LEAA program from the beginning. This was the launching of a demonstration program (with demonstration-size funding) in a nation that expected more and had only partial understanding of the program's limitations. With the necessity for rejecting aid in three out of four requests submitted, it was clear that a great measure of frustration was in store for law enforcement as it responded to the Act. Nevertheless, it is believed that a basic understanding of the problem has been communicated to our constituency.

Past experience has indicated the critical importance of a substantial expansion of the "research and development" effort assigned to LEAA if it is to play an effective role in dealing with the nation's crime problem. It has shown also the Act's inability to respond to existing needs which require national subsidy support for our crime-fighting institutions. Both of these problems have been incorporated in plans for the future and are embodied in legislation now pending before the Congress--the proposed Safe Streets and Crime Control Act of 1967. Under this legislation, the experimental work of LEAA would be continued, expanded, and combined with a companion program for grant-in-aid support reaching into all states and localities willing to join with the federal government in increasing local investment and commitment to law enforcement and criminal justice activities. An initial appropriation of $50 million has been requested for this program, approximately $20 million of which will be allocated to essentially LEAA-type activities. Substantial and rapid growth beyond this is contemplated in the years ahead. With the experience of the past 18 months behind it, and the comprehensive and concrete range of improvement recommendations formulated by the President's Crime Commission to draw upon, the Department is hopeful that this expanded dimension in the war on crime will signal a new era of effective response and remedial action.

* * *

In conclusion, the Department believes that a good start has been made to meet the intent of Congress and the Administration in establishing

a law enforcement assistance program. It is prepared to continue to prosecute the work of the past 18 months and to do so on whatever level the Congress may deem appropriate. It is hoped that such efforts will demonstrate, in increasing degree, tangible accomplishments and measurable victories in the ultimate goal of our labors--reduction and neutralization of crime and increased safety for the American public.

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Annual Report to the President and the Congress
on
Activities under the Law Enforcement Assistance Act of 1965

APPENDIX I

FISCAL 1966 PROJECT LISTS

(December 1, 1965 to June 30, 1966)

U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE

LIST OF APPROVED PROJECTS

FISCAL YEAR 1966

First-Year Grant and Contract Awards Under the Law Enforcement Assistance Act of 1965 (PL 89-197)

The following pages contain a complete list of projects approved under the Law Enforcement Assistance Act of 1965 ("LEAA") during the first year of program operation (fiscal 1966). These include a short list indicating only recipient and amount and a more comprehensive list organized under the following headings:

I. Law Enforcement - Training Projects
II. Law Enforcement - Agency Improvement
III. Corrections Projects
IV. Criminal Justice Projects
V. General Studies and Surveys
VI. D. C. Comprehensive Program
VII. Special LEAA Programs

This grouping is based on the main substantive areas of program coverage--law enforcement (police), criminal justice, and corrections, with a special section relating to general studies and projects spanning more than one substantive area. Because of a special program effort focusing on a comprehensive range of experimental programs in one area--the District of Columbia--all D.C. projects have been grouped together although they individually relate to and could have been listed under the various substantive headings. Grants awarded under three special LEAA programs have also been grouped separately although classifiable under appropriate substantive headings.

Each project listing contains the name and location of the award recipient, the type of assistance award (grant or contract), the amount of the award (to nearest $100), date of approval (by month) and a short project description. By footnote contained on the first page of each section listing, cross-references to related projects listed elsewhere or other relevant classifications have been provided.

A total of 83 LEAA projects were approved in fiscal 1966 aggregating $6,957,911 in assistance awards and involving obligation of virtually all funds authorized for that purpose. These awards went to grantees or contractors located in 30 different states. The average duration of grant awards was 14 months and the average award amount, exclusive of the special D.C. projects and a comprehensive science-technology survey contracted through the Department of Defense, was $71,500 ($83,830 with all projects included).

Briefly, the Law Enforcement Assistance Act authorizes the Attorney General to make grants to, or contract with, public or private non-profit

agencies to improve training of personnel, advance the capabilities of law enforcement bodies, and assist in the prevention and control of crime. The Act also authorizes the Attorney General to conduct studies, render technical assistance, evaluate the effectiveness of programs undertaken, and disseminate knowledge gained as a result of such projects. Police, courts, corrections, and other mechanisms for the prevention and control of crime are all within its scope.

The LEAA legislation was conceived as part of a larger and comprehensive program to increase federal participation in the nation's efforts to cope with the rising incidence of crime. Described by the President as a "creative federal partnership," it has involved the establishment of two Presidential commissions, intensification of federal law enforcement programs, development of a variety of crime-control legislative proposals, six-fold expansion of FBI training facilities for local law enforcement, and the establishment of bold and significant correctional programs. Within the context of this larger program, and its strategy of unified, collaborative action, LEAA was designed to make a many-sided contribution, but one largely centering on direct help to state and local law enforcement agencies.

The Act was passed in September of 1965 with authorization for a first-year appropriation of up to $10,000,000. The President signed the law on September 22. Late in October there was approved an appropriation of $7,249,000 which became available for obligation on November 1, 1965.

Evaluation of first-year assistance project has centered on the "experimental - new methods" support role conceived for LEAA by both the Administration and the Congress. Departmental grant criteria, with some departure for special program efforts and flexibility appropriate to different substantive areas, have emphasized (i) new techniques and approaches, (ii) an action orientation, (iii) value to the nation as a whole, (iv) relatively short duration, (v) modest fund requests, (vi) a substantial grantee contribution, (vii) program balance in relation to the total LEAA effort, (viii) a potential for continuation after grant support ends, (ix) broad community sponsorship, and (x) some plan for objective evaluation of results.

U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE

Grants and Contracts Awarded under the Law Enforcement Assistance Act of 1965
(Fiscal 1966)

Number	Grantee (or Contractor)	Amount
001	D. C. Crime Commission (police workshop)	$ 18,301
002	American Correctional Association	55,425
003	National Council on Crime and Delinquency	98,234
004a	D. C. Metro. Police Dept. (planning & development bureau)	310,670
004b	D. C. Metro. Police Dept. (vehicle supplementation & remarking)	217,900
004c	D. C. Metro. Police Dept. (off-duty radio monitoring)	36,500
004d	D. C. Metro. Police Dept. (motor scooter demonstration)	18,030
005	Michigan State University	48,716
006	University of Michigan	144,535
007	Probation Research, Inc. (Brooklyn)	14,985
008	New England State Police Admin'rs Conference	87,335
009	South Carolina Law Enforcement Division	180,700
010	Washington State University	9,480
011	Academy of Police Science, Inc. (New York)	64,009
012	Opportunities, Inc. (Rhode Island)	92,735
013	New York City College of Police Science	26,598
014	University of California at Berkeley	70,190
015	D. C. Metropolitan Police (computerized info. system)	257,456
016	New Jersey Police Training Commission	109,630
017	California State College at Los Angeles	29,900
018	Indiana University Foundation	111,630
019	D. C. Department of Public Health	274,201
020	Associated Public Safety Communications Officers	29,029
021	National Opinion Research Center (Chicago)	180,878
022	Los Angeles County Sheriff's Department	159,350
023	Illinois Institute of Technology	11,442
024	Western Interstate Commission on Higher Education	109,690
025	New England Board of Higher Education	33,716
026	University of Pennsylvania Law School	42,402
027	King County Sheriff's Department	107,570
028	International Association of Chiefs of Police	97,164
029	Univ. of Wyoming (with Peace Officer's Association)	64,350
030	Polytechnic Institute of Brooklyn (with New York City P. D.)	43,193
031	Minneapolis Police Department	70,364
032	University of Georgia, Institute of Government	159,451
033	City of Newark (New Jersey)	99,284
034	Metro. D. C. Police Department (in-service training)	48,385
035	National District Attorneys Association	82,050
036	United Planning Organization (D. C.)	122,677
037	Denver County Court	156,604
038	Ohio State Highway Patrol	76,200

(Grants & Contracts Awarded under LEAA of 1965, Fiscal 1966 - continued)

Number	Grantee (or Contractor)	Amount
039	St. Louis Metropolitan Police Department	$ 170,482
040	New York State Identification & Intelligence System	180,000
041	Southern Illinois University	189,236
042	New Orleans Police Department	62,077
043	Judicial Research Foundation (North American Judges Assoc.)	8,931
044	Rice University	37,350
045	Brandeis University	16,825
046	Chicago Police Department	39,862
047	Eastern Kentucky State College	36,844
048	North Carolina State Bureau of Investigation	41,793
049	Philadelphia Police Department	76,367
050	City of Phoenix (Arizona)	92,485
051	California Department of Justice	350,000
052	University of Cincinnati (with Police Department)	62,678
053	University of North Carolina, Institute of Government	25,089
054	New York Division of Municipal Police Training	80,000
055	Portland State College (Oregon)	81,572
056	Connecticut Municipal Police Training Council	27,050
057	Memphis State University	13,482
058	University of Georgia	15,000
059	Indiana University of Pennsylvania	13,191
060	Kentucky State Police	9,888
061	D. C. Metro. Police Dept.(community relations training)	56,450
062	Southern Regional Education Board	7,120
063	State of Wisconsin (Governor's Commission)	25,000
064	City of Miami, Florida (police department)	15,595
065	National Council on Crime and Delinquency	82,664
066	University of Utah	10,600
067	Lawyers' Committee for Civil Rights Under Law	75,093
068	Michigan State University	95,282
069	State of Minnesota (Governor's Commission)	25,000
66-1	Stanford Research Institute (California)	78,024
66-2	Bureau of Social Science Research (D. C.)	48,118
66-3	Public Admin. Service (Chicago)	41,200
66-4	Century Research Corporation (D. C.)	24,915
66-5	C.E.I.R. (D. C.)	35,580
66-6	Bio-Behavioral Research, Inc. (California)	12,210
66-7	Institute for Defense Analyses (D. C.)	498,000
66-8	National League of Cities (D. C.)	4,956
66-9	Illinois Institute of Technology Research Institute	23,443
66-10	Arthur D. Little, Inc.	99,500
-----	Federal Bureau of Investigation	97,000
	TOTAL:	$6,957,911

Total Number of Projects: 83
Total Assistance Awards: $6,957,911

OFFICE OF LAW ENFORCEMENT ASSISTANCE
ASSISTANCE PROJECTS APPROVED - FISCAL 1966

I. Law Enforcement - Training Projects

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
New England Council Boston, Massachusetts (New England State Police Administrators Conference)	Grant No. 008 (March 1966)	$87,000 (15 months)	Establishment of state police "command staff college" as cooperative venture of 6 New England states presenting 1-month supervisory and command training course (4 presentations--30 students each).
South Carolina Law Enforcement Division Columbia, South Carolina	Grant No. 009 (March 1966)	$180,700 (2 years)	Training program, developed in cooperation with state educational television network, for closed circuit monthly presentations (1 hour videotape--1 hour lecture-discussion) on basic police science topics for all state law enforcement personnel (estimated 3,000 participants).
Academy of Police Science New York, New York	Grant No. 011 (March 1966)	$64,000 (6 months)	Presentation of 3-week management seminar for large city police chiefs at Harvard Business School by selected University faculty. (summer 1966). Involves review of major areas of executive responsibility and use of Harvard case method (40-50 participants).
New Jersey Police Training Commission Newark, New Jersey	Grant No. 016 (April 1966)	$109,600 (12 months)	State-wide training program primarily for smaller cities and departments (190-hour basic course and 20-hour supervisory course) utilizing professionally staffed, multi-media mobile training units as demonstration in low-cost mobile classroom facilities, standardized state-wide curriculum, and programmed teaching and testing techniques.
Indiana University Foundation Bloomington, Indiana	Grant No. 018 (April 1966)	$111,600 (20 months)	Consultation and evaluation program for Labor Department manpower development pilot projects designed to qualify disadvantaged persons for police service (5 large city efforts). Involves consolidated evaluation-research study with on-site personnel in each pilot city to monitor and determine effectiveness of program in raising individual capabilities and preparing trainees for police work.

References: See also Grants 013, 020, 026, and 064 (Law Enforcement - Agency Improvement), Grants 001, 034, and 061 (D.C. Comprehensive Programs), and Grants 047, 056, 057, 058, and 059 (Special LEAA Programs) for other training-related efforts.

(I. Law Enforcement - Training Projects continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
University of Wyoming Laramie, Wyoming (with Wyoming Peace Officers Association)	Grant No. 029 (May 1966)	$64,400 (24 months)	State-wide training program for all law enforcement personnel (more than 600 officers) involving 3 training conferences per year at 5 regional locations in subjects related to law enforcement; also contemplates development of uniform state crime reporting system.
University of Georgia (Institute of Government) Athens, Georgia	Grant No. 032 (May 1966)	$159,500 (2 years)	Police training program utilizing statewide open-circuit educational TV facilities. Contemplates 15-minute or half-hour video-taped segments on variety of law enforcement subjects transmitted weekly (some repeats) and including 40 hours of instruction (estimated 3,000 participants).
North Carolina Department of Justice (State Bureau of Investigation) Raleigh, North Carolina	Grant No. 048 (June 1966)	$41,800 (2 years)	State-wide program of advanced and specialized in-service training (4 and 6 week courses) at regional locations (primarily community colleges) for officers of municipal police departments, county sheriff police agencies, and other local law enforcement personnel whose departments do not provide training.
University of North Carolina (Institute of Government) Chapel Hill, North Carolina	Grant No. 053 (June 1966)	$25,100 (10 months)	Demonstration course in management training for North Carolina police executives. Trainees will include chiefs of police or command personnel from 29 cities in the state (20 days aggregate training distributed over monthly 4-day sessions).
Office for Local Government, New York State (Division of Municipal Police Training) Albany, New York	Grant No. 054 (June 1966)	$80,000 (18 months)	Establishment of regional training center system (12 sites primarily at community colleges) offering expanded basic training for new recruits (1,000 annually) and intermediate training for in-service officers (also annually) under supervision of paid part-time coordinators. Will also inaugurate and monitor experimental use of new audio-visual training aids.

(I. Law Enforcement - Training Projects continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
Portland State College Portland, Oregon	Grant No. 055 (June 1966)	$81,600 (24 months)	In-service training program and seminars for law enforcement personnel in Oregon and Southern Washington involving nine 1-week offerings (management training, community relations, special subjects, and 3 half-week seminars) supplemented by summer research effort and tie-in with undergraduate program (approximately 300 trainee participants).
Kentucky State Police Frankfort, Kentucky	Grant No. 060 (June 1966)	$9,900 (9 months)	Four 1-day training conferences (quarterly basis) for Kentucky law enforcement officers from county and local agencies which do not provide regular training. Will cover basic police subjects and serve as prelude to development of state-wide in-service training standards and requirements.
Michigan State University East Lansing, Michigan	Grant No. 068 (June 1966)	$96,300 (12 months)	Police-community relations training institutes for special groups (training officers, personnel officers, community relations unit commanders) from selected metropolitan forces (1 to 2 weeks--70 participants) and police chiefs' management training institute for medium-size mid-west departments (3 weeks--50 chiefs).
City of Newark Newark, New Jersey	Grant No. 033 (May 1966)	$99,300 (12 months)	Police-community relations pilot project embodying (i) intensive small group training--150 police and 150 poor citizens--in joint 16-week course and (ii) retention of project staff after training for evaluation and implementation of off-shoot operational programs.
New Orleans Police Department New Orleans, Louisiana	Grant No. 042 (June 1966)	$62,100 (10 months)	Police-community relations training course for entire city police department (approximately 1,100 officers) plus 100 key police officials from 4 surrounding parishes. Organization of citizen committees is planned. Will include lecture and group discussion in 18 hours of instruction spread over 9-week period.

II. Law Enforcement - Agency Improvement
(Studies and Demonstrations)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
Michigan State University (National Center on Police and Community Relations) East Lansing, Michigan	Grant No. 005 (February 1966)	$48,700 (8 months)	Study of police-community relations through questionnaire survey, on-site observations in selected cities, and development of recommended model programs. Will explore police and community roles and responsibilities and practical improvement measures in specific problem areas.
University of Michigan (Institute for Social Research) Ann Arbor, Michigan	Grant No. 006 * (February 1966)	$144,500 (9 months)	Metropolitan area precinct study to provide detailed descriptions of policing and crime patterns in selected precincts of 3 large cities--victim interviews, police observation, survey of community attitudes, and analysis of statistics.
Washington State University Pullman, Washington	Grant No. 010 (March 1966)	$9,500 (8 months)	Laboratory and field study of accelerants in fire remains to establish base levels indicative of presence of accelerant in arson investigations.
City University of New York (College of Police Science) New York, New York	Grant No. 013 (June 1966)	$26,600 (12 months)	National study, survey, and analysis of police laboratory needs--facilities, equipment requirements, personnel training. Will seek to develop models and standards appropriate on regional, state, and local basis, including suggested training curriculum for police lab personnel.
University of California (School of Criminology) Berkeley, California	Grant No. 014 (April 1966)	$70,200 (6 months)	Intensive study (2 cities--east and west coast) of dynamics of the police-community relationship to determine present status and underlying problems and attitudes, develop improvement suggestions, explore services and mechanisms for strengthening, and suggest action models and programs of general applicability.

*Supplemental award (Fiscal 1967 grant list-#092)

References: See also Grants 001, 004a-d, 015, and Contract 66-4 (D.C. Comprehensive Programs) for agency improvement efforts (non-training). Grants 031 and 052 in this section include general crime prevention dimensions permitting classification in Section V. Several studies listed in this section have components extending beyond an agency improvement focus, e.g., Grants 006, 044, and 051 and Contract 66-8.

(II. Law Enforcement - Agency Improvement continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
California State College Los Angeles, California	Grant No. 017 (April 1966)	$29,900 (18 months)	Short study and analysis of major police organization and management problems (e.g., structure, specialization, functional classification, deployment of resources) to identify issues, establish principles, and suggest models appropriate to varying sizes of departments and in accord with modern management principles.
Assoc. Public Safety Communications Officers, Inc. Miami Beach, Florida	Grant No. 020 (April 1966)	$29,000 (7 months)	Development, publication, and dissemination to all police departments (5,000 population and above) and related organizations of a manual of standard procedures and operating guides for personnel responsible for operation of police and public safety radio systems. Will serve as aid in training and development of national standards.
Los Angeles County Sheriff's Department Los Angeles, California	Grant No. 022 (April 1966)	$159,400 (13 months)	Demonstration in routine police patrol utilizing helicopters. Round-the-clock service (3 shifts--20 hours per day) will be provided to one community in urban county (Lakewood, California) to test cost, impact, operational effectiveness, and ability of procedure to substitute for normal patrol by auto. Evaluation by university group
University of Pennsylvania Law School Philadelphia Police Dept. Philadelphia, Pennsylvania	Grant No. 026 (May 1966)	$42,400 (19 months)	Development of series of police manuals (10 pamphlets) dealing with legal and constitutional requirements applicable to police work, problems of police discretion, and other law questions involved in performance of duties. Will be written in non-technical, readily understandable terms and distributed to Philadelphia police as operational guide and for training purposes; also serve as model for other metropolitan police forces.
International Association of Chiefs of Police Washington, D. C.	Grant No. 028 (May 1966)	$97,200 (14 months)	Police-community relations project involving establishment of national consulting service to assist metropolitan police departments in development, improvement, or expansion of community relations programs. Also includes workshop for police executives of 30 key cities (June 1966) and developmental work on community relations guidebook for law enforcement agencies.

(II. Law Enforcement - Agency Improvement -- continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds and Duration	Nature of Project
Polytechnic Institute of Brooklyn Brooklyn, New York (with N.Y.C. Police Dept.)	Grant No. 030 (May 1966)	$43,200 (24 months)	Development of computer model of police operations (NY City Police Department) to explore selected agency problems and test effects of changes in operations and organization by mathematical simulation techniques.
Minneapolis Police Dept. Minneapolis, Minnesota (with Minn. Public Schools)	Grant No. 031 (May 1966)	$70,400 (2 years)	Placement of specially selected juvenile officers in Minneapolis junior high schools (5 placements) for improved preventive, educational, and school-police liaison work. Officers will maintain school offices, organize special educational programs, collaborate with teachers and others in problem youth programs, handle conventional juvenile officer duties.
Ohio State Highway Patrol Columbus, Ohio	Grant No. 038 (June 1966)	$76,200 (2 years)	Feasibility study for model state-wide computer-based information system to serve law enforcement agencies at all levels (survey of needs, analysis of services offering potential and development of recommendations). Will seek to illuminate general areas of service and support which computerized systems can offer to police operating personnel.
St. Louis Metropolitan Police Department St. Louis, Missouri	Grant No. 039 (June 1966)	$170,500 (18 months)	Development and controlled experimentation with new techniques for allocation of police patrol manpower. Will involve work in two test districts, development of predictive techniques based on demands for service calls and preventive patrol functions, and utilization of computer capabilities for implementation.
New York State Identification and Intelligence System Albany, New York	Grant No. 040 (June 1966)	$180,000 (23 months)	Development of automatic license plate scanning system for conversion of license plate characters and optical data to electrical signals permitting computer search and retrieval against "wanted car" data. Contemplates production of prototype system capable of field test and evaluation.

(II. Law Enforcement - Agency Improvement continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
Rice University (Department of Anthropology and Sociology) Houston, Texas	Grant No. 044 (June 1966)	$37,350 (12 months)	Administration and testing of measurement technique to determine community tensions and violence potential on week-by-week basis. Will operate in selected neighborhoods of Houston. Relying primarily on intensive interview system, data will be used for law enforcement guidance, alleviative measures, and detection of community attitudes re law enforcement and use of violence.
Chicago Police Dept. Chicago, Illinois	Grant No. 046 (June 1966)	$39,900 (16 months)	Provide basis for new techniques in patrolman selection and assignment by identifying patrolman "types." Beat patrolmen from each district will be interviewed and observed, their performance records analyzed; they will be tested for motivational, intellectual and behavioral characteristics. Industrial Relations Center, University of Chicago, directing project.
Philadelphia Police Dept. Philadelphia, Pennsylvania	Grant No. 049 (June 1966)	$76,400 (12 months)	Development and testing of operations research model for crime prediction. Involves data collection to determine relevant predictive factors for particular types of crime, development and computerization of predictive model, and formulation and field testing of various action strategies (personnel deployment and concentration, patrol methods, etc.) to improve police capabilities in crime prevention and suppression.
City of Phoenix Phoenix, Arizona	Grant No. 050 (June 1966)	$92,500 (12 months)	Police records and data system study designed to modernize and integrate existing local systems and improve their capacity for meeting operational, analytical and reporting requirements. Will seek to provide a model in records and automated data processing capabilities for similarly situated metropolitan areas.

(II. Law Enforcement - Agency Improvement continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
California State Department of Justice Sacramento, California	Grant No. 051 (June 1966)	$350,000 (18 months)	Development of integrated, state-wide criminal justice information system covering all components of law enforcement, corrections and courts. Proceeding from previous feasibility studies, the project will undertake necessary staff orientation, existing system configuration analysis, user requirements analysis, advanced system design, and final implementation plan.
University of Cincinnati Cincinnati, Ohio (with Cincinnati Division of Police)	Grant No. 052 (June 1966)	$62,700 (14 months)	Development and testing of curriculum and materials for (i) junior high school social studies classes, and (ii) local police academy to assist the early adolescent in understanding law enforcement concepts and values and to provide police recruits with specialized training re this age group.
Public Administration Service Chicago, Illinois	Contract No. 66-3 (February 1966)	$41,200 (6 months)	Study of problems and potential of regionalization of police services in U. S. with analysis of such areas as staff training, planning and research, records and data processing, laboratory services, etc., and development of recommendations, models, and suggested pilot efforts.
Bio-Behavioral Research, Inc. Pala Alto, California	Contract No. 66-6 (March 1966)	$12,200 (5 months)	Description, analysis, classification and recommendations re responses to Attorney General survey of 2,200 police agencies seeking information on promising field operations techniques and practices.
National League of Cities Washington, D. C.	Contract No. 66-8 (April 1966)	$5,000 (2 months)	Preliminary research and study paper exploring need for and value of municipal crime control and property security codes, proposed contents for such codes, and existing legislation and ordinances of this nature.
Illinois Institute of Technology Chicago, Illinois	Grant No. 023 (May 1966)	$11,400 (3 months)	Exploratory study of inter-organizational contacts, communication, and coordination between police departments and other municipal agencies to provide recommendations for improved information procedures and cooperative relationships calculated to augment law enforcement effectiveness. Involves intensive work in one major city and sample studies in 4 others.

(II. Law Enforcement - Agency Improvement continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
Federal Bureau of Investigation, U. S. Department of Justice Washington, D. C.	Allocation of Funds (January 1966)	$97,000	Feasibility and design work on computerized national crime information system. Involves (i) development of standards and codes to make state and local systems compatible, (ii) establishment on pilot test basis and using selected state and local agencies, of retrieval files for stolen auto, identifiable stolen property, and wanted felon information, and (iii) technical requirements and feasibility study by Department of Commerce (ITSA).
City of Miami Miami, Florida	Grant No. 064 (June 1966)	$15,600 (12 months)	Development, testing, and evaluation of video-tape recording system for improved police identification capabilities (with supplemental training uses). Visual and voice characteristics of suspects and offenders (complete felony file) will be recorded in short films as substitute for standard photo identification.
Lawyers' Committee for Civil Rights Under Law Washington, D. C.	Grant No. 067 (June 1966)	$75,100 (12 months)	Development and demonstration (in 3 cities) of new techniques for implementing police-community relations programs. Areas of concern will include police role, police practices, special community relations units, recruitment and training, and crime prevention. Project will involve work with local lawyer groups, law enforcement officials, concerned agencies, and citizen groups, plus police consultants.

III. Corrections Projects
(Training, Studies, and Demonstrations)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
American Correctional Association Washington, D. C.	Grant No. 002 (January 1966)	$55,400 (15 months)	Series of five 1-week training institutes for key correctional administrators--1 national institute for state directors of corrections and 4 regional institutes (covering whole nation) for wardens and superintendents of major adult correctional institutions.
National Council on Crime and Delinquency New York, New York	Grant No. 003 (February 1966)	$98,200 (8 months)	National survey of correctional systems, personnel, facilities, programs, workloads, and financing. Eight-month project will also include evaluation of existing programs against current standards and new directions in rehabilitation programs.
Probation Research, Inc. Brooklyn, New York	Grant No. 007 (March 1966)	$15,000 (12 months)	Presentation by metropolitan probation department of two 3-day institutes and development of model curriculum materials for use by others to acquaint college students with correctional field and careers (200 participants drawn from colleges in 3-state area)
Opportunities, Inc. Providence, Rhode Island	Grant No. 012 (March 1966)	$92,700 (26 months)	Establishment of model residential treatment facility for juvenile offenders as rehabilitation alternative between probation supervision in home and state training school commitment. Wide range of counselling and services.
Western Interstate Commission for Higher Education Boulder, Colorado	Grant No. 024 (May 1966)	$109,700 (20 months)	Regional training program for correctional personnel (13 western states) involving short continuing education seminars (175 participants), faculty placement of university people in correctional institutions (9 placements), and travelling teams of trainers to bring in-service training to remote locations in the region (400 participants).

References: See also Grant 051 (Law Enforcement - Agency Improvement) and Contracts 66-7 and 66-10 (General Studies and Surveys)

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(III. Corrections Projects continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
New England Board of Higher Education (with New England Correctional Adm'rs. Conf.) Winchester, Massachusetts	Grant No. 025 (May 1966)	$33,700 (12 months)	Development of comprehensive plan, utilizing university resources, for establishment and execution of appropriate training programs for corrections personnel of New England states (including survey of area needs and resources).
King County Sheriff's Department Seattle, Washington	Grant No. 027 (May 1966)	$107,600 (24 months)	Development, operation, and evaluation of 2-year pilot work-release program for inmates of King County jail (75-man capacity, most misdemeanants). Project will permit departure from jail for work, training, and counselling experience; budgeting of earnings for family support and restitution payments; and appropriate rehabilitative services.
Denver County Court Denver, Colorado	Grant No. 037 (June 1966)	$156,600 (2 years)	Establishment of a professionally directed, community-oriented probation service within county court for misdemeanant offenders. Probationers will receive diagnostic workups, priority referrals to social agencies, job assistance, "crisis counseling," and, when needed, psychiatric and group therapy. Demonstration will utilize volunteer probation workers, university consultation and training services, and contributed personnel from state agencies.
Southern Regional Education Board Atlanta, Georgia	Grant No. 062 (June 1966)	$7,100 (9 months)	Institute on manpower and training needs for correctional rehabilitation in the South. Educators, correctional and mental health leaders, state directors of vocational rehabilitation, state legislators and others to attend fall 1966 conference (15 southern states represented). Joint support with Vocational Rehabilitation Administration, HEW.
National Council on Crime and Delinquency New York, New York	Grant No. 065 (June 1966)	$82,700 (12 months)	Series of 1-week training institutes for upper and middle management probation personnel (state and local systems) conducted in 9 different regions over 2-year period (270 participants). Will encourage use of new developments in probation organization, practice and treatment with focus on laboratory learning techniques.

(III. Corrections Projects continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
University of Utah Salt Lake City, Utah	Grant No. 066 (June 1966)	$10,600 (16 months)	Development and testing of audio-visual aids (filmstrips and slides) for in-service training of correctional officers (primarily institutional) to improve understanding of factors which motivate anti-social behavior and familiarize trainees with improved methods of working with offenders.
Southern Illinois University (Center for Study of Crime, Delinquency, & Corrections) Carbondale, Illinois	Grant No. 041 (June 1966)	$189,200 (24 months)	Regional training program for middle management correctional personnel (approximately 15 central region states) consisting of 10-week pilot institute for correctional training officers (with practice teaching experience), four 1-week test institutes, and graduate training fellowships (approximately 200 trainee participants in all categories).

IV. Criminal Justice Projects
(Training, Studies, and Demonstrations)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
National District Attorneys Association Chicago, Illinois	Grant No. 035 (June 1966)	$82,100 (2 years)	Two-part training project in 5 mid-western states will include (i) training institutes for new prosecuting attorneys (one week each--total 150 participants), and (ii) development of state manuals for prosecutors (and other law enforcement personnel) covering legal issues of search, seizure, arrest, etc., and procedural guidance.
Judicial Research Foundation, Inc. (North American Judges Association) Denver, Colorado	Grant No. 043 (May 1966)	$8,900 (7 months)	Short judges' conference (August 1966) to (i) define problem areas and needs in lower court systems relative to criminal case handling, and (ii) recommend methods for dealing with such problems (14 participants drawn from misdemeanor courts across nation).

References: See also Grants 019, 036, and Contract 66-5 (D. C. Comprehensive Program) for related projects concerned with the criminal justice process.

V. General Studies and Surveys

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
National Opinion Research Center (University of Chicago) Chicago, Illinois	Grant No. 021 * (April 1966)	$180,900 (18 months)	Study, utilizing national population sample and public survey techniques (10,000 homes, 3,500 subjects) of the incidence of crime (reported and unreported) and attitudes of victims and non-victims toward law enforcement personnel agencies. Seeks to probe beyond official statistics re actual amount of crime in nation and related public attitudes.
Institute for Defense Analyses, Washington, D.C. (Task Assignment Under Dept. of Defense Contract)	Contract No. 65-7 (March 1966)	$498,000 (9 months)	Comprehensive study of potential applications of science and technology to agencies, methods, and problems of crime control, law enforcement, corrections, and criminal justice administration.
Illinois Institute of Technology Research Inst. Chicago, Illinois	Contract No. 66-9 (May 1966)	$23,400 (14 months)	National science symposium to be held at Chicago in March 1967. Interested professionals (scientists, engineers) will meet with law enforcement disciplines to identify capabilities of science and technology for improving law enforcement capabilities, examine specific problem areas, and foster exchange of information between scientific and law enforcement communities (300-500 participants).
Arthur D. Little, Inc. Cambridge, Massachusetts	Contract No. 66-10** (June 1966)	$99,500 (4 months)	Study of illicit traffic in narcotics and dangerous drugs and law enforcement methods for control and suppression. Will analyze traffic from origin to user, current treatment and control alternatives, and make recommendations for changes and improvement in procedures.
Brandeis University (Florence Haller Graduate School for Social Welfare) Waltham, Massachusetts	Grant No. 045 (June 1966)	$16,800 (4 months)	Study of "professional crime" in 4 major cities (New York, Chicago, San Francisco, and Atlanta) involving intensive interviews with police, district attorneys, crime reporters, and selected offenders from "professional crime" group. Will cover processes and methods of offenders and of law enforcement agencies in dealing with this element

References: See also Grants 006, 014, 023, 051, 052, and Contract 66-8 (Law Enforcement - Agency Improvement), Contracts 66-1 and 66-2 (D.C. Comprehensive Programs) and Grants 063 and 069 (Special LEAA Projects) for other general studies concerning public attitudes, the nature and incidence of crime, characteristics of criminal offenders, crime control and prevention, or focusing on more than one substantive classification.

*Note supplemental award shown in Fiscal 1967 grant list (#098)

**Note supplemental award shown in Fiscal 1967 grant list (#67-12)

VI. D. C. Comprehensive Program

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
Metropolitan Police Department Washington, D. C.	Grant Nos. 004 a-b-c-d (February 1966)	$583,100 (15 months)	Four projects: development of police planning and development bureau ($310,700), vehicle supplementation and remarking to increase patrol effectiveness and mobility ($217,900), converter radio receiver equipment for cars of off-duty police officers ($36,500), and limited experimental use of motor scooters in patrol and tactical operations ($18,000).
Metropolitan Police Department Washington, D. C.	Grant No. 015 (April 1966)	$257,500 (16 months)	Developmental work for computer-based information system to service police departments in metropolitan D.C. area. Includes development of specifications, design of component programs to be built into system, and early operational testing of one component ("wanted auto" file).
D. C. Department of Public Health Washington, D. C.	Grant No. 019 (April 1966)	$274,200 (24 months)	Establishment and operation of detoxification facility (50-bed capacity) for "public intoxication" misdemeanants. Will serve as substitute for jail detention with direct referral by police and nolle prosequi consideration for treated offenders. During stay, not to exceed 5 days, nutritional care, medical aid, and referral services will be provided.
Metropolitan Police Department Washington, D. C.	Grant No. 034 (June 1966)	$48,400 (13 months)	Comprehensive in-service training program for all levels of department personnel, including (i) executive development program for 40 selected command officials (6 days plus 35 hours of seminars), (ii) management and supervisory training for 340 officers (2 weeks duration), and (iii) in-service training for all department personnel (approximately 2,500 officers) utilizing audio-visual and written training aids.

References: All projects shown here are susceptible of classification in other categories of the listing. Footnote references to other sections indicate such classifications.

(VI. D. C. Comprehensive Programs continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
United Planning Organization Washington, D. C.	Grant No. 036 (June 1966)	$122,700 (14 months)	Establishment of referral service for crime complainants (primarily re family offenses) providing citizens with prompt, private hearing of complaints and, where appropriate, referral to community resources in lieu of prosecution. Service expected to relieve prosecutor's office (U.S. Attorney) and police of portion of existing heavy complaint burden in this area.
Metropolitan Police Department Washington, D. C.	Grant No. 061 (June 1966)	$56,450 (12 months)	Police-community relations training for approximately one-half of Department's field operations personnel. Following design phase and staging of 2 pilot efforts, course (24 hours of instruction) will be given to 1,000 members of force using variety of modern learning techniques.
Stanford Research Institute Menlo Park, California	Contract No. 66-1 (December 1965)	$78,000 (5 months)	Study of characteristics of adult and juvenile offenders in D.C (based on extraction of data from probation and pre-sentence reports). To further work and analyses of D.C. Crime Commission and provide significant data on relationships between offender and type of offense, personal background, prior record and recidivism.
Bureau of Social Science Research, Inc. Washington, D. C.	Contract No. 66-2 * (January 1966)	$48,100 (8 months)	Study in selected areas of D.C. of incidence of crime (reported and unreported) through public survey techniques. Will also include sampling of citizen experience with law enforcement agencies, attitudes toward crime and police-community relations.
Century Research Corporation Washington, D. C.	Contract No. 66-4 (March 1966)	$24,900 (4 months)	Study of police recruitment methods and practices in D.C., including limited comparison with other large cities and interviews with recent recruits (terminated and still in-service). Improvement recommendations to be provided.

*Note supplemental award shown in Fiscal 1967 grant list (#67-11)

(VI. D. C. Comprehensive Programs continued)

Party Conducting Project	Form of Assistance and Approved Date	LEAA Funds & Duration	Nature of Project
CEIR, Inc. (cooperation with D.C. Crime Commission) Washington, D. C.	Contract No. 66-5* (March 1966)	$35,600 (5 months)	Data extraction and computerization of D.C. felony court records (1950, 1955, 1960, 1965) for study of case handling, identification of problem areas and points of delay, and development of improvement recommendations.
President's D.C. Crime Commission (with Metropolitan Police Dept. & Intl. Assn. of Chiefs of Police) Washington, D. C.	Grant No. 001 (December 1965)	$18,300 (5 months)	Presentation of 1-week workshop on police operations re burglary, robbery and auto theft. Representatives of 15 metropolitan forces to review successful programs, exchange experience, and recommend model plans, with national dissemination of findings. (Participation by 40 operating command officials and 15 chiefs.)

*Note supplemental award shown in Fiscal 1967 grant list (#67-14)

VII. Special LEAA Programs

State	Party Conducting Project	Form of Ass't & Month Approved	LEAA Funds and Duration	Comments
A. Governor's Planning Committees in Criminal Administration				
Wisconsin	Governor's Commission on Law Enforcement and Crime	Grant No. 063 (June 1966)	$25,000 (12 months)	31 member commission (includes sub-granting program for needed studies)
Minnesota	Governor's Comm. on Law Enforcement, Criminal Justice Administration & Corrections	Grant No. 069 (June 1966)	$25,000 (12 months)	15-18 member commission (plus technical advisory committee--15 members)
B. Law Enforcement Degree Program Development				
Kentucky	East'n Kentucky State College Richmond, Kentucky	Grant No. 047 (June 1966)	$36,800 (20 months)	2 and 4 year degree programs
Tennessee	Memphis State University Memphis, Tennessee	Grant No. 057 (June 1966)	$13,500 (12 months)	2 year degree program
Georgia	University of Georgia Athens, Georgia	Grant No. 058 (June 1966)	$15,000 (4 months)	2 year degree program--entire state university system
Pennsylvania	Indiana Univ. of Pennsylvania Indiana, Pennsylvania	Grant No. 059 (June 1966)	$13,200 (12 months)	2 and 4 year degree programs
C. State Standards and Training Commissions				
Connecticut	Connecticut Municipal Police Training Council	Grant No. 056 (June 1966)	$27,100 (12 months)	Existing commission--new program development

References: See relevant LEAA Guidelines for description of scope of special programs. Briefly: Item A relates to matching grants to stimulate establishment of state committees or commissions representing all elements of criminal law administration (police, courts, corrections, citizen and preventive interests) to study problems, collect data, and plan comprehensive improvement programs in crime prevention and control. Item B relates to planning and initial support grants to stimulate establishment of degree programs in police science or law enforcement (associate or bachelor's level) in the 30 states where not currently available; and Item C relates to planning and new program development grants to encourage establishment of state law enforcement training and standards commissions where non-existent(about 30 states) or stimulate expansion of programs by existing commissions.

GPO 931-973

Annual Report to the President and the Congress
on
Activities under the Law Enforcement Assistance Act of 1965

APPENDIX 2

FISCAL 1967 PROJECT LISTS

(July 1, 1966 to April 1, 1967)

U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE

LIST OF APPROVED PROJECTS

Fiscal Year 1967 (to 4/1/67)

Second-Year Grant and Contract Awards Under the Law Enforcement Assistance Act of 1965 (PL 89-197)

The following pages contain a complete list of projects approved to date under the Law Enforcement Assistance Act ("LEAA") during the current year of program operation (fiscal 1967) through April 1, 1967. These include a short list indicating only recipient and amount and a more comprehensive list organized under the following headings:

I. Law Enforcement Projects - Training
II. Law Enforcement Projects - Operations Improvement
III. Corrections Projects
IV. Criminal Justice Projects
V. General Studies and Surveys
VI. Special LEAA Programs
   (a) state planning committees in criminal administration
   (b) police science degree program development grants
   (c) police-community relations planning and development grants for metropolitan agencies
   (d) state law enforcement standards and training system grants
   (e) state-wide in-service correctional training system grants

This grouping is based on the main substantive areas of program coverage--law enforcement (police), criminal justice, and corrections, with a special section relating to general studies and projects spanning more than one substantive area. Grants awarded under five special LEAA programs have also been grouped separately although classifiable under appropriate substantive headings.

Each project listing contains the name and location of the award recipient, the type of assistance award (grant or contract), the amount of the award, length of project, date of approval (by month) and a short project description.

A total of 111 new LEAA projects were approved in fiscal 1967 to date, aggregating $4,277,532 in assistance awards. In addition, $499,061 has been allocated for supplemental grant awards and dissemination and technical assistance projects under the Law Enforcement Assistance Act (see last portion of short list).

Combined with first-year (fiscal 1966) awards, this makes a grand total of project support under the Act in the amount of $11,734,504 and covering 194 separate projects. These awards have gone to grantees or contractors located

in 47 different states, the District of Columbia, and Puerto Rico. The average duration of grant awards has been 12+ months and the average award amount for all projects, including a $.5 million science and technology survey and a $.4 million national crime information center test project is $61,117.

Briefly, the Law Enforcement Assistance Act authorizes the Attorney General to make grants to or contract with public or private non-profit agencies to improve training of personnel, advance the capabilities of law enforcement bodies, and assist in the prevention and control of crime. The Act also authorizes the Attorney General to conduct studies, render technical assistance, evaluate the effectiveness of programs undertaken, and disseminate knowledge gained as a result of such projects. Police, courts, corrections, and other mechanisms for the prevention and control of crime are all within its scope.

U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE

Grants Awarded under the Law Enforcement Assistance Act of 1965
by Name of Grantee - Sequential Listing
Fiscal 1967 up to March 30, 1967

Number	Grantee	Amount
070	West Virginia Governor's Committee on Crime, Deliquency and Corrections	$ 25,000
071	DC Metropolitan Police Department (Communications System)	104,987
072	Michigan Governor's Committee on Crime, Deliquency and Criminal Admin.	25,000
073	Tucson (Arizona) Police Department	60,291
074	Southern Police Institute (Kentucky)	166,540
075	St. Petersburg (Florida) Junior College	43,527
076	New Jersey Governor's Commission to Study Causes and Prevention of Crime	25,000
077	Richmond (Virginia) Professional Institute	13,638
078	University of Hawaii	14,679
079	International Association of Chiefs of Police	81,489
080	Eastern Kentucky University	15,000
081	League of Kansas Municipalities	2,428
082	Texas Commission on Law Enforcement Officer Standards and Education	33,838
083	Boise College, Idaho	14,758
084	University of Minnesota	12,922
085	Harvard Law School	22,960
086	Roscoe Pound-American Trial Lawyers Foundation (with Univ. of Michigan)	87,580
087	Arkansas Law Enforcement Training Academy	33,251
088	Honolulu Police Department	19,947
089	DC Department of Corrections	74,530
090	Des Moines (Iowa) Police Department	14,054
091	Des Moines (Iowa) Police Department	16,120
092	University of Michigan (supplemental award - Grant #006)	38,458
093	St. Louis Metropolitan Police Department	158,781
094	University of Mississippi	15,000
095	Oregon Advisory Board on Police Standards and Training	29,990
096	Maryland State Department of Education	12,123
097	University of Mississippi (with National Sheriff's Association)	62,004
098	National Opinion Research Center, Univ. of Chicago (supp. to Grant 021)	55,921
099	National Council on Crime and Deliquency (with Menninger Foundation)	9,387
100	Syracuse Police Department	38,680
101	Washington Law Enforcement Officers Training Commission	29,886
102	Boston University Law School	63,517
103	California State Department of Justice	25,000
104	Boston Police Department	15,000
105	University of Nevada	13,730
106	Richmond (Virginia) Bureau of Police	14,718
107	University of Oklahoma	12,504
108	Minot (North Dakota) State College	13,772
109	Wichita (Kansas) Bureau of Police	14,998
110	Iowa Committee on Planning and Evaluation in Criminal Administration	25,000
111	University of Illinois (at Chicago Circle)	11,405
112	Jefferson State Junior College	13,145
113	Gary (Indiana) Police Department	14,887
114	New Haven (Connecticut) Police Department	14,917
115	San Jose (California) Police Department	14,970
116	Southern Oregon College	14,493

Number	Grantee	Amount
117	Lorain County (Ohio) Community College	$ 13,130
118	Weber State College (Utah)	15,000
119	St. Louis County (Missouri)	20,027
120	Rider College (New Jersey)	6,369
121	Tarrant County (Texas) Junior College District	14,444
122	University of Iowa	13,290
123	Omaha (Nebraska) Police Department	15,000
124	Lane County Youth Study Board (Oregon)	8,727
125	American Center, Catholic University (Puerto Rico)	32,758
126	Pittsburgh (Pennsylvania) Police Department	48,598
127	City University of New York (John Jay College)	59,000
128	Traffic Institute of Northwestern University	125,154
129	Southwestern Legal Foundation (Texas)	42,548
130	Florida State Committee on Law Enforcement and Administration of Justice	22,068
131	University of California (Berkeley)	147,924
132	Wisconsin Governor's Committee for Development of Minimum Selection and Training Standards for Law Enforcement	14,610
133	Missouri Department of Corrections	14,208
134	University of Kansas (with State Penal Institutions and Board of Probation and Parole)	15,000
135	Harrisburg (Pennsylvania) Area Community College	24,622
136	St. Louis Metropolitan Police Department	14,726
137	Ohio Peace Officers Training Council	34,955
138	Flint (Michigan) Police Department	14,171
139	Rhode Island State Department of Social Welfare	12,485
140	Massachusetts Governor's Public Safety Commission	24,600
141	Rochester (New York) Police Department	14,888
142	New York City Police Department	15,000
143	University of Wisconsin, Center for Advanced Study in Org. Science	105,033
144	American Foundation, Philadelphia	45,000
145	Massachusetts Municipal Police Training Council	15,000
146	Tucson Police Department (Arizona)	15,003
147	Kansas City (Kansas) Police Department	15,003
148	Dayton (Ohio) Division of Police	15,000
149	City of Detroit (Michigan)	137,000
150	South Dakota Division of Criminal Justice	18,242
151	Maine Municipal Police Training Council	15,000
152	State of New York, Governor's Special Committee on Criminal Offenders	25,000
153	Boston Police Department (Massachusetts)	30,200
154	University of Virginia	172,550
155	Wilmington (Delaware) Police Department	16,185
156	State of Vermont	15,000
157	City College of New York (with N.Y.C. Police Department)	94,736
158	University of Montana Law School	20,000
159	Elizabeth (New Jersey) Police Department	15,000
160	Oklahoma City Police Department	14,940
161	Illinois Law Enforcement Officers Training Board	29,700
162	University of California at Berkeley, School of Criminology	65,000
163	City of Des Moines Police Department (Iowa)	14,991
164	City of Peoria (Illinois) Police Department	14,969
165	Michigan State University, School of Police Administration	58,730

Number	Grantee	Amount
166	University of Missouri	$ 14,852
167	City of Cincinnati (Ohio)	123,712
168	University of Southern California Youth Studies Center	112,942
169	University of Cincinnati (with Cincinnati Police Division)	51,174
170	Los Angeles Technical Services Corp. (with Los Angeles Police Dept.)	149,625
	GRAND SUBTOTAL	$3,842,714

Contracts and Special Technical Assistance or Dissemination Projects

Number	Contractor	Amount
67-11	Bureau of Social Science Research (Supp. to 66-2)	$ 61,925
67-12	Arthur D. Little, Inc. (Supp. to 66-10)	13,220
67-13	U. S. Atomic Energy Commission	45,000
67-14	C-E-I-R, Inc. (Supp. to 66-5)	6,500
67-15	Matson Research Corp.	3,000
67-16	U. S. Attorney, E. D. Louisiana - Police	4,798
67-17	The Advertising Council, Inc.	75,000
67-18	OLEA Technical Assistance Project--Conference of State Planning Committees in Criminal Administration	12,750
67-19	OLEA Dissemination Project--National Crime Commission Report	246,064
67-20	OLEA Dissemination Project--DC Crime Commission Report	48,425
67-21	Federal Bureau of Investigation (with 15 State & Local Police Agencies)	406,197
67-22	OLEA Study Project--Police Command Training in Southern United States	710
67-23	OLEA Technical Assistance Project--Conference on Police Management Training Projects	4,540
67-24	OLEA Dissemination Project-- National Corrections Survey	1,250
67-25	OLEA Dissemination Project--First National Symposium on Science & Technology	4,500
	Contracts Subtotal	$ 933,879
	GRAND TOTAL	$4,776,593

U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT
ASSISTANCE

NEW GRANT AND CONTRACT AWARDS
IN FISCAL 1967
(July 1, 1966 to April 1, 1967)

LAW ENFORCEMENT-TRAINING

Grantee or Contractor	Amount	Project
Southern Police Institute University of Louisville Louisville, Kentucky (Grant #074)	$166,540 (2 years)	Advanced in-service educational program for command police officers from Southeast and South Central region (12-week course--15 states participating--120 trainees).
St. Petersburg Jr. College St. Petersburg, Florida (Grant #075)	$ 43,527 (15 mos.)	Development and presentation of management training course for police executives--police chiefs from 40 Florida cities (6 weeks of training distributed over the project year).
International Association of Chiefs of Police Washington, D. C. (Grant #079)	$ 81,489 (8 mos.)	Three regional training institutes for police executives--1-month course for 80 chiefs in 20 states--(eastern, central, and western U.S. locations at university sites).
League of Kansas Municipalities Topeka, Kansas (Grant #081)	$ 2,428 (3 mos.)	Printing and distribution of law enforcement handbook to all Kansas law enforcement officers (in cooperation with State sheriffs, police chiefs, and peace officers assns.).
Arkansas Law Enforcement Training Academy Little Rock, Arkansas (Grant #087)	$ 33,251 (13 mos.)	Management-supervisory training for law enforcement officers--sergeant through chief (175 participants--5 regional courses each involving 4 weeks of training).
Honolulu Police Department Honolulu, Hawaii (Grant #088)	$ 19,947 (11 mos.)	One-week training institute in police-community relations (July 1967) for police, plus social agencies, churches, unions, minority group organizations--Hawaii and American Samoa (200-300 participants).
Des Moines Police Department Des Moines, Iowa (Grant #091)	$ 16,120 (1 year)	Development and testing of law enforcement course for vocational high school seniors (full semester credit course) to provide both career orientation and understanding of law and law enforcement function.

78-433 O—67——30

LAW ENFORCEMENT-TRAINING (cont'd)

Grantee or Contractor	Amount	Project
Inter-American Center Catholic University Ponce, Puerto Rico (Grant #125)	$ 32,758 (4 mos.)	Development and presentation of month-long training institute (Puerto Rican culture, social conditions, law enf. practices, etc.) for 35 police supervisors and chiefs from 9 mainland cities with concentrated Spanish-speaking populations for improved understanding and effectiveness in police service to these groups.
Office of the Mayor Pittsburgh, Pennsylvania (Grant # 126)	$ 48,598 (8 mos.)	In-service training program in police-community relations to reach 500 patrolmen and supervisors. (10 presentations of 24 hour course utilizing lecture and small group discussion).
John Jay College of Criminal Justice City University of New York New York, New York (Grant #127)	$ 59,000 (19 Mos.)	Fellowship support (living stipend plus tuition and fees) to 10 law enforcement officers for graduate study leading to Master's degree in public administration (emphasis on law enforcement and police administration). Pilot project involves 2 other universities.
Traffic Institute of Northwestern University Evanston, Illinois (Grant #128)	$125,154 (2 years)	Regional expansion of present short course programs for management, supervision, personnel management and instructor training (North Central states--125 participants per year--5 different courses).
Southwestern Legal Foundation Dallas, Texas (Grant #129)	$ 42,548 (2 years)	Expansion and regionalization of present 4 and 12 week police in-service training course for command and supervisory personnel (5-state area--25 to 50 traineeships per year).
Harrisburg Area Community College Harrisburg, Pennsylvania (Grant #135)	$ 24,622 (9 mos.)	Development and presentation of police management institute for command level personnel from 4-state area with primary focus on Pennsylvania (30 chiefs--one month course--cities of 20,000 to 50,000 population).
Wilmington Police Department Wilmington, Delaware (Grant #155)	$ 16,185 (1 year)	Demonstration of closed circuit TV training for in-service and recruit training programs of metropolitan department plus surrounding communities (5 test presentations--academy class and roll call use).

LAW ENFORCEMENT--TRAINING (cont'd)

Grantee or Contractor	Amount	Project
University of California at Berkeley School of Criminology Berkeley, California (Grant #162)	$ 65,000 (16 mos.)	Fellowship support (living stipend plus tuition and fees) to 10 law enforcement officers for graduate study leading to Master's degree in public administration (emphasis on law enforcement and police administration). Pilot project involves 2 other universities.
Michigan State University School of Police Administration and Public Safety East Lansing, Michigan (Grant #165)	$ 58,730 (16 mos.)	Fellowship support (living stipend plus tuition and fees) to 10 law enforcement officers for graduate study leading to Master's degree in public administration (emphasis on law enforcement and police administration). Pilot project involves 2 other universities.
University of Cincinnati (with Cincinnati Police Div.) Cincinnati, Ohio (Grant #169)	$ 51,174 (3 years)	First demonstration of integration of large city police cadet program with "cooperative college plan" of education leading to 2-year associate degree (30 trainees 1st year, 60 in 2nd, 90 in 3rd--alternate quarters of full-time study and full-time on-the-job police work experience).

LAW ENFORCEMENT--OPERATIONS

Grantee or Contractor	Amount	Project
Metropolitan Police Dept. Washington, D. C. (Grant #071)	$104,987 (9 mos.)	Development grant for complete study and redesign of police communications system--to provide model system format.
Tucson Police Dept. Tucson Arizona (Grant #073)	$ 60,291 (15 mos.)	Support for school resource officer program (police assigned to and working with junior high and elementary schools) including specialized training and in-depth evaluation of program.
St. Louis Metropolitan Police Department St. Louis, Missouri (Grant #093)	$158,781 (1 year)	Demonstration detoxification facility for persons taken into police custody for drunkenness (3,000 annual capacity) to include medical care, therapy, counselling and referrals, as alternative to normal arrest, jail and prosecution procedures.
Syracuse Police Department Syracuse, New York (Grant #100)	$ 38,680 (7 mos.)	Pilot project to improve handling of juveniles and youthful offenders, including complete revision of police juvenile procedures, study of boys on probation, plan for early identification of probable repeaters, and design of professionally staffed screening-referral unit.
U.S. Atomic Energy Commission (with General Dynamics Corporation) (Contract #67-13)	$ 45,000 (1 year)	Developmental work in utilization of neutron activation analysis for identifying substances in criminal investigations. To include statistical calculations on identity and coincidence, catalog of composition of commercial substances, and further studies.
University of Mississippi (with National Sheriffs' Association cooperating) Oxford, Mississippi (Grant #097)	$ 62,004 (1 year)	Study will gather, interpret, and disseminate data previously unavailable on the sheriff's office in 11 southern states--organization, selection, tenure, operations, problems,etc.
15 state & local law enforcement agencies (with Federal Bureau of Investigation) State: Calif., Ga., Md., N.Y., Pa., Tex., Va., Local: Boston, Chicago D.C., New Orleans, NYC, Phila., St. Louis (Technical Assistance Project #67-21)	$406,197 (16 mos.)	One-year pilot test of computer-assisted coast-to-coast information network linking 15 local and state law enforcement agencies with National Crime Information Center. Information on fugitives, stolen cars and property. FBI is coordinator; grant will help finance agencies' test costs and related expenses.

LAW ENFORCEMENT--OPERATIONS (cont'd)

Grantee or Contractor	Amount	Project
St. Louis County St. Louis, Mo. (Grant #119)	$ 20,027 (7 mos.)	Prototype study of feasibility and legal and financial implications of consolidation of law enforcement services in county area to analyze weaknesses, suggest improvements and offer models of value to other localities.
Boston Police Department Boston, Massachusetts (Grant #153)	$ 30,200 (5 mos.)	Development study of communications and police department information system needs to increase efficiency of report and record keeping operations, facilitate access to operational information, and delineate optimum uses and potentials of advanced data retrieval capabilities.
University of Virginia Charlottesville, Va. (Grant #154)	$172,550 (14 mos.)	Basic developmental and research work with spark source mass spectrometry re identification of substances for criminal investigation and prosecution purposes plus evaluation of comparative effectiveness of spectrometry against the technique of neutron activation analysis.
City of Cincinnati (with county law enforcement agencies) Cincinnati, Ohio (Grant #167)	$123,712 (1 year)	Development of computer-based regional law enforcement information system to integrate and serve information handling requirements of police, prosecution, and court agencies in Hamilton county and surrounding communities (hardware and software design plus initial implementation).
City College of New York (with N.Y.C. Police Dept.) New York, New York (Grant #157)	$ 94,736 (2 years)	Demonstration project to experiment with round-the-clock radio patrol tactical units specially trained and assigned to respond to family disturbance complaints. Includes on-campus training in family crisis counselling, field demonstration in experimental precinct, and evaluation of results against normal family complaint handling.
Los Angeles Technical Services Corporation (with Los Angeles Police Department) Los Angeles, California (Grant #170)	$149,625 (1 year)	Development work on automated police information system featuring design of integrated computer programs for correlation and retrieval of tactical and investigative data in natural language form.

CORRECTIONS

Grantee or Contractor	Amount	Project
D.C. Department of Corrections Washington, D. C. (Grant #089)	$ 74,530 (13 mos.)	Establishment of model research unit to organize data, research effectiveness of present and future corrections programs, plan new efforts, and demonstrate value of this function in a correctional system.
National Council on Crime and Delinquency (with Menninger Foundation) New York, New York (Grant #099)	$ 9,387 (3 mos.)	Three-day institute in Topeka, Kansas, (early 1967) on managing and treating mentally disordered (aggressive, dangerous) offenders. 9 west-midwestern states participating--prisons, mental hospitals, governors' representatives.
Lane County Youth Study Board Eugene, Oregon (Grant #124)	$ 8,727 (4 mos.)	Project to develop training materials for correctional personnel, particularly those in semi-rural area; materials suited to different levels of activity (administration, supervision, direct services, community-based and institutional treatment).
University of California (Institute for the Study of Law and Society) Berkeley, California (Grant #131)	$147,924 (2 years)	Study, analysis and development of improved methods and action models concerning critical factors affecting the success and failure of adult parolees (research in Oakland area-findings generalized for national significance).
University of Wisconsin Center for Advanced Study in Organization Science Milwaukee, Wisconsin (Grant #143)	$105,033 (2 years)	Presentation of 1-month executive development training institutes for correctional administrators (one per year--2 two-week sessions--25 trainees each drawn nationally) to acquaint administrators with modern management, administrative, personnel and organizational techniques and practices.
American Foundation Philadelphia, Pa. (Grant #144)	$ 45,000 (1 year)	Planning, production and distribution of 30-minute correctional film on jail and the misdemeanant as training aid for correctional personnel and to stimulate public concern and knowledge re constructive treatment programs. Will embody best correctional thinking (including findings of President's Crime Commission.)
City of Detroit Detroit, Michigan (Grant #149)	$137,000 (14 mos.)	Demonstration treatment and rehabilitation project for misdemeanant offenders in local house of corrections (at least 100 subjects) to involve intensive testing and counselling services, work-release programs, and post and pre-release remedial education, vocational guidance, job training and family services.

CORRECTIONS (cont'd)

Grantee or Contractor	Amount	Project
University of Southern California Youth Study Center Los Angeles, California (Grant #168)	$112,942 (24 mos.)	Project to develop mathematical models of the probation process, including computer programs for prediction of probation success and probation alternatives likely to be selected. Will be tested in 3 county probation departments as tool for improved decision-making and basis for further work re caseload management, updating of procedures and evaluation of experimental programs.

CRIMINAL JUSTICE

Grantee or Contractor	Amount	Project
Harvard Law School (with Suffolk and Middlesex County Dist. Atty's.) Cambridge, Mass. (Grant #085)	$ 22,960 (9 mos.)	Demonstration project in which senior law students serve as prosecutors in minor criminal cases of selected local courts, under new court rule with special supervision and training (law school seminars).
Boston University (with Suffolk County Dist. Atty.) Boston, Mass. (Grant #102)	$ 63,517 (1 year)	Demonstration project similar to Harvard project (Grant #085)--third-year law students serving as prosecutors in minor criminal cases. Trial work is clinical adjunct to credit course.
Roscoe Pound-American Trial Lawyers Foundation (with Univ. of Mich. Inst. of Cont'g. Legal Education) Boston, Massachusetts (Grant #086)	$ 87,580 (1 year)	Creation, production and evaluation of films on criminal law advocacy and trial work for training prosecutors, defense attorneys, law students, law enforcement personnel.
University of Montana Missoula, Montana (Grant #158)	$ 20,000 (6 mos.)	Conduct of 4-day tribal judge training institute (30 participants) and establishment of law student criminal justice internship program (12 summer interns) with placements on Indian reservations ("ombudsman" type services) and in probation, police and county prosecutor offices.

GENERAL STUDIES AND CRIME PREVENTION

Grantee or Contractor	Amount	Project
Des Moines Police Dept. Des Moines, Iowa (Grant #090)	$ 14,054 (1 year)	Crime prevention demonstration program, using police academy facilities, for owners, managers, and employees of local businesses (150 participants--20-hour course).
Maryland State Dept. of Education Baltimore, Maryland (Grant #096)	$ 12,123 (9 mos.)	Development and testing of new course on "citizenship and the law" as crime prevention demonstration involving 20 junior high schools in 3 selected counties and production of training film and other special training materials.
Matson Research Corp. San Francisco, California (Contract #67-15)	$ 3,000 (1 month)	Preliminary research to determine magnitude and feasibility of major study on organized crime.
National Advertising Council (with Criminal Div'n., Dept. of Justice) Washington, D. C. (Contract #67-17)	$ 75,000 (1 year)	Nationwide crime prevention campaign to reduce auto theft and burglary via citizen education. Will rely primarily on contributed services and resources of advertising agencies, media, and users. (Grant funds limited to out-of-pocket costs in million dollar campaign.)

LEAA SPECIAL GRANT PROGRAMS *

SPECIAL GRANTS--GOVERNORS' PLANNING COMMITTEES IN CRIMINAL ADMINISTRATION

Grantee or Contractor	Amount	Project
West Virginia Governor's Committee on Crime, Delinquency & Corrections Charleston, West Virginia (Grant #070)	$ 25,000 (1 year)	15-member commission will research, analyze, assign priorities and develop comprehensive course of action for improved law enforcement and criminal justice administration in state.
Michigan Commission on Crime, Delinquency & Criminal Admin. Lansing, Michigan (Grant #072)	$ 25,000 (1 year)	Essentially same as above by 45-member commission.
Commission to Study Causes and Prevention of Crime in New Jersey Trenton, New Jersey (Grant #076)	$ 25,000 (1 year)	Essentially same as the above by 15-member commission.
California Joint Council on Technology & the Administration of Justice Sacramento, California (Grant #103)	$ 25,000 (1 year)	Essentially same as above by 15-member council with initial concentration on design of integrated criminal justice information system.
Iowa Committee on Planning & Evaluation in Criminal Administration Des Moines, Iowa (Grant #110)	$ 25,000 (1 year)	Essentially same as other State Planning Committees--16-member commission.

* Through March 1967 OLEA had launched five special programs under which grant awards had been made. These offer support for (1) state committees to plan integrated law enforcement and crime control programs (all 50 states eligible--matching grants up to $25,000), (2) development of state law enforcement training and standards systems where non-existent (30 states--up to $15,000 for planning grants), and strengthening of those now in operation (remaining states--up to $35,000), (3) stimulation of college degree programs in police science primarily in states where non-existent (30 states--$15,000 planning stage, $25,000 first-year support), (4) expansion and improvement of police-community relations efforts by large metropolitan departments (planning and development grants--up to $15,000), (5) development of state-wide programs for in-service training of correctional personnel (all 50 states-up to $15,000 planning stage, $30,000 first-year support).

SPECIAL GRANTS--GOVERNORS' PLANNING COMMITTEES IN CRIMINAL ADMINISTRATION (cont'd)

Grantee or Contractor	Amount	Project
Massachusetts Governor's Public Safety Committee Boston, Massachusetts (Grant # 140)	$ 24,600 (1 year)	Essentially same as foregoing by 17-member commission.
Florida State Committee on Law Enforcement and Administration of Justice Tallahassee, Florida (Grant #130)	$ 22,068 (1 year)	Essentially same as above by 16-member committee.
Governor's Committee on Criminal Offenders Albany, New York (Grant #152)	$ 25,000 (1 year)	Essentially same as above by 16-member committee (initial emphasis on offender correction and rehabilitation).

SPECIAL GRANTS--POLICE SCIENCE DEGREE DEVELOPMENT

Grantee or Contractor	Amount	Project
Richmond Professional Institute Richmond, Virginia (Grant #077)	$ 13,638 (1 year)	Grant to develop 4-year police science degree program: design curriculum, secure community and law enforcement agency support.
Univ. of Hawaii Honolulu, Hawaii (Grant #078)	$ 14,679 (1 year)	Same as above--2-year degree.
Boise College Boise, Idaho (Grant #083)	$ 14,758 (1 year)	Same as above--4-year degree.
Univ. of Minnesota Minneapolis, Minn. (Grant #084)	$ 12,922 (1 year)	Same as above--2-year degree.
Univ. of Mississippi Oxford, Mississippi (Grant #094)	$ 15,000 (1 year)	Same as above--4-year degree.
Univ. of Nevada Reno, Nevada (Grant #105)	$ 13,730 (8 mos.)	Same as above--2-year degree.
Univ. of Oklahoma Oklahoma City, Okla. (Grant #107)	$ 12,504 (8 mos.)	Same as above--4-year degree.
Minot State College Minot, North Dakota (Grant #108)	$ 13,772 (10 mos.)	Same as above--2-year degree.
Univ. of Illinois, Chicago Circle Chicago, Illinois (Grant #111)	$ 11,405 (8 mos.)	Same as above--4-year degree.
Jefferson State Junior College Birmingham, Alabama (Grant #112)	$ 13,145 (9 mos.)	Same as above--2-year degree.
Southern Oregon College Ashland, Oregon (Grant #116)	$ 14,493 (1 year)	Same as above--4-year degree.

SPECIAL GRANTS--POLICE SCIENCE DEGREE DEVELOPMENT (cont'd)

Grantee or Contractor	Amount	Project
Lorain County Community College Lorain, Ohio (Grant #117)	$ 13,130 (8 mos.)	Same as foregoing--2-year degree.
Weber State College Ogden, Utah (Grant #118)	$ 15,000 (1 year)	Same as above--2-year degree.
Rider College Trenton, New Jersey (Grant #120)	$ 6,369 (5 mos.)	Same as above--2-year degree.
Tarrant County Junior College District Fort Worth, Texas (Grant #121)	$ 14,444 (8 mos.)	Same as above--2-year degree.
University of Iowa Iowa City, Iowa (Grant #122)	$ 13,290 (1 year)	Same as above--2-year degree.
University of Missouri St. Louis, Missouri (Grant #166)	$ 14,852 (1 year)	Same as above--4-year degree.

SPECIAL GRANTS--POLICE-COMMUNITY RELATIONS

Grantee or Contractor	Amount	Project
Boston Police Dept. Boston, Massachusetts (Grant #104)	$ 15,000 (6 mos.)	Develop police-community relations program, including p.c.r. unit, advisory council and workshops; seminars with youth.
Bureau of Police Richmond, Virginia (Grant #106)	$ 14,718 (9 mos.)	Develop police-community relations program, including p.c.r. unit, training course for all officers, and field interviews to analyze community needs.
Bureau of Police Wichita, Kansas (Grant #109)	$ 14,998 (6 mos.)	Develop police-community relations program, including p.c.r. unit; training course; expanded recruiting of officers from, and closer work with, minority groups.
Gary Police Department Gary, Indiana (Grant # 113)	$ 14,887 (8 mos.)	Develop police-community relations division and program in two phases; first, an analysis of police personnel attitudes; second, a citizen advisory committee (appointed by the mayor) to work with police re training and operational program elements.
New Haven Police Dept. New Haven, Conn. (Grant #114)	$ 14,917 (1 year)	Develop police-community relations program wherein police planning committee will work with community agencies and citizen groups. Intergroup conferences will evaluate PD operations and training.
San Jose Police Dept. San Jose, California (Grant # 115)	$ 14,970 (6 mos.)	Develop police-community relations function with particular emphasis on pilot program in overcrowded area with diverse ethnic make-up. Seminars, work with, and officer recruitment from, minority groups.
Omaha Police Dept. Omaha, Nebraska (Grant #123)	$ 15,000 (6 mos.)	Develop police-community relations program, including increased staff detached to work on p.c.r. problems and special training for 300 officers.
St. Louis Metro. Police Dept. St. Louis, Missouri (Grant #136)	$ 14,726 (1 year)	Develop and expand present police-community relations program, including review and enlargement of departmental human relations training and establishment of 2 store-front centers in high crime areas.

SPECIAL GRANTS--POLICE-COMMUNITY RELATIONS (cont'd)

Grantee or Contractor	Amount	Project
Flint Police Department Flint, Michigan (Grant #138)	$ 14,171 (1 year.)	Develop and expand present program through increased training course attendance, larger operational p.c.r. activities, and more officer involvement in community affairs.
Department of Public Safety Rochester, New York (Grant #141)	$ 14,888 (6 mos.)	Develop and expand present program, including Spanish language training for 30 officers, new liaison police-youth - community specialist, utilization of radio and television spots and programs to describe police function and goals to the community.
New York Police Dept. New York, New York (Grant #142)	$ 15,000 (1 year)	Project will include analysis of present police-community relations, comparison with p.c.r. programs in other cities, an attitude survey among police officers, and development of long-range program. Vera Institute of Justice will assist.
Tuscon Police Dept. Tucson, Arizona (Grant #146)	$ 15,003 (9 mos.)	Develop police-community relations program including training for all supervisory and command personnel plus 10 selected patrolmen (videotapes of training to be used for entire department).
Kansas City Police Dept. Kansas City, Kansas (Grant #147)	$ 15,003 (1 year)	Develop and expand present police-community relations program through use of district citizen councils, establishment of speaker's bureau, establishment of youth council, and in-service training for entire department.
Dayton Police Dept. Dayton, Ohio (Grant #148)	$ 15,000 (8 mos.)	Develop police-community relations program, including establishment of two-man police-community relations unit, human relations training program for police personnel, etc.
Elizabeth Police Dept. Elizabeth, New Jersey (Grant #159)	$ 15,000 (9 mos.)	Develop police-community relations program including establishment of two-man police-community relations unit and design and conduct of in-service training.
Oklahoma City Police Dept. Oklahoma City, Oklahoma (Grant #160)	$ 14,940 (1 year)	Develop police-community relations program --300 departmental personnel to receive special instruction (20 hrs.) at Southwest Center for Human Relations Studies, University of Oklahoma.

SPECIAL GRANTS--POLICE-COMMUNITY RELATIONS (cont'd)

Grantee or Contractor	Amount	Project
Des Moines Police Dept. Des Moines, Iowa (Grant #163)	$ 14,991 (1 year)	Develop police-community relations program with special emphasis on juveniles and minority groups. Special p.c.r. training to be added to regular training academy program.
Peoria Police Department Peoria, Illinois (Grant #164)	$ 14,969 (1 year)	Develop police-community relations plan through study of present literature, survey of the department and liaison with civic groups.

SPECIAL GRANTS--STATE LAW ENFORCEMENT STANDARDS AND TRAINING COMMISSIONS

Grantee or Contractor	Amount	Project
Eastern Kentucky Univ. (Kentucky Peace Officers' Standards & Training Council) Richmond, Kentucky (Grant #080)	$ 15,000 (1 year)	Planning grant--to establish commission and develop state-wide standards for selection and training of law enforcement officers.
Texas Commission on Law Enforcement Officer Standards and Education Austin, Texas (Grant #082)	$ 33,838 (1 year)	New program development--existing commission will expand activities, i.e., selection standards, curriculum aids, certification of instructors.
Oregon Advisory Board on Police Standards Salem, Oregon (Grant #095)	$ 29,990 (1 year)	New program development--existing commission will expand activities, i.e., state-wide survey, certification of students and instructors, uniform recruitment standards, upgrading course content and instruction.
Washington Law Enforcement Officers Training Commission Olympia, Washington (Grant #101)	$ 29,886 (1 year)	New program development--existing commission will expand activities, i.e., minimum recruitment standards, revision and development of basic and advanced course curricula, and development of state-wide corps of qualified instructors.
Wisconsin Governor's Commission on Law Enforcement & Crime (for Trng. & Standards Comm.) Madison, Wisconsin (Grant #132)	$ 14,610 (7 mos.)	Planning grant--to establish commission and develop state-wide standards for selection, training and promotion of law enforcement officers.
Ohio Peace Officers Training Council Columbus, Ohio (Grant #137)	$ 34,955 (1 year)	New program development--existing commission will expand activities, i.e., conduct job study and analysis of police function, evaluate and revise training curricula, and develop new instructional aids, materials, and course outlines.
Massachusetts Municipal Police Training Council Boston, Massachusetts (Grant #145)	$ 15,000 (1 year)	New program development--existing council will implement minimum training requirements for law enforcement officers mandated by new statute, including certification and supervision of schools authorized to give required basic recruit course.

78-433 O—67——31

SPECIAL GRANTS--STATE LAW ENFORCEMENT STANDARDS AND TRAINING COMMISSIONS (cont'd)

Grantee or Contractor	Amount	Project
South Dakota Division of Criminal Investigation Office of the Attorney General Pierre, South Dakota (Grant #150)	$ 18,242 (1 year)	New program development--existing agency will develop and implement basic, advanced and specialized state-wide training for law enforcement officers.
Maine Municipal Police Training Council Portland, Maine (Grant #151)	$ 15,000 (1 year)	Planning grant--to establish agency and develop state-wide standards for selection and training of law enforcement officers.
Office of the Attorney General State of Vermont Montpelier, Vermont (Grant #156)	$ 15,000 (1 year)	New program development--to develop minimum selection and training standards system for state and municipal law enforcement officers.
Illinois Local Governmental Law Enforcement Officers Training Board Springfield, Illinois (Grant #161)	$ 29,700 (1 year)	New program development--existing commission will expand and implement current basic recruit curriculum and new supervisory, management and special subject training courses.

SPECIAL GRANTS--IN-SERVICE TRAINING FOR CORRECTIONAL PERSONNEL

Grantee or Contractor	Amount	Project
Missouri Department of Corrections Jefferson City, Mo. (Grant #133)	$14,208 (9 mos.)	Development of state-wide training program for correctional staffs (probation, parole, institutions), primarily line and supervisory personnel--collaboration with University of Missouri.
University of Kansas (Governmental Research Center) Lawrence, Kans. (Grant #134)	$15,000 (1 year)	Essentially same as above--collaboration with Kansas Board of Probation and Parole and Kansas Penal System.
Rhode Island State Department of Social Welfare Providence, Rhode Island (Grant #139)	$12,485 (9 mos.)	Essentially same as above--collaboration with University of Rhode Island.

TOTAL NEW PROJECT AWARDS APPROVED TO DATE IN FISCAL 1967: $4,371,911

Senator KENNEDY. Mr. Chairman, could there also be included any complaints from the State and local areas that have experienced a termination of funds?

Attorney General CLARK. There have been no actual terminations of any funds authorized.

Senator KENNEDY. Well, if any complaints concerning the administration of the act have been made, I would be interested in seeing them. My own impression is that this has been one of the best administered grant programs in the Government.

Senator HRUSKA. Of course, that would not reach the point this Senator was bringing out because title III and the Law Enforcement Act does not involve operations. That is for research and development.

Attorney General CLARK. That is right.

Senator HRUSKA. In the area dealing with the control and supervision, the language from section 204(a)(2) refers to improvement and coordination of all aspects of law enforcement and criminal justice.

That gets back to the source of the police chief's authority. He must go to the State statute to see if he has authority. Then when he gets to the matter of making application to you, he also has to include the court system and the prosecutor's system.

I wonder if the State government would not be very, very sensitive about having somebody coming in and requesting to rearrange what the State has set out to enforce the law within its boundaries.

Attorney General CLARK. Section 204(a)(2) requires a plan to contain a comprehensive outline of priorities for the improvement and coordination of all aspects of law enforcement and criminal justice dealt with in the plan.

In other words, obviously, we want a comprehensive statement of everything that is dealt with in the plan. There is, however, no requirement that all law enforcement and criminal justice agencies be dealt with in the plan. We also want them to coordinate however. And I think this is more in line with what you are addressing yourself to. We do want them to coordinate their plan with other plans and other functions not covered by main plan, but related to it.

Senator HRUSKA. A sheriff would be impudent to tell a county judge how to run his department, or a county attorney of the county how to run his department, or the city police how to run their department in his county.

In trying to get cooperation and coordination, maybe the chief of police would state to the sheriff, "You go and peddle your papers and I will peddle my papers." Mind, that is not any fancy. We have things like that facing our community in my home State and in other fields that have required the necessity of going beyond the State board. Because we are on the Missouri River and take in some of Iowa we get into matters of discipline and higher relations. That is why I questioned what this means, all aspects.

Senator MCCLELLAN. Would the Senator yield at this point?

Senator HRUSKA. Surely.

Senator MCCLELLAN. This is off the record.

(Discussion off the record.)

Senator McCLELLAN. We will stand in recess until 2 o'clock.

(Whereupon at 12:30 p.m., a recess was taken until 2 p.m. of the same day.)

AFTERNOON SESSION

(Present: Senators McClellan (presiding), Kennedy of Massachusetts, Hruska, and Thurmond.)

Senator McCLELLAN. We will resume.

Mr. Attorney General, section 202(a)(2) provides that not more than one-third of any grant should be expended for compensation of personnel. Does that mean that not more than one-third of any grant can be used to increase the salaries of policemen or law enforcement officials?

Attorney General CLARK. The one-third limitation applies to either increasing the salary of personnel or adding personnel for whom you pay additional salaries—with the exceptions that are stated.

Senator McCLELLAN. Certainly none of this money is to be used to pay present salaries?

Attorney General CLARK. No.

Senator McCLELLAN. We are not going in and pick up the tab for present expenses, since grant funds can be used only to improve—therefore, it can go for an increase in salary.

Attorney General CLARK. It can go to an increase in salary for personnel presently employed or it could go for additional personnel.

Senator McCLELLAN. But it could not be used to pay part of a salary without an increase.

Attorney General CLARK. No.

Senator McCLELLAN. The purpose of that is to enable municipalities, and so forth, to increase their police forces?

Attorney General CLARK. No. The purpose of the limitation is to direct most of the Federal money to research, to training, to equipment, to things that police forces are not as likely to do for themselves.

Senator McCLELLAN. But this is set apart here for salaries, is it not?

Attorney General CLARK. It is a limitation. It says that not more than one-third of the Federal grant can be used for salaries, which would involve increases in present salaries or additional personnel salaries, with the exceptions of training and personnel performing innovative functions.

Senator McCLELLAN. Training expense is not included in this item, is it?

Attorney General CLARK. That is correct. It is excepted.

Senator McCLELLAN. Training and education come under another category.

Attorney General CLARK. This limitation applies to all of the grants under 204, under title II, but there is an exception to it; the limitation does not apply to compensation for personnel for time engaged in conducting or undergoing training programs. Lines 1 through 4 on page 5.

Senator McCLELLAN. In other words, while they are undergoing training, going to school or taking special courses, you could pay more of their salary?

Attorney General CLARK. Yes.

Senator McCLELLAN. The one-third limitation would not apply?

Attorney General CLARK. That is correct.

Senator McCLELLAN. In other words, a municipality may say, "We have 45 policemen here, and we want to send them to school." They would be scheduled to take a course of perhaps 6 weeks. You could say, "Well, all right, in addition to the 30 percent we have already allowed you for increased salaries for additional personnel, we will pick up the tab to send these policemen to school."

You could do that?

Attorney General CLARK. Yes, sir.

Senator McCLELLAN. The limitation would not prevent you from doing that?

Attorney General CLARK. That is correct.

Senator McCLELLAN. It is not a very big restriction, is it?

Attorney General CLARK. When you consider that 90 percent of the average police department budget is for salaries, you can see that it is a fairly significant factor. We thought it was necessary.

Senator McCLELLAN. Well, this 30 percent applies only to increased expenditures, not expenditures that are normal, not——

Attorney General CLARK. There would be no Federal funds available for present salaries.

Senator McCLELLAN. Can you explain just how the requirements of section 202(a) will operate. May these requirements under subsection 202(d) be completely and entirely waived by the Attorney General? I think we pretty well covered how they will operate under 202(a). But under section 202(d), can those requirements be completely waived by the Attorney General?

Attorney General CLARK. Section 202(d) in its proviso beginning on line 10 of page 6, provides the flexibility that Senator Hruska was inquiring about earlier. It says that if the Attorney General is of the opinion that the requirements of this section constitute an unreasonable restriction on an applicant's eligibility, that the requirements may be reduced where there had been substantial and extraordinary amounts expended in the base period.

The reasons for that are that a police department may have made a very, very substantial increase in the base year. We see this, from time to time, where a police department will increase its expenditures 30 percent in 1 year.

Now, if they happen to increase 30 percent in the base year 1967, it could be much more difficult for them to add 5 percent over that to qualify for a grant in 1968 in comparison with the city that had made no increase in 1967.

Senator McCLELLAN. In other words, are we going to average it out? If this year the city, the entity, agency of government, spends 10 percent, next year it could spend less and then come within the 5-percent requirements.

Attorney General CLARK. No. It probably would not be averaged. I think you would have to look at each one on its merits. I think most——

Senator McCLELLAN. Then I say the discretion would be with you and it could be averaged out.

Attorney General CLARK. The discretion is in the Attorney General, and it could be, in effect, averaged.

Senator MCCLELLAN. In other words, a police department may increase its expenditures, say, this year, by 10 or 15 percent in order to get the additional personnel it needs, and next year it maybe could not increase 5 percent over that 15 percent of this year. So, under those circumstances, it is within your discretion, to say "Very well, since you have done so much already this year, we will not expect you to expend 5 percent more than you did last year."

Attorney General CLARK. That is correct. Under the language of the bill as presently written, it applies—the exception applies only to the first year, to the period over the base year. So 2 or 3 years down the road, you would not have that flexibility.

Senator MCCLELLAN. It only applies to the first year.

Attorney General CLARK. That is my recollection. I am trying to read that now. I believe that is right.

Senator MCCLELLAN. I am not sure that I understand what this first part of section (d) means. It is not clear to me.

Attorney General CLARK. The part beginning on line 6?

Senator MCCLELLAN. Yes.

Attorney General CLARK. That provides you determine the base expenditure. It provides that the base expenditure represents the operating expenses for the last fiscal year completed before January 1, 1968.

Senator MCCLELLAN. That means that it would be the amount they expended in fiscal year 1967.

Attorney General CLARK. That is right, it is the fiscal year——

Senator MCCLELLAN. Fiscal 1968; we are in the fiscal 1967 year now.

Attorney General CLARK. We are in the Federal fiscal year. But this refers to their fiscal year which is not necessarily the same as the Federal.

Senator MCCLELLAN. This refers to their fiscal year, not the Federal?

Attorney General CLARK. Yes, sir. So it would be their fiscal year that ends before January 1, 1968, and the theory was——

Senator MCCLELLAN. The fiscal year that ends before January 1, 1968?

Attorney General CLARK. That is right. That will be a budget that will be unaffected by this bill because the budget was prepared in a period before this bill was introduced in the Congress so they would not——

Senator MCCLELLAN. In other words, they have a year in contemplation of this bill, to increase their budget or make plans. If they do not want to increase their budget the base will be lower. It would seem to me that would discourage them from increasing their budget this year because if they are going to use that as the base, they will say, "There is no use in getting the base any higher."

Attorney General CLARK. The base is fixed. The base was fixed in their budgets and was determined before this bill was submitted to the Congress. The year in question would have to end by December 31, 1967, which means it had to begin on or before January 1, 1967. The bill was not introduced until about March 8.

Senator McCLELLAN. What does this January 1, 1968, mean?

Attorney General CLARK. Well, it means that is the last date before which their fiscal year—their 12-month period must have been completed. So that means the budget was probably approved 18 months before that date.

Senator McCLELLAN. It may need some clarification.

Section 202 restricts expenditures of grant money for salaries to one-third. If, as you are quoted, I believe, 85 to 95 percent of law enforcement budgets are now for personnel, and I believe that is what you stated here today, is not this restriction unrealistic?

Attorney General CLARK. No; I think not for several reasons. First, it is only 30 percent, 33 percent of the Federal funds. It does not apply to the local funds that will be added as an increment to the preceding year's budget.

Second, it is our experience and judgment that we need to encourage police departments more in areas other than in salaries. If 100 percent were available for salaries, some police departments might come in with nothing but a request for police salary increases, and that would not accomplish what we need to do with this act.

Senator McCLELLAN. Well, it does not only apply to salary increases, but it also applies to increasing personnel. I think many police departments are absolutely understaffed today.

Attorney General CLARK. I think that is true.

Senator McCLELLAN. I think one of the reasons why they are understaffed is because the low pay is not a very attractive incentive. So if we want to strengthen the police departments, is this not an area where very substantial aid is needed?

Attorney General CLARK. Yes; I think it is. But I do not think it is an exclusive need, and it is our judgment that one-third of the Federal funds for more police or better pay for police provides an adequate balance between the need for better pay and the need for the Federal money to go into the other purposes that have been described.

Senator McCLELLAN. What are the other restrictions or limitations for other purposes? Are any other spelled out in the bill?

Attorney General CLARK. There are several others. There is one that we have discussed on physical facilities.

Senator McCLELLAN. Is it 33⅓ or 30 percent? One-third. This 33⅓, now of all the money that is planned to be received, what are the limitations percentagewise on the other items in the plan?

Attorney General CLARK. There are—I do not think of any other percentage limitations except in the area of—well, the three percentage limitations on the Federal contribution are the 90 percent on planning, the 60 percent on actions, and the 50 percent on construction. These do not pertain to a proportion of the Federal grant, however. They are the amount of the Federal share in proportion to the contribution by the State.

I think another way of putting the significance of the one-third limitation might be this: Suppose that the police department had first made its 5-percent increase, and then it wants to go 5 percent above that, and a Federal matching grant of 50 percent is authorized. That means that the city has put up the first 5-percent increase in order to qualify. It then puts up 2 percent as its match for the 3 percent that

the Federal Government puts up. The applicant, however, can only spend one-third of the Federal contribution of 3 percent or 1 percent for salaries. So that means in those circumstances that potentially 8 percent of the 10-percent increase may go for salaries; only 2 percent of this 10 percent is restricted. In other words, 80 percent of the increase can be spent on salaries. This figure almost receives the 90-percent average proportion of law enforcement budget which goes for salaries.

Senator McCLELLAN. Do you foresee the approval of plans that embrace only an increase of personnel and salaries for personnel—a simple plan from a municipality saying, "We need 25 more policemen, and we need to increase their salaries." Would a plan like that get approval? Would it be eligible?

Attorney General CLARK. I doubt that it would.

Senator McCLELLAN. Why? That may be their greatest need.

Attorney General CLARK. Well, it would almost have to be their only need before that would be sufficiently comprehensive in its outlook.

Senator McCLELLAN. Well, we have to keep this in mind, too. We can spend any amount of money for this or anything else, but we do know that there are times when appropriations are not up to the level of budget requests, and it may very well be that you will not have funds at all times to accommodate completely every plan that may be submitted.

If a community decides in applying for a grant, "We have got to have more policemen; our policemen are underpaid; we have got to offer an incentive to get recruits for the police force"; if that is the greatest need of the community, and they submit a plan for that, then do I understand you to say that the plan would not be approved because it did not include a lot of other things that you think they might need.

Attorney General CLARK. I think it unlikely that a police department, with all of its budgetary items and needs, will come in with a plan that has no increase for any purpose except salaries.

Senator McCLELLAN. I do not say just salaries. I said increasing the number of personnel, number of policemen. Two things.

Attorney General CLARK. Well, that is more salaries rather than more salary. It is still for salaries, and nothing else, and I would doubt, while it is theoretically possible that a police department would have really surveyed its needs very carefully if that is all it came in with.

Senator McCLELLAN. When they come in asking for equipment, they can hope for approval in that field, can they not?

Attorney General CLARK. Certainly.

Senator McCLELLAN. I think there might be instances where they will make application for a lot of equipment that perhaps they could get along without; and instances where they need personnel more so than they need the new equipment. These are going to be matters that are going to present problems to you from time to time.

I see Senator Hruska has returned. He had not quite finished, and Senator Thurmond did not get a chance this morning to ask any questions. I am going to defer again at this point and let you finish, Senator Hruska, and then let Senator Thurmond have an opportunity.

Senator HRUSKA. I shall not take too long because I want to be sure we cover questions from the Senator from South Carolina.

We were discussing at one juncture this morning the $20 million for title III. Inasmuch as you have pending applications, and there are some current projects, and because this bill ties into and will take over the activities of the present LEA activities, there is every reason to suppose there will be no loss of momentum in that field. Title III is ready to go and it will continue its stride, will it not?

Attorney General CLARK. That is exactly right. In fact, I think we can step it up with this reauthorization.

Senator HRUSKA. Step it up.

Attorney General CLARK. With an authorization.

Senator HRUSKA. On the basis of your experience with the type of application, then, you will be able to accelerate your program approvals.

Attorney General CLARK. That is right.

Senator HRUSKA. That would sound reasonable, would it not? Are you providing a summary of the backlog among other data?

Attorney General CLARK. Yes, sir. We have these books here now.

Senator HRUSKA. Would you supply the information for the record?

Mr. Attorney General, during the discussion of the Law Enforcement Assistance Act in the Senate, I called for the application of science and technology to the problems of the criminal justice system. This is reflected in an exchange of letters between the Attorney General and myself, and they appear in the committee report on that LEA Act, with some remarks I made on the floor. Both of them called for a broad-scale scientific study into the root causes of crime.

What progress has been achieved in bringing an application of technology to the crime problems in line with the concept advanced at that time?

Attorney General CLARK. I think we have made some substantial progress, both through the Crime Commission studies and the Law Enforcement Assistance Act grants. There have been a variety of grants that have gone to science and technology and its applications to law enforcement. I think we can see high potential from these in a variety of areas. They include such things as use of different types of vehicular equipment, and employment of vehicular equipment, computerization and communications.

Senator HRUSKA. The chapter on science and technology in the President's Crime Commission's report expands somewhat on this very same idea. But as far as I know, they did not conduct a study or go into depth on the matter.

Could we expect such a study to be undertaken under this new arrangement with this new agency that is being formed?

Attorney General CLARK. Well, there has been considerable study to date, and when the volume on science and technology that accompanies the basic report of the President's Crime Commission comes out, that will be available in full. These involve both their staff study and related studies plus LEA studies that were complementary to their mission.

In addition, we would expect to support expanded studies of this type in the future.

Senator HRUSKA. It is such material that could be used as a basis or partial basis for new or additional grants? Would that not follow?

Attorney General CLARK. That would be our great hope, yes.

Senator HRUSKA. The assistance under title II is in the form of grants only. Have you given any consideration to loans, long-term low interest loans, as an additional means of assistance and especially where capital improvements are involved?

Attorney General CLARK. We have studied it some. Our feeling was that at this time we want to move forward as fast as we can. We did not want to involve techniques that would inhibit expansion of effort, that we did not want to emphasize facility improvement or capital construction because of the time that it takes, and the great expense that it involves and, therefore, we have not included any loan techniques in the present bill.

Senator HRUSKA. It would not necessarily require emphasis, but it seems that with a complete grant, the process of weaning away the hopeful expectation that one of these days we can get away from this kind of a program and put the localities and the communities on their own.

It is just that much further removed where there is a complete grant rather than at least some loans in some categories.

Attorney General CLARK. Well, the grant in the facilities area would be limited to 50 percent. In the program action area it would be limited to 60 percent, and to cause local jurisdictions to plan now to repay those later would probably inhibit their own expansion at this time, that we feel is so desirable.

Senator HRUSKA. In section 203, would there be contemplated the idea of correctional institutions, that would serve a regional purpose rather than just a particular political subdivision such as a city or a county?

Attorney General CLARK. Probably not, because the key language here in determining eligibility begins on line 20 where it refers to facilities which fulfill a significant innovative functon. It is not the purpose of 203 to supply funds to build a new jailhouse in every county or a new prison in every State. The only thing that will be financed here are facilities that fulfill significant innovative functions.

Senator HRUSKA. Well, in many parts of the Nation there are relatively small counties, sometimes there are compact cities, and there are many of them within a given area. Few of them can finance or support a decent correctional institution. I am not referring to a jail in the sense of being purely custodial in nature, but a modern type of correctional institution wherein there would be educational facilities, corrective facilities, and places for diagnosis and so on. The concept being to have on such regional institution built to serve the area and, therefore, be able to have something that is much more constructive, efficient, and effective.

Would this be an innovation?

Attorney General CLARK. If it were conventional except for its service areas it would probably not be considered to fulfill a significant innovative function. It is not that we do not recognize the great importance of the type of facility that you are talking about, because they are terribly important. It is because the purpose of this bill is not to engage in a broad construction program for corrections across the country. It is not to provide new prisons, new jails for all of the jurisdictions of the United States.

We hope that the States will tend to predominate in the corrections field because that is where the greater flexibility and capacity really is.

But the funds here are not designed to build these institutions for all the States. The concept of the facilities grants here is that they must be really significantly innovative and new types of facilities or an addition to a facility or reworking an old facility or remodeling something in a way that is really significant and new.

Senator HRUSKA. Could you give us an example of what an innovative building would be within that description you have just given?

Attorney General CLARK. Well, there are several that we might think of. It could be that as we try to consolidate our police management that we need some new concept for precinct offices that keep police close to the people so they identify with them and people know them. So it may be there is a new type of police substation that is not the type that we were building in 1910; that does not disperse your management and make inefficient your police but keeps them close to the people where they may be called——

Senator HRUSKA. That is not new. Hasn't the precinct police house or police station been with us for 75 years? Is that something new?

Attorney General CLARK. I would say we have had them a lot longer than that. But the type I was describing might be new.

You know, there is nothing new under the sun if we want to look at it in the broadest sense, but there are new types and new techniques of housing police or temporarily quartering them or having places for their vehicles in precincts.

It does not mean you have to have a chief of police out there or a precinct captain; what I have in mind would bring more efficient management and better deployment of personnel. At the same time you would have a precinct identification or an area identification facility that will be helpful to you.

In corrections it might involve a YMCA willing to devote one wing of a floor to a work-release program. This might involve an innovative remodeling of that wing so that you could have guards to police, and you could have security features in the windows and things like that. That part of that facility could then be used in connection with a corrections program.

But that is the type of innovative technique that we are thinking about, rather than just a broad construction program, a new city hall, a new police station, a new jail.

Senator HRUSKA. Whatever it is that you will build, I presume you will develop architectural and technical standards much like Hill-Burton does in hospitals and FHA does in its sphere of influence. Wouldn't you have to develop those?

Attorney General CLARK. I would think we would; yes.

Senator HRUSKA. Title III is silent as to patent rights flowing from research grants. What is the policy of the Department of Justice in regard to patents until we get a solid U.S. patent policy in that field such as that which we passed last year in the Senate?

Attorney General CLARK. We would intend to follow here the policy that has been adopted by the executive branch generally at this time.

Senator HRUSKA. I would like to know what that is. They have a lot of policies.

Attorney General CLARK. Basically we would try to reserve rights to the patents to the public that has paid for them where that seems feasible. There would be an option, however, in the administration of the program.

Senator HRUSKA. One of our big troubles is the many departments in the executive department, many agencies, and most of them have different ideas on the subject. That is why we are trying to legislate. I hope we will be successful.

If the Government puts some money into a research effort, and therefore, it automatically becomes the Government's patent, we might get into a field of controversy on that for many good and sound reasons.

What is the nature and the size of the organization which the Director of Law Enforcement and Criminal Justice Assistance will command?

Attorney General CLARK. We would seek about 120 positions for fiscal 1968, and this would include the positions that we presently have for law enforcement assistance. It would include an implementation of that staff for title III.

Senator HRUSKA. How many are in the Office of Law Enforcement Assistance now?

Attorney General CLARK. There are 20 in that.

Senator HRUSKA. Twenty.

Attorney General CLARK. Yes, sir; 25, I believe.

It would include them the new section set up primarily for planning, and the beginning of the force for title II.

Senator HRUSKA. What would be the balance? When we get into the $300 million level of expenditure, what can you envision by way of a staff?

Attorney General CLARK. Well, it is awfully hard to estimate at this time. I think we will know a lot more about that when we come back to the Congress for appropriations at the beginning of the next session. I assume that there would have to be a further substantial increase.

I think it is terribly important that we have a staff adequate to be efficient and effective in the administration of the act, and we want enough this year to give us a basis for full action under title I and at least a skeletal force for title II so we can move forward effectively there in the following fiscal year.

Senator HRUSKA. Would the Director have the status of an Assistant Attorney General?

Attorney General CLARK. The bill provides that he would be level 4 which is the same level as an Assistant Attorney General.

Senator HRUSKA. Is there some special reason for calling him Director instead of an Assistant Attorney General? Is that a counterpart of Mr. Hoover as FBI Director?

Attorney General CLARK. It is a distinction that we have historically made in the Department between the law services and the services that involve other than law. In immigration, in prisons, in corrections, in community relations service, in investigation, we have called the various heads of those departments or agencies directors.

Senator HRUSKA. They are professional in the traditional style, is that the idea?

Attorney General CLARK. That is correct. The Assistant Attorneys General have been legal officers—the head of the Civil Division, the head of the Criminal Division, the head of the Office of Legal Counsel.

Senator HRUSKA. In section 405(b), at the top of page 13, the Attorney General is authorized to collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of law enforcement and criminal justice in the several States.

Isn't that what we now have in the FBI uniform crime reports?

Attorney General CLARK. Only partially. This is much more comprehensive in what it would permit. This is what we have in the Law Enforcement Assistance Act, and it is terribly important because one of the major problems in law enforcement is being sure that all the jurisdictions have the opportunity to know the experience of others and have the best information that is available.

Senator HRUSKA. I do not quarrel with the necessity for it. I just wondered as to its place here, because I thought that was being done by the FBI under direction of the Attorney General. Is that the way it is handled now, insofar as the uniform reports are concerned?

Attorney General CLARK. Oh, yes. This would not contemplate any change in those any more than the Law Enforcement Assistance Act did. There are many statistics that are not included in those. There is much collection, evaluation, and publication that goes beyond the uniform crime reports.

Senator HRUSKA. Do the Uniform Crime Reports include Federal offenses?

Attorney General CLARK. They are the reports from the local jurisdictions to the FBI.

Senator HRUSKA. They do not include the Federal jurisdiction of crimes or offenses.

Attorney General CLARK. That is correct.

Senator HRUSKA. There has been some discussion as to whether or not we should get into this area. I would presume that would be one of the facets that would be open to you under this bill, am I correct?

Attorney General CLARK. Yes.

We have a fairly highly developed statistical accounting for the Federal crimes, because that is what we are living with and dealing with. So we are generally quite familiar with those.

Senator HRUSKA. Of course, we have about 26 Federal investigative agencies, and the FBI is only one of them, so we have a long ways to go.

Attorney General CLARK. The FBI is about—they have about 6,600 agents. There are about 23,000 investigative agents in the Federal Establishment. I think there is a great value in the—not necessarily arguing for the precise allocation of authority that we have now, but I think there is great value in the dispersal of investigative responsibility that we have. I do not think it would be compatible with our principles of government to have only one investigative agency for the whole Federal Government. I also think that there is very considerable efficiency in an agency with the responsibility for enforcing a particular law to have its own investigative resources.

Senator HRUSKA. Of course, a consolidated report would be very helpful, would it not?

Attorney General CLARK. We need to know at all times what is happening.

Senator HRUSKA. Mr. Chairman, those are all the questions I have now. I have some others that are of a minor nature, but I would like to defer to whoever else wants to ask questions.

I should like to observe at this point that the Attorney General has been testifying enough that he can recognize a devil's advocate when he sees him now and then. In part my questions were in that role, Mr. Chairman.

Some of the questions I asked were in line with suggestions that have been made to me, and others I invented and contrived myself. But it is with that spirit and with that thought of bringing out the good and the bad that I have been interrogating you, and I hope you will understand the spirit in which I have done it.

Attorney General CLARK. Absolutely, very penetrating, and I appreciate it.

Senator MCCLELLAN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Attorney General, as I understand it, the grants that would be made under this bill if it became law would not be according to a formula necessarily, but each application would be passed upon by the Attorney General's Office, and approved or disapproved or amended, as the case may be.

Attorney General CLARK. I think that is basically correct. There is a formula and planning requirement for title II grants but we would have to pass upon them. Title I grants for planning and title III grants are more specific-item type of grants.

Senator THURMOND. Well, if you have to build up a tremendous staff, how many more people do you plan to add to administer this law?

Attorney General CLARK. We would seek approximately 120 positions for fiscal 1968.

Senator THURMOND. What would be the objection, if the Federal Government wishes to help in this field, to providing the Federal funds to the Governors of the States and letting them do this job?

Attorney General CLARK. Well, I think it would lose the great opportunity that we have now to really improve the quality of criminal justice and law enforcement because we have professional people involved in direct contact with each other, and we have the experience of the Crime Commission study; we have the experience of the Law Enforcement Assistance Act.

The Governors have not been involved in this field generally. A great many of them even today still have no commission or planning group looking at the problem. There would be loss of time and delay, and I also feel that there is more to the Federal function than collection of taxes, that there is responsibility to see that the funds collected are expended wisely for purposes determined by Federal elected officials.

Senator THURMOND. What is it that the Federal Government can do that the States cannot do if they have the funds? For instance, if you wanted to provide training, the FBI can provide instructors to train law enforcement officers; that is one thing that is being done now, I believe.

Attorney General CLARK. That is right. Thousands of them.

Senator THURMOND. When I was Governor of South Carolina, I remember we sent a number of officers of the State to take those courses, which were good courses.

Attorney General CLARK. But it is not on a national——

Senator THURMOND. What is it that the Federal Government can do that the States cannot do? Section 408 states, "Nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or other agency of any State or local enforcement and criminal justice system."

I believe you stated that it was not the intent of the Justice Department to exercise any control over the police force of any State; is that correct?

Attorney General CLARK. Or city, that is correct.

Senator THURMOND. That is correct, is it not?

Well, what can the Federal Government do that the States cannot do if they had the money?

Attorney General CLARK. Well, the States have done very little, by and large, and have shown, you know, no general activist interest in this area. On the other hand, the Federal Government has been in liaison, in communications and coordinated effort with local law enforcement for years and years. There is a Federal responsibility in determining how Federal funds should be expended, and that should be done through Federal administration.

There is the experience of the Crime Commission reports. There is the experience of the 49 other States that would not be as available to the Governor of a single State, if there is no one there to help correlate and bring it together.

Senator THURMOND. Well, the FBI does that now, does it not?

Attorney General CLARK. Only to a very limited extent.

Senator THURMOND. I used to get reports when I was Governor, FBI reports, which gave information which was very helpful. Have we discontinued that?

Attorney General CLARK. I do not know what type of reports that you are referring to. There are many types of reports that the FBI compiles. They have a monthly magazine, but they also engage in thousands of training programs in localities throughout the country each year. But they do not have a grant program. They do not administer funds. They do not involve themselves in but a tiny fraction of the things that this bill contemplates.

Senator THURMOND. The Federal Government could offer training—after all, the training of these law enforcement officers is very important, is it not? That is one of the keys to this situation, is it not?

Attorney General CLARK. Standards and training of law enforcement officers are of the highest importance.

Senator THURMOND. Highest importance.

And if the Federal Government wishes to provide the training, that would take care of that, would it not? You are doing that now to a certain extent, but you could do it on a broader scale, could you not?

Attorney General CLARK. Well, the training is much more complex than that. Major police departments should have their own training programs. A State should provide training programs for jurisdictions not large enough to take care of their own.

There should be, for continuing educational and improvement purposes, police science and training programs in colleges in every State in the country, but half of the States still do not have them.

This is the type of thing this bill would seek to do.

Senator THURMOND. Well, is there any reason why the States cannot provide these courses in colleges——

Attorney General CLARK. Well, they have not.

Senator THURMOND (continuing). If they have the funds to do it? What does the Federal Government intend to do that the States are not doing in this field? That is what I am trying to get at.

The FBI is now helping to train and some colleges offer law enforcement courses now, and you intend to expand that, do you not?

Attorney General CLARK. Yes; we have already assisted about 20 colleges in 15 States that have never given courses in this field before.

Senator THURMOND. And you propose to provide Federal aid to assist in the cost of those courses. But what would you do otherwise? Can they not get information from you to set up those courses in the colleges? Should your duties just be offering advice and training to the State?

You cannot control them, you cannot supervise them, you cannot direct them; you admit that here.

Attorney General CLARK. That would be inconsistent with our principles. We would not want to.

I also do not think we are the big training offices for all State and local law enforcement. I do not think that is the function of the Federal Government.

We want to encourage broader based training than that. We want every police department to have high quality training built into its regular program so they do not have to come to Washington or some Federal center or other places for it, but it has to be a comprehensive approach.

Senator THURMOND. Could not the Federal Government hold some training courses in each State, or in each region?

Attorney General CLARK. Well, we do now.

Senator THURMOND. You bring in certain officers and train them and let them go back and train others.

Attorney General CLARK. We do now, but it is not nearly enough. The FBI holds training sessions in every State in the Union every month.

Senator THURMOND. Under this bill the Attorney General would have the power to withhold funds if he saw fit, would he not?

Attorney General CLARK. Withhold Federal funds if the——

Senator THURMOND. If certain conditions are not met?

Attorney General CLARK. An application for a grant might not be approved. There is also under certain limited conditions the power to terminate a grant under section 411.

Senator THURMOND. Are you not going to develop here the same tensions and the same pressures and irritations that now are going on between HEW and the States? You know the tensions now existing between HEW and the States, do you not?

Attorney General CLARK. Yes. This——

Senator THURMOND. Of course I am speaking of the guidelines that were set up which went further than any Supreme Court decision, which went further than the civil rights law itself, and which is causing so much trouble now.

78-433 O—67——32

Is this not injecting the Federal Government into a new field of activity and can you not foresee that eventually this will end up with Federal control of law enforcement even though you say in the bill that you do not have the right to supervise, control, or direct?

That is standard phraseology in the other laws, but they are exerting Federal control anyway. HEW is doing it.

Attorney General CLARK. Well, that would be for someone else to decide. But I do not think that that is a problem here at all. We have not heard that complaint from anyone in local law enforcement. We are involved in a mutual and cooperative venture, and, as far as I know, the relationships have been of the highest order. I do not know of any friction that exists. I do not anticipate any will arise, and I think the analogy to school desegregation is really not pertinent.

Senator THURMOND. It is not school desegregation. It is the matter of withholding funds after the applicant complies with the law and the decisions, but through their arbitrary manner in which they administer those funds the agency withholds them because they claim the applicant does not meet certain guidelines which go beyond the law and the Supreme Court decisions. While you are Attorney General it might be a different situation. But suppose you get an Attorney General who will be arbitrary, like the man administering the school funds is now proving to be arbitrary. Can you not foresee where there will be great tensions here between the Federal Government and the States, and it will be a seesaw as to whether they are going to get funds or not?

The Federal Government—or the administering agency—might determine that a department did not have enough policemen of a certain race or enough people for some other reason. Can you not foresee all kinds of problems that will arise in the law enforcement field just like they are now arising and are existing today in the fields of education and the health?

Attorney General CLARK. I can see problems arising in any activity of man. I can see them arise if the State tried to take over local law enforcement or tried to direct it.

I think we have to have confidence in the public officials, and if there is a Federal responsibility and a Federal function, we have to go forward and assume that the law will be complied with.

I really think the risk in this area is minimal.

Senator THURMOND. There is no question about the fact that we have more crime today than we have ever had and steps should be taken to remedy this situation. I am wholeheartedly with you on that, and I commend you for your interest and your zeal. I want to work with you all I can, and if this bill could be amended in certain particulars, then maybe I could support it. But I get very concerned when I see more and more power being given to Washington to go into new fields of activity. Whenever there are funds involved I have seen the experience of withholding these funds and threats to withhold them.

We have had it in my State over and over again in the last few years, withholding funds and threats to withhold funds.

Senator HRUSKA. Will the Senator yield? Is that under title VI of the Civil Rights Act?

Senator THURMOND. Yes.

Senator HRUSKA. Are you speaking of the section which provides that Federal grants must be dispensed in such a way that they will

not offend against State standards of discrimination, race, color, or racial origin? Is that the section that the Senator speaks of?

Senator THURMOND. Yes, sir.

Senator HRUSKA. That certainly is an area where there has been a lot of tension. I want to identify it for the record.

Senator MCCLELLAN. Will the Senator yield?

Senator THURMOND. Yes; I will be glad to yield.

Senator MCCLELLAN. Since this issue has come up, and I have already asked you privately, I will ask you now, would you have any authority under this bill, with respect to plans involving personnel or police departments generally, to require a planning entity to have a ratio of police personnel according to race corresponding to the racial population of the area covered by the plan?

For example, here is a community where 50 percent of the population is Negro and 50 percent is white. Would you be able to say under this bill, "You have got to have 50 percent of your policemen colored, otherwise you get no money and the plan is no good"?

I am asking you if under the bill you would have that authority? That will bring out the issue one way or the other.

Attorney General CLARK. Title VI of the Civil Rights Act of 1964 would apply to expenditures made under this bill when it became law, and any discrimination that was engaged in in connection with the functions covered by this bill would be in violation of that act and subject to its terms.

Senator MCCLELLAN. In other words, if this bill is enacted into law, then——

Attorney General CLARK. Title VI of the Civil Rights Act of 1964.

Senator MCCLELLAN (continuing).——would be applicable, and you could make that requirement.

Attorney General CLARK. We would be——

Senator MCCLELLAN. Just as you have stated.

Attorney General CLARK. We would be required by the law to see to it that funds expended under this act were not used to further discrimination.

Senator MCCLELLAN. That is a general statement. I want to know——

Attorney General CLARK. Yes.

Senator MCCLELLAN (continuing). Can you require such a ratio be followed under this act based upon title VI of the Civil Rights Act? Can you say to them, "Your plan is no good with respect to your personnel, your application for funds for salary, for personnel or increasing personnel unless you bring your personnel, your police personnel, up to that standard or ratio as reflected by the community population"?

Attorney General CLARK. Well, there are two lines that we ought to pursue on this. One is that if there were discrimination, then title VI would apply, and we would not have discretion. We would have to comply. We would have to comply with title VI.

Senator MCCLELLAN. I am sorry, we have to recess a few minutes while we go and answer a rollcall vote, Mr. Attorney General. But when I come back, I would like for you to be able to answer me yes or no. Can you require it?

Attorney General CLARK. Let me think about the question then please, sir.

Senator MCCLELLAN. All right, review the question. I would like to get a yes or no answer, and settle it.

(Whereupon, a short recess was taken, after which the hearing was resumed.)

Senator MCCLELLAN. While we are waiting for Senator Thurmond, I believe I will have inserted in the record at this point, without objection, the pertinent provisions of title 42, section 2000d, The Public Health and Welfare (Civil Rights Act of 1964). Let it be inserted in the record at this point for the information of people who are interested in this particular statute now that the Attorney General has testified on it.

(The document referred to is as follows:)

EXCERPTS FROM TITLE 42, UNITED STATES CODE, THE PUBLIC HEALTH AND WELFARE (CIVIL RIGHTS ACT OF 1964)

CH. 21 FEDERALLY ASSISTED PROGRAMS 42 § 2000d—1

SUBCHAPTER V.—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Pub. L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252.

§ 2000d—1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action.

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report. Pub. L. 88-352, Title VI, § 602, July 2, 1964, 78 Stat. 252.

§ 2000d–2. Judicial review; Administrative Procedure Act.

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 1009 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section. Pub.L. 88–352, Title VI, § 603, July 2, 1964, 78 Stat. 253.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment.

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment. Pub.L. 88–352, Title VI, § 604, July 2, 1964, 78 Stat. 253.

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty.

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. Pub.L. 88–352, Title VI, § 605, July 2, 1964, 78 Stat. 253.

Senator HRUSKA. Mr. Chairman, I have a question. May I ask it at this time?

Senator MCCLELLAN. You may proceed.

Senator HRUSKA. And I would be glad to defer to Senator Thurmond as soon as he returns.

Mr. Attorney General, there are some pending bills in the field of regulating more or less strictly the use of ownership of firearms. I know, of course, that the Department of Justice has its official position. I would like to ask you quite frankly, is it conceivable that the Department of Justice in approving applications and approvals for plans would have authority to say, "We would look upon this plan with much greater favor if your municipality had a certain type of firearm control ordinance"? Would that follow? Would you have that authority? Would there be a likelihood of that happening?

Attorney General CLARK. It is difficult to conjure up all the situations that might arise. The problem seems very remote to me. I think—at least as I understand your question—the type of firearms control that a city or State may have is a local or State political judgment that only they should make.

Senator HRUSKA. I understand that.

Attorney General CLARK. It would not be appropriate at all—it has really never occurred to me—to do that sort of thing under this law.

Senator HRUSKA. Yet we did have an example. I have been told of certain housing code enforcement programs where people on the Federal payroll had been known to go to the municipal governing body and say, "You would fare much better in this area if you had a hous-

ing code of a certain kind." I just wonder if it is good taste and if it is something to which exception could be taken. I just wonder if in the future some Attorney General, not quite constituted like you, might send out minions to say to municipalities or to States, "Now, if you had a certain kind of gun law and a certain type of registration law, you would get along a lot better with your police department." Is that conceivable, Mr. Attorney General?

Attorney General CLARK. Anything, of course, is conceivable. I guess constant vigilance is the only protection that we have against such activities. It does not seem likely at all to me. If a person had that inclination, I suppose he would use anything that he had at his command to try to bring his will to bear. But it seems very remote to me, and it does not seem related to this bill.

Now, it may be there could be particular types of applications that would relate to firearms themselves which would raise questions about the appropriateness of a Federal grant—even that seems very remote and unlikely.

Senator HRUSKA. Could it be an element in one of these master plans? You have a master plan involving all aspects of law enforcement and criminal administration, and the Department of Justice has declared itself very, very strongly in this field of gun control legislation.

Could it be conceivable that in a master plan coming from a State or from an area or a region, interjection of that kind of condition might enter into the thing?

Attorney General CLARK. No, I do not think so. There are many areas where we have clearly defined positions that we would not endeavor to impose such positions on the States and local governments through this bill. It would be inappropriate for us to do so.

Senator HRUSKA. My city happens to have a handgun registration ordinance, and has had it for many years. There are other cities in America that do not have such gun registration. Do you think my city of Omaha might fare a little better in an application for funds under this thing than some other city that did not have any such gun registration ordinance?

Attorney General CLARK. No. I would think that would be irrelevant.

Senator HRUSKA. You would think it would be irrelevant.

Attorney General CLARK. Ordinarily that should be irrelevant.

Senator MCCLELLAN. Would you yield at that point?

Suppose the President of the United States says to the Attorney General, "Mr. Attorney General, it is the policy of my administration that no plans be approved unless they meet certain conditions," as they have been outlined here by the distinguished Senator from Nebraska. What would happen then?

Attorney General CLARK. Well, that could not happen for quite a few years, but should that ever happen at some distant time in the future, the Attorney General would be in the position of having to decide whether to follow——

Senator MCCLELLAN. Be in a position to resign if he wanted to.

Attorney General CLARK. That is right.

Senator HRUSKA. Would he be a free agent to that extent?

Attorney General CLARK. I am glad I will never have that problem.

Senator HRUSKA. Well, it is just a thought along this same line, and I thought I would explore it with you a little bit.

That is all I have now.

Senator MCCLELLAN. Can you answer the other question I asked you with a direct yes or no? I think it can be answered that way.

The question I asked you was about the requirement of a ratio of personnel with respect to the races.

Attorney General CLARK. I really think that an essay type answer is an only fair answer for me to give, because I think it is important that we really understand each other on the subject and that I explain fully the way I see it.

I am inclined to think that the only issue is whether discrimination has been practiced by the jurisdiction applying for funds. If it has, then title VI applies, and we would have to act accordingly.

If it has not, if there had been no discrimination, then I do not think that the number of Negro or Puerto Rican or Mexican-American on the police force is likely to be a factor in granting or denying any particular application in a region.

Senator MCCLELLAN. Can it be? Can it be under this bill?

Attorney General CLARK. Yes, in theory, it could be, in a very limited way only, however. I think so.

Senator MCCLELLAN. That is it.

Attorney General CLARK. But I think a fuller explanation is of much greater value to the committee. The reason it can be is if there is a city of a million people and it has got 400,000 Negroes and it has got no Negro policemen, then I think we have to wonder how effective our Federal funds might be, how wisely spent the funds might be under these circumstances and we have got to——

Senator MCCLELLAN. Do not misunderstand me, Mr. Attorney General, I am not opposed to having Negro policemen.

Attorney General CLARK. I understand.

Senator MCCLELLAN. I just use this because in my judgment these things are involved in this legislation. Now, we might just as well face them and give the answers for the record, because I believe there are plenty of cities where according to the ratio of population, colored and white, there are far more white policemen than there are Negro policemen.

Attorney General CLARK. I think that is true.

Senator MCCLELLAN. Now, would you be authorized to say, "Well, you have got to bring up the ratio on your police personnel, you have got to bring it up so it will compare with the population ratio before you are eligible, before we will make you a grant under this bill"?

Attorney General CLARK. I think we would find that every major city in the country has a smaller proportion of Negro policemen to population than whites. I think we would find that in nearly all of these jurisdictions, if not all, a conscious effort is being made because of the practicalities of law enforcement to qualify and train and recruit more Negro police officers. I think that is true in the South, in the North, in the West, and every part of the country.

I think these men are doing their best, and for us to impose some arbitrary formula that is unrealistic and would not work, would hardly accomplish the purposes of this bill.

It is much more important to civil rights that we have good law enforcement, this is not an employment measure. This has not been a problem under the Law Enforcement Assistance Act, and I do not think it will be a problem under this bill. I cannot, however, say that there is no case that I can imagine in which we would not feel some duty to urge, encourage, as the bill says, hiring of more Negroes or Mexican-Americans or Puerto Ricans.

Senator McCLELLAN. Well, I appreciate that. But the point is—and I think many of them, maybe most of them, are doing exactly what you are saying, and there are no objections from my standpoint. But my point is that there may be one that has not done that. Another thing that has to be taken into account, I think, is that there are applicants who are not eligible, I mean who would be competent to assume these duties and to perform these duties but have not yet been trained or have not the opportunity to be trained as policemen.

Attorney General CLARK. Or just do not want to be.

Senator McCLELLAN. What I mean is that a community should not be penalized and a plan rejected simply because they have not already attained that level of nondiscrimination, if you want to put it that way, that you think the law contemplates—the statute that we referred to here, title VI of the Civil Rights Act.

I would hate to see a community penalized because it had not yet reached that level.

Attorney General CLARK. Well, I think that would be self-defeating from the standpoint of the purposes of the bill.

Senator McCLELLAN. I think so, too, and I do not think that should be the policy or become the policy in the administration of this act.

Very well, Senator Thurmond. I apologize. I asked that while you were out of the room.

Senator THURMOND. That is all right.

Mr. Attorney General, if this law did pass, do you think the Attorney General would have the right to withhold funds if there were not a racial balance in the law enforcement personnel? I want to make my position clear. I do not think you have the right, but I am wondering what you think.

Attorney General CLARK. Well, I think this is the same question that we have just discussed really, and my answer would be the same.

Senator THURMOND. You think you would have the right to withhold funds or not?

Attorney General CLARK. I think that title VI of the Civil Rights Act of 1964 might require us to withhold funds.

Senator THURMOND. You think there would be a power to withhold funds?

Attorney General CLARK. Where it was felt that there had been discrimination in employment.

Senator THURMOND. Who would determine whether there had been discrimination?

Attorney General CLARK. The director of this agency.

Senator THURMOND. The director. So one man, one man sitting in Washington, could determine whether or not the State or subdivision gets funds from this agency.

Attorney General CLARK. He would determine that in accordance with the general compliance techniques that have been utilized by the

agencies under title VI. Really our experience has been that this is not a practical problem in this area.

Senator THURMOND. I am not speaking about discimination. I mean to bring about a racial balance. Do you think you or any Attorney General would have the right to withhold funds to bring that about?

Attorney General CLARK. There is no general power here to use this act for the purpose of bringing about racial balance in every police department in the country. That is not the purpose of this bill at all.

Senator THURMOND. Would the Attorney General have the right to do so?

Attorney General CLARK. He would have the power in circumstances of discrimination.

Senator THURMOND. Suppose you have an Attorney General—not you but someone else—who said, "I am going to make them bring about a racial balance down there in that police department" in such and such a city. Would he have the right to withhold funds to do that? If you had a director and he said he was going to do it if he could, could he do it under this law?

Attorney General CLARK. Well, he might be involved in some inherent discrimination, I would say. He probably would if he tried to do it because he is going to find—I think you will find this is not a practical problem in law enforcement; that law enforcement generally has found it difficult to attract and recruit and develop Negroes and Mexican-Americans and Puerto Ricans in communities where they are in substantial numbers.

Senator THURMOND. Well, when they were passing the civil rights law of 1964, Mr. Humphrey and others said the idea was not to bring about any racial balance either. But HEW is working toward that end. In my State any child can go to any school he wants to. But that does not satisfy them. They are telling them they have got to get more of the minority race in the white schools to get funds.

We contend there is no authority of law or court decision to do it.

Under this bill, if you had a director who says, "I am going to require racial balance in law enforcement," would he have the right to withhold funds to bring that about?

Attorney General CLARK. I think if there are gross racial imbalances amounting to discrimination in a particular jurisdiction that he could withhold a grant to it.

Senator THURMOND. Do you think he could do it? You think he could withhold funds?

Attorney General CLARK. If there had been discrimination, if there was discrimination, in hiring in the jurisdiction.

Senator THURMOND. I did not say discrimination. I just said racial balance. There is a big difference between the two.

Attorney General CLARK. There sure is.

Senator THURMOND. That is the very point I make to you. Discrimination is not the point. Racial balance is the point I am making.

Suppose you had a director who says, "I am going to bring racial balance down there in the police department" in such and such a city.

Attorney General CLARK. And no other city?

Senator THURMOND. Well, one or more cities if he decided to do it. Suppose he said, "I am going to have a blanket policy that throughout

the whole Nation then there has got to be a racial balance in these law enforcement departments." Would he have the right to withhold funds under this bill?

Attorney General CLARK. Well, I think—you know, it is just hard to visualize. This is not analogous to the school situation at all. The police departments are seeking all over the counrty to attract Negroes because they need them.

Senator THURMOND. I understand that. I am fully aware of that.

Attorney General CLARK. And if you agree that is the fact, then you can understand that to compel what is impossible is a useless thing.

Senator THURMOND. That is not the question I asked you though. I am trying to get your construction of this bill which you submitted to the Senate, to know whether your director would have the power to withhold funds to bring about a racial balance in the police personnel in one or more cities or political subdivisions in this country.

Attorney General CLARK. Well, there is no general power sought in this bill to vest the power to cause racial balance in police departments.

Senator THURMOND. There is no power sought. I understand that, but does the bill grant the power? Does this bill contain such power if your director saw fit to exercise it?

Attorney General CLARK. There is no general power to that effect here. The thing I am trying to keep clear is that there can be situations where particular jurisdictions have made an inadequate effort, and where their effectiveness is impaired, where some encouragement can and should be given that they do this. I think that power is vested by the bill.

Senator THURMOND. You understand I am not talking about discrimination.

Attorney General CLARK. Yes, I understand.

Senator THURMOND. I am talking about integration or talking about racial balance. We have taken the position under the present law, and the Supreme Court decisions, that you do not have the right to bring about a racial balance or do not have the right to bring about full integration. All the law does is to prevent discrimination. We admit that under the decisions and the statutes you cannot have discrimination. But that is far different from bringing about full integration, and I gave you the illustration that now the HEW is trying to get schools to haul children from one place to another specifically to bring up the racial balance in schools.

I am asking you here under this bill, coupled with title VI of the civil rights law, would your director have the right to withhold funds if he wanted a racial balance brought into the personnel of the police department in order to accomplish that?

Attorney General CLARK. I do not believe that he would have the general power to require racial balance across the board in all criminal justice jurisdictions. I do think where, in his judgment, there was an inadequate effort that impaired the effectiveness of law enforcement and made the expenditure of Federal funds through this grant unwise—because of that he would have the power to withhold them.

Senator THURMOND. So you think the director would have the power to withhold Federal funds then if he felt there was not a proper ratio?

Attorney General CLARK. I do not think his judgment would be based on ratio. I think his judgment would be based upon the circumstances and efforts made by the jurisdiction to secure Negro personnel if that were the case. It would be a part of your police-community relations problem. If there is an obvicus inadequacy here, if the job that is being done and the funds being sought for the job to be done would not contribute to the end of public safety, why then, Federal funds would be withheld.

Senator THURMOND. You think he would have the power to withhold, in his judgment, in such a case?

Attorney General CLARK. Under the circumstances I indicated; yes, sir.

Senator THURMOND. Now, under this proposed legislation could Federal money be obtained to purchase guns and other types of weapons for a police department?

Attorney General CLARK. Yes.

Senator THURMOND. In other words, the city of New York could apply to you for Federal money to buy their guns to be given to the policemen there?

Attorney General CLARK. That could be included in their request; yes, sir.

Senator THURMOND. What is the purpose in that? Why can't the State or city furnish weapons the same as the Federal Government?

Attorney General CLARK. Well, within the scope of the bill if they asked us for funds for that purpose it would presumably be because there was some need that had not been fulfilled. It would have to be after a 5-percent increase on a 40–60 maximum matching basis, but it would be their judgment as to the priorities.

Senator THURMOND. That would be on the basis that the city of New York would not be able to provide their policemen with guns and, therefore, they would have to trot to Washington with their hat in their hand and beg for funds.

Attorney General CLARK. There is no difference between guns and training and extra pay. There are many purposes for which the Federal moneys could be expended.

Senator THURMOND. Do you recommend such as that? Why do you feel that is sound? Why not let each subdivision in each county furnish the policemen with their own guns? We have no money here except what came from the taxpayers of New York and other States, and we are running as big a defiicit here in Washington as any State in the Nation, in proportion to its wealth. The Central Government in Washington is worse off financially than any State in this Nation, and why should we be called upon to provide weapons and guns to the police department of any city in this Nation?

Attorney General CLARK. Well, we feel there is a need for the Federal Government to help, and we think that it should help through additional resources, and we think the jurisdiction should determine initially through their application the priority that they give to their various needs, and if among those priorities should be guns, that is what they think is their greatest need at this level.

Senator THURMOND. All right. Then would that apply to caps and clothing?

Attorney General CLARK. It can apply to any need of a police department or a corrections agency or a court.

Senator THURMOND. You have got a bill here then in which any police department of any city in this Nation can ask Washington, our Government, to help to supply uniforms and clothing to their policemen; is that right?

Attorney General CLARK. Well, that is a peculiar way of thinking about it. But they could come out that way. We require, however, that they have spent 105 percent before they are entitled to anything from the Federal Government. We would look at the whole budget together. Why in the world they would take out of all their budget uniforms and put it in the Federal part? Whether they could get the funds when they actually sought them for such a limited purpose or not is another question. But these funds would be available for any need of a police department that met the qualifications.

Senator THURMOND. Would that include shoes, too?

Attorney General CLARK. It could include shoes; yes.

Senator THURMOND. Well now, suppose the Federal Government said to the police departments over the country, suppose your director says, "Now, I think the policemen will look handsomer, better, and appear more disciplined if they all used blue uniforms and black shoes, and we are going to withhold funds unless you buy blue uniforms and black shoes."

Would your director have that authority to do that?

Attorney General CLARK. Well, I think we would start looking for a new director about that time.

Senator THURMOND. I know, but that is not the question. I am visualizing some Attorney General other than Mr. Clark now, someone who might succeed you some day and be arbitrary. Would your director have the right to withhold funds if the police departments did not use the color uniform he wanted or the color shoes or the quality of uniform or shoes that he wanted them to use?

Attorney General CLARK. He has to have broad discretion, and in theory he would probably have that discretion under the bill.

As a practical matter, the opportunity to exercise it would be very limited. The police are an independent type of person, and I just do not think that is a real possibility.

Senator THURMOND. But you think he would have that authority?

Attorney General CLARK. Yes, sir.

Senator THURMOND. Well, then, would your director also have the authority to say that, "We don't think a Colt is a very good pistol. It doesn't get results, and, therefore, we are not going to give any funds unless you buy Smith & Wesson pistols."

Would your director have the authority to withhold funds unless they used Smith & Wesson pistols?

Attorney General CLARK. I think if some police department sought Federal funds for a type of weapon that we thought was dangerous or unreliable or otherwise defective, that we would have a duty to withhold funds.

Senator THURMOND. So the Director would have the authority to withhold funds as to the kind of weapon or the quality of weapon that the city police department or the State law enforcement agency would purchase?

Attorney General CLARK. The probability of an exercise of discretion like that is very, very slight. It depends, unless——

Senator THURMOND. I am not saying how he would use this discretion, Mr. Attorney General. I am just asking, I am trying to get at the authority the bill gives, whether he would have the authority.

Attorney General CLARK. The bill gives broad discretion.

Senator THURMOND. It gives broad discretion.

Attorney General CLARK. Yes.

Senator THURMOND. So your director would have the right to withhold funds if he saw fit unless a policeman used the kind of weapons that he said they must use or use the kind of uniforms that he says they must use or use the kind of shoes that he said they must use.

Attorney General CLARK. No. I think that really is very remote. It is necessary under the bill to give broad discretion. But if it came to the specificity you are talking about, such an exercise of discretion would probably violate section 408 itself. It is so unreal.

Senator THURMOND. It is not contemplated, but is it possible?

Attorney General CLARK. I would say when it reaches the level that you have now reached with shoes and uniforms and guns and all these oher things there would begin to be control of the police department, and there would be a violation of section 408 of the act, and, therefore, it would be in violation of the act.

Senator THURMOND. Well, I took up each one separately, and you said he would have the authority, and then I summarized it and lumped it together, and now you say you do not. What is your position?

Attorney General CLARK. My position is as stated that the case you pose would be clearly arbitrary, when you add them up the way you do—in fact, any one by itself would seem highly arbitrary to me and so unrealistic as to not be a possibility.

Senator THURMOND. Who is going to control whether he is arbitrary or not? He makes the final decision, does he not?

Attorney General CLARK. Well, there are lots of checks and balances that we have in the system, and one is we would hope he would always try to accomplish the purposes of the act, and if he proceeded the way you indicated, I think the act would break down.

Senator THURMOND. That is not the question. I asked you who would call his hand if he became arbitrary.

Attorney General CLARK. Well, perhaps, with you Senators up here, you would help and there would be an Attorney General and other people.

Senator THURMOND. That is not it. I mean in the executive branch. Suppose you had a director under you or some other Attorney General who was arbitrary, and he was trying to bring about conformity in every way, shape and form, just completely arbitrary. Now, who is above him to correct him?

Attorney General CLARK. We worked for these 19 months under the Law Enforcement Assistance Act. There is complete discretion in the director there. He can grant or not grant. There are no criteria or standards set whatever, and we have not had any complaints of any type that you raise.

Senator THURMOND. In other words, he does have the discretion but you do not think he would be arbitrary, is that it?

Attorney General CLARK. I do not think he would be arbitrary, and I think if he endeavored to exercise his discretion as you have indicated he would not last very long.

Senator THURMOND. But he would have the power, he would have the discretion, to act.

Now, would any of this Federal money go to help pay the salaries of law enforcement officers, policemen, and others?

Attorney General CLARK. To their salaries?

Senator THURMOND. Yes.

Attorney General CLARK. Yes. Some of it could go directly into salaries, up to one-third of the Federal funds.

Senator THURMOND. In other words, then if this bill passes, the city of Philadelphia, the city of Chicago or New York, for example, can draw from the Federal Government from the funds that are available up to one-third of the cost of the policemen's salary.

Attorney General CLARK. No, it would not be nearly that much. It would be up to one-third of Federal funds available and granted. The Federal funds——

Senator THURMOND. I say insofar as the funds are available.

Attorney General CLARK. Yes. But you said one-third of the policemen's salaries. You have to start with the base expenditure. You have got to add 5 percent to that. Those are all local payments. Over and above that the Federal match is 60 percent of the increment over 105 percent the first year. Now you are not going to have a very large increment there. But only one-third of that 60 percent could go to the salaries themselves, and that would always be a tiny fraction of the total salary expenditures.

Senator THURMOND. What do you figure that would amount to in the average law enforcement officer's salary?

Attorney General CLARK. Well, we can work a hypothetical if you want to. Let us take a jurisdiction with a 100 base so 90 percent of it is for salaries. That would mean 90 goes to salaries. Let us say that they propose to increase law enforcement expenditures by 10 percent during this year. That first 5 percent has to be their money. Two of the remaining 5 percent has to be their money, so that means 1 percent of the Federal 3 percent could go to salaries. That is 1 percent on a base of 110, which is one one-hundred-and-tenth of the total law enforcement budget.

Senator THURMOND. How is that?

Attorney General CLARK. Assuming that the applicant put his original 90 percent into salaries plus 90 percent of his 7 percent share of the increase in his budget, 1 Federal dollar would go into salaries for approximately every $96 of local money. At the same time the rate of new investment for law enforcement purposes would have been doubled.

Senator THURMOND. So that if a man got $500 salary a month, about $5.50 of that would be from the Federal Government?

Attorney General CLARK. Well, it would all come through the police department. He could not tell which was which.

Senator THURMOND. Yes, I understand. But that is about the contribution that would be made by the Federal Government.

Attorney General CLARK. On this hypothesis, that is right.

Senator THURMOND. Now, would this $5.50 on the $500 salary, say, just offhand, would that go to increase the policemen's salary or would that go to relieve the local community because they were not able to pay that amount?

Attorney General CLARK. Not only would they have had to maintain their own level of investment; they would have had to increase it 5 percent before they got their first Federal dollar.

Senator THURMOND. So this Federal money then that goes into salaries of personnel would mean additional salaries for the law enforcement officers and it does not relieve the local political subdivision of any expense in that connection.

Attorney General CLARK. That is true. In fact, it would require some additional local contribution.

Senator THURMOND. In fact it would require additional local money.

Attorney General CLARK. That is right.

Senator THURMOND. So the theory then that the Federal Government is stopping in to help with the expense of law enforcement from the standpoint of paying law enforcement officials then goes out of the window, does it not?

Attorney General CLARK. The theory is that the Federal Government will help the locality by more and better law enforcement.

Senator THURMOND. To do what?

Attorney General CLARK. By more and better law enforcement.

Senator THURMOND. Mr. Attorney General, I am one of those who does not believe that the Federal dollar can do everything. In my judgment there are some things that can be done by this Congress that would improve law enforcement in this country much more than any Federal dollars that we could appropriate.

The able chairman of the subcommittee has a bill now on confessions and Senator Ervin has one—I believe I joined both of them on bills on confessions—to provide that a confession, so long as it is voluntary, would be admitted in evidence even though a lawyer was not present, and even though a man had been held a few minutes or a few hours too long.

I fully believe if we can pass a bill to that effect in this Congress it would do more than any other one thing to stem the crime in this country.

These criminals know the rules today. They are mighty smart, and they know when they are caught that they can ask for a lawyer immediately. They do not have to confess, and the law enforcement people tell me that about nine-tenths of them can be apprehended and they will confess.

But since this decision of the Supreme Court was handed down they won't confess. So you can see the great handicap this decision of the Supreme Court is having on this matter.

There is another thing that I think the Congress could do, and that concerns another bill, H.R. 3, that the chairman of this subcommittee and I worked on for several years back, and it passed the Senate. The bill passed the House one night and then it was delayed a couple of days, and then was defeated by one or two votes. This proposal would prevent Federal preemption of the fields of State jurisdiction, such as the *Steve Nelson* case in Pennsylvania, where Federal law will strike

down State laws, even though there is no provision in Federal law providing for that, and even though there is no inconsistency to such an extent that they both cannot stand.

Then, the other thing I think that has to be recognized by the Supreme Court is that the rights of society have to be paramount to the rights of the individual, even if he has to suffer.

These are things that I think go to the heart of the crime problems, and these are the things that do not require money.

There are some things I think the President can do. Take the draft card burnings—quick apprehension and quick trials and quick punishment would have a very fine effect in this country.

I had checked about the flag burnings. It is a violation of the Federal law to burn a flag in the District of Columbia, but it does not seem to be nationwide, and I am having that researched further. That is a matter that certainly ought to be pursued vigorously.

Another thing, if the President would expose to the public the FBI records of some of the agitators and demonstrators like Martin Luther King, Stokely Carmichael, and others, and let the public see just who they are and what they are, and the elements they are connected with, I think it would kill their influence overnight.

I think there are a lot of things the President can do that would prove more effective than asking for Federal dollars to hand out in a political way, particularly if you get a director who wants to be political and who wants to create attention by withholding such funds.

There is another thing the President can do, and that is to stop catering and showing favortism to special groups. That does not take any money either.

The rising crime rate is a vital question here that I think demands urgent attention, but the urgent attention that I feel it demands is action by the President and action by Congress more than just Federal money.

I just wanted to mention those things to you because that is the way I feel about it. I am not saying I would not support any kind of bill that is offered here. But this thing of going down to the States and giving out Federal money with a lot of strings attached and giving the administration the power to withhold funds from police departments and getting everybody in the departments obligated to the Federal Government can be a powerful political hammer in the hands of any administrator. You have that hammer now in the HEW and they are using it. I know they are using it because I have seen it used in my State.

That is all, Mr. Chairman.

Senator McCLELLAN. Very well.

Mr. Attorney General, I wanted to ask you one question before we quit today. I have a few more and we will proceed a little longer. Do you have to go any particular time?

Attorney General CLARK. No, sir.

Senator McCLELLAN. We will proceed a while longer.

I want to be sure and get an answer to one question before we recess today, and I will ask you now while I am thinking about it: Assuming this bill is enacted into law in its present form or substantially so, in other words, like you want it generally, how long do you think

it would be before there would be any impact, before we would be able to see any results, consequences, from it with respect to the increase in crime in this country?

Attorney General CLARK. Well, I think we would badly deceive ourselves if we thought that there is any easy formula that would bring about an immediate and significant reduction in the amount of crime.

I think that the perfection of law enforcement can make a substantial difference, and I would think that after a period of a few years with this great new effort that we would have a significantly higher quality of police and corrections and judicial efforts in the country, and I think you could measure it.

But in the long run it will take much more than just that. I think we owe it to ourselves as an end in itself to perfect criminal justice in this country, and I think we will be repaid many times over for that effort, but it will not change the character of our people or their capability to commit crime where there is a will. It will make it more difficult for them.

Senator MCCLELLAN. Well, the objective of this bill is to make the streets safe. When are we going to begin to get any results from it? That is the objective. When are we going to begin to realize the objective?

The only way I can see to realize this objective is by a reduction in the crime rate. Let us just stop and see what are we going to get out of this bill, if enacted, and when the fruits of it are going to begin to flow. I do not think the public is going to be misled or get the impression that if we pass this bill, then they are fully protected and all crime is going to disappear.

I want to analyze it and see what we can reasonably expect, assuming it is enacted into law.

What would be your prognostication?

Attorney General CLARK. I think we could reasonably expect to have a higher order of public safety and a more effective police, corrections, and courts in a matter of a few years. I am not prepared to say that we could hope to have a great reduction in crime. That involves too many other factors.

Senator MCCLELLAN. Then it is kind of a misnomer if it is not going to reduce crime, is it not?

Attorney General CLARK. I think not.

Senator MCCLELLAN. If it is not going to make the streets safe?

Attorney General CLARK. I think crime control is the responsibility and the function of the police, and corrections, and courts, and that is what this bill is about.

Senator MCCLELLAN. If it does not reduce crime then it is not controlling it much, is it? If we get the kind of control we want we will reduce crime.

Attorney General CLARK. That is right.

Senator MCCLELLAN. We have before us a bill with the title, "Safe Streets and Crime Control Act of 1967." It carries with it an implication that we are going to get some very good results from it. I would like to know how soon, in your estimation, we are going to get these results and what you anticipate they will be. If you can, give us something more specific than what you have.

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Attorney General CLARK. Well, I think we will get results as soon as the Congress acts on this bill. I think there will be results of the type that I described near the beginning of our hearing. I think it will be in two immediate ways: First, the realization by the law enforcement community that the Congress is committed to their assistance will make a big difference.

Second, I think the expansion, the implementation under title III of the potentials of the Law Enforcement Assistance Act will make a big difference.

But for us to sit here and say that there is going to be a great reduction in crime and that the streets will be safe everywhere for everyone would be to promise more than reason tells us we can expect from this or any other legislation.

Senator MCCLELLAN. Would you agree with me that it will be some, possibly, 5 years from the date of the enactment of this law before you will actually begin to get any obvious, noticeable, apparent results from it so far as its impact on crime in the streets?

Attorney General CLARK. Well, it is hard to notice crime on the streets in the first place. You notice it——

Senator MCCLELLAN. That is the title you have given this bill. I have been using the title of it because people think in terms of titles, "Well, we are going to have safe streets now. We have a law. We are going to have safe streets, a lowering in crime."

Let us just analyze it and see what it really means, let the record reflect what it means.

Attorney General CLARK. The bill, I would hope, would make a difference long before 5 years. On the other hand, our task of perfecting our criminal justice agencies will take longer than that. It is an endless process. We need to begin now and we need to begin in a massive way, and we need to begin with great vigor.

Senator MCCLELLAN. In what way will this improve the efficiency of the courts?

Attorney General CLARK. Well, it provides, I think particularly with the Federal Judicial Center bill, on the Federal side it provides, an opportunity for the courts both in terms of training their own people and in terms of the new techniques in docket handling, to offer greater efficiency in adjudication.

Senator MCCLELLAN. I do not follow that, I cannot follow that. You mean you train clerks, the law clerks, the clerk of the court, the bailiff? How is it going to affect the quality of court decisions?

Attorney General CLARK. Well, the quality of court decisions will be affected primarily in the training given judges under the institutes and other things that could be designed under the act, and also by relieving them of some of the burdens of administration which gives them the time to devote their intelligence to cases before them.

Senator MCCLELLAN. You think the quality of their decisions now is impaired by the fact that they have to give some time to administration?

Attorney General CLARK. I think judges are just like other people in that if they are overworked their judgment is not as likely to be as good as if they had a reasonable amount of work to deal with.

Senator HRUSKA. Would the chairman yield?

Senator McCLELLAN. I hope some of the recent court decisions were not due to the fact that some judge had been overworked and that threw him off the track. I hope we are not implying that.

Attorney General CLARK. Well, I think if we study the facts we would find that case backlogs are much more harmful than confessions. I think we can demonstrate statistically that more people who have committed crimes go free because of delay through backlog several times over than are ever involved in confessions problems.

Senator McCLELLAN. Well, is it the purpose of this bill to get more judges so they can keep up with the docket better? I do not see that in the bill.

Attorney General CLARK. That is not the major purpose of this bill, no.

Senator McCLELLAN. There is nothing in the bill to give more judges, is there?

Attorney General CLARK. Well, I think you could say if you get more judges—we were talking about the one-third limitation, that can go for salaries of new judges. I doubt that it is likely to. I think we have to find better techniques.

Senator McCLELLAN. This bill does not provide it. You would have to pass a statute in the States increasing the number of judges. You cannot do it on the basis of this bill.

Attorney General CLARK. That is true of every grant to be made under this bill. It has to be based on application authorized by State or local law.

Senator McCLELLAN. Well, Mr. Attorney General, what I am saying is this bill gives no authority to appoint a new judge or establish new courts in any way, does it?

Attorney General CLARK. It gives no authority to apply for any of the other purposes of the bill. It all requires the authorization of the local jurisdiction.

Senator McCLELLAN. I understand that, but I am talking about Federal courts. There are no other Federal courts provided in this bill, so the Federal courts can catch up with the dockets.

Attorney General CLARK. No, I did not understand you were talking about Federal courts.

Senator McCLELLAN. I was talking about Federal courts first. There is nothing in the bill and, of course, the bill does not authorize or say to the States or the municipalities. "You have got to increase the number of judges or you have got to establish more courts," does it?

Attorney General CLARK. No, or that you have got to have more policemen or anything else.

Senator McCLELLAN. Are you saying you would have the authority to tell a municipality or tell a State jurisdiction that "You have to establish another court otherwise we will withhold funds from you?" Do you say you would have that authority under this bill?

Attorney General CLARK. Well, I was not saying that, but if that is your question I could address myself to it.

Senator McCLELLAN. All right.

I ask you the question: Does the bill authorize it?

Attorney General CLARK. I think that where there is a comprehensive plan that clearly showed that there is a great imbalance between

the numbers of police and the number of courts and that the courts were unable to prosecute cases that it would be improvident for us to spend more money for more police when people could not be put before a court and given a trial and convicted or acquitted and, therefore, that we would make——

Senator McClellan. You can say then "Unless you establish some more courts in your States you get none of this money," is that right?

Attorney General Clark. We could certainly encourage that balance that is greatly needed.

Senator McClellan. If that is in the bill I certainly shall seek to amend it so that you cannot do it, because I do not think you should have that power.

Very well.

Senator Hruska. Mr. Chairman, I think that power is inherent in this bill. Any plan before it is effective must be approved by the Attorney General.

Senator McClellan. I am saying if the power is there, I wanted him to say so. I do not want it in there.

Senator Hruska. And it leads back to the series of questions I asked this morning that without the Governor's approval of the plan and the entry of these people into the State, you are going to reach a blind alley because if the Governor is not in favor of increasing the judges in his own State, then there is a complete block there that will result in nothing. And yet we have a denial here of any provision which would call for a Governor's approval of a plan, which I think, is very close to the heart of the problem.

Senator McClellan. Mr. Attorney General, I do appreciate your appearance. It is obvious that we cannot get through today, after taking the time to go and vote and come back. We have other witnesses scheduled tomorrow and the next day, so I won't ask you to come then because we want to accommodate them since they are coming. At some future time or convenient day as early as we can get you, we will resume your testimony. In the meantime, may I earnestly urge you to weigh some of these questions and consider how we might eliminate some of the provisions of the bill which have some potential consequences that I do not think we want to grant. I think we want to modify this bill some to keep it confined to the purpose which, I think, is intended. I ask you to do that. I want to cooperate. I want to help you get a good bill. I am not trying to sabotage this bill.

I want us to help you get a good bill, but I do think we have got to go through the bill and weigh these provisions and put some safeguards in it in the proper places.

Thank you very kindly.

Attorney General Clark. Thank you, sir.

(Whereupon at 4:20 p.m., the subcommittee adjourned to reconvene at 10 a.m., on Wednesday, April 19, 1967.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

WEDNESDAY, APRIL 19, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan, Kennedy of Massachusetts, Hruska, and Thurmond.

Also present: William A. Paisley, chief counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

I understand some other members will be present later, but I do not want to delay the hearing so we will begin now.

This morning our first witness is Judge Grumet. We welcome you. I believe you are chairman of the New York State Commission on Investigation?

Mr. GRUMET. That is correct; I am the present chairman.

Senator MCCLELLAN. I see you have a brief prepared statement.

Mr. GRUMET. Yes. I would like to read it, with the committee's permission.

Senator MCCLELLAN. You may read it, but first, would you identify yourself more fully, and then, if you like, read your statement.

STATEMENT OF JACOB GRUMET, CHAIRMAN, STATE OF NEW YORK COMMISSION OF INVESTIGATION; ACCOMPANIED BY MYLES J. LANE AND JOHN W. RYAN, JR., COMMISSIONERS

Mr. GRUMET. Before I read the statement, I would like to say that the New York State Commission of Investigation is bipartisan and has four members. Three of those four members are present here this morning, and I would like to introduce my colleagues.

On my left is Commissioner Ryan, of Buffalo, formerly chief justice of the city court of Buffalo.

On my right is Commissioner Myles J. Lane, who was formerly U.S. attorney for the southern district of New York.

All of us have spent many years in law enforcement, and three of our members are former judges.

Senator MCCLELLAN. We welcome you gentlemen. We appreciate your interest in this matter and your cooperation. We think that our

country faces danger from the crime menace. I think it is going to take the cooperation and joint efforts of many forces in this Nation to successfully combat this evil. I personally, and I am sure I can also speak for the committee and the Congress, am very grateful to each one of you who has been willing to come here and testify, to give us the benefit of your experience and your counsel. Thank you very much.

Now, you may proceed.

Mr. GRUMET. Our commission is deeply concerned with proposed legislation in the Congress dealing with the very important subject of wiretapping.

In our third annual report, issued in February 1961, we stated that "criminal law enforcement in New York State has been dealt a crippling blow" by Federal court decisions relating to wiretapping. The decision of the U.S. Supreme Court in *Benanti* v. *United States* thrust law enforcement officials and judges of our State courts squarely on the horns of a most vexing dilemma. As you know, by the way of dicta in the *Benanti* case, the Supreme Court indicated that wiretapping under New York law was illegal and in violation of the Federal Communications Act.

As a result of this decision, many judges and law enforcement officials in our State, understandably, refuse to perform an act which, though authorized by State law, has been described as illegal by the Supreme Court of the United States. The public safety and public welfare and important investigations dealing with organized crime and official corruption have suffered.

This commission and others expert in the problem of law enforcement, presented strong and convincing proof that legal wiretapping, pursuant to court order, and I emphasize that, "pursuant to court order," and the use of evidence thus obtained, is an absolutely indispensable law enforcement weapon in the fight against organized criminal activities, racketeering, and official corruption. Furthermore, it has been clearly demonstrated that there is no substitute for this investigative procedure in dealing with such cases. In that regard, we refer you to the transcript of our commission's public hearing concerning the wiretapping dilemma which was held in New York City on April 5 and 6, 1960. We should like to quote but one statement of the testimony given at that hearing by Mr. Frank S. Hogan, district attorney of New York County for over 25 years, to emphasize the importance of wiretaps. Mr. Hogan said:

> Wiretapping is a powerful investigating weapon in the field of labor racketeering where the criminals' cunning and the victims', the businessmen's fear, would otherwise combine to conceal crime and make a mockery of law enforcement.

Mr. Hogan goes on to say:

> Our files are full of cases where, but for wiretaps, some of the worst racketeering offenders might well have gone unpunished.

In the years following our public hearing, the need for wiretapping for law enforcement purposes has been proven repeatedly.

Now, almost a decade since the *Benanti* decision, the damaging situation still prevails. The Congress has failed to act on necessary remedial legislation which has been introduced.

Mr. Chairman, as you have just pointed out, when crime has increased to such alarming proportions as to become recognized as a most serious nationwide problem, paradoxically, persons both in and out of public office, who lack firsthand knowledge in dealing with the difficult problem of law enforcement, are demanding abolition of all wiretapping. Speaking in the name of "civil liberties," they completely disregard the compelling rights and interest of the public to be protected from the lawless acts of criminal elements. Such persons consistently fail to distinguish between illegal wiretapping and that carried on by law enforcement officers pursuant to law and court order, for the public good. They seek to create the impression that abolition of the latter will somehow eliminate the evils of the former. Nothing could be further from the truth. Moreover, much confusion and unjustifiable concern is being created by gross distortions and misstatements of fact concerning the use of wiretaps.

On March 7, 1967, a letter was sent to the chairman of this commission, signed by former U.S. attorneys for the Southern District of New York, which district, undoubtedly, is one of the largest and most important in this country. This letter urged the enactment of legislation to permit wiretapping pursuant to court order by both Federal and State enforcement authorities.

This commission fully supports the views expressed by these experienced gentlemen and we strongly urge the adoption of their recommendations. In brief, we respectfully propose that the Congress consider legislation which would accomplish the following:

(1) Prohibit all unauthorized wiretapping, with stringent penalties for violators.

(2) Legalize court-authorized wiretapping and the use of wiretap evidence by the States, where State law so permits.

(3) Permit court-authorized wiretapping by Federal law enforcement authorities, subject to the approval by the Attorney General, in specified areas of major crimes and organized crime.

Such legislation, with appropriate safeguards, would resolve existing confusion and difficulties. It would also be of immense aid to effective law enforcement. Above all, it would provide society with immeasurable protection against serious criminal invasions into its safety and security.

Senator McCLELLAN. Thank you very much, Judge Grumet.

Do either of you gentlemen wish to make a statement, Judge Ryan, Judge Lane?

Mr. LANE. No, sir.

Mr. RYAN. No, Senator.

Senator McCLELLAN. Or, to add anything?

In your conclusions, Judge Grumet, you make recommendations as to the kind of legislation you feel appropriate in this field. Do your recommendations in any way conflict with or do they support S. 675, the bill now pending before this subcommittee with respect to wiretapping?

Mr. GRUMET. I think, generally speaking, we support that bill. There may be one or two minor things, but——

Senator McCLELLAN. In principle, you support it?

Mr. GRUMET. In principle, we definitely support it.

Senator McCLELLAN. Now, do you have any suggestions of any modifications or any specific amendments to offer for our study?

Mr. GRUMET. I am looking at the bill now. There is one that I think I have in mind that I might mention, and that is, if I recall correctly, the bill provides that there must be a showing that other means could not be used to obtain the evidence. I don't know where to find it at the moment, but I recall reading it.

Senator McCLELLAN. It is at the bottom of page 9, I believe.

Mr. GRUMET. Thank you very much, Senator.

Subdivision 3 of 8(c).

Senator McCLELLAN. Yes.

Mr. GRUMET. Where the reference is to the fact that no other means are readily available for obtaining that information.

Senator McCLELLAN. Readily available—not necessarily excluding all other means, but whether they are readily available. I would take that to mean, that it would be the intent of this section, whether or not you could, by a practical use of other means, obtain the information as easily as you could by wiretapping. Of course, you might be able to get the information in the course of 6 months or more by some other means but readily means comparable, as I would interpret it, to the use of wiretapping.

Mr. GRUMET. The only hesitation I had about it was that it might, if there must be a showing that other means are not readily available, then it might result in litigation which would hamper the efforts of the authorities.

Senator McCLELLAN. Well, we do not want that. But still, at the same time, I would not want any loose administration of this law.

Mr. GRUMET. No.

Senator McCLELLAN. But have it very strictly observed. It is not to become a catchall for promiscuous use. I want to see this law strictly observed with the courts adhering to the spirit and intent of it in granting the orders. I am not for promiscuous wiretapping in any sense, but I do believe that it is an indispensable tool, particularly in fighting organized crime, and some specific crimes.

We recently had a kidnaping case, I believe it was out in California, where a little boy was kidnaped and I think they paid $250,000 ransom. Fortunately they were able to comply with the kidnaper's request. They were fortunate, I guess in being able to provide the ransom demanded and did it promptly, and were able to get their little child back unharmed.

Now, who would say that to catch some scoundrels like that kidnaper you should not use wiretapping? People that prey upon the lives of innocent children in order to exact a ransom in money are the lowest scum of humanity, in my judgment. To deny the use of wiretapping to catch somebody where a little child's life is in danger, under those circumstances, would be depriving ourselves and law enforcement agencies of a very vital tool. I may be wrong, but those are my views.

Mr. GRUMET. Senator, I might add that very frequently in order to collect the ransom and communicate with the victims, they have got to use a telephone.

Senator McCLELLAN. Surely.

Mr. GRUMET. And as you just pointed out, the authorities would be prevented from listening in on these conversations.

Senator MCCLELLAN. They could not tap the telephone at the home if you barred it, and if they did tap and pursued the clue that they got from the tap, that evidence would be excluded from the trial of the case, according to the Supreme Court holdings.

Now, that is going to the extreme. Every defendant charged ought to have a fair trail, but to say that we cannot use the same tools and the same weapons that the criminals use in organized syndicates to commit a crime, that we cannot use the same means to detect their crimes, is to deprive society of the protection that it is entitled to have. I could be wrong in my views, and I would be glad to have your comments.

Mr. LANE. I have a simple formula.

Mr. MCCLELLAN. Sir?

Mr. LANE. I have a simple formula of my own, and that is that sometimes the telephone can be used as a weapon, and I believe that where you can use the telephone to commit a crime, or a wire to commit a crime, you should be able to use that wire to either detect or prevent that crime. It is that simple.

Senator MCCLELLAN. In other words, if a robber goes out and uses a pistol to put his victim in a state of fear so he must submit to his demands, why cannot a policeman, when he goes to arrest the robber, put a gun on him and say, "Halt."

Mr. LANE. Precisely.

Senator MCCLELLAN. What are you going to do, take the pistol away from the arresting officer and let the robber have one? It is just about that simple. Are you going to let the criminal use a means of communication and deny that means of protection to the officer?

Mr. LANE. That is true.

Senator MCCLELLAN. I think if we continue to favor every criminal in this country, turn him loose, call him a sick man, say all we can do is treat him instead of punish him, we are going to encourage more crimes. We are moving pretty swiftly already to a state of chaos.

Mr. LANE. It has been the experience of all enforcement officers that I know, all district attorneys, that organized crime uses the telephone for the two principal crimes that make for the treasury of the underworld; that is, gambling and narcotics. There is no other way in which you can combat gambling and narcotics rackets without the telephone, and anyone that says it can is not very familiar with this particular area. Can all district attorneys, all police enforcement officials be wrong, and one or two persons with no experience be right? We feel that insofar as organized crime is concerned, particularly in those two areas—narcotics and gambling—there is no weapon that you can use to stop this except permitting legalized wiretapping.

Senator MCCLELLAN. When wiretapping was in operation in New York, before the Supreme Court decision that you have referred to here, the *Benanti* case, was it an effective tool?

Mr. LANE. Extremely effective.

Senator MCCLELLAN. Extremely so?

Mr. LANE. Yes.

Senator MCCLELLAN. We have here a statement from the Attorney General as reported in a news article: "As for wiretapping, it is his

view that they are neither desirable nor efficient," the article says. "The country pays more for the use of a wiretap than it secures in terms of public protection." These remarks are attributed to the Attorney General.

What have you got to say about his comments?

Mr. LANE. Well, let me give you one of our experiences and I think that will best answer the question.

We had complaints from the dean of Cornell University about some gambling in Ithaca, so we sent our agents up there, and, one thing led to another. This started with gambling on football games. We put one or two wiretaps in and we got information which enabled us to get certain leads and for the next 6 or 8 months we put our agents out on these leads. Now, I think it was on October 23, 1959, at 3 o'clock in the afternoon that we had a simultaneous raid by 400 State police in conjunction with our commission. In these 19 counties in the upper tier of New York State I think they must have hit 50 or 75 towns and cities.

They picked up 130 or 140 gamblers, professional gamblers. They picked up $100,000 in cash on the tables. They hit four banks; that is, gambling banks. For the next 6 weeks we put our accountants on this material. We were able to project what the gambling was in those 19 counties. This is organized crime. We projected that they were doing, in the period of 1 year, in those 19 counties, a business of $500 million—$500 million, of which they made a profit of $50 to $100 million in 19 counties.

Now, we got that through our wiretaps. As a result of those wiretaps we discovered people that would use the telephone in connection with this gambling business. In other words, you cannot have professional gambling unless you get the morning line from somewhere, and that is usually out in the West, either in Chicago or Minneapolis. Big gamblers, when they want to lay off any bets, lay them off either in Kentucky, New Orleans, or Miami. To do that they must use the telephone. They also have a system of projecting or sending out the race results within a few minutes after a race.

As you know, they use the so-called catcher-pitcher way of doing this. They have somebody stationed at the track and they give a signal to someone at an open phone outside the track who will telephone the results down to Maryland where they then send it over the entire country. You cannot do that unless you use the telephone.

That would give you one example of the way the telephone is used.

We have found in our business that they use the telephone many other ways in other crimes. But the telephone is the most important instrument of organized crime in getting the money for the rest of their businesses.

Mr. GRUMET. Senator, I would like to add to what the commissioner just said. In answer to the statement you just quoted, by Attorney General Clark, I referred before to the letter which was addressed to your committee.

Senator MCCELLAN. This letter will be printed in the record at this point.

(The letter referred to follows:)

NEW YORK, N.Y., *March 10, 1967.*

Hon. WILLIAM A. PAISLEY,
Chief Counsel,
Subcommittee on Criminal Laws and Procedure,
United States Senate,
Washington, D.C.

DEAR MR. PAISLEY: Enclosed herewith is a copy of a letter directed to Senator McClellan from all the former United States Attorneys for the Southern District of New York supporting court-approved wire tapping and electronic eavesdropping.

You might be interested in a word about each of the signatories to this letter. They are:

Charles H. Tuttle, for 65 years a member of the Bar of the State of New York, over 50 years a member of the Board of Higher Education of the City of New York, and senior partner of the New York law firm of Breed, Abbott & Morgan.

James B. McNally, Justice of the Appellate Division of the Supreme Court of New York.

John F. X. McGohey, United States District Judge of the Southern District of New York.

Irving H. Saypol, Justice of the Supreme Court of the State of New York.

Myles J. Lane, member of the New York State Investigation Commission, and partner of the New York law firm of Schwartz & Frohlich.

J. Eward Lumbard, Chief Judge of the United States Court of Appeals for the Second Circuit.

Paul W. Williams, Special Assistant Attorney General of the State of New York in charge of the Saratoga and Columbia County Investigations, former Justice of the Supreme Court of the State of New York, and counsel to the New York law firm of Cahill, Gordon, Sonnett, Reindel & Ohl.

S. Hazard Gillespie, former President of the New York State Bar Association, Chairman of the Moreland Commission to Investigate Public Welfare in the State of New York, and partner in the New York law firm of Davis Polk Wardwell Sunderland & Kiendl.

Yours sincerely,

S. HAZARD GILLESPIE.

NEW YORK, N.Y., *March 7, 1967.*

Senator JOHN L. MCCLELLAN,
Subcommittee on Criminal Law and Procedure,
United States Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: The undersigned being all the former United States Attorneys for the Southern District of New York now living urge on the consideration of the Committee on the Judiciary of the United States Senate immediate clarification of Federal law relating to wire tapping and electronic eavesdropping.

The commission of crimes on a national scale and the infiltration of legitimate business by criminal elements are heavily dependent on *telephonic communication.* Without the means of meeting crime effected through such communication, law enforcement officers are handicapped to a point where their proper pursuit of the protection of society is virtually impossible to carry out. At the same time we recognize the importance to society of protecting the individual in his rights to privacy in the use of his telephone. A proper balancing of the two considerations is essential.

Without considering the merits of the individual bills such as S. 634 and S. 675 introduced in January 1967 and referred to the Committee on the Judiciary and without presuming to draft specific language, we strongly recommend amendment of Section 605 of the Federal Communications Act (48 Stat. 1103, 47 U.S.C. 605 (1934)) in keeping with the following principles:

> One: make it unlawful and punishable by a fine of not more than $10,000 or imprisonment of not more than ten years, or both (see Section 1362, Title 18, United States Code), for any person to willfully intercept or attempt to intercept any wire communication, or to electronically listen to or record a conversation without the consent of at least one party to the conversation, unless authorized by a Federal judge on application of

the Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General, when such authorized interception or recording may provide evidence of an offense against the laws of the United States. (This procedure would make it possible for a United States Attorney, the Federal Bureau of Investigation or any other enforcement arm of the Government through the intervention of the Attorney General's office and court approval to effectively combat the commission of crime in our modern society.)

Two: make appropriate exception to permit the attorney general of any State or the principal prosecuting attorney for any political subdivision, if authorized by statute of that State, to make application on a showing of probable cause to a State court judge for leave to intercept wire communications and electronically listen to or record a conversation when such action may provide evidence of the commission of any crime or conspiracy to commit a crime.

Three: provide for suppression of any evidence obtained by wire interception or electronic eavesdropping except that obtained by authorization of the Federal or State judiciary and to authorize the use of the later in any court or grand jury proceeding.

Four: provide for method of prompt reporting to the Administrative Office of the United States Courts and to the Attorney General of the United States by any State or Federal judge who has granted or denied leave to intercept or record with the purpose of informing the Congress of the volume of interception and recording which occurs during the period of a year.

We believe a proper protection of the individual in his privacy and of society against the commission of "modern" crime compels immediate enactment of legislation consonant with these principles.

Yours respectfully,

CHARLES H. TUTTLE (1929–1930),
New York, N.Y.
JAMES B. MCNALLY (1944–1945),
Appellate Division, First Department, New York, N.Y.
JOHN F. X. MCGOHEY (1946–1949),
United States Court House, New York, N.Y.
IRVING H. SAYPOL (1950–1951),
Supreme Court New York County, New York, N.Y.
MYLES J. LANE (1952),
New York, N.Y.
J. EDWARD LUMBARD (1953–1954),
United States Court House, New York, N.Y.
PAUL W. WILLIAMS (1955-1957),
Cahill, Gordon, Sonnett, Reindel & Ohl, New York, N.Y.
S. HAZARD GILLESPIE (1959–1960),
New York, N.Y.

Mr. GRUMET. This letter by the eight U.S. attorneys who cover a period, I believe, of over 30 years, eight U.S. attorneys for the southern district, which, as you well know, is the largest district in the country, in the southern district of New York, and these gentlemen, I think, represent all the U.S. attorneys, and they were appointed by Presidents, Hoover, Roosevelt, Truman, and Eisenhower, representing both parties, and their experience, going over a period of 30 years are—I think, is a complete answer to the Attorney General, who, I say, with the greatest respect, has not had the experience in this particular field that these men have had.

Senator MCCLELLAN. In other words, the policemen out on the firing lines, the prosecutors, and those who have got to detect the crimes, apprehend the criminals, and fight the case in court say they need this tool, is that correct?

Mr. GRUMET. That is correct; that is right. And I might add that with all due respect to the Attorney General and the judges, those who

have not had the actual experience in fighting organized crime just do not comprehend the problem.

Senator McCLELLAN. Now, the Attorney General is quoted as saying, "Furthermore, illegal surveillance with devices that invade the privacy, contribute to a disrespect for the law."

I rather think, on the contrary, that properly used under court order, as you apprehend the criminal, you command a real respect for the law from that source, perhaps more respect than existed before he got caught.

Mr. GRUMET. It should be emphasized we are advocating wiretapping pursuant to court order. In other words, a judge must pass on this before a law enforcement officer is permitted or authorized to tap a wire.

Senator McCLELLAN. Under this bill the court keeps control on it. The judge can set the time it can operate, he can require a report to him on the progress being made, he could do anything to keep absolute control of it, to see that it is not abused.

Mr. LANE. We had another situation in New York where through a wiretap we got information that a certain well-known racketeer got control of the whole bingo business in New York. You know, where they have bingo for charities or for veterans organizations and so forth. He not only got control of it, but he also started a lobby. He financed a lobby to get the law changed in his favor. And we found out where the charity bingo might take in $50,000, he was getting probably $48,000 of the $50,000. We got that through a wiretap.

We also found out through a wiretap that in certain situations in New York that there was connivance between some of the racketeers and some certain members of the police departments. Through our investigations we were able to clean that up. In one situation we found that a man in the real heart of the police department was giving out information to these racketeers whenever there would be a raid, a police raid. After we found that out we gave it to the police commissioner, who was very thankful. The police got rid of this man. We could not have discovered this without use of wiretaps.

Senator McCLELLAN. So, when properly used, it is very fruitful?

Mr. LANE. I would say definitely yes, Senator. I think it is indispensable.

Senator McCLELLAN. I see the Attorney General further says, "We spend too much time on incidentals. We worry too much about wiretaps and confessions and not enough about the excellence in police work." What is your comment on that?

Mr. GRUMET. I would like to comment on that.

Of course we all subscribe to excellence in police work, as the Attorney General puts it, and some of those who argue against wiretapping and the admissibility of confessions, use that as an argument and say that this is a method which is used as a substitute for effective police work.

Now, as important as good police work is in solving crime—and I do not by any means minimize it—there are many cases where the best police work in the world would not help, in the absence of wiretapping and reasonable interrogation of a suspect or a prospective defendant. This is particularly true, Senator, in homicide cases where the principal

witness—as I have often said to a jury—where the principal witness has been eliminated by the hand of the defendant. And, I speak from experience, because I might tell you that for 6 years I was in charge of the homicide bureau in the district attorney's office in New York, and under my supervision we handled literally hundreds of homicides, and I know something about taking of confessions and how important they are.

Senator MCCLELLAN. Would you submit a brief statement for the record giving your background and your experience? I suggested that you do that in the beginning, I don't think you understood fully, but will you submit it for the record?

Mr. GRUMET. We try to appear modest.

Senator MCCLELLAN. I appreciate that, but some of those who oppose your views do not appear modest. I would like to compare experiences of those who are testifying as to different viewpoints on this subject.

Mr. GRUMET. Speaking for myself—and I will let my colleagues speak for themselves—as I said at the outset, we have had many years in law enforcement. My own career in law enforcement began back in the early 1930's when I was assistant U.S. attorney in the southern district, and where I pointed out, Mr. Lane was U.S. attorney, but after me, he is a younger man. Thereafter I was connected with the Dewey rackets investigation and served in the district attorney's office under Thomas E. Dewey and Mr. Frank S. Hogan, and as I have already explained, I was in charge of the homicide bureau where we had about 12 assistants who did nothing else but handle homicide cases, and where we took any number of confessions and where, I might point out, but for the confessions we would never have solved the case, and we took those confessions with full protection, I might point out, to the rights of the defendants. We vere very careful about that, and we issued warnings to these defendants long before the Supreme Court passed on the *Miranda* case.

Thereafter, by appointment of the Governor of our State, I was a judge of the court of general sessions, which is now the Supreme Court of the State of New York; and since 1958 I have been a commissioner of investigations of the State of New York.

Senator MCCLELLAN. Thank you very much, Judge Ryan?

Judge RYAN. I was for 6 years assistant district attorney of Erie County, which includes Buffalo, N.Y. I was for 9 years chief city judge of Buffalo, and I resigned from that position to become a commissioner on the commission of investigations.

Senator MCCLELLAN. Mr. Lane?

Mr. LANE. I was with the Department of Justice, Senator, for I believe about 12 years before I became U.S. attorney for the southern district of New York. While I was the U.S. attorney, I tried the 16 Communists which you may recall took about 10 months. Then I tried Frank Costello and I successfully convicted him. I have tried many criminals, many racketeers. Then I was a member of the judiciary committee of the county bar association in New York. From 1958 until the present I have been a member of this New York State Commission of Investigations.

Senator MCCLELLAN. Gentlemen, what would be your comment about the scales of justice today, whether under present conditions and

court-imposed restrictions on police interrogation they balance as between the rights of the individual and the protection necessary and to which society has a right to and deserves?

Mr. LANE. I think it is way out of balance, and it is tipped, in my opinion, in favor of the person who commits a crime.

One little point, Senator, that I might mention, maybe it is an aside, but I think that it has a bearing on your question. That is, in New York City we have over 50,000 known addicts. I don't mean users, I mean addicts, which represents, I think, close to 50 percent of the entire narcotic problem in the United States. We have a very good Treasury group in New York, they do a marvelous job——

Senator MCCLELLAN. Are you talking about the Federal Narcotics Bureau?

Mr. LANE. Yes. They do a very good job. But, they do not come anywhere near being able to solve the problem.

Now, 98 percent of our addicts are heroin users. That has been our experience. Heroin is not manufactured in this country. It comes from abroad. The United States, in a sense, is responsible for the heroin problem, that addiction problem in New York City, and yet it has done nothing about it and the people of the city and State of New York are saddled with it.

Now, if we cannot use wiretapping to try to curb or stop this thing, maybe the Senate and the Congress are not doing their duty because they are leaving New York City and New York State at the mercy of these narcotic addicts. Our own experience has taught us, a good deal of the crime that is committed is committed by addicts who are trying to get money to buy more of the stuff.

Senator MCCLELLAN. That is, as peddlers?

Mr. LANE. That is right.

Senator MCCLELLAN. The peddler ordinarily is an addict himself?

Mr. LANE. Seven out of 10 are, Senator; seven out of 10 of the addicts are peddlers, the other three are not.

Senator MCCLELLAN. And they have to prey on other victims in order to support their own appetities?

Mr. LANE. That is right. We had a narcotics hearing in New York not so long ago and we found out that as far as the female addicts were concerned, they get the money from shoplifting and prostitution. As far as the male addicts were concerned, they get their money from everything from using guns to killing people. Here is a city that is saddled with 50 percent of the narcotic problems in the United States. Yet we are told that we cannot use legal wiretapping today and curb this thing. We think it is a complete injustice.

Senator MCCLELLAN. How long has this restriction been imposed on you by that decision?

Mr. LANE. The *Benanti* case was in 1957; 10 years.

Senator MCCLELLAN. For 10 years. Prior to that time what was your experience with wiretapping? I assume if you use it now the evidence is held invalid, the court will not sustain the case or will not permit the admission of it because of the *Benanti* decision?

Mr. GRUMET. I think after all that New York law permits it at the present moment and they use it, some district attorneys use it, some have refrained from using it, but I think it is still being used.

Senator McCLELLAN. But if they introduce any evidence——

Mr. GRUMET. It is a Federal crime.

Senator McCLELLAN. It is a Federal crime, and they cannot disclose it, so whether they use it or not, they are tremendously handicapped.

Mr. GRUMET. That is right.

Senator McCLELLAN. They may get information and be able to identify people who are committing crimes but they cannot use the information they get in the prosecution of those that are guilty.

Mr. GRUMET. They still use it in many cases to obtain leads, and they may not divulge it, but I think it is high time——

Senator McCLELLAN. If it ever got to the Supreme Court, any clues you followed up as a result of a wiretap, or information that came by wiretap would be held invalid, would it not?

Mr. GRUMET. I think it is high time that the prosecutors should be able to use it in States where the State laws permit it, without feeling that they themselves are committing a crime.

I want to add one point——

Senator McCLELLAN. Some judges do refuse to grant the order now, do they not?

Mr. GRUMET. That is correct, some judges do; and that is an anomalous situation. You have judges that won't sign the order, and you have judges who do sign the orders, because as I say, the laws of the State of New York, the constitution of the State of New York permits it and we should have the privilege by Federal law, if the State wants it—that is all we are saying—if the State of New York wants it, let's have it.

Senator McCLELLAN. That is what we are trying to provide in this bill, exactly what we are providing. There are States that do not need wiretapping laws, or do not have organized crime of any consequence, and they do not need it.

Mr. GRUMET. As a matter of fact, indicating how the people of New York feel about it, through their elected representatives, I think I wrote you a letter to that effect, there was a bill put into the last legislative session which just adjourned, providing for a prohibition against wiretapping. It went to a vote in the assembly, which is the lower house of the legislature, and the bill was defeated, 2 to 1. Now, that is an indication of how the people of the State of New York feel.

Senator McCLELLAN. The people of the State of New York feel, and the law enforcement officials of the State of New York feel, that wiretapping is an essential and indispensable tool to effective law enforcement in certain areas of crime, is that correct?

Mr. GRUMET. That is right.

There is one other point I wanted to make. You asked about the scales of justice, and of course you put your finger on the basic question here, which is a question of maintaining a proper balance between the rights of the individual as against the rights of society, and I think that in recent years the scales have tipped against the rights of society.

Now, to give you some idea of the problem, last night in going through some of my papers, there was a report in the New York Times, I think 2 weeks ago, the beginning of April, indicating that there has been a substantial increase in the number of homicides in the city of New York, 149 since the beginning of the year, so I com-

puted it—one every 16 hours, we get a homicide in the city of New York.

Senator McCLELLAN. How much was that an increase over the year before?

Mr. GRUMET. A substantial increase over the year before. As a matter of fact I have a quotation here from the chief of detectives of the city of New York who says we have 30 unsolved murders this year, the highest we ever had for a 3-month period in recent years. I believe in answer to your question, I believe that the year before there were 119 as against 149.

Senator KENNEDY. Mr. Chairman, could I ask a question at this point?

Senator McCLELLAN. Yes.

Senator KENNEDY. I am wondering if you can draw any conclusion on the relationship of wiretapping to the increase in homicides. As I understand it there are States where all electronic surveillance is proscribed but which do no worse, and perhaps better, in controlling crime than States which permit bugging and tapping. There is no question about how unfortunate the increase in crime has been, but I am trying in my mind to see whether there is any relationship between this increase and the use of bugging and tapping.

Mr. GRUMET. Senator, I would relate wiretapping to organized crime. When I am talking about homicide, I would rather relate that to what I call custodial interrogation, in other words, the opportunity—I am sorry you were not here when I mentioned that, the opportunity to question a suspect or a prospective defendant, a reasonable opportunity to be afforded to the authorities.

I relate that to homicide, rather than wiretapping. In the area of organized crime, there wiretapping is important, but I did not intend to connect the increase in the number of homicides and unsolved homicides to wiretapping, but rather to the opportunity to examine a suspect.

Commissioner Lane reminds me, I was talking about confessions.

Senator KENNEDY. You do not see a relationship between the possibility of wiretapping and solving homicides?

Mr. GRUMET. In homicides, no, not too close a relation. And the reason for that is, that as a result, and I mentioned before, that I was in charge of the Homicide Bureau in New York for many years and handled hundreds of homicides and prosecuted many myself, wiretapping was not too frequently used if at all, in investigating homicides. The important thing in connection with the homicides is to get an opportunity to talk to the man who we feel knows more about it than anybody else, as I said before, if he is the defendant, having eliminated the principal witness for the State, the principal witness is dead, and sometimes it is a question of two people, the victim and the defendant who know all about it, and if you do not have a reasonable opportunity to talk to him, that is why in the New York County District Attorney's Office we had a system whereby lawyers—all of us were lawyers—and perhaps that is the better system, I think it is the better system, under Mr. Hogan, we were on call 24 hours a day. In other words, any time during the night, in the middle of the night we were called out and we supervised the questioning of—rather than the police. And as I

said before to Senator McClellan, we saw to it that the rights of the individual are fully protected, he was warned about the fact that anything he said may be used against him, that he had a right to remain silent. It is true, he may not have been given the complete warning that is now required by *Miranda* v. *Arizona*.

Senator KENNEDY. And you think that additional warning in some way infringes upon effective law enforcement?

Mr. GRUMET. Does what?

Senator KENNEDY. In some way makes the task of law enforcement and law enforcement personnel more difficult?

Mr. GRUMET. If the onus is on the State to suggest to him that he ought to have a lawyer and perhaps provide one, then, of course, as you well know, any lawyer would be out of his mind to advise this man to say anything.

Senator KENNEDY. Those are his rights, are they not, under the Constitution?

Mr. GRUMET. He has a right to remain silent. About whether or not those are his rights under the Constitution, I am not so sure. He has a right to remain silent, he does not have to say anything, he should be warned, we have been doing that for years.

Senator KENNEDY. You say you have been doing that for years. What additional advice would a lawyer give that you would not give?

Mr. GRUMET. A lawyer give?

Senator KENNEDY. Yes.

Mr. GRUMET. I just said that the lawyer would tell him to keep his mouth shut.

Senator KENNEDY. Doesn't he have a right to remain silent?

Mr. GRUMET. Without even knowing—what?

Senator KENNEDY. Did you tell him that, too?

Mr. GRUMET. Tell him to keep his mouth shut?

Senator KENNEDY. Did you tell him he could have the opportunity to keep his mouth shut?

Mr. GRUMET. I told him he had a right to remain silent, he didn't have to say anything, anything he said might be used against him, and we made a stenographic record of that.

Senator KENNEDY. So, actually what you told him was about the same as that which a lawyer would tell him?

Mr. GRUMET. I don't follow you. A lawyer would tell him, "Don't say anything," that is his lawyer talking to him, "Don't say anything."

Senator KENNEDY. And what would you say?

Mr. GRUMET. I would tell him he had a right to remain silent, but I didn't say, "Don't say anything." I said, "If you want to talk, I will be glad to listen."

Senator KENNEDY. All right.

Senator MCCLELLAN. Do you know of anything in the Constitution that says before a policeman can interrogate a witness, someone suspected of a crime, that he has to offer to provide him with a lawyer, if he knows one?

Mr. GRUMET. No. And as a matter of fact, before the *Miranda* case the American Law Institute, which is headed by very eminent law professors, provided for a very reasonable opportunity which is referred to in the Supreme Court decision as custodial interrogation, and I might point out——

Senator KENNEDY. Did they adopt that position?
Mr. GRUMET. What?
Senator KENNEDY. Did they adopt that position?
Mr. GRUMET. Who?
Senator KENNEDY. The American Law Institute.
Mr. GRUMET. They adopted that position, but now they are reviewing it because of the *Miranda* case.
Senator KENNEDY. It is my understanding that that was brought out in May, prior to the *Miranda* decision, and it was not adopted by the American Law Institute.
Mr. GRUMET. Well, it was proposed. Now, I——
Senator KENNEDY. That wasn't the question. I am asking you whether it was adopted.
Mr. GRUMET. Well, you may be right. Prof. Herbert Wexler, who was head of that, certainly I heard him myself, propose that the authorities get an opportunity to talk to a suspect or a prospective defendant.
Senator KENNEDY. You raised the point so I think it is important for the record that you show it.
Mr. GRUMET. I think the record should, by all means, be accurate.
Senator MCCLELLAN. It was not rejected?
Mr. GRUMET. No.
Senator MCCLELLAN. The Supreme Court rejected it by the *Miranda* decision before they had a chance to act on it, isn't that true?
Mr. GRUMET. That's right. And I might point out that the father of the Attorney General, himself, voted in favor of custodial interrogation.
Senator MCCLELLAN. The father of the Attorney General?
Mr. GRUMET. That's right, Mr. Justice Clark, he voted for it.
Senator KENNEDY. However, as I understand it, it was not adopted. And, I would appreciate the help of the chairman on this. It was initially suggested by the witness that his position reflected the attitude of the American Law Institute; I think it is important to show for the record that it was debated but not adopted.
Mr. GRUMET. Well, I think the record has already shown that. I went along with that, if that is your recollection.
Senator KENNEDY. Now, with regard to that, we are on the question of the Clark decision, I think——
Mr. GRUMET. Pardon me, Senator. It is not the Clark decision. Mr. Justice Clark was one of the dissenting judges, it was a 5 to 4 decision.
Senator KENNEDY. Excuse me. I meant to say Mr. Justice Clark's separate opinion, and, of course, he did not join the majority. But I think it would be a misconstruction of his opinion in that decision to say that he rejected flatly the basic findings of the *Miranda* decision. His position was much more limited. He said—and I am reading his own words—that:

> Such a strict Constitutional specific inserted at the nerve center of crime detection may well kill the patient. Since there is at this time a paucity of information and almost a total lack of empirical knowledge of the practical operational requirements * * * by the majority, I would be more restrained lest we go too far too fast.

I think anytime we refer to Mr. Clark's opinion in that decision, it is important that we consider exactly what he was saying. I don't

believe Mr. Justice Clark's opinion reflects a position that is opposed to the fundamental principles underlying *Miranda*, and if that case were to come up again today, I would not be suprised if the decision would be 6 to 3, instead of 5 to 4, but that is my own opinion.

Mr. GRUMET. That is a matter of opinion—that is a matter of opinion.

Senator KENNEDY. That is right.

Mr. GRUMET. That's a matter of opinion, and I might point out that since the decision was 5 to 4 and that is not the only decision in this particular area, we have one judge who swings the pendulum you just read from Mr. Justice Clark's decision, he said something about killing the patient. Now, who was the patient?

Senator KENNEDY. This is the question. Whether the patient, since the *Miranda* decision, has been killed. I certainly have seen no evidence that the patient is even suffering.

Mr. GRUMET. Well, I think it is too early, Senator, to say whether or not the patient has been killed. And you have got to admit that that is very strong language for the judge. The judge says you might kill the patient, and I am not prepared to say, I wouldn't even use that language, that the patient will be killed, but you have got the chief of detectives, and I want to give you a quote from the chief of detectives of the city of New York who has to handle hundreds of homicides every year. He says—and this is his quote, not my language—he says:

> We are convinced that court rulings emphasizing that those questioned by the police have a right to a lawyer while talking to us are responsible for our inability to solve more murders as quickly as we used to.

That's the chief of detectives of the city of New York.

Senator MCCLELLAN. I think we ought to read the first paragraph of the dissenting opinion of Mr. Justice Clark, and I think it will set the record straight. He says:

> It is with regret that I find it neccessary to write in these cases. However, I am unable to join the majority because its opinion goes too far on too little while my dissenting brothers do not go quite far enough. Nor can I agree with the Court's criticism of the practices of police and investigatory agencies as to the custodial interrogation. The material it refers to as police manuals are, as I read them, merely writings in this field by professors and some police officers. Not one is shown by the record here to be the official manual of any police department, much less in universal use in crime detection. Moreover the examples of police brutality mentioned by the court are rare exceptions to the thousands of cases that appear every year in the law reports. The police agencies, all the way from the municipal and state forces, to the Federal Bureau, are responsible for the law enforcement and public safety in this country.
>
> I am proud of their efforts which in my view are not fairly characterized by the Court's Opinion.

I would say he dissented very much to the majority opinion, on the basis of that.

Let me ask you one or two other questions.

You refer in your statement here to a "third annual report," issued in February 1961, where you stated that criminal law enforcement in New York State has been dealt a crippling blow by the Federal court decision relating to wiretapping.

Do you have a copy of that with you?

Mr. GRUMET. I don't have a copy with me, but I will be glad to send you one.

Senator McCLELLAN. I will be glad to have it made an exhibit to your testimony.

Mr. GRUMET. Well, as a matter of fact, now that you mention it, we might also send you the transcript of the proceedings during which District Attorney Hogan and other district attorneys and law enforcement officials testified to the same effect, including, I believe, the police commissioner of the city of New York.

Senator McCLELLAN. Now, you have testified specifically here on wiretapping, with respect to the necessity for it in organized crime and in narcotics peddling, I believe.

Mr. LANE. Well, that is part of organized crime.

Senator McCLELLAN. What?

Mr. LANE. Narcotics is one of the two principal crimes utilized in organized crime.

Senator McCLELLAN. You say in your statement here, Judge Grumet, that public safety and public welfare and important investigations dealing with organized crime and official corruption have suffered, meaning or speaking as a result of the Supreme Court action in the *Benanti* case. Is that correct?

Mr. GRUMET. That is correct. And that is, I might say, almost the unanimous opinion of all law enforcement officers who have had any experience in this field, and I mentioned before, some of those officers.

Senator KENNEDY. Are you familiar with Vincent Piersante, who was the chief of the detectives in Detroit?

Mr. GRUMET. No, Senator; I'm sorry. I would not be familiar with him.

Senator KENNEDY. I understand that he was not only Detroit's chief of detectives, but one of the outstanding law enforcement officers in the country, and he has reached some rather different conclusions which might be of interest to you.

Mr. GRUMET. Thank you very much.

Senator McCLELLAN. On the question of an order being granted for wiretapping by court, after due hearing and so forth, do you think there should be an appeal from that order if the judge refuses to grant the order?

Mr. GRUMET. No. If the judge refuses to grant the order, I would not.

Senator McCLELLAN. You think we can entrust the discretion——

Mr. GRUMET. To the judge.

Senator McCLELLAN. To the judge to whom it is presented?

Mr. GRUMET. Yes, Senator.

Senator McCLELLAN. Now, let me ask you your experience in New York with respect to any abuses of your State law authorizing wiretapping. Do you have any instances, any cases that you can cite, where there have been abuses of that law?

Mr. LANE. I cannot recall any, and I believe, in talking to Frank Hogan, who was the district attorney of New York County, as I remember his testimony before us when we had our wiretapping hearings, he said he could not recall any abuse. I am talking about "abuses," by the police. There have been abuses by individuals, as you know. Private investigators have used it.

Senator McCLELLAN. I am talking about abuse of the law relating to wiretapping. Abuse of the law, of course, is present in all walks of life.

Mr. LANE. None by public officials that we know of.

Senator MCCLELLAN. I am talking about the procedures. Have there been any abuses of procedures, any complaints of abuse of them, that you know of?

Mr. LANE. I do not recall any.

Senator MCCLELLAN. Of course, there is an abuse if a policeman goes out and undertakes a wiretap without a court order, but that would be a violation of the law under the bill I have introduced.

Mr. GRUMET. I want to emphasize, if it already has not been said, that some people have an idea that if this law were passed there would be indiscriminate use of wiretaps. No such thing——

Senator MCCLELLAN. It would be a crime for any unauthorized person to tap wires. There would be more protection under this bill than there is now.

Mr. GRUMET. There would have to be a showing of reasonable or probable cause that a crime was being committed, and then the judge signs the order, as far as the invasion of that person's privacy is concerned. I say that, and frankly the minute anyone is suspected of committing a crime or about to commit a crime, as would appear in the order, his privacy is immediately invaded and that has to be. A man crossing the street against the light has his privacy invaded by a policeman putting his hand on the man and taking him back to the sidewalk.

Senator MCCLELLAN. Any arrest is an invasion of privacy, is it not?

Mr. GRUMET. Or any investigation has to be an invasion of privacy. We are an investigatory agency, we are investigating people right now and to a certain extent we have to invade their privacy when we have to ask for their record or ask them to come in. They may have a dinner engagement or something else that might conflict with it, and they say that they have and that this is an invasion of their privacy.

Senator MCCLELLAN. How about when an income tax agent comes down and says, "Let me see your books," is that an invasion of your privacy?

Mr. LANE. With a proper search warrant, you can go in that person's house, and I see no difference between that and getting a wiretap order.

Senator MCCLELLAN. Suppose you listen through the keyhole and hear something you can use later, is that an invasion of privacy?

Mr. LANE. I don't believe so.

Senator MCCLELLAN. Under the court's holdings, it would be one, if you carry this thing to its logical conclusion.

Mr. LANE. There is one thing I think the public has a misconception of, Senator, and that is, as to the number of wiretaps. If you talk to the average person on the street that reads about the wiretapping business in the papers, they think everybody's wire is tapped. When Frank Hogan appeared before us a few years ago in New York County, he gave us some figures. As I recall he said that in a 10-year period they had something like over 700,000 complaints of crimes and in that 10-year period they only had 700 wiretaps. That is a very small percentage. That would be about 70 wiretaps a year that they used, yet you read some of these writers and they let you believe that everybody's wire is tapped. That would be an average of about 70 a year out of some, I guess, around 70,000 complaints a year.

Senator McCLELLAN. You make reference, Judge, in your statement, to "Speaking in the name of 'civil liberties,' they completely disregard the compelling rights and interest of the public to be protected from the lawless acts of criminal elements."

Do you agree with me that civil liberties, so-called civil liberties, and individual rights today are being exhalted to the detriment of the protection of society?

Mr. GRUMET. I will repeat what I said before. There has to be, the basic issue here is maintaining a balance between the rights of the individual and the rights of the public, and I think that the rights of the public are being disregarded. I think that the rights of the individuals, although they should be fully protected, are not paramount. I say the rights of the public are paramount and when an individual interferes with the rights of the public, then of course his right to privacy ends, and I think the public has a right to question him and to invade his privacy to a certain extent, within limitations, and with proper safeguards.

Senator McCLELLAN. You made reference to the fact that there were attempts to repeal the New York State law authorizing wiretapping.

Mr. GRUMET. That is correct.

Senator McCLELLAN. How recent was that?

Mr. LANE. This last session of the legislature.

Senator McCLELLAN. This year?

Mr. LANE. This year.

Senator McCLELLAN. 1967?

Mr. LANE. About a month or two ago.

Senator McCLELLAN. Notwithstanding the attitude of the Supreme Court, and its ruling in the *Benanti* case that evidence so obtained is invalid and cannot be used, notwithstanding that, the people of New York, through their representatives in the legislature, have recently refused to repeal the statute——

Mr. LANE. It was by an overwhelming vote.

Mr. GRUMET. Two to one.

Mr. LANE. I think it was 2 or even 3 to 1.

Senator McCLELLAN. I pointed out a while ago that there are some areas where wiretapping may not be needed. It may not be needed in all of the States. There may be no organized crime and it may not be necessary, but in some areas—and I would think in yours, especially so in yours—where organized or syndicated crime is a fact, where they definitely operate, and where they make use of the telephone to carry on the criminal activities, that the same privilege should be granted to law enforcement officers under proper supervision to use that same instrumentality for detection purposes.

Mr. GRUMET. That gets back again to giving the States that want it the right to use it, and New York State is one of those.

Senator McCLELLAN. This pending bill does that.

Mr. GRUMET. Exactly.

Senator McCLELLAN. I would be glad to have you gentlemen further review S. 675 and submit any comments or statements about it with respect to any changes that you feel might be important.

Now, as to the confession bill, S. 674, you have touched on that briefly in your prepared statement. I would be glad for you to further

review that bill and submit any further comments that you may have for consideration on that.

Mr. GRUMET. Thank you very much.

Senator MCCLELLAN. Are there any further questions?

I have an editorial here from the Progress Bulletin of Pomona, Calif., on the subject of wiretapping.

Without objection I will have it printed in the record at this point.

(The editorial referred to follows:)

[From the Pomona, Calif., Progress Bulletin, Mar. 14, 1967]

WIRETAPPING JUSTIFIED

The Republic has survived in freedom for 178 years under a Constitution that permits police to intrude on private property, search through private papers and effects and confiscate evidence under authority of court-issued warrants.

Hence it is a little difficult to understand the horror that is aroused among some people by the idea of legalized wiretapping or eavesdropping in criminal investigation.

Wiretapping and other forms of electronic eavesdropping such as "bugging"—planting of hidden microphones—are merely extensions of the traditional form of search and seizure of evidence, without which law enforcement would be crippled. It is strange that the law is being asked to foreswear the use of these technological aids but not others. Such thinking logically would deny police the use of high-speed cars and two-way radios.

There have been police abuses even under the Constitution. In recent years, court decisions refining the rules governing the scope of warrants, the admissibility of evidence obtained by means of them and the use of confessions have strengthened the safeguards surrounding the rights of suspected persons. There is no reason why these rules should not be equally applicable to information gained by electronic means.

Nonpolice abuse of this new technology is another matter entirely. Without question, the unauthorized eavesdropping of private conversations should be prohibited by law, just as is the unauthorized physical intrusion into private homes.

This prohibition should cover not only private citizens, nonpolice investigators and "industrial spies," but also agencies like the Internal Revenue Service which has been accused in the past of bugging rooms where taxpayers and their lawyers conferred.

President Johnson, however, wants Congress to pass a total ban on wiretapping and electronic eavesdropping except in cases involving the national security.

A bill introduced by Sen. John McClellan of Arkansas would allow wiretapping (but not bugging) by court order in federal investigations of a limited number of crimes and would also legalize the use in state courts of wiretapping evidence obtained in accordance with state laws.

Testifying before a Senate Judiciary subcommittee holding hearings on the subject, Judge J. Edward Lumbard of the U. S. Court of Appeals recommended that the bill be broadened to induce electronic eavesdropping as well as wiretapping and that their use be authorized in the investigation of any federal crime.

"To the great majority of Americans," he said, it is unthinkable that law enforcement should remain as impotent as it is today."

What it comes down to is this: Either we, the people, trust our police and our courts or we do not. Or if we do not trust them, either we exercise ultimate control over them, through our legislators, or we do not.

But if we have been able to trust them in the matter of physical search and seizure of criminal evidence, it is not clear just what terrible danger is now posed by permitting them a more remote form of this power.

Indeed, the danger may lie in doing the opposite.

Senator MCCLELLAN. Very well, gentlemen, thank you very much.

Senator KENNEDY. May I just ask one final question.

In what do you think bugging ought to be allowed? Only organized crime, or other areas, too?

Mr. LANE. Bugging or wiretapping?

Senator KENNEDY. Both.

Mr. LANE. I am not so sure, I don't care much for bugging at all. There may be others that do. My personal opinion is that we should be permitted, and when I say "we," I mean law enforcement officials, to use wiretaps with reference to certain crimes that we find the underworld engaged in. The two particularly that I had reference to are gambling and narcotics. Before you came here, I expressed my theory which is that where you can use a wiretap to commit a crime, you should be able to use the wire to detect or prevent it. Bugging is a little different. I have not had too much experience with bugging. As a matter of fact, in bugging you do not use the bug to commit a crime. As, for instance in tapping a wire. My thought is that as far as gambling and narcotics are concerned, at least in our experience in New York, we have found that we could not have completed them without the use of wiretapping. We do not use them promiscuously. We use a few wiretaps to get leads and from then on our investigators go out and follow up the leads.

Mr. GRUMET. As a matter of fact, this may be of interest to you. I have a copy here of this morning's New York Times and the headline reads: "Bugging reported to yield evidence for milk inquiry. Hogan now said to change his approach as the result of the information gained." So, apparently the district attorney is using it, although I, too, with Commissioner Lane, have not had any experience with bugging, and I draw a distinction between that and wiretapping.

Senator KENNEDY. If you use the wiretapping to develop the leads, how do you go to court and get an order for authorization? That is, what basis for a warrant do you have if your purpose is to get a tap to obtain leads before you have any probable cause?

Mr. LANE. I think I gave an example of that. We received a complaint from the dean of men at Cornell about some gambling in football, on the scores, you know. So, we sent our agents up there and they had an investigation and they found it went further than that. On the basis of what they found, we went into court and got the wiretap order. As a result of that, our investigation took about 6 or 8 months and we found that this whole thing involved organized crime. It went from New York to Minneapolis and Chicago, to get the daily line on horses. Also, there is a service they have out there to give you the spread on point scores in football and we have found that the layoffs on big bets went to Kentucky, Miami, and New Orleans. After 6 or 8 months, with about 400 State police, we conducted simultaneous raids in 19 counties; and in those raids they picked up, I think, about 150 who were involved in this gambling. Also $100,000 in cash. On the basis of the material they picked up, projected by our accountants, we figured they were doing about a $500 million business just in those 19 counties. This all resulted from these leads that come from the wiretapipng.

Senator KENNEDY. It is your own personal feeling that this could not have been done without those wiretaps?

Mr. LANE. Yes, Senator. I feel it could not have been done without the wiretapping. With respect to professional gambling and horses and so forth, I do not believe a gambler could stay in business unless he has got the place to lay off bets, usually out of State, and also to get

the morning line. Also there is a system that they use where they send the race results within a minute or two after the race all over the United States, and they have to do that by telephone, too.

Mr. GRUMET. Senator, I might add that we have been faced again and again this morning with reference to your question about what you have to show, that this must be done and should be done by court order. We are against all wiretapping without specific authorization in our State by a justice of the supreme court. I hope you fully understand that.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Senator MCCLELLAN. Thank you, gentlemen.

Mr. GRUMET. Thank you, sir.

Senator MCCLELLAN. Judge Wren. Will you have a seat, please, sir.

Judge WREN. Thank you.

Senator MCCLELLAN. Thank you very much for responding to the committee's invitation to come and testify. We appreciate your cooperation.

Do you have a prepared statement?

Judge WREN. Senator, I did have. With apologies, I made some last minute changes on it, and my secretary has not yet had an opportunity to get it out here to me. The one I have before me has many marginal notations. I do have a prepared statement as such to read into the record with your permission.

Senator MCCLELLAN. Very well, you may proceed with it.

Give us your background, please, sir.

STATEMENT OF LAURENCE T. WREN, JUDGE, SUPERIOR COURT, FLAGSTAFF, ARIZ.

Judge WREN. At the present time I am judge of the Superior Court of the State of Arizona. I've been on the bench for a period slightly in excess of 5 years. Prior to that I was 6 years in the county attorney's office, as the prosecutor.

I would like at the outset, Senator, to thank you for the privilege of appearing before your committee. I read in an Arizona newspaper, in the Law Journal, the purpose of these subcommittee hearings, and your proposals as to legislation and constitutional amendments, and the matter immediately gained my intense interest.

I would also like to thank you for your very fine and informative letter and enclosures of the Congressional Record on the *Miranda* case. I must confess, after reading it, I feel like I'm here to learn, rather than to impart any knowledge of our famous, or perhaps infamous, as the case might be, *Miranda* decision. The record was certainly replete with a very knowledgeable account of your full knowledge as to the problems.

I did note, however, that my primary concern with the *Miranda* rationale was only lightly mentioned in your statement and in your recommendations.

Senator MCCLELLAN. You were the trial judge in the *Miranda* trial?

Judge WREN. I was the trial judge of the second *Miranda* trial, the retrial.

Senator MCCLELLAN. The second, not in the first one?

Judge WREN. That is correct.

Senator MCCLELLAN. Very well.

Judge WREN. I was callel to Phoenix from the northern part of the State to sit on the retrial of *Miranda*. I would like to add, gentlemen, that it was quite an experience. The retrial itself portrays my concern with its doctrine, and the problems which the Supreme Court decision places before us.

A jury was finally impaneled and immediately thereafter sequestered at the demand of defense counsel, Mr. John Flynn. He thereupon filed a motion to suppress certain evidence, as he is entitled to do under both Arizona and Federal law. And what followed, gentlemen, was a 9-day game of constitutional chess, during which time the jurors, during the 9 days, heard only 6 hours of testimony.

The rules of this game were so complex and the publicity on the excluded confession so intense that the jury was locked up in a motel room where they had no access whatsoever to the news media.

The attorneys and I worked long into the night researching the great web of constitutional law that each question and each answer of each witness led us into. The motion to suppress contained far more than the singular confession the U.S. Supreme Court had struck down in its consideration of the first *Miranda* trial and it delved deeply, very deeply into what we refer to in Arizona as that vast, dark, and completely mysterious cavern known as the fruit of the poison tree. What other evidence in the hands of the prosecutors had been tained by the unlawful confession? That is, in any way, his attorneys argued, had the verbal or tangible evidence directly or indirectly been derived from the original statement.

Mr. Justice Warren, writing for the majority in the *Miranda* opinion, stated that this case "presents a graphic example of the overstatement of the need for confessions and that there was adequate evidence left to convict in the *Miranda* case."

He further stated in *Miranda* "That the victim of the rape had identified her assailant."

Senator MCCLELLAN. What?

Judge WREN. Had identified her assailant. That is, she had identified Miranda in a police lineup, and he implied that justice would triumph without the use of his confession. This statement, gentlemen, is what more or less fired my resentment.

The victim's identification fell squarely back into the exclusionary rule. She had been completely unable a few minutes before to pick him out of a police lineup. The identification of Miranda came only after he had confessed in her presence that she was the girl he had raped. Nothing of the original evidence in the first trial was therefore left.

Miranda would have gone free on his second trial, because of the exclusionary ruling, on an instructed verdict of acquittal had not the county attorney's office, 1 week before the second trial, literally stumbled onto a statement made by the accused to a woman with whom he had been living at the time of the rape.

The complexities of the constitutional precepts governing her testimony were unbelievable and here, gentlemen, is my concern with the principle of the unlawful confession.

Now, Flynn's argument, that is her defense attorney's argument, was that the statement was made to her while he was still in jail and that he was unlawfully incarcerated because the arrest followed the illegally obtained confession; that the unlawful confession could not therefore constitute probable cause for the arrest; that the police had therefore placed him in the position of needing bail and a lawyer, and that his subsequent admissions to the woman, therefore, were the product; that is, the poisoned fruits of the first unlawful confession.

Senator McCLELLAN. May I inquire, just for information, was the alleged confession to her, I believe she was his common law wife, was that the relationship that presumably existed?

Judge WREN. Did this relationship exist?

Senator McCLELLAN. Is that the relationship that presumably existed between Miranda and this woman?

Judge WREN. Arizona does not recognize a common law marriage. The papers immediately tagged her as the common law wife——

Senator McCLELLAN. I noticed it in the press, I didn't know, and I ask for clarification.

Judge WREN. Under Arizona law there is no disqualification to her testifying against Miranda because, for the privilege to be exercised, there has to be, in effect, a legal marriage, and Arizona does not recognize a common law marriage. But there was a so-called common law——

Senator McCLELLAN. Was the statement to her, the confession to her, before or after the one he made to the officials?

Judge WREN. It was made the following day, it followed it.

Senator McCLELLAN. The following day? Is it not a part of the so-called poisoned fruit?

Judge WREN. This is what her attorney argued and very forcibly so, and his argument had a great deal of tenacity under our decisions. Again, this is one reason the trial took 9 days.

Senator McCLELLAN. What will happen when it goes to the Supreme Court the second time, if it follows the rule laid down in the first case, would it have to again reverse the decision or delete the material?

Judge WREN. There is a lot of argument pro and con on that proposition, Senator. The rationale of *Miranda* is restricted to police exploitation, in other words, interrogation by a police officer, not a lay person.

I drew the line on this point, too, but of course, Counsel Flynn had a strong argument that the environment was produced by the police, that he was unlawfully in jail and therefore it was police exploitation, rather than individual exploitation.

Senator McCLELLAN. What I am pointing out is that the confession he was convicted on the second time was a confession made by the accused after the first confession which the Supreme Court had held would be invalid if it followed the precedent set in the *Killough* case. In other words, under the previous decision and the precedent set in that, they would probably hold that this second confession was not acceptable. I don't know how you resolved that in trying the case.

Judge WREN. Had the second confession been given to a police officer, there is no question but that it would have had to be excluded, but all of the cases dealing with the proposition talked about police exploitation of the first confession.

Senator McCLELLAN. Well, do you think because there was no probability of police exploitation associated with the second confession that it may be held to be valid?

Judge WREN. I so ruled, because the police had not sent her there for the purpose of getting the confession; he, in fact, had sent for her. Nor, had the police in any way sat in on the conversation.

Senator MCCLELLAN. That is a fine distinction made here upon which there is a probability or a hope that the second conviction will be confirmed.

Judge WREN. That is correct, sir; and there is a very good possibility that it would be reversed.

Senator MCCLELLAN. Go ahead.

Judge WREN. I think, to realize the full import of the *Miranda* doctrine, too, one has to read the *Wong Sun* case in San Francisco which deals with evidence gathered pursuant to an unlawful arrest, and where a very fine thread was followed to exclude verbal and tangible evidence gathered after the confessionary statement.

Now, again, Mr. Justice Warren made the statement in *Miranda*, and this is the one that I feel gives the full import of it:

> That unless and until such warning and waiver are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.

Justice Clark, of course, interpreted it the same way as I did, when he dissented. He said that, "failure to follow the new procedure requires inexorably the exclusion of any statement, as well as the fruits thereof."

Now, in the retrial, as I just indicated in response to your question, I restricted the application of this fruit of the poison tree doctrine to direct as distinguished from indirect police exploitation of the confession.

Gentlemen, I presented the retrial in some detail to illustrate my concern.

Miranda was convicted at the second trial, and, in a way, this was unfortunate, because it lends credence to the Supreme Court's statement that without the confession to police there was still adequate evidence. Time magazine tossed off the damage done by the exclusionary rule in *Miranda* by pointing out that he was convicted again on a retrial; that there was still enough evidence to convict. Any many courts might well have split the hair the other way and acquitted the defendant; holding that the confessionary evidence was the product of police activity.

Senator MCCLELLAN. Was the second confession known at the time of the first trial?

Judge WREN. No, it was not. It was not known by anyone until just shortly prior to the second trial. She suddenly became angry with Miranda over his threat to take his baby away from her because she had a child by another man while he was in prison, and for this reason her testimony suddenly came forward.

Senator KENNEDY. Had they questioned her before that?

Judge WREN. To my knowledge, Senator, as brought out at the trial, there had been no questioning or examination or interrogation of her at all until 3 days before the second trial.

Senator KENNEDY. Was there any particular reason she was not questioned before that?

Judge WREN. This was not mentioned, I do not know. I assume that they felt she would offer nothing in evidence against him because she

had been living with him for a period of several years, three or four, I believe.

Senator McClellan. Proceed.

Judge Wren. When the verdict was finally in, I suddenly realized, with complete amazement and infinite disgust, that we had dealt, not at all, during that 9-day trial with the basic question of guilt or innocence. Not once had this question been even a part of our thorny legal arguments and motions. In fact, the trial, had a very ironical twist on that point. Miranda himself took the witness chair, in the absence of the jury, of course, and, while testifying that his second confession was tainted by the first, admitted on cross-examination, that he had, in fact, raped the girl.

Senator McClellan. He admitted that in chambers?

Judge Wren. No, this was in open court, in the witness chair with the jury being absent, of course. He was testifying on the question——

Senator McClellan. Out of the presence of the jury, of course they have a different terminology, but it was not in the presence of the jury, he admitted to the trial court that he did, in fact, rape the girl?

Judge Wren. This was on a hearing on the admissibility of his statements to the so-called common-law wife, that is, to the woman with whom he had been living.

Senator McClellan. It was admitted under oath, before the court which tried the case?

Judge Wren. Yes, that he had raped the girl.

Senator McClellan. Yes.

Judge Wren. And of course the question was immediately asked by me and others, and was discussed rather extensively; can you imagine the utter consternation and complete dismay of the 12 jurors had they acquitted Miranda and then read later in the newspapers that he had confessed in the witness chair.

I knew the newspapers in Arizona would be asking the question—does this type of thing create the increased respect for law enforcement officials which the *Miranda* principle is said to do.

I know that the hue and cry of *Miranda* has created an out and out bitterness in Arizona in many circles. His release might also have been rather hard on an unknown future victim because he had a history of sex offenses, and yet, in spite of all this, the Supreme Court opinion admitted that the 2-hour interrogation preceding his confession had not been unreasonable and was free of coercion in its historical sense.

I agreed with what this committee has stated, or certain members of this committee have stated, that the standards of the proof of guilt which have been voiced in the Congressional Record are more than adequate to protect the rights of the accused, and that the enunciation of such utopian principles as "no man is above the law and no man below it," used to justify our recent excursions into new constitutional interpretations do not alter this basic premise.

Some say the Supreme Court is dedicated to the proposition that confessions should be outlawed. I personally, gentlemen, would rue the day that Justice White's dissenting prediction in *Escobedo* would come true. We all know that interrogation is the age-old tool of the investigator. Many law officers feel that there is no stronger or

more reliable evidence than the voluntary confession. And I used the word "voluntary" in its normal Websterian sense, which I feel that the drafters, our ancestral drafters of the fifth amendment were doing when they insulated confessions against their production on the whipping post or in the stockades.

I do not seriously quarrel with the doctrine of *Miranda* in the sophistication of police station interrogation, in other words, a formal interrogation. But when the technicalities of the courtroom are moved beyond the police station and into the police car, my quarrel then becomes alive.

I would like to demonstrate this by a brief analogy to a case which I sat on in Florence, Ariz., one Cozzie Jones, who also received some national attention. The officers in an outlying precinct had received word that a known convicted killer from back East, an escapee, was in a vehicle whose description they also had, and that he had just kidnapped a man at gunpoint. At approximately midnight the officers located the vehicle with Jones inside. They had also been warned that the occupant of the vehicle, the driver, was armed and dangerous. He was asked his name, and admitted that he was Jones.

They then asked him where the gun was and he said it was in the back seat. One of the officers thereupon said, "Where is Quast," the name of the individual he supposedly had kidnaped a short time before. Jones then admitted that he had kidnaped him and then he had killed him, and he led the officers to the spot where the body had been dumped at a desert trash dump.

Prior to the trial of this case a motion to suppress all this evidence was heard by me, and it was agreed by the county attorney's office that it would have to be granted because the principles of *Miranda* were not followed at the scene of the arrest and prior to the question: "Where is Quast?" The full impact of *Miranda* struck me when I realized the fear that these officers had out there at midnight, with a known killer, who had a gun, and who admitted in response to one question as to the whereabouts of a kidnap victim that he had killed him and dumped the body. Not only the admission that he had killed a man, but also the evidence of the finding of the body at the city dump, had to be excluded from the record, or from introduction into evidence, because clearly here was the fruit of the first poisoned statement.

Senator McCLELLAN. Because of the Supreme Court decision in what case?

Judge WREN. The *Miranda* case.

Senator McCLELLAN. And you had to dismiss the case and explain—

Judge WREN. This was this last January.

In addition to that, the formal interrogation which followed it by several hours in the police station had also to be stricken from the evidence and not used because under *Westover*, a companion case to *Miranda*, it was a part of this poisoned fruit doctrine.

I noted also an analogous case in the *People* v. *Allen*, reported in a New York supplement. There police officers went to the defendant's home to arrest him for the rape of his mother-in-law. In the presence of the defendant and his wife, without giving *Miranda's* fourfold warning, the police asked if Allen had raped the complainant. Deny-

ing the rape, Allen admitted having had intercourse with her but maintained that she had consented. He was then arrested and taken to police headquarters.

Supreme Court Judge Sobel, in holding the incriminating statement inadmissible, found irrelevant that only a single routine question was asked and held that the defendant had been questioned during a time when he was being deprived of his freedom in a significant way.

The question was designed to elicit a response that might have incriminated him and under these facts the *Miranda* warning was required.

Judge Sobel also found unimportant that the question was asked prior to arrest, since the defendant was not at such time free to go. He interpreted the *Miranda* case and he was right, but the claimed analogy to FBI practice falters here. Now, the taking of a confession at the commencement of investigation, I feel, has become a dangerous tool to successful prosecution. Heretofore it was an aid to solving crimes. Now it is a deterrent. If tossed out on a technicality any tangible evidence following it is also likely to be thrown out.

I was told recently by a very prominent and successful defense attorney in Arizona that he would actually rather defend a self-confessed criminal than one who had not made any incriminatory statement to the police. Why? Because the forensic, physical evidence which the officers had is easier to suppress, because the getting of such evidence in nine out of 10 cases follows the confessionary statement and is in some way related to it.

Now, gentlemen, when you place the doctrine of *Miranda* and *Won Sun* in the hands of very competent defense counsel, like John Flynn, Lee Bailey, Ed Williams, Percy Forman, you are rendering a conviction based on police interrogation or even in part on police interrogation well nigh impossible. And it is for these reasons that the strict mandates of the *Miranda* doctrine should be emasculated as not bearing directly on the issue of guilt or innocence and as not being compatible with the problem involved.

That was all of my prepared statement, Senator.

Senator McClellan. Thank you very much.

Where was this other case that had to be dismissed?

Judge Wren. The *Jones* case?

Senator McClellan. Where was that?

Judge Wren. Florence, Ariz. The case in itself was not dismissed. Because of a mental factor he had been committed to the State hospital. This mental factor also produced his incarceration in the State prison at the recommendation of psychiatrists. Had defense counsel so desired his acquittal would probably have been assured.

Senator McClellan. Would you say the precedents established in the *Miranda* and other cases, such as *Escobedo* and *Mallory*, have made it more difficult to convict the guilty?

Judge Wren. Well, I don't think there is any question about it, that it has handicapped a great deal the prosecution in those areas where such cases come into play. Of course, you, when you mention *Escobedo*, I have no quarrel with the *Escobedo* decision as such, when based on those particular facts. I think it is another area where a good case makes bad law. It is the expansion of the *Escobedo* case or doctrine by

California when they followed it in the *Dorado* case that I quarrel with.

I don't have any quarrel with *Mapp* v. *Ohio* on the facts of that case, because it was a case of police brutality, but it is the highly technical situation, of nonformal interrogation in the field such as *Miranda* encompasses that I quarrel with. Theoretically it is applicable even to a traffic citation.

Senator MCCLELLAN. Like all of us, you are opposed to police brutality or in the extortion of a confession or an incriminating statement.

Judge WREN. Yes, on that point, yes. But in the 6 years I spent in the county attorneys office, and in the many more hours that I spent discussing these questions and problems with other prosecutors in Arizona, I have never come across a single case of police coercion on a confession, not one.

Senator MCCLELLAN. Let me ask you——

Judge WREN. That is, coercion in its traditional sense, not as enunciated by *Miranda*.

Senator MCCLELLAN. Let me ask you, in this second trial of *Miranda*—the defendant was placed on the witness stand by his own counsel in support of a motion pending before the court?

Judge WREN. That is correct.

Senator MCCLELLAN. And it was in support of a motion on his behalf?

Judge WREN. That is correct.

Senator MCCLELLAN. That he testified. And, upon examination by the court or by the district attorney——

Judge WREN. By the district attorney in cross-examination.

Senator MCCLELLAN. He admitted to the court——

Judge WREN. Yes.

Senator MCCLELLAN (continuing). Admitted to the trial judge under oath that he did rape the woman?

Judge WREN. That is correct.

Senator MCCLELLAN. What kind of a system of justice have we in this country, where, under those circumstances, a man can go free?

Judge WREN. Of course, Senator, in fairness to the defense here, this type of a hearing has long been required and allowed in many courts.

Senator MCCLELLAN. I am not objecting to that, I can understand that. I can well understand that it should have been heard out of the presence of the jury, no question about that. But I am showing the advantages the defendant has when he can walk into the court and look the court in the face and say, "Oh, yes, I raped her, what are you going to do about it?" Must the court turn him loose on a technicality, thus freeing him to rape somebody else?

Judge WREN. Of course, the same thing would be true in normal out-of-jury-hearing on the voluntariness of a confession.

Senator MCCLELLAN. True.

Judge WREN. In other words, the guilt or innocence really on a normal voluntary hearing is not pertinent——

Senator MCCLELLAN. Let me ask you this: What is the objection to permitting the trial court to ascertain, in the manner in which you were hearing that motion, from all of the circumstances that attended

an incriminating statement or a confession and weighing it to determine whether under all of the facts it was voluntary or not? What is wrong with that procedure?

Judge WREN. I see nothing wrong with it. I see nothing wrong with incorporating the *Miranda* doctrine into it to that extent, so long as it does not absolutely exclude the confession. I believe this is the position taken by Justice Clark in his dissent when he states this is one of the factors which should be considered on the totality of the circumstances as to the voluntariness of the confession.

Senator MCCLELLAN. After hearing all of the testimony the trial judge concludes that there was no evidence to sustain a claim of coercion or intimidation, or that the statement was involuntary, then if he permits it to go to the jury and tells the jury "weigh it, give it such weight as you think it is entitled to under all the circumstances," what is wrong with that in our system of justice?

Judge WREN. Senator, I agree that that should be the law.

Senator MCCLELLAN. That has been the law until this *Miranda* decision, hasn't it?

Judge WREN. That is correct, at least in the States with which I am familiar.

Senator MCCLELLAN. That has been the law.

Now, what is wrong about that? What about that is unfair to a defendant?

Judge WREN. We are talking about the question of basic guilt or innocence under the historical test, there is nothing wrong with it.

Senator MCCLELLAN. Isn't that what we ought to be doing, determining the guilt or innocence?

Judge WREN. This is what we ought to be doing; yes.

Senator MCCLELLAN. Shouldn't that be the chief objective of a criminal trial?

Judge WREN. That is correct. In fact, the defense attorney in the *Miranda* case admitted to me afterward, he said, "In a way I goofed this case, for I forgot about the jury. I forgot about the question of guilt or innocence and a proper presentation on that point because I became so wrapped up on getting it dismissed on constitutional questions." But of course, the constitutional issues have an important bearing.

Senator MCCLELLAN. I take it you would support the confessions bill which I have introduced. I have never talked to you about it, I don't know your position, I am just asking you.

Judge WREN. I support the language of it, Senator, but I don't feel that it would change anything.

Senator MCCLELLAN. Do you think the court would hold it unconstitutional, is that what you mean?

Judge WREN. No, because there is nothing unconstitutional in a sense, about our present law on confessions, although most of it is derived from the common law and from a doctrine of stare decisis, rather than from specific enunciations of our legislators.

But the thing is that the *Miranda* doctrine is itself based upon the proposition of voluntariness. This is replete throughout the opinions in both the majority and the minority, and of course, in *Johnson* v. *New Jersey*, they enunciated that it was based on the voluntary doc-

trine, but they were ruling on the question of its retroactivity. So, to merely state that these principles shall be considered by the judge, as you have proposed in S. 674, and later by the jury as bearing on the question of voluntariness, does not and would not, I feel, change the Supreme Court's position on *Miranda*, because they have stated that failure to advise the accused of his right to a lawyer is something that would absolutely bar the confession and they also state that this has a direct bearing on the question of voluntariness; that the coercion may result from psychological as well as physical pressure.

Senator McCLELLAN. The bill proposes that the jury take that into account, it doesn't say that they are bound, they may take into account whether he was advised that he might have an attorney, but it doesn't preclude the testimony just because he was not so advised.

Judge WREN. I understand this, Senator, but as long as the Supreme Court has *Miranda* on its books and wants to follow it, they could and probably would follow it, I feel, without in any way declaring that this is not a valid proposition.

Senator McCLELLAN. They might find some pretext to get around it.

Judge WREN. I think as long as the fifth amendment is in its present form, and as long as we have the——

Senator McCLELLAN. Do you think we have got to revise that?

Judge WREN. I think that the only way that the *Miranda* doctrine can be emasculated is to spell out what the fifth amendment means or to set out specifically that the *Miranda* doctrine is not applicable to a fifth amendment confessionatory statement.

Senator McCLELLAN. It may be highly improbable in this instance, but it becomes a very common practice for some Supreme Court Justices to change their minds.

Judge WREN. Whether it would have this effect or not on the Supreme Court, I don't know, but legally I don't think that S. 674 would have any effect. Of course, it is applicable only to the Federal courts, No. 1; and secondly it merely sets forth——

Senator McCLELLAN. But, if it is applicable to the Federal courts, and should a State legislature pass a comparable statute, the Supreme Court would have to sustain if it sustained the Federal statute, I assume.

Judge WREN. That would probably be correct.

Senator McCLELLAN. That would probably be correct. I don't know whether we can say it would be correct or would not, but if the Federal Government practices something and the Court holds the Federal statute to be constitutional, I assume that a like State statute actually would be held constitutional; would it not?

Judge WREN. Yes; I think that probably follows.

Senator McCLELLAN. Let me ask you another question. Do you know the past criminal record of Miranda?

Judge WREN. He had a history of sexual problems.

Senator McCLELLAN. What?

Judge WREN. Sexual problems, sexual deviant behavior, based in part on psychiatric reports and in part on prior arrests. It did not deal, I believe, with a felony, but it did deal with a misdemeanor on some sex offense, the exact nature of which I do not at this time recall.

Senator McCLELLAN. Had he not also been convicted in Tennessee under some statute?

Judge WREN. I don't know as to an actual conviction on a sex offense, but he had been picked up before and he had been investigated and psychiatric tests, if I recall correctly, were made on him.

Senator McCLELLAN. Again, he was not a total stranger to court procedures, after arrests and interrogations?

Judge WREN. I couldn't answer that. I am sure he had been in court before, but just how much advice they had given him, I don't know, sir.

Senator McCLELLAN. Thank you very much.

Senator Kennedy?

Senator KENNEDY. Judge, as I understand the *Escobedo* case, the holding was to the effect that an accused is entitled to a lawyer in a police station, that he is entitled to legal counsel and legal advice while he is being held in a police station?

Judge WREN. I don't believe *Escobedo* goes that far. In *Escobedo* the accused had already retained counsel. *Escobedo* was a sixth amendment case, not a fifth amendment. In other words, *Escobedo* went to the proposition that the accused had already had counsel and requested counsel, was entitled to have him and, you see, there was an actual request made there. It wasn't a question of being warned under his fifth amendment rights.

Senator KENNEDY. Nonetheless, he was entitled to counsel at that time?

Judge WREN. At interrogation?

Senator KENNEDY. At interrogation.

Judge WREN. Yes, sir.

Senator KENNEDY. And *Miranda* says he is to be notified of that right?

Judge WREN. That is correct.

Senator KENNEDY. Is this the point where you distinguish between what you find acceptable and what you find objectionable?

Judge WREN. No, Senator. I'm sorry, perhaps I did not make myself clear. I have no quarrel with the warning question being given, I have no quarrel that this is an accused's right. Perhaps he should be informed of it. But my quarrel is that it goes way beyond merely being considered a part of the overall picture, of whether the statement is or is not involuntary, and rendering it per se an involuntary statement and excluded in evidence, because I don't think it in any way deals with the competency of the evidence or the question of guilt or innocence of the accused. Take for instance, an interrogator. An interrogator who would use third-degree methods to obtain a confession and deny their use later in court, would also prevaricate and lie as to the giving of the warning question. *Miranda* accomplishes very little of its intended purpose.

I don't think commonsensewise we could say that *Miranda* would in any way detract from that. The *Miranda* doctrine is too difficult to use in the field. Again, I don't have any real quarrel with it, or its use in a sophisticated police station interrogation, but to require an officer in the field facing a gun and perhaps fear, to have to give the warning questions before he can ask any type of question that might bring

forth an incriminating statement, is, to me, going too far. I don't think—and the issue in the *Miranda* case itself did not deal basically with whether or not it should be given—it dealt with the fact that when it is not given and whether this would in any way keep the confession out by per se rendering it involuntary, in other words, the issue between the majority and the dissenting judges in *Miranda* was not, as I read it, "should we give the warning question?" All agreed, the dissenters agreed, that this is one of the rights, and perhaps he should be advised of it, but not to make it within the exclusion rule.

That is my thinking as well.

Senator KENNEDY. Thank you very much.

Senator MCCLELLAN. Thank you, Judge, thank you very much.

Mr. Wilson—is Mr. Wilson present, Orlando Wilson?

(No response.)

Senator MCCLELLAN. Mr. Robert W. Johnson.

Mr. JOHNSON. Yes, Mr. Chairman.

Senator MCCLELLAN. Mr. Johnson, will you come forward. Senator Mondale hoped to be here to introduce you in person. However, other commitments prevented his doing so. Instead he has asked that this letter of introduction be placed in the record, and I so direct.

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
April 19, 1967.

Senator JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Through this letter I would like to introduce to this Committee Mr. Robert Johnson, attorney for Anoka County, Minnesota. He is accompanied by Mr. Cecil Hegarty of the city of Anoka Police Department. I know both of these men personally. My knowledge of their backgrounds and accomplishments leads me to believe that they have a valuable contribution to make and that their testimony will be of benefit to the Committee.

I appreciate the fact that they have been called as witnesses.

Sincerely,

WALTER F. MONDALE.

You may identify yourself and proceed.

STATEMENT OF ROBERT W. JOHNSON, COUNTY ATTORNEY, ANOKA COUNTY, MINN.

Mr. JOHNSON. Thank you, Mr. Chairman.

My name is Robert Johnson. I am county attorney of a surburban county of Minneapolis and St. Paul. I have been county attorney since 1950.

In addition to that, I am chairman of the Minnesota Municipal Commission that passes on annexations and corporations, mergers, this type of thing for the State of Minnesota, primarily dealing in the metropolitan area.

I have been chairman of the Governor's Advisory Council on Children and Youth for 6 years, which relates in part to activity that has to do with prevention of crime.

Anoka County is a surburban county and I was very interested in hearing the testimony this morning that this——

Senator MCCLELLAN. What kind of county.

Mr. JOHNSON. A suburban county.

This is quite a change of pace from what you have heard so far this morning, because we don't deal in thousands, we deal in hundreds and less than hundreds, where New York and other places are dealing with much larger numbers.

The CHAIRMAN. Do you have someone with you that you can identify?

Mr. JOHNSON. Mr. Cecil Hegarty is with me. He is an investigator for the city of Anoka.

Senator MCCLELLAN. How long have you been an investigator?

Mr. HEGARTY. Four years, but I have been with the police department 12 years.

Senator MCCLELLAN. You have been a policeman for 12 years?

Mr. HEGARTY. Twelve years.

Senator MCCLELLAN. Very well. Do you have a prepared statement, Mr. Johnson?

Mr. JOHNSON. I have a prepared statement which has been duplicated and each of the committee members has a copy of it.

Senator MCCLELLAN. I have a copy of it here.

Mr. JOHNSON. Rather than read it in its entirety, I would simply summarize it.

Senator MCCLELLAN. Very well. Let the statement be printed in the record in full and we will be glad to have you summarize it, Mr. Johnson.

(The prepared statement of Mr. Robert Johnson follows:)

PREPARED STATEMENT OF MR. ROBERT JOHNSON

Mr. Chairman, members of the Committee on the Judiciary, it is a privilege to have an opportunity to testify before you in regard to this very vital and critical matter.

By way of background so that you can better evaluate my testimony, I will identify myself first as being Robert Johnson from Anoka, Minnesota. I am County Attorney of Anoka County and have been County Attorney since 1950. Anoka County is a part of the Minneapolis-St. Paul metropolitan area. We are adjacent to both Hennepin and Ramsey Counties—Minneapolis being located in Hennepin Co. and St. Paul in Ramsey Co. Mpls.-St. Paul are the core cities. In the year 1950, Anoka County had a population of 35,579; in the year 1960, 85,816; and our estimate now as of Jan. 1, 1967, is 140,000. The governmental structure within our county is: we have 5 cities, 9 villages, 7 townships—the cities & villages vary in size from about 300 to 27,000. The townships vary in size from about 500 to 2,000. Our police departments within the county vary from townships without even so much as a Constable to cities with a police force of about 20. The County Sheriff's office has 25 deputies. In 1950 the Sheriff had 2 deputies in addition to himself to take care of the police work in the county as far as the county responsibility. Some of the townships have one and two constables who are merely on call. The villages by and large have either constables or part-time policemen who work at a regular job in the daytime and then work in the evening as a part-time patrol officer. One of the villages has a police department made up of a chief and 3 part-time officers. Of the 4 cities, one has 2 investigators who have had some training in investigating. Three have investigators who have merely been assigned this responsibility but do not have any formal training and one of the cities does not have an investigator at all. In the Sheriff's Department the table of organization calls for 8 investigators. At the present time he has 3 and only one of the 3 has any type of formal training in the field of investigation or detective work. At the present time the Sheriff is contemplating adding 5 more investigators who he will attempt to recruit from the patrol and obviously, they will come into the force without any training in the field of investigation or detective work.

As you can readily see, our problem is very great. The incidents of crime in our suburban area have been alarming in the amount of increases and our ability to cope with this problem is, to say the least, very limited. The problem indeed is so complex that it is a little difficult to know just where to start explaining. In order to bring some order to the approach of this question, I will list the matters that I will discuss, not necessarily in their order of importance:

(1) The need for training
(2) The availability of training
(3) The practical considerations in making training available to the different departments
(4) The problems we are having in operating under the existing Supreme Court decisions
(5) Efforts that we are making to cope with the problem
(6) Suggestions that we are making to the committee which would be helpful to us.

No. 1: the need for training, of course, is self-evident. All you have to do is examine the information I have given you and with your knowledge of the law and the rights of the individuals under existing cases and the complexity of responsibilities that a police officer has in today's sophisticated society, the need for training is so overwhelming that it is self-evident. Perhaps this would be a place, however, to review just briefly with you what is expected of a police officer in the suburban area, which is somewhat different from the responsibility that a police officer has in a larger department such as Mpls. or St. Paul or one of the other metropolitan police forces where they have these various degrees of specialization. I am sure you gentlemen recognize that the Supreme Court decisions have placed tremendous responsibility on the patrol officer that he previously did not have. Perhaps the best way to illustrate this would be to speak of specific cases confronting patrol officers so that you can better understand the complexity of their responsibility—

One day about 2 in the morning in January, 2 of our patrol officers were making a routine check of a liquor store that has been burglarized 4 times in the last year, and as they approached the building they noticed a hand disappear from the roof of the building and within a few seconds saw 2 men running away from the building and off into the woods. They radioed for help and pursued the individuals on foot, apprehended one of them in the woods at about 2:30 that AM. The other one surrendered to one of the other squad cars that answered their call for help. Here you have the demonstrated need for keenness of observation of the officers as they approached the building because, obviously, had they not seen the hand, there would be some question as to their right to arrest these 2 people who they saw running across the field. Then you move into the psychological tension of the chase in not knowing if the men were armed or not, the pressure of self-preservation, together with the competitiveness of the situation. When they finally apprehended one individual, then under the *Miranda* case, of course, they were required to give the suspect his warnings and this would have to be very carefully and accurately given to the defendant. Not only that, they would have to create a situation in which the defendant understood what was being said to him and able to intelligently waive any rights he had. Mind you, this is 2 AM and 2 big burly policemen with their guns drawn and under this type of a setting, they then have to be able to handle this in such a way that psychologically they have acclimated the individual apprehended into a frame of mind where he can intelligently and calmly waive any rights he might have relating to any confessions or admissions he might make under the circumstances. Now those same 2 men very well within their same tour of duty may be called upon to settle a domestic quarrel between a hysterical wife and a drunken husband, handle some obnoxious and difficult teenagers, be called upon to render first aid with loving care and tenderness to someone who was injured—yes, even possibly deliver a baby—be called upon to investigate and report on neglect and dependency matters, handle a complaint relating to mistreatment of animals and the whole gamut of human behavior, of course, that they could be called upon to make judgments on and handle.

I guess what I am trying to establish is that this man we call a patrol officer must be a highly trained, very able, dedicated and resourceful person if we are going to carry out the mandates and directives of the Supreme Court. Let it be perfectly clear that I can understand the logic of the Supreme Court and its majority opinion but the ability to implement this type of logic is very limited.

If the patrolman makes a mistake at any one of several very critical areas as he is apprehending a criminal or alleged criminal, this mistake can not only result in a failure of prosecution but can result in substantial criticism to himself for his failure to have carried out his responsibilities. The results of these responsibilities are many and varied. Not the least of which is a very severe morale problem. It is much easier for the officer just to not see the problem and not address himself to an attempted solution to the problem because he certainly feels and rightly so that with the emphasis the way it is today, really he goes on trial as soon as he makes any kind of an arrest. So that in order to avoid controversy or any problem it is much easier for him to just not see whatever it is. Pick off the simple ones and avoid the complicated ones and all will be well.

The need for training, gentlemen, is very great. There are quite a number of training courses available. The State of Minn. through the Crime Bureau conducts a number of regional training sessions covering different areas and responsibilities in police work. Mpls. and St. Paul both have training schools. Hennepin County chiefs of Police have a training school. But these are inadequate to meet the needs of this type of a community such as Anoka County. The larger departments in the county take advantage of these training sessions. Of necessity there are several major weaknesses. First, your part-time policeman is not going to be able to take advantage of this. Your one and two man police departments are not going to take advantage of this. Your local communities are not prepared to release these men for the schools nor to pay the cost of attending, the cost being, of course, primarily the time that these men must be off from work. In this regard and a little aside, one could say that the community is at fault and should assume this responsibility and if they do not want to assume it, it is just too bad.

Well, in this regard I would further identify myself as chairman of the Minn. Munic. Comm. I have been on the commission for 8 years and conducted hearings throughout the state, mostly in the metropolitan area relating to annexation, incorporation, merger and detachment. Through these hearings you begin to pick up the tremendous number of problems confronting a community who are newly formed and becoming urbanized. If you visualize a group of people who have formed a government and are starting from scratch, you can just run down the list of water, sewer, roads, sidewalks, recreation, zoning, planning, building codes, fire departments, and police then just becomes one of a great multitude of responsibilities that they are assuming to provide for themselves. I suppose basically we always think the other guy is honest and as we form together we sort of assume we are not going to have any problem in our community because everyone loves everyone. At any rate, it is an American tradition that you can take care of yourself. It used to be we had our dog and our gun and I guess this was kind of a law enforcement officer on your own. It is a little difficult for a community, which is a group of people, to recognize the problems inherent in policing under today's set of rules that we have to go by. As a result, policing is kind of far down the list when it comes to establishing a substantive program for this responsibility. A community really is no different than you or I individually. We sort of respond to the need as it develops, so I suppose that if a community would have an experience of a heinous crime or just as certain leaders in the community would be subjected to some criminal element, then the community would get on the move and chances are that in this type of emotional reaction you would have an extreme reaction and this is what I fear most. That is that if we in law enforcement are unable to provide adequate and proper police protection, the public after experiencing a series of indignities and the criminal element are going to cause the pendulum to swing to the other extreme where we end up with a police state.

The other aspect of the training program is that criminal laws have been changing so rapidly that it is really a week by week basis in which you can determine what rights you have and don't have. For example, when the *Miranda* case came down in June last year we had cases pending which were handled properly prior to that time but did not come up for trial until after that time. We then could not prosecute them because the proper warnings had not been given prior to making the confession. This goes to the matter of training patrol officers and investigators, and in the absence of having this on-going, in-service training at the department and patrol level, you get this delayed training where these officers are proceeding on the basis of what they had been previously trained or taught to be the law and had not had occasion to be informed to the contrary because of the lack of training of any on-going, in-service kind.

The third concern I have is that training programs are basically lecture programs, and the men who are in the police departments attending these lecture programs are not experienced in taking notes from lectures and as a result they retain but very little of what they hear. It is my opinon that the training programs have to be designed in such a way that those attending are able to understand and retain enough to make it usable. It is my impression that this is not the case with the training programs we have. They are better than nothing, but the point is, they are not getting the job done in the type of detail necessary to keep up with the sophisticated rules the Supreme Court has enunciated.

The problems that we experience in our county of operating under the existing rules have been quite substantial. Let me just by way of passing before I get into specific instances and cases involved make my observation that the full impact of these rules on the effectiveness of law enforcement and successful prosecutions has not yet been experienced. We have a public defender system in Minnesota newly instituted and reasonably effective. There is no question in my mind that as time goes on, if the technical rights are strictly adhered to and pursued in depth in each case, our rates of successful prosecution will be cut in half. We have had in addition to this observation that the worst is yet to come, let me illustrate specific instances of cases where we have failed in prosecution or are likely to fail because of the rules we have to proceed under.

The instances which I cited earlier relating to the attempted burglary at the liquor store when these two individuals were informed of their rights under *Miranda*, they both indicated an unwillingness to talk and of course immediately upon having expressed this unwillingness to talk, we were forbidden from having any further conversation with them about the matter.

Last fall a specific case we had—a young man was apprehended in another jurisdiction by a patrol officer for careless driving and as he radioed in to have a license check on the car he found that it was a stolen car. He then noticed on the seat alongside the driver that there was, among other things, a notarial seal for Anoka County, so he started inquiring of this individual on various matters he may have been involved in and failed to give the man his *Miranda* warning. The man confessed to a burglary in our county in a general way. The officer then realized he had something more than a misdemeanor on his hands and took him to the police station, where he was given his *Miranda* warning in its complete detail. He then again confessed to the crime in Anoka County. We charged him and under a motion to suppress the evidence came out that he had made the admission of this crime prior and it was then the "fruit of the forbidden tree" theory and as a result we were unsuccessful in the prosecution of the case.

We had a situation come up a few weeks ago—we had a man who committed a felony and was racing away from the scene and the police officer was pursuing him and the police officer shot the man. A bullet went through his kidney and liver and the officer rushed up to him and was administering to his wounds and wiping the blood away and at the same time reciting the Miranda warning to him as he lay in this prone, critical condition. The officer was surely doing what he should do, but I think it is kind of illustrative of a frantic mind functioning in a terribly tense situation.

Increasingly we are running into the situation where the individuals who have been apprehended are refusing to give a statement and refusing to talk. Unfortunately, almost exclusively, these individuals are "con wise"—those previously involved in crime. As I have understood from reading just about everything I can find on the subject, the total motivation behind the rules of criminal law that we are caused to operate under is to protect the innocent man or to certainly prevent the possibility of some poor innocent individual being talked into confession to a crime for which he is not guilty. The thing that is emerging from all of this is that those individuals we try to protect through this type of Supreme Court decisions are the types now giving us statements. A person not previously involved in a crime will very readily talk to us. It is the recidivist who really is the menace to society who has taken advantage of the rules. So we are really not accomplishing as a society the very thing we have set out to accomplish. No responsible law enforcement officer wants to convict an innocent man and no responsible law enforcement officer objects in the least to informing the man who previously has not been at odds with the law of all of his rights, even to the point of overlooking his transgressions and helping him out of his particular problems,

whatever they might be. I have seen this happen many times. So the problems of working with the rules are extremely great and they are hurting us and will hurt us a lot more before we are through.

The fact that the policeman is the man on trial, at least as it appears in the minds of some of the people, was so dramatically illustrated to me a few months ago when I was in Juvenile Court and the young man who was before the court on questioning said, and the officer verified—at the time the car full of teens was stopped because of his erratic driving and it was discovered they had been drinking. This young man then said, "Copper, you didn't ask the questions, you answer them. You have no right to arrest me. You better watch your step on what you are doing to me because you are the one who is on the spot—not me!!"—words to that effect and as a matter of fact quite a bit stronger. Now this young man was not a habitual delinquent. He was not one of our better citizens but he was not a habitual delinquent either. When I asked him where he had picked this up he said well among other places he had been told this in a class in high school. And then he said of course he has read the paper that the police don't have any right to question individuals and that they better know what they are doing and not arrest him, etc. I just give this by way of example that this is the sort of thing our young people are picking up, and we are in for a lot more trouble before this is over.

What efforts are we making to cope with the problem? For the past two years our office has had monthly meetings with the Chiefs of Police of the county in order to discuss our situation and problems and attempt to solve the problems. For the past 1½ years, our office has had weekly two hour discussion sessions with the investigators of the Sheriff's office and for the last 3 months for the entire county. We discuss on a case by case basis the different matters that have come up within the county and use this as a case study approach to point out in retrospect what should have been done and how matters should have been handled and to review the Supreme Court decisions as they come down almost weekly in interpreting the law in various ways. Hopefully then, they will transmit this information to the men in the department. In addition to this, I have mentioned earlier, the various training sessions are available. At the present time the Univ. of Minn. has legislation before the Legislature to develop a police academy, and I happen to be on the committee for the Univ. academy. We have a state committee that has been formed by the Governor to have a $25,000 grant with matching funds from the state to make a study of the problems of apprehension, prosecution, sentencing, and corrections.

The approach—again coming locally—our approach in the County Attorney office has been met with enthusiastic response on the part of the police. In addition to these weekly meetings we have met with various departments in which we discuss search and seizure, arrest, probable cause, etc. One of the departments has set up monthly meetings which we attend in going into these same matters. These efforts we are making are perhaps feeble at best, but nonetheless, it is the recognition on our part of the problem and addressing ourselves to the best of our ability to seek out a solution.

Suggestions as to approaches to this problem—

In the first instance, I am satisfied that there has to be an in-service training program developed that can be taken to the departments within the municipalities. The regional training programs serve a purpose, but you cannot keep up with the changes in the law and you cannot really localize the approach in a manner that is understandable by the average police officer so that he can put into practice those things which he has learned.

The discussion approach on a department by department basis has proven very satisfactory and helpful to us. The men are not as fearful of being embarrassed and as a result participate in the discussions. They ask questions and make contributions to the discussions at a local level that they understand and can then apply. It would seem to me that a method should be devised where communities such as Anoka County would be able to get assistance to set up a permanent in-service training officer or officers operating out of the County Attorney office where he, together with the County Attorney or his representative, can meet weekly with the various departments to discuss their problems and bring to them the changes in the law, bring to them solutions to their problems in light of the current Supreme Court decisions, and above all, bring to them the techniques of investigation as science might tend to develop them, receive from them suggestions as to how the county law enforcement responsibility could better be carried out, what facilities they would want the county to provide, and the whole broad cross-section of things that would come out

in this type of give and take discussions. It is my impression that this officer should work out of the County Attorney office because as you know, there is a certain amount of jealousy between all police departments. If he were attached to the Sheriff's office, you would have to overcome this type of interdepartmental jealousy in order to get the proper reception for this man. It is my impression that where all of the cases in the nature of gross misdemeanors and felonies are prosecuted by the County Attorney, the effectiveness of the law enforcement officer and the evidence he has received is no better than the prosecuting attorney's willingness to proceed under the facts he brings to him, the way in which he has acquired those facts, and the whole complete case as it is presented. If it be the prosecuting attorney's final judgment on how these things should be presented, then it seems he should be the one to direct the training process so that the facts are collected and presented in a manner that at least in his judgment would justify a prosecution.

Another approach to this whole matter of in-service training would be the development of program learning techniques used in education. The use of visual aids and the modern teaching methods where each officer at his own pace could take a course in whatever subject he might need—I am thinking specifically of the one where with visual aids you receive a lecture on tape with a viewer and at the conclusion of a certain unit you are asked questions and you answer them and you cannot go on to the next unit until you have demonstrated the fact that you have absorbed and learned what is presented to you in that session. The problem with this, of course, is that there would have to be a constant updating of the information contained in the lectures.

STATISTICS

It is impossible in a presentation like this to be comprehensive to the extent of covering the total problem as it exists. We daily experience frustrations as a result of the Supreme Court rulings. It is imperative in order to preserve our way of life that very drastic steps be taken to upgrade the quality of law enforcement, to reinstill public respect for law enforcement officers, to develop this in such a way that communities such as Anoka County, who have not developed the art of federal program craftsmanship are able to participate. I am sure you are well aware that by the time these well meaning programs see the light of day, they become so complicated and so full of, I suppose, ideas and prejudices, that a community such as our county is unable to draft a proposal that would be acceptable. Those governmental units that are large enough to hire this type of skill are able to take advantage of the federal program and the rest of us are not. Still, our need is much greater. It is only when those who are drafting the guidelines that must be followed in order to qualify for funds have a full realization and appreciation of the problems of suburban communities that we will have guidelines prepared which will be meaningful to us and under which we can qualify.

PUBLIC RELATIONS

It is apparent that the general public do not respect the police. It is evident in many ways. We see it in the courtroom. The policeman's testimony is often given little more weight than the testimony of a criminal or his buddies. We see it in the refusal by people to assist the police. You see it in the riots where the mobs turn on a policeman when he is trying to make an arrest. Most of all, we see it when we are trying to recruit men for the department. Recruiting is so very difficult because the respect and prestige is down. There are many other examples that illustrate the point that people in general have lost respect for the police.

The majority of the population is under 25 years of age. We should look to this age group to determine what qualities of character they respect. Once we have determined what impresses this group, we should determine if there is some way we can use this information to help develop respect for our police.

This young group respects:

1. The man who is the outstanding athlete.
2. Physical strength.
3. Shooting skill.
4. Daring—bravery.
5. Physical appearance.
6. Intellect.
7. Artist—exceptional talent.

This is but a limited list.

I would propose that Anoka County would be provided with a training officer and the facilities to carry out the training. Every police officer in the county should be required, in addition to regular training programs, to be trained in judo, karate, weight lifting, gymnastics, and shooting. This should be repeated as often as necessary to keep them reasonably proficient. From the Anoka County police officers (different departments), judo and karate teams should be picked. They would give demonstrations to various school assemblies and service groups. Hopefully, they would give these demonstrations at schools yearly. One or more shooting teams should be picked. They would be available for demonstration shooting. Possibly a film, using team, should be made of their shooting prowess. This could include all types of shooting to make it interesting. This film would be made available to schools for assembly programs. Using these and perhaps other such demonstration techniques to develop a receptive audience, a well trained speaker should then give a short, effective, entertaining speech developing the theme that the police are a highly trained and reliable group of men. Awards should be designed and given which would be for heroic acts—humane acts—outstanding and dedicated acts which would tend to cause people to respect the police.

This type of positive approach would not only cause the general public to respect them but would cause the policeman to have respect for himself. The internal benefit would be very great indeed.

We desperately need—first, your understanding; second, your concern; third, your willingness to do something about our problems. I appreciate very much the opportunity I have had to appear before your committee. Thank you.

Mr. JOHNSON. Before I would start summarizing, I would concur in a statement made by the judge who just preceded us here. And as I develop the case for the suburban county, I think it would become very evident to the committee that my concern is directed at the problem of the policeman who is out in the field.

Miranda, as you are taking it into the police station, is one thing, but *Miranda* out in the middle of the woods at 2 o'clock in the morning, after having given chase to a criminal, is an entirely different matter.

I think it reached its point of—and I mentioned this in the statement, but I would use it as a digression before going into the statement—I think it reached its point of indicating how kind of frustrated police officers are about this in a case that happened in Columbia Heights, one of our cities, about a month ago.

A policeman was giving chase to a narcotics addict who had used a false name in order to obtain a prescription. The policeman was attempting to arrest this individual, and this individual fled from him. The officer fired two warning shots, asked him to halt, and he did not halt, so the policeman then shot and wounded him. The shot went through a part of his liver and kidney, and the man was in very critical condition.

The officer rushed up to this man and pulled out his handkerchief, and was sponging the wound, and while sponging the wound, recited the *Miranda* warning, which, in my mind, indicates a total lack of understanding of really what *Miranda* says.

Miranda not only says you recite the *Miranda* warning, but that the defendant understands it, and this is the part of *Miranda* that is so difficult in the field and that the police are finding terribly frustrating and a morale factor. The police force is suffering greatly as a result of it.

Well, now to get back to the presentation as it relates to our problem.

I would identify first Anoka County. I have talked about it as being suburban and adjacent to Minneapolis and St. Paul.

When I first was county attorney in 1950, we had 35,000 people. Actually, 35,579 people. Then in 1960, it was 85,000 people, and now in 1967 it is estimated to be 140,000 people.

The governmental structure of the county varies. We have five cities, nine villages and seven townships. They vary in size, about 300 to as many as 27,000. The townships vary in size from about 500 to 2,000.

The police departments in the county vary from no police, no constable, to the fee system constable, to the part-time constable, to the part-time officer, to the one-man police force, to the 20-man police force.

Now, this becomes very significant as you look at the Safe Streets Act that has been proposed. I will get into that later as we talk about it.

This creates, of course, a great problem, if you try to be as sophisticated as the Supreme Court has us try to be in these matters. You win and lose these lawsuits or your success and failure and prosecutions are based on that first contact. You win or lose it right at that point when the patrol officer first meets the man on the street. If he fails to give the warning, you are out, regardless of what happens. The fruit of the forbidden tree follows and you are unable to get a successful prosecution. You are unable to bring justice, if I may use that word in a general way.

Let me digress again and then I will come back. One thing occurred to me yesterday as I was listening to the Attorney General testify. He was talking about statistics and perhaps I am being very elementary and very naive in this whole process, but I must say this, that statistics really in this whole field of the ability to detect and have successful prosecutions is very misleading. The FBI statistics refer generally to cleared cases. Now, cleared cases can mean different things to different chiefs, and I know from my own experience. The reporting process has with it an inherent problem that the success of the chief of police relates to the ability as he is able to administer or control crime within his jurisdiction. So, you have a locked-in almost conflict in this whole reporting process.

I could give you example after example where we have cleared from two to as many as 250 cases out of which you would not be able to get more than one successful prosecution because of this situation. Not that I am saying that you should prosecute him 50 times, that's not my point. My point is that *Miranda* is not an inhibition because you have "cleared" as many cases. These cases are cleared because these people, once they were caught, said, "Well, in spite of *Miranda*, we will give you the whole facts." Then they reveal everything and this very often is done without the benefit of *Miranda*.

I'm not saying this very well, but I think you get the gist of what I am saying. Statistics, if there are to be statistics, and certainly we must have them, must be based upon a clear and concise definition of what it is that is to be reported.

I would like to just quickly go into the six subdivisions, if you want to call them that, that I want to talk about.

First, there is a need for training; second is the availability of training; third is the practical considerations in making training available to different departments; fourth is the problems we have in operating under the Supreme Court decisions; the fifth is the efforts we are

making to cope with the problem; sixth is the suggestion we are now making where the law could be made helpful to us.

Now, the need for training in the suburban area is very great. Your larger police departments are sophisticated, they have their own training program, but based upon my own experience as a municipal commissioner, these new communities that are developing have a host of governmental problems.

Each municipality has problems concerning zoning ordinances, streets, water, the whole gamut of problems with services that a community is to provide. Police is just one of them, and so in the struggling process they have a minimum budget and they hire a man as a policeman and then he becomes their police force. A one-man police department. That man cannot leave the community to go and take a training session. Training somehow has to be brought to him. That man does not have a supervisor to turn to, to assist him and answer the questions that he has that would relate to *Miranda* and other court decisions, and so this man actually should be a more competent policeman than even the routine policeman that you get in a sophisticated police department. But the thing works against itself.

You hire a man without training because you are on a minimal budget and he has to be the chief, the supervisor, the investigator, the patrol officer, and the whole business and he has no one to turn to for his direction. This is the policing that you get in the suburban areas. Then you impose the *Escobedo* case and the *Miranda* case on his judgment and hold him to this high degree of sophistication the court refers to, that the FBI has been functioning under for years. This is not comparing apple for apple, it is comparing apples with dried apricots because the FBI functions in an entirely different area. They function in an entirely different type of case. They do not have the on-the-scene-type of problems. The policeman has to be a very complex individual.

I will use a specific example. This was back in December of last year. There is a liquor store that is out a way from everywhere that has been burglarized four times in the last year. The squad car pulled up there and detected a man coming down off the roof. A few seconds afterward, there were two people running away. The two big burly policemen gave chase and caught one of these men out in the middle of the woods. They then, you see, had to go from the psychological position of self-protection—and if you have ever been in this situation, policemen gave chase and caught one of these men out in the middle of the night, you don't know whether these people are armed or not armed—you are in a kind of a psychological position of a chase and immediately upon getting him, you not only have to recite the warning to him, you have to psychologically handle that man in such a way that he understands the warning.

This is a part of *Miranda* that is very often overlooked. All of a sudden the officer must then become a pacifier. Then, within a half an hour he must go and handle a domestic; he has to be compassionate to someone relating to an accident; he has to have first aid training; he probably gets involved in picking up some animals; and he might have to go out and help deliver a child. A man who is an extremely complex person is the type policeman that particularly is required in the suburban areas, because this man has to be all things.

Your larger police organizations are departmentalized and he does not have to be all things.

My point is that the suburban officer is the man who does not have the training because the community is not able to give him this training. Even though we have the regional type of training, as we do in Minnesota—and they are doing a creditable job, the crime bureau does have these regional schools—a community can't afford to let a policeman go for a week or 2 weeks, because there is no other law enforcement officer there.

I don't want to take too much of the committee's time but there are these things that I feel so strongly about that I will just move quickly into them.

We have in our county attorney's office started 2 years ago holding weekly training sessions for investigators, 2 hour training sessions. We have the men come into our office on Friday mornings and we sit and talk about cases and we critique the cases—probable cause—did you give a proper warning—searches and seizures. It seems to me that this is terribly important, because after all we have to go into court with these cases and we feel that it is important for the police officers to know what we are thinking.

We are not, of course, training in the total sense of doing this job in the way it should be done, I'm sure. But this is our effort to try to get at it. We cannot have much success in the one-man department or in the part-time police department. We cannot carry out training programs for the constables, who are out in the field, because they have other jobs and do other things.

It seems to me that it would be important under the safe streets bill for recognition to be given to the suburban communities because they, too, need help.

I realize that in the drafting of the bill you get a broad general language where we may be qualified, but we are not trained in the art of, what do you call it, grantsmanship, this Federal grantsmanship or whatever it is. I've been through some of this, but we do not have the ability and skill to put something together that is new and innovative, that meets the criteria that is set up by some bureaucrat. As a result, the assistance goes to the larger and more sophisticated departments who can hire a man with this grantsmanship ability who can put together the brochure that is necessary to get the grant to do the job. Thus, although our need may be generally recognized in the act, in practical application we will be left out.

We know that we have a problem and if there is some way to include in the bill a provision that the Federal authority who had this responsibility would go to suburbia and would say pull your chiefs together and we will sit down and talk about how to get at your problems; and then put us through this maze of bureaucracy in order to get some help. This is the type of thing that we think is terribly important.

Senator McCLELLAN. Does not this provide that for any city of over 50,000 population?

Mr. JOHNSON. No question about it.

Senator McCLELLAN. And they may very well make application and get grants?

Mr. JOHNSON. Yes, sir; I understand that.

Senator McCLELLAN. What do we need to do further?

Mr. JOHNSON. I think what we need to do is the type of thing that will bring it to the level where we are in a suburban community. We need to sit down with the authorities and relate our problem and not have to come up with this draft before anyone will sit and talk to us about what the problem is. We're not gifted that way——

Senator McCLELLAN. You want counsel before you undertake the plan?

Mr. JOHNSON. This is right. There is a provision in the bill for a planning grant requiring this type of grantsmanship. I don't know what this entails, but I have been through this on 701. I have been chairman of a committee in the State of Minnesota for 2 years relating to the Job Corps. We had what we thought was an eminent committee of professional and lay people and we have gone through 2 years of this. Each time there is a change of personnel, there is a change in the guidelines and you go back and do it over again and you change it again. We have been a bridesmaid about six times and this is the type of thing that you get frustrated from because it takes a special know-how. So, if we had counsel, sir, who recognized our problem and then would assist us to move into a grant program, I believe smaller communities would benefit.

Now, let me move into two other areas and then I will turn it over to Mr. Hegarty.

One of the things that has distressed me a great deal in the years that I have been county attorney is the lack of respect for the police officer. He is not as respected today as he was when I first started in this business of being county attorney. As you address yourself to this problem, you try to think in terms of why and try to do something about it. So, this is what we have done. We have sat down, a group of us who are in law enforcement, and noting that in our particular county the majority of our population is under the age of 25, we tried to determine a common denominator that these young people would tend to respect. This gets very homely and perhaps naive but nevertheless I think it has some significance. The factors that they respect the most relate first to, perhaps, physical prowess—the athlete, the star athlete, no matter what his particular profession is. They would respect the man who has expert marksmanship. They would respect the person who has command presence. While there are other common denominators, these were what occurred to us. We felt that perhaps we should take a page from the Green Berets or the Marine Corps or the FBI itself, and set up a training program.

All policemen in Anoka County, for instance, would have to go through a judo course or a karate course or something of this sort, and out of this we would pick an elite corps, four or five or whatever was receptive to this type of training and put on a series of demonstrations in the schools of that judo ability, that weightlifting or that gymnastic ability or whatever it happened to be so that these kids who are at the assembly programs would look to the police as being someone that they could admire and they would associate policing with this type of person. There is nothing new about this, this is kind of turning the page backward, because they used to do this.

The second is, if we could have a very complete regional shooting range, rifle range, pistol-rifle range, where you would have all of the

shooting facilities that one could have and you then could train an elite corps. As you know, the FBI does this, they have their trick-shot artists and all the rest. Why not develop a film of all of this with local policemen and show the film, not in the fearful sense, but in the sense that there is professional competency in these men, and that they are able to do all these things young people do respect and recognize.

You see what we're doing now, we send a policeman out to speak to these groups in school, and he is not a proficient speaker. The toughest audience in the world to talk to is a bunch of kids. You can demonstrate to them, but to talk to them is a difficult thing, so you send a man out at his worst and not at his best and this could tend to break down the respect for law enforcement.

This type of homely, practical thing we think could be effective in reinstilling a respect for policemen, not fear, but the respect that an elite type of corps could command. The policeman today, time and again they are telling us, are just not seeing crime. They are just looking the other way, reasoning, why should they, because if they see it, there is a tendency that if they make a mistake, if they don't give the right kind of a warning, that if they have been wrong, and they are a little unsure of themselves, then they and not the suspect are going to end up on trial.

Senator McCLELLAN. What you are saying is that the policeman is being placed under conditions that frustrate them very much.

Mr. JOHNSON. Very much so.

Senator McCLELLAN. And they feel that they will be the ones to be tried?

Mr. JOHNSON. Yes, Mr. Hegarty can tell you about this. This is what they tell me and we are down at the level where we work with them on a day-to-day basis.

Senator McCLELLAN. In other words, we have transformed the criminal prosecution to a challenge of integrity and competency of the police?

Mr. JOHNSON. That is right, sir. What has happened is that it used to be that the policeman's word was more respected, but today, if you are on a one-to-one basis, on a par, there is not that same sense of respect. This is unfortunate. This is going to take a long time to bring back.

Senator McCLELLAN. How do you account for that? Have the qualities of our policemen, their integrity and conscientiousness and sense of duty, has it so deteriorated as to warrant this distrust of them?

Mr. JOHNSON. No, I don't think so. I think the problem is simply that an attempt to enforce the law under its now sophisticated state is such that they are not able to do it and time and again they are caught being wrong in the technical sense, and as a result of that you get this gradual deterioration, and it tends to kind of impugn their integrity because it carries with it the implication that the policeman arrested someone that should not have been arrested.

Senator McCLELLAN. Do you think that does damage their incentive?

Mr. JOHNSON. No question about it.

Senator McCLELLAN. There is no incentive any more to go out and risk their lives?

Mr. JOHNSON. There is no question about it.

Mr. JOHNSON. I don't know whether it is in Mr. Hegarty's prepared statement or not, but it has reached the point at the school where all morning they would have a lecturer on a matter and that afternoon they would have a different lecturer on the same subject and the man in the afternoon would not agree with the man in the morning and so the officers come away as confused as they were before.

Senator MCCLELLAN. Confusion compounded.

Mr. JOHNSON. To illustrate that, under *Miranda*, the Supreme Court, in talking about what you are supposed to tell the defendant, has two different versions. One says that you can have an attorney, one says you may have an attorney. You have those two, but in another area there are three versions. And that is, whatever you say would be used against you, whatever you say can be used against you, whatever you say can and will be used against you. Now, those three versions are in there, and as you look at the little cards the policemen have in the jurisdiction concerning the *Miranda* warning you will find the words vary. Now, the problem is that as you vary the words on when you can have an attorney, perhaps saying, you can have an attorney appointed when the case goes to court, you can slip into that and there is a mistake. Mr. Hegarty will give you an example of a two-page recitation that they give to a suspect as to his rights under *Miranda*, and as you read it technically, in the office, it doesn't quite do the job. With that, I will close.

Senator MCCLELLAN. I note the time; we will not be able to finish maybe before lunchtime. How long will you take, Mr. Hegarty?

Mr. HEGARTY. I will make mine as short as I can, Mr. Chairman.

Senator MCCLELLAN. Very well, we will proceed. I have a luncheon engagement at 12:30, but I can be a little bit late.

Mr. Johnson, I forgot to ask you, are you familiar with the other bills the committee is considering, the confession bill, particularly?

Mr. JOHNSON. Yes, sir.

Senator MCCLELLAN. And the crime control bill?

Mr. JOHNSON. Yes, sir.

Senator MCCLELLAN. What is your position on those?

Mr. JOHNSON. My position is totally favorable. I can understand what the judge was talking about as to whether or not the confession bill would change the *Miranda* case, I can understand what he was talking about, but I think it is terribly important that you enunciate the principles in the bill, and if the court wants to wrestle with it, that's fine, they can.

Senator MCCLELLAN. The court suggested that this may be an area where the Congress should act.

Mr. JOHNSON. That's right. I am just wholeheartedly in favor of what you have proposed, because it relates to some of the problems that I have talked about, out in the field. The mere technical omission of some act which had nothing to do with the voluntariness of this man's statement——

Senator MCCLELLAN. Nothing to do with his guilt or innocence.

Mr. JOHNSON. Nothing to do with his guilt or innocence, should not be a controlling factor.

Miranda as it is being interpreted, is hurting us badly and I think that the bill relating to confessions will be very helpful.

The safe streets bill, by all means. I would urge the committee to put in some sort of accompanying recitation relating to suburbia and

suburban problems. I believe this would be helpful to us and would be greatly appreciated.

As to the third bill relating to wiretapping. we have not had any experience with that. I can readily understand the need for it and I certainly wholeheartedly endorse the proposition as set forth. I do so in a legal sense, not as a practical thing, but as I have studied and read these cases, and I think I have read just about everything there is to read about it, I wholeheartedly endorse the bill and am in favor of it.

Senator McCLELLAN. Thank you very much.

What has been the effect of these decisions in your jurisdiction? Is it more difficult now to get convictions of those who are really guilty, and has it shackled efforts of law enforcement officials and police in their investigation and interrogation processes?

Mr. JOHNSON. No question about it. Let me merely make one additional observation that I probably should have made earlier, and that is that we have not felt the full impact of *Miranda*.

Senator McCLELLAN. You have not felt——

Mr. JOHNSON. We have not felt the full impact by a long way.

Senator McCLELLAN. What do you mean?

Mr. JOHNSON. There are parts of *Miranda* that the defense counsel have not taken full advantage of, that if they really come to grips with this we are going to be stymied very much more so than we are at the present time.

Senator McCLELLAN. In other words, the *Miranda* decision if fully exploited by defense attorneys and by defendants, and by the criminals, can give you far more trouble than it has thus far, is that what you are saying?

Mr. JOHNSON. No question about it. We took a young fellow into our office 2 or 3 months ago who had done a fair amount of defense work. Last week I was talking to him and I said, "What would be your feeling now if you went on the outside and started defending? He said, "Mr. Johnson, in good conscience I really don't think I could do it because now I can see the weaknesses in the prosecutions' presentations that I just didn't realize were there before and, as I would be able to exploit those, I couldn't live with myself." That was his comment to me.

Senator McCLELLAN. In other words, the potential mischief in the *Miranda* decision has not yet fully blossomed.

Mr. JOHNSON. Absolutely not.

Senator McCLELLAN. It is going to get worse as time goes on, is that your judgment?

Mr. JOHNSON. No question about it.

Senator McCLELLAN. Thank you very much.

Mr. Hegarty, this is off the record.

(Discussion off the record).

Senator McCLELLAN. We will, then, stand in recess until 2 o'clock.

(Whereupon, at 12:30 p.m., the subcommittee stood in recess until 2 p.m. that same day.)

AFTERNOON SESSION

Senator McCLELLAN (presiding). We will proceed.

Mr. Hegarty, do you have a prepared statement?

Mr. HEGARTY. Yes.

Senator McCLELLAN. Do we have a copy of it here?

Mr. HEGARTY. Yes; you should have.

Senator McCLELLAN. Very well, will you give us your background? Maybe you did already.

(The prepared statement of Mr. Cecil Hegarty follows:)

PREPARED STATEMENT OF MR. CECIL HEGARTY

Honorable Chairman and distinguished members of this committee, my name is Cecil Hegarty. I am a detective on the Police Dept. in the city of Anoka, Minnesota, a community of 12,000 people in a metropolitan area of over one million.

I am here voluntarily in the interest of law enforcement and its problems in our community, in an attempt to relate to you information which will be helpful in giving direction of a positive nature that we may better work with some of the recent decisions of the Supreme Court. I am not here for the purpose of and do not intend to argue or debate decisions by the Supreme Court. For this reason I have a prepared statement for this committee.

Let me first tell you that we keep in our office a file which is full of subjects who are active in crime at the present time. In fact, some of these individuals are very mobile and are known to be active in communities other than our area such as Chicago, Kansas City and Denver. I tell you this to illustrate that we do have a large known criminal faction. Also that this by no means covers the criminals known to all of the Suburban cities in the Metropolitan area of St. Paul and Minneapolis, Minnesota, of which we are only a part.

To give you an illustration of the handicap set about in the Miranda decision, let me tell you about a situation in which a burglar alarm was set off on Christmas Eve Dec. 24, 1966. The squads arrived at the scene in time to see a certain vehicle leaving, so turned around and gave chase and in so doing momentarily lost sight of the vehicle, since the driver of same turned off his lights. Shortly after picking up the chase again the subject again eluded the squads by turning off his lights and four or five miles later the auto was found in a snow bank and the subjects had fled. I had the owner of the auto come to my office, who incidently had spent many years off and on in the state institutions because of burglary convictions. I told him what I suspected him of and warned him of his rights against self incrimination under the Miranda Decision and he immediately refused to say anything other than deny any implication and state that he was a hundred and sixty miles from here and some one must have used his car.

Since no officer could identify him as being in the car and the lack of physical evidence to link him to the scene of the crime—you must keep in mind that when he said he didn't want to talk further, I had to stop talking to him and forfeit any possibility of a lead from him. We still have his car impounded but the case has never been solved. I don't think I should have been able to browbeat this individual in questioning him, but I would like to have had some freedom in talking to him further in hopes that something in conversation with the individual would have led us in a successful direction to investigate further for a solution and conviction in the crime.

Another case in 1966 was the attempted burglary of a jewelry store in which two burglars from Kansas City invaded our community and were spooked from the scene by the squad. A description of the vehicle was broadcast over police radio and the vehicle was stopped in another village some five or six miles away and brought back to our city. At this time they were warned of their rights against self incrimination according to *Miranda*, and refused to say anything, thus eliminating the possibility again of coming up with some small clue that might lead us to evidence for a proper charge. We ended up by keeping these parties out of circulation for approximately a week by charging them with "Destruction of Private Property". They pled guilty to this charge and paid thirty-five dollars in damages for destruction caused to the door in the burglary attempt, and were released again to prey on society for which they have so little respect.

I would like to present to the committee for its analysis a seventeen page statement which I took from a subject on March 9, 1967. In the zerox copy of this statement you will find at least two full pages pertaining solely to the subject's rights against self incrimination according to the *Miranda* Decision. The names of the subjects involved have been blocked out for the protection of same. The

County Attorney did not feel this warning was adequate, and the County Attorney is here, maybe he would like to tell you why. Nine or ten burglaries were cleared up in this statement taken from one of the burglars involved. The probable reason for the admissions of all these burglaries is that these individuals were young and unfamiliar in comparison to one who is con wise. My real reason for making this statement available to the committee is to make you aware first hand to the extent that a detective in the field must go in order to safeguard the *criminal from society.* Although this individual has pled guilty in district court and these burglary cases have been cleared, we are not often this fortunate.

I feel that the criminal has become braver since some of the recent supreme court decisions, and I base my reasoning on the fact of increases in crimes and decreases in the percentages of crimes that are solved. Also the fact that the perpetrator is less willing to talk to the police and is ready in my opinion, to hide himself against self-incrimination after being advised of his rights in accordance with the *Miranda* decision.

I have had 13 and 14 year old kids sit and say, "Look, cop, I'm going to tell you nothing, haven't you heard about the rights I've got?" This type of conversation was rare two or three years ago.

Another interesting case was one in January of 1967 in which we received a call from a doctor that a man had been shot in his home. When we arrived on the scene we found a man sitting in his living room in an easy chair, semi-unconscious, with what appeared to be a shotgun wound in the stomach. His wife was present, very intoxicated, fighting and ordering the police officers from the house. The gun was missing, she stated that we would never find it. According to *Miranda,* the warning against self incrimination must be given and the defendant must knowingly and intelligently waive his rights against self incrimination. How, under these circumstances, does the person intelligently waive his rights—the court in *Miranda* did not say how this was to be accomplished.

Another problem with *Miranda* is that if a constable or untrained officer in a small village some distance away, should pick up some one and question the party about a crime in our jurisdiction without giving the *Miranda* warning and the party makes certain admissions, believe me this case is blown out the window. So along this line where there are communities that do not have funds to train officers there should be some type of State or Federal funds to assure that this is done. Decisions from the Supreme Court are coming down so fast that in a department the size of ours where we only have sixteen officers, only one or two can be spared at one time to go to any type of police training school, thus the officers are never up to date on all the important Supreme Court decisions, since we do not have the funds for in-service training programs. The problem in education of Police Officers in the suburban cities such as ours are unequivocal in their differences as to the city of Minneapolis. If my information is correct and I believe that it is, Minneapolis Police Dept. has received a $125,000 Federal grant to put a policeman in each public school in an attempt to get to the juvenile problem at that level and thus thwart the possibility early of many youngsters getting into trouble. I can imagine the friends that the federal government could make in cities such as ours if they were this liberal with our city government. Training is a great financial problem in the suburban city since the patrolman who is unequivocally the first to arrive on a crime scene, what he may say to a suspect without the proper Miranda warning is your case or is not your case today. In a school which I attended last week Oliver Schroeder, Dean of Western Reserve Law School of Cleveland, Ohio, said that there is no doubt in his mind that an efficient police officer should have quite an extensive amount of training in the law. This then means that salaries must be raised considerably if we are going to be able to attract this type of person or encourage people already in law enforcement to go out and get this training. I truly hope some of you people on this committee can be of influence in this area.

Let me give you an example of the increase in crime in our city. In Jan. and Feb. of 1966 we had eleven burglaries—in Jan. and Feb. of 1967 we had 27 burglaries. This is an increase of well over 100%. Number of those Jan. & Feb. 1966 crimes that were solved were 0. Number of those Jan. & Feb. 1967 burglaries that were solved were 3.

One reason for the increase may be the low morale of the patrolman on the beat or in the squad, because of the small financial reward he gets he fails to see or detect crime while it is taking place.

The sharpest rise in crime in the U.S. is occurring in small cities and suburbs of big cities, FBI Director J. Edgar Hoover revealed in the FBI's Uniform Crime Reports for 1966.

The report showed these increases in major crimes compared with 1965: Cities below 10,000 population, 14 per cent; suburban areas, 13 per cent; cities with more than 100,000 persons, 10 per cent. For major crimes the rates of increases were: Murder, 9 per cent; aggravated assault, 10 per cent; forcible rape, 10 per cent; robbery, 14 per cent. Assaults in which a gun was used rose by 23 percent.

A surge in crimes committed by youths was reflected in arrest statistics, 1 per cent fewer adults having been arrested last year than in 1965, while arrests of persons under 18 were up 9 per cent. The crime-solution rate for the nation was 25 per cent in 1966, down from 26.3 per cent in 1965.

Offenses in city of Anoka, Minn.

	1965	1966
Burglary	61	87
Larcenies	268	380
Auto theft	35	43
Assaults	16	29

	1966		1967	
	January	February	January	February
Burglary	2	8	15	12
Larcenies	13	15	18	22
Auto thefts	2	3	5	5
Assaults	2	0	6	1

My fervent hope is that this committee can give direction through some sort of legislation which will help to overcome these many problems either on the local level or the federal level.

Thank you for your attention.

Senator McCLELLAN. You may proceed with your summary.

Mr. HEGARTY. The reason for my appearance here today is to make the committee aware that just because we are not a large city doesn't mean we have no great problems.

The Supreme Court decisions as of late have created a very hampering situation to work with, especially the *Miranda* decision, as far as I am concerned in my field.

To further let you know that we do have a criminal element, we have a large file of known criminals who are active, not only in Minneapolis, but also the suburban area.

Senator McCLELLAN. How far are you out of Minneapolis?

Mr. HEGARTY. We are 18 miles out of town.

I am going to skip part of my statement, some of these illustrations I have used—factual cases and get on.

Senator McCLELLAN. I see you give some illustrations there. I did not have an opportunity to read your statement. If you will give one of them, at least——

Mr. HEGARTY. I would like to make an illustration as to a case that is serious to us as far as *Miranda* is concerned in that in January 1967 we received a call from a doctor that a man had been shot in his home. When I got on the scene shortly thereafter I found the victim sitting in an easy chair in the living room with what appeared to be a shotgun wound in his stomach or his abdomen. The lady of the house was very intoxicated—quite wild—ordering the police out of the house, kicking some of the officers.

I want to state further this was not a slum area. These were quite influential people.

It appeared offhand, when you looked at it, that it probably was an attempted suicide, but at the same time there wasn't any gun visible.

It is hard to understand how anyone could inflict a self-inflicted wound in the abdomen with a shotgun and then have enough strength to do away with the gun. The wife did make a statement to us that we wouldn't find anything.

I bring up the illustration for the fact that *Miranda* says a suspect must knowingly and intelligently waive his rights against self-incrimination. *Miranda* didn't provide for any situation like this, where you have a hysterical, drunken woman and you have what looks like an attempted homicide. In such a situation how could we inform her intelligently and with her full understanding, that she was waiving any rights in case she had been a party to the shooting, and that certainly is what it looked like with the gun missing.

Here we are in the field trying to work with the *Miranda* decision. Luckily, in this situation, the party lived for about 4 days and made a deathbed confession as to the self-inflicted wound. If he had not regained consciousness how could we have incarcerated her as a possible suspect in the shooting in her condition and then get her to knowingly waive her rights so that we would be able to talk with her?

I have another instance, a Xerox copy of a statement taken in March 1967. I think the committee has copies of it.

This is to let you see what we go through working in the field, when we are trying to work with the *Miranda* decision. The suspects were apprehended by another small department in another county, 8 or 10 miles from ours, but also in a metropolitan area and in the largest county in population in the State of Minnesota.

I am going to start with the question:

Talking to Detective McMullen over there. Before you talked to him, did he tell you about your rights against self incrimination?
A Yes.
Q That you had a right to remain silent?
A Yes.
Q That you had a right to have an attorney present during anything that you told him?
A Yes.
Q And that if you couldn't afford an attorney and you did appear in court, they would appoint one for you?
A Yes.
Q And he also told you that any time that you—that he talked to you that you had a right to have an attorney present?
A Yes.
Q And did you talk to him knowing full well that these were your rights and you did have a right to remain silent?
A Yes.
Q You did this of your own free will and accord?
A Yes.
Q I picked you up over there about 5 o'clock P.M. yesterday, March 8, 1967, do you recall this?
A Yes.
Q You told me several things on the way back in the squad car?
A Yes.
Q Before you told me anything, do you recall me warning you of your rights against self incrimination?
A Yes.

Q And those rights I told you were that you didn't have to tell me anything, that you had a right to remain silent, you had a right to counsel, you could contact an attorney, you had a right to have an attorney present while you were talking to me and that if you couldn't afford an attorney, we would get one for you, do—did you understand this at that time?

A. Yes.

Q. And you knew full well that you were waiving your rights against self incrimination before you did say anything?

A. Yes.

Q. Then do you recall I talked to you a little later last evening?

A. Yes.

Q. And again warned you of your rights, do you recall this?

A. Yes.

Q. And do you recall again that you talked to me and told me certain things that were self incriminating, knowing full well that you had a right not to this?

A. Yes.

Q. This morning we went out to—on the Dayton Road, I think it's called—between Champlin and Dayton. Chief Hoagland, myself, you, and you directed us out to the location of a safe that had been dumped along the road out there in a ditch, a ltte dump. Do you recall this?

A. Yes.

Q. Did you do this of your own free will? And accord?

A. Yes.

Q. Knowing full well that you didn't have to take us out there?

A. Yes.

Q. We did recover that safe and you and the other boys pointed its location out to us, is that right?

A. Yes.

Q. And then after coming back with the safe, recovering it, I talked to you again at approximately 11 o'clock AM and advised you of your rights again against self incrimination from a sheet that I'm showing you now here, a sheet of paper, which you have signed in the presence of myself and Sgt. Rollins. You were full well aware that you did not have to sign this, that you waived your rights against self incrimination voluntarily?

A. Yes.

Q. As an officer of the law, it is my duty at this time to inform you that since we are taking a recorded statement that will be transcribed into typewritten form—to warn you again of your rights against self incrimination, you have a right to remain silent and you do not have to say anything unless you choose to do so. Anything you do say will and may be used against you in a court of law. You have a right to consult a lawyer and to have a lawyer with you during any questioning. If you cannot afford a lawyer, one will be appointed for you by the judge when you appear in court. Knowing these things are you still willing to go ahead and give us this statement?

A. Yes.

That point, Mr. Chairman, is the end of the warning. I just bring it out because you can see to what length we have to go before we can discuss a crime with an individual. This individual did waive his rights against self-incrimination but you have to remember that his age is 19. He is not a professional convict, criminal. He has not been through the mill. He waived his rights because he wanted to get something off his chest.

Because of his confession we did clear up about nine or 10 burglaries. But at the same time after all this waiving, the county attorney who sits alongside of me, who was to prosecute these cases, was somewhat critical of the statement, that maybe we didn't go far enough with the *Miranda* warning, and I stop here so that he can comment and tell you why he feels this way.

Senator McCLELLAN. All right.

Mr. JOHNSON. Well, it is this language bit that I was talking about this morning. If you will note the last part of the second page, one of

the warnings that was given, is that you have a right to consult a lawyer during the period of questioning. If you cannot afford a lawyer, one will be appointed for you by the judge when you appear in court.

This is not exactly what they said in *Miranda*. The implication that can be drawn from this, is that, if you can't afford the lawyer you won't get one until you go to court.

Senator McCLELLAN. I see your point.

Mr. JOHNSON. That's the point.

Senator McCLELLAN. That probably would not hold up with all the warning given.

Mr. JOHNSON. Might very well not. On page 1 the warning alludes to the same thing and it says that if you can't afford an attorney and you did appear in court, they would appoint one for you. Again, it is going to the future and this is the type of thing that I talked about this morning. I mentioned that the different types of so-called *Miranda* warnings—I have three of them here and they are all different.

Senator McCLELLAN. Would you file those three different ones and identify them, the source of them?

Mr. JOHNSON. Yes, sir.

Senator McCLELLAN. Do that, please, sir. That will be printed in the record at this point.

Mr. JOHNSON. I will hand them to the reporter.

Senator McCLELLAN. Identify them sufficiently so we can understand them.

Mr. JOHNSON. The larger page is one that is used by the city of St. Paul. The other one, the plastic covered one is one that we have used in our county. The other paper one is used in one of our other jurisdictions in the metropolitan area, I am not sure which one.

Senator McCLELLAN. Will you mark them 1, 2, and 3 in the order you referred to them so the record will be clear?

Mr. JOHNSON. Yes, sir.

The first one I identified will be identified with a one with a circle around it.

The second is the plastic-covered one which I can't mark and the third one I will mark with a three with a circle around it. There are others.

The one that we talked about, that the city of Anoka was using up until the time of this particular statement was taken is different again from these three.

Senator McCLELLAN. So there is a fourth one that you no longer use?

Mr. JOHNSON. That's right.

Mr. HEGARTY. It is not only those four. Whatever a particular jurisdiction interprets *Miranda* to mean that is reflected in the warnings.

Senator McCLELLAN. In other words, the police departments and law enforcement officials are undertaking to interpret the decision as best they can and they come up with these different interpretations. From this we can see that the full fruit of this *Miranda* decision, the evil of it, has not yet been thoroughly demonstrated. The potential evil of it is going to continue to appear and be demonstrated by such illustrations as you are giving here.

All right, proceed.

(The material referred to follows:)

C.N. 723 585.

SAINT PAUL POLICE DEPARTMENT

WRITTEN STATEMENT

Date 4-4-67. Time 11:21.

I, David E. Knutson, Age 19, DOB November S, 1947, address 631 3rd Ave. S.W. Marital status single, phone 259-1309.

Educated at Rochester St. Jun. Col., Sophomore, have been advised of my rights to protection against self-incrimination to wit:

1. I have the right to remain silent and to refuse at any time to answer any questions asked by a Police Officer. DEK
2. Anything I say can or will be used against me in court. DEK
3. I have a right to talk with a lawyer and to have the lawyer with me during questioning. DEK
4. If I cannot afford a lawyer, one will be appointed for me by the judge when I appear in court and I may remain silent until I have talked to him. DEK

The above statements have been read to me and I understand what they mean. I have initialed each paragraph to show that I have read it. David E. Knutson.

I am giving this statement voluntarily to Lt. R. L. Highbeig whom I know to be a member of the St. Paul Police Department. No threats or acts of force have been made against me nor have any promises of any kind been made to me.

MIRANDA WARNING

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

MIRANDA CARD

Before a suspect in a case is questioned he must be warned, as follows:

1. You have the right to remain silent.
2. Anything that you say can, and will, be used against you in Court.
3. Before answering any questions you have a right to consult an attorney and to have him with you during our interrogation.
4. If you are unable to hire an attorney, one will be appointed by the Court to represent you.
5. Do you understand what I have just told you?

Mr. HEGARTY. My real reason, Mr. Chairman, for making this statement available to you is so the committee can see at first hand what we are using in the field. This is an actual case where the individual has now pled guilty in the District Court and these several burglaries have been cleared up. I think it tends to show the committee how we are protecting the criminal against society. I think it is just that plain. And I think that is who we are protecting. I don't think we are doing a great job of protecting society.

I feel that the criminal has become much braver in his acts since the recent Supreme Court decision in *Miranda* and a couple of others. His chances of being caught probably have not changed a great deal, but his chances of being convicted have changed considerably. It is not just the adult criminal we are talking about. We are talking about the delinquent child, 13 or 14 years old that has gotten the word about how the police can't talk to you. It is not unusual now——

Senator MCCLELLAN. What is your experience with them now? What is your personal experience with them?

Mr. HEGARTY. This is what I was going to state. It is not unusual now to pick up kids shoplifting or this type of thing and bring them into the station to talk to them and quite quickly get the remark from them, "Look, cop, haven't you heard about my rights? I am not going to talk to you."

I am talking about children—these are 13, 14-year-old kids. Two or three years ago this was a pretty rare thing. I think because of the Supreme Court decisions, that respect for law enforcement has declined considerably.

I don't think that the quality of the policeman has declined—in fact, I think it probably is better than it was. But there is no question but that the Supreme Court has scared the policeman.

Senator MCCLELLAN. Do you have something to say about the improvement of the quality of justice not helping to enforce the law and prevent crime? It is kind of a useless improvement, is it not?

Mr. HEGARTY. This is true.

Senator MCCLELLAN. The purpose of the law is to protect society, is it not?

Mr. HEGARTY. This is my understanding of it. I am a little bit apprehensive about whether we are really doing that today.

Senator MCCLELLAN. Today, the kind of justice we have in this country is not affording the protection to society that it is entitled to and as time marches on that protection seems to be getting less, we feel, instead of stronger. We are confronted with this situation and the question is how to limit it.

All right, proceed.

Mr. HEGARTY. I am going to skip over some of the rest of my statement because some of it concerns the service training program. The county attorney did a fine job of covering that except that I do want to mention, along the lines he was talking about, the governmental red-tape in order to get financial help in training.

I am aware that the city of Minneapolis got $125,000 in Federal grants last year from the police department to put officers in different public schools to sit there like a counselor. The policemen are there to handle any delinquent problem or act by these kids.

Senator MCCLELLAN. What funds did they get that out of?

Mr. HEGARTY. I will have to get that for you and submit it for the committee.

Senator MCCLELLAN. Law Enforcement Assistance Act funds?

Mr. JOHNSON. I am pretty sure you are right.

Mr. HEGARTY. The funds were spent for the extra staff to have a police officer in the public schools like student counselors would be.

I only bring this up to let you know that I am sure you can make our city government pretty happy if you could channel some of this in their direction. We are not the size of Minneapolis.

Senator MCCLELLAN. Have you fought for it?

Mr. HEGARTY. No, because I am not in the administrative capacity within the police department. I am a detective.

Senator MCCLELLAN. What would you do with the money if you had it?

Mr. HEGARTY. I think this is a start right here, what we are talking about. Policemen in the public schools to help counsel these children to keep them from becoming——

Senator McCLELLAN. To protect the teacher?

Mr. HEGARTY. Absolutely not.

Senator McCLELLAN. What has become of the old system where the teacher taught children the fundamentals? And the home where they are supposed to be taught, I thought, a little bit about morality and taught proper conduct and human relations? What has happened to that?

Mr. HEGARTY. I wish I had the answer, Senator.

Senator McCLELLAN. We are talking about poverty and ignorance being the cause of crime. Well, beginning with the history of the country, we had far more poverty then than there is now and less education than there is now and yet there is more crime now than ever before. So I do not think we can just nail it down to those two factors.

Mr. HEGARTY. We know, of course, too, Mr. Chairman, that whether it had any deterrent or not it was done and we had less juvenile problems in those days where the teacher did have a little room off to the corner some place and used the paint stir stick to let them know that he did have some authority. I am not so sure that is being done any more.

I attended a detective training program in Minneapolis all last week and, along the same line, one of our speakers. Oliver Schroeder, dean of Western Reserve Law School of Cleveland, Ohio, said unless we can get more extensive training in the law to law enforcement officers, that our already mounting problem was going to be worse.

To conclude my statement, I would like to give you just a few statistics. This is taken from the report of FBI Director J. Edgar Hoover. The sharpest rise in crime in the United States is occurring in small cities and suburbs of big cities. This is from the 1966 crime report, uniform crime report.

The report showed that in major crimes, compared with 1965, in cities below 10,000 population, the increase was 14 percent.

Suburban areas, 13 percent.

Cities with more than 100,000 persons, 10 percent.

For major crimes the rates of increases were: Murder, 9 percent; aggravated assault, 10 percent; forcible rape, 10 percent; robbery, 14 percent.

Assaults in which a gun was used rose by 23 percent. A surge in crimes committed by youths was reflected in arrest statistics, 1 percent fewer adults having been arrested last year than in 1965, while arrests of persons under 18 were up 9 percent.

The crime solution rate for the Nation was 25 percent in 1966, but down from 26.3 percent in 1965.

To compare a little bit with the city of Anoka, these offenses don't sound very large unless you compare it with the population we have, 12,000.

In 1965 we had 61 burglaries in the city of Anoka and in 1966 we had 87 burglaries.

We had 268 larcenies committed in 1965 and 380 in 1966.

We had 35 auto thefts in 1965 and 43 auto thefts in 1966.

We had 16 assaults in 1965 and 29 assaults in 1966.

I only have tabulated comparable to 1967 January and February.

Now, to show the increase, starting already this fiscal year, in January and February 1966, we had 10 burglaries committed.

In January and February 1967, we had 27 committed.

Senator McCLELLAN. Is that due to the inefficiency or lack of vigilance on the part of your police establishment?

Mr. HEGARTY. Absolutely not.

Senator McCLELLAN. What do you attribute it to?

Mr. HEGARTY. The bravery of the individual committing the act. He doesn't think that confinement is nearly as possible for him as it was a year or two ago.

Senator McCLELLAN. In other words, as the prospects of detection, apprehension, and punishment decrease, the rate of crime increases?

Mr. HEGARTY. Right.

Senator McCLELLAN. Is that your observation?

Mr. HEGARTY. Absolutely.

Senator McCLELLAN. Is that what your statistics demonstrate?

Mr. HEGARTY. Yes, they do.

You can read the other two or three entries. I just made this comment to show you how the increase is taking place. It's pretty rapid.

My fervent hope is that this committee can give direction through some sort of legislation which will help to overcome these many problems both on the local level and the Federal level.

I have a copy of an article that may not be pertinent here, but I would like to read it to the committee. It is a copy of a newspaper article.

I think one of our problems in securing the right people in law enforcement is salaries. You certainly can't get anybody who is going to have much dedication if you can't pay a decent wage, and this is pretty much true across the nation.

This article, from a local newspaper is as follows: "Ditch Digger Declines Low Pay of Police."

Recently, a police chief in a northern city was seeking applicants for his department. In his search for qualified personnel, the chief came across an individual who was then employed digging ditches. The man had 13 years' experience on different police departments, and the chief interviewed him as a good prospect.

The worker admitted that he would like to work for the chief, but in order to do so, he would have to take an almost $1,500 cut from his yearly salary as a ditchdigger. As a result, he declined the opportunity to apply for a position as a patrolman and resumed his shoveling.

Thank you, Mr. Chairman.

Senator McCLELLAN. Policemen are very much underpaid for the risks they take, for the responsibilities they have, for the skills they are required to have. That is one of the reasons, one of the principal reasons that I introduced this overall bill for safe streets and crime control. I am not convinced that is one that will contribute much to better enforcement of the law, except as we give training to policemen, better train them and pay them better so we can get a higher quality, higher type and better educated people into the service. I think that it will make a substantial contribution.

But if we cannot interrogate suspects and some policeman happens to stumble just a little in some ritual that is supposed to be used and by reason of that the guilty is turned loose, that will not develop strong law enforcement and will not improve conditions that now exist very much, if any.

Mr. HEGARTY. I want to comment, Mr. Chairman, the patrolman, the fellow who has to meet this problem every day and make that initial contact——

Senator MCCLELLAN. The patrolman on the beat?

Mr. HEGARTY. Right. This individual who is of very high caliber, a very high-caliber individual but at the same time he is ignorant as to the requirements of the *Miranda* decision, as many of the rest of us are.

In fact, it is quite evident many attorneys are and so are the courts, because they are interpreting the thing differently from one place to the next. You can understand a fellow's reserve in saying anything.

The policeman on the scene may have a good statement from the suspect that would be admissible in court. But, he tells the fellow, don't talk to me, I don't want to talk to you. Talk to the detective when we get down to the station.

Senator MCCLELLAN. How can he make a thorough investigation into a crime if he has to tell the prospect or the suspect, do not talk to me? How can he make an investigation? He could give a lead and he would be able to help.

Mr. HEGARTY. This is where the *Miranda* decision hurts us, Mr. Chairman. This is not an interrogation situation when the patrolman meets the suspect on the street or has him in the squad car, as far as I understand it, or what I would like to believe was meant in *Miranda*. I would like to believe the interrogation takes place in the police station when the detective sits down with this fellow in a smoke-filled room. This is where I would like to feel the interrogation takes place, not when the patrolman meets a suspect out in the street.

Senator MCCLELLAN. Well, they take the suspect to the police station and I do not see anything in the Constitution or know of anything in the Constitution stating that you cannot ask questions until you get him in the police station.

Mr. HEGARTY. No.

Senator MCCLELLAN. I think if the policeman is alert and on the job and vigilant, he can ask whatever questions appear to him at the time, the answer to which might be helpful and might give him information on how to proceed, what to do next, what to pursue or what not to pursue. I do not understand that a citizen of this country does not have some obligation to cooperate with law-enforcement organizations. I know you cannot make him testify against himself. But that is all the Constitution says. You cannot make him give testimony against himself in a criminal case. But when you are out investigating the circumstances of a crime where it is committed, I do not understand not being allowed to ask questions. Of course, you cannot make him talk but I do not understand that you cannot ask him questions. If he does answer, whether he has a lawyer or not—if he wants to answer a question when he is interrogated, I do not interpret the Constitution as preventing such interrogation. I may be all wrong about it, but I do not believe that the police officer investigating a crime, or trying to detect a crime, or apprehending someone who is possibly guilty of the offense, actually has to give the suspect a recitation of his rights before he asks him a question.

A lot of these suspects are repeaters, such as Miranda was, from the testimony we heard here. Think how absurd it is. I think it is absurd and ridiculous to the extreme that Miranda could walk into court, under direction of his counsel, take the witness stand and under oath say, yes, I raped her, and, in effect, what are you going to do about it? Go free. Free to rape another one. If that is justice in the American system of jurisprudence it needs some remedy.

Do you have any further comments?

Mr. JOHNSON. I appreciate the opportunity to come here and share with you our problems. We are looking to you for help and assistance.

Senator MCCLELLAN. If I have my way about it you are going to get some help. I appreciate very much your cooperation. I hope in the course of these hearings to make a thorough record from the standpoint of police, and anyone who wants to testify on behalf of the criminal element that you ought not to ask them to answer questions, we will hear that also. Let us make a record here and let the Congress weigh it and undertake legislatively to determine whether we should do anything about it.

Mr. JOHNSON. I would like to say that prior to *Miranda*, in all the good conscience that I have, there is no one that I know of in the county of Anoka that has ever been prosecuted and at a later time we discovered that they did not commit the crime. I think we have the ability to administer justice and I want that to be perfectly clear.

Senator MCCLELLAN. In other words, no injustices were committed as far as you know.

Mr. JOHNSON. That is correct.

One of the things that people do not understand when you talk about this matter of justice, is that actually there are several different levels on which this justice or judgment is made.

The policeman at the apprehension role makes a judgment. Very often this policeman, certainly in minor crimes, makes a judgment that this individual is not a menace to society and takes him home or maybe gives him a lecture and sends him on his way.

When it comes to our level at the prosecution, as we examine the mitigating circumstances relating to this man, what he has done, we do not prosecute every crime that comes to our attention, because oft times it is that man who steals because he needs that crust of bread. He has no previous crime record—no previous record, and there is an excellent prospect for him to be rehabilitated. A great many crimes are not prosecuted at that level for that reason and that is not just in Anoka County. That is throughout.

Senator MCCLELLAN. That is not our problem. That is not what we are talking about.

Mr. JOHNSON. I just want the general tone to be that this is not some kind of contest. We are trying to administer justice and we do it now and we will continue to do it.

Senator MCCLELLAN. Thank you kindly. Thank you very much.

Mr. HEGARTY. Thank you, Mr. Chairman.

Senator MCCLELLAN. Orlando W. Wilson, will you come forward, please.

Mr. Wilson, will you identify yourself for the record, please?

STATEMENT OF ORLANDO WINFIELD WILSON, SUPERINTENDENT OF POLICE, DEPARTMENT OF POLICE, CITY OF CHICAGO, ILL.

Mr. WILSON. My name is Orlando W. Wilson. I am superintendent of police at Chicago, Ill.

Senator MCCLELLAN. Before we have your biographical sketch, I will ask you to examine it and insert it in the record.

That will be printed in the record in full.

(The biographical sketch of Mr. Wilson follows:)

BIOGRAPHICAL SKETCH OF ORLANDO WINFIELD WILSON, SUPERINTENDENT OF POLICE, CHICAGO, ILL.

RÉSUMÉ OF EXPERIENCE

Appointed Superintendent of Police, Chicago Police Department, by Mayor Richard J. Daley on March 2, 1960. Prior to this was:

Professor of Police Administration, University of California, July 1939 to 1960; and Dean, School of Criminology, University of California, July 1950 to 1960.

Police Consultant, Public Administration Service, May 1939 to January 1943 and intermittently since 1948.

Lieutenant Colonel and Colonel, Army of the United States, January 1943 to November 1946; civilian employee of War Department to June 1947. Served as Chief United States Army Public Safety Officer, Italy and England, September 1943 to February 1945. Chief United States Public Safety Officer, U.S. Group Control Commission and Office of Military Government (U.S.) in Germany until May 15, 1947. Directed public safety and denazification activities in U.S. Zone in Germany.

Instructor, Bureau for Street Traffic Research, Harvard University, 1936 (on leave from Wichita)

Chief of Police, Wichita, Kansas, March 1928 to May 1939.

Chief of Police, Fullerton, California, April 1925 to December 1925.

Berkeley Police Department, Patrolman, May 1921 to April 1925.

Directed reorganization surveys of following police departments:

Dallas, Tex.
San Antonio, Tex.
Pasadena, Calif.
Hartford, Conn.
Birmingham, Ala.
Louisville, Ky.
Nashville, Tenn.
Oakland, Calif.
Vancouver, B.C.
Puerto Rico
Worcester, Mass.
Portland, Maine
Stockton, Calif.

DECORATIONS

Awarded U.S. Bronze Star Medal
U.S. Legion of Merit

SPECIAL AWARDS

1960 Chicagoan of the Year, Junior Chamber of Commerce
1961 Annual Award, American Society of Criminology
1962 Annual Public Service Award, National Law Fraternity, Chicago Chapter, Tau Epsilon Rho—March 1962
Honorary Doctor's Degree, Carthage College—September 1962
1962 Award in Human Relations, Chicago Commission on Human Relations—December 1962
Citation for Outstanding Service, John Howard Association—December 1962
Daniel H. Burnham Award, Roosevelt University—January 1963
1963 Annual Award, Illinois Academy of Criminology—April 1963
1963 Citizen of the Year Award, Royal Task Masters Club—April 1963
1963 Brotherhood Award, National Conference of Christians and Jews (NCCJ)—June 1963
1964 Chicagoan of the Year, 1964—Chicago Press Club—January 1965
1965 Honorary Doctor of Laws, Northwestern University—June 1965

PUBLICATIONS

Prepared Public Safety Manual for Liberated Territories and for Germany
Police Records, Their Installation and Use, Public Administration Service, Chicago, 1942, 336 pp.
Police Administration, McGraw-Hill, New York. 1st Edition 1950, 540 pp.; 2nd Edition 1963, 515 pp. (translated and published in Spanish, Arabic and Chinese)
Police Planning, Charles C. Thomas, Springfield, 1952, 492 pp. Revised, 1957

EDUCATION

A.B., University of California, Berkeley, 1924

MEMBER

International Association of Chiefs of Police (life)
Past President, American Society of Criminology, 1941 to 1949

Senator MCCLELLAN. You have a prepared statement?

Mr. WILSON. Yes, I have, Mr. Chairman.

I feel obliged, first of all, to apologize to you, appearing before you with a cold.

Senator MCCLELLAN. We have that much in common.

Mr. WILSON. It was my intention to read this brief statement if I may and then respond to any questions which you might care to put to me.

Senator MCCLELLAN. We will be very glad to have you read it, Mr. Wilson.

Mr. WILSON. Mr. Chairman and gentlemen, I appear before you today in support of three bills—Senate bill No. 674, regarding the admissibility of confessions as evidence in criminal trials, Senate bill No. 675, the "Federal Wire Interception Act," and Senate bill No. 917, the "Safe Streets and Crime Control Act of 1967." These three bills which, at first glance, appear very dissimilar are in fact quite similar in one very important respect—they are all aimed at reducing and containing that blight upon society which will otherwise overwhelm us—crime. I would like to comment briefly on these bills in numerical sequence and then I understand you gentlemen may want to ask me specific questions on any or all three of them which I will be happy to answer to the best of my ability.

The first bill, No. 674, relates to confessions. Prior to 1964, the Supreme Court of the United States had settled upon what I thought to be a fairly reasonable standard with regard to the admissibility of confessions in State courts. This standard was commonly referred to as the "voluntary-trustworthy" test. Under this test the court would determine two things on the specific facts in each case. First it would decide if the confession was voluntary—did the defendant give it of his own free will. If he did, the mandate of the fifth amendment, against coerced confessions was satisfied.

Second, the court would decide if the confession was likely to be the truth. The whole justification for our system of criminal justice is to get at the truth and trustworthiness is of course a proper matter of concern with regard to all evidence. If the court found the confession to have been both voluntary and trustworthy it was admitted—it was as simple as that.

But the Court has now changed the rules and I might add justified the change under the same Constitution that had supposedly dictated

the old voluntary-trustworthy standard. Under the *Escobedo* case in 1964 and the *Miranda* case last year, decisions as to the admissibility of confessions are no longer made on the basis of the specific facts in each case. Decisions are now made in accordance with the arbitrary rule that police must advise the defendant that he may remain silent and may have an attorney before he is asked any questions. If the police don't so advise the defendant, the confession is inadmissible regardless of whether it was voluntarily given and regardless of whether it is the truth. All of this is done on the peculiar theory that releasing criminals will in some manner protect the rights of the innocent.

As I understand it, Senate bill No. 674, if enacted will merely codify the voluntary-trustworthy standard. I have some reservations concerning the effect that the enactment of this bill would have on future Supreme Court decisions. The Court held that this standard was insufficient in the *Miranda* case, by holding that the police advice system was required under the Constitution. It would appear that no action of Congress short of a constitutional amendment would have the desired effect. I am something of an optimist, however, and I think that this type of enactment might indicate to the Court that the people of the United States are tired of the Court turning criminals loose, are tired of being afraid to leave their houses after dark and are fed up with the kind of reasoning that puts the individual liberties of one confessed criminal above the welfare of our whole society. I sincerely hope so.

Senator McCLELLAN. I have expressed the opinion that if one of the justices changes his mind it would have a salutary effect.

Mr. WILSON. Although they are very obvious to anyone involved in any kind of law enforcement or investigative work, I want to give you some small indication of the effect of the *Miranda* decision on law enforcement. The *Miranda* decision virtually precludes any interrogation by the police. We must advise an arrestee that he may remain silent and that he may have a lawyer—at State expense if necessary. If he can afford a lawyer and he contacts one, the lawyer will tell him to keep his mouth shut. If he can't afford a lawyer, we have no means; that is, the Chicago police, to provide him one so we have to forget about questioning him. In either case, the result is the same—no interrogation. There are those who say that any crime can be solved without interrogation. I would like to state unequivocally that this is simply not so. This business about "rubbing red pepper into some poor devil's eyes" is a lot of nonsense. We're talking about questioning—not third degree. There is no substitute for questioning. Even in the relatively few cases where incriminating evidence is found at the scene of the crime the evidence rarely speaks for itself. The testimony of someone, or an admission by the accused, is usually needed to tie the evidence to the accused and to make the physical evidence relevant as proof.

I have a favorite quotation from the 1958 case of *Trilling* v. *United States* which reflects my thoughts on this matter as follows:

> At least one of the prime functions, if not the prime function, of the police is to investigate reports of crime or the actual commission of crime. The usual, most useful, most efficient, and most effective method of investigation is by questioning people. It is all very well to say the police should investigate by

microscopic examination of stains and dust. Sometimes they can. But of all human facilities for ascertaining facts, asking questions is the usual one and always has been. The Courts use that method.

The next bill that I would like to comment upon is Senate bill 675, the Federal Wire Interception Act.

As a local law enforcement officer my main interest in this bill is in section 5(b). That section would authorize the attorney general of a State or the principal prosecuting attorney for any county or city to intercept wire communications upon court order, so long as the State had a statute permitting such activity. As I understand it the section would give congressional approval to State statutes similar to the one that New York now has. With this type of authorization I am confident that other State legislatures would adopt similar laws.

I might tell you at this point that Illinois has the most restrictive law in this area of any jurisdiction in the United States. In Illinois it is unlawful for a person to record a conversation which he himself is a party to. It is unlawful for a police officer to monitor a telephone conversation between a citizen and a kidnaper even if the citizen requests it. Hopefully, the Illinois legislators would look upon the passage of this bill, 675, as an indication of the type of law that our citizens want and are entitled to.

The remainder of my remarks on this bill relate to the need for court-supervised wiretapping with regard to the fight against organized crime.

It is my firm conviction that organized crime poses a greater threat to the American way of life than even communism. And it is my further belief that we will make no substantial inroads against organized crime without the use of electronic surveillance. The police are very successful at arresting the local narcotics peddler, the runner for the gambling organization, and the prostitute; but they never seem to have much luck with the higher-ups. The bosses don't engage in any activity that is readily detected by the police. They commit crimes such as conspiracy and they employ their henchmen to do the actual dirty work. As a result the police must be satisfied with arresting the pimps, the prostitutes, and the runners and the addict-pushers while organized crime grows stronger and stronger because the driving force behind it—the kingpins—go untouched.

You may ask if court-supervised wiretapping would have any effect on this problem. I believe it would. The recent report of the President's Commission on Law Enforcement and the Administration of Justice indicates that the Commission agrees with me. The report states at page 201:

> Members of the underworld, who have legitimate reason to fear that their meetings might be bugged or their telephones tapped, have continued to meet and to make relatively free use of the telephone—for communication is essential to the operation of any business enterprise. In legitimate business this is accomplished with written and oral exchanges. In organized crime enterprises, however, the possibility of loss or seizure of an incriminating document demands a minimum of written communication. Because of the varied character of organized criminal enterprises, the large numbers of persons employed in them, and frequently the distances separating elements of the organization, the telephone remains an essential vehicle for communications.

Thus the telephone is essential to the higher-ups in organized crime—they use the telephone as an instrument of criminality. It seems

to me that law enforcement should have the same opportunity to intercept and use this evidence as it has with regard to other more tangible evidence. The Constitution provides that a search may be made with a judge's authorization—a search warrant. This bill only seeks to apply that same principle to electronic searches.

Finally, I want to talk about Senate bill No. 917, the Safe Streets and Crime Control Act.

This act provides that the Attorney General may make grants to State and local governments for law enforcement planning, for the development of new approaches and improvements in law enforcement, and for research and the development of special projects.

Such grants could be used to cover a part of the costs of those things that police departments across the Nation sorely need but can't afford, ranging from the development and acquisition of specialized equipment, to less tangible things such as training, operations research, and studies in police-community relations.

The contemplated appropriation for this program is $50 million for the first year. Although this may sound like a great deal of money, the sum begins to shrink in size when you consider the fact that it costs well over twice that amount to run the Chicago Police Department for 1 year and it becomes a mere pittance when you consider that burglaries alone cost the citizens of the United States an estimated $284 million in 1965. I haven't even begun to mention the actual cost to society of other serious crimes and the loss of some 10,000 lives through willful homicides that none of us would even attempt to evaluate in terms of money, in that same year.

Law enforcement is presently entering a new era. We are desperately seeking the knowledge necessary to first understand and then solve the problems confronting us. The general caliber of police administrators has risen to a point that I would have certainly not anticipated a few years ago. It would be shameful, and perhaps disastrous, if we were to waste the desire and ability of the present administrators by failing to provide them with the necessary resources with which to progress.

We in Chicago have been fortunate in that we have had the type of city administration that has provided the police with every possible bit of support, monetary and otherwise. Since 1960 we have almost completely motorized our patrol force, we have installed a whole new communications system that allows us to provide police service in a matter of seconds, we are introducing electronic data processing into every possible phase of police work, and our police-community relations programs are beginning to demonstrate their usefulness.

Other cities have not been so fortunate and have fallen behind. We in Chicago have progressed. We can see our progress in the reduced crime rate. But progress is an elusive thing. Our national population is increasing and crime is increasing about five times more rapidly. We must take significant strides to merely hold our own and then we must accomplish even more before we can state that we have progressed.

I am in hopes that the program contemplated under Senate bill 917 and other similar programs will provide law enforcement with the means to make those additional strides that we can call progress toward the reduction of crime.

Thank you, Mr. Chairman. I would be glad to respond to any questions.

Senator McCLELLAN. Thank you, Mr. Wilson.

In discussing the purpose of this safe streets and crime control bill we keep referring to law enforcement and criminal justice. It is designed to make justice and the administration of criminal laws more equitable and more efficient. Will we not omit a very important area if we do not try to deal with the improvement of justice at the top as well as at the arresting level?

Mr. WILSON. I agree with you completely, Mr. Chairman.

Senator McCLELLAN. What has law enforcement gained when officers apprehend the guilty and then they are turned loose on some, maybe dubious, technicality?

Mr. WILSON. I feel there is something terribly wrong with the administration of criminal justice in this country. I hope Congress can do something to rectify this condition.

Senator McCLELLAN. I think maybe we have come to the point where we will have to do one of two things. I am trying to take the moderate approach and simply let the Congress declare how voluntary confessions may be received in evidence in the trial of a criminal case.

Now, I think that is a moderate approach to the problem. It still leaves the matter in the hands of the court to weigh the totality of circumstance and, in other words, it is what we have done all through these years in our system of jurisprudence. Just return to what was and has been the procedures under the same Constitution——

Mr. WILSON. Right.

Senator McCLELLAN. —before somebody decided that it was wrong to interrogate a suspect without providing a lawyer. But if we cannot enact this moderate bill, then there are two other courses open, as I see it.

One is a constitutional amendment, which is a cumbersome process—I do not know whether you could get two-thirds of both Houses of Congress to pass a resolution and submit it and get three-fourths of the States to ratify it. The third, most drastic step, would be to limit the appellate jurisdiction of the courts.

We have a provision in the Constitution which would permit the Congress to limit the jurisdiction of the Supreme Court. That is a harsh remedy. I do not want to see that done.

But we have these alternatives. Or we have the fourth alternative, to do nothing, and leave conditions as they are.

Mr. WILSON. If they would leave conditions as they were, we could live with them.

Senator McCLELLAN. But if we leave them as they are, what?

Mr. WILSON. Our society cannot survive, in my judgment. We are operating under an accusatorial system and in my judgment an accusatorial system cannot operate effectively without questioning.

The alternative is to adopt the inquisitorial system of France and some of the European countries, in which a magistrate would direct questions and require answers. The questioning that the police have been privileged to engage in in the past, in my judgment, is an inherent part of our accusatorial system and the system will fall if we are denied questioning suspects.

Senator McCLELLAN. It has been said by some that the fact that guilty criminals are turned loose has no impact on the increase in crime in this country. What is your comment about that?

Mr. WILSON. Well, I cannot prove this statistically beyond the fact that over the past several decades the crime rate has been spiraling all out of proportion to the growth of our population.

Now, how to prove how much of this grows out of restrictions that have been imposed by the Supreme Court, what other factors may have been involved, would be very difficult.

But certainly, in my judgment, the restrictions the police are operating under is one factor that has played a part in the spiraling crime rate.

Senator McCLELLAN. If it does not have any impact, it appears to me our theory of punishment for crime is wrong. The only purpose in punishment is to deter, is it not?

Mr. WILSON. That is correct.

Senator McCLELLAN. Certainly that is the prime purpose of it. I wonder if anyone can rationalize the fact that in his retrial Miranda went before the court, under oath, and with the advice of counsel, told the trial judge, "Yes, I raped her. What are you going to do about it?" Is that calculated to cause respect for law and order?

Mr. WILSON. Not in my judgment.

Senator McCLELLAN. Is that calculated to restrain one so inclined in his passions to go out and rape? What will be the impact on such individuals who have such inclinations? It would not restrain them in my judgment.

Mr. WILSON. I agree.

Senator McCLELLAN. The other impact is, if he can get by with it, so can I. Does that not tend to increase the crime rate in this country?

Mr. WILSON. Right.

Senator McCLELLAN. The way I rationalize it, it does. I do not know any other way. I am going to be interested in anyone who wants to testify that this has no impact at all. I will be interested in listening, getting their logic and reasons to fortify that statement.

That signal you heard was the signal for a rollcall vote. I have to suspend for a few moments, and I will come back just as quickly as I can. Some other Senators may come and they may want to ask you something, if you do not mind waiting. We will take a 15- or 20-minute recess.

(Short recess taken.)

Senator McCLELLAN. Mr. Wilson, through the interruption of this rollcall vote I had to make, I lost my place here with respect to interrogating you.

I would like to have you emphasize your views with respect to wiretapping. That is quite controversial. I take the position, and I think you point that out, that actually, the principle is the same as the search warrant.

Mr. WILSON. Right.

Senator McCLELLAN. The administration takes the position that no one should wiretap except the Federal Government and that only in national security cases. I don't think anyone could oppose wiretapping when national security was definitely involved.

I am speaking now with respect to external threats to our survival. However, I cannot see a great deal of difference in external threats and internal threats if the degree of danger is important.

The way I view this crime situation, as I think you mentioned here in your prepared statement, is that we are really in more danger from crime bosses than from communism. Therefore, there is an internal threat, and it seems to me that, if the use of this instrumentality in connection with an external threat to our security can be justified, we can justify it in some cases to protect us from internal dangers.

I would like to have you comment on this. In the most recent kidnaping case I know of, a young boy was kidnaped and within a day or two the parents paid a $250,000 ransom, I believe it was. Fortunately, they were able to pay. Fortunately, they were able to make contact and pay the ransom and get their child back unharmed.

But I wonder who could conscientiously oppose a court order to tap the wire in that home, the telephone there or anywhere else where they thought there might be a call coming in from the kidnaper.

Mr. WILSON. I concur with you completely, Mr. Chairman. I feel threats to our domestic security are more serious than the threats to our national security.

I have little fear that anyone is going to invade our country. No foreign country is going to invade our country; but we have, as a cancer in our society today, organized crime that we simply are not able to deal with effectively and, in my judgment, will not be able to deal with effectively until we are authorized under court supervision to engage in wiretapping and electronic surveillance.

Senator MCCLELLAN. Do you regard the risk of abuse of any serious consequence when it is done under the surveillance of a court?

Mr. WILSON. We hear a great deal about the right of privacy. I don't care who taps my telephone, even in police matters. Even in police matters, I don't think there are any conversations that I carry on at home or in my office that would be jeopardized if the whole world might listen to the telephone conversations. The police are simply too busy to listen to backyard gossip, what a teenage daughter might be saying over the telephone to her boyfriend or activities of this sort.

Senator MCCLELLAN. You can walk out here on the street and see everything more plainly than by listening in on the conversation. I think it is silly to think a policeman would take time from his important duties in law enforcement to listen to such slush on the telephone—let us call it a nicer name. Let us call it such romance on the telephone. It just does not make sense.

Mr. WILSON. I agree.

Senator MCCLELLAN. We have had testimony here from authorities in New York where they have the law and they testified that there is far more abuse under the conditions where there is no effective law against wiretapping, far more abuse, more promiscuous wiretapping, than there is under a wiretap law administered under the strict supervision of a court and only after there is a showing made of a probability of a crime being committed or having been committed.

Any other comments you wish to make?

I will ask you to wait a few moments. Another Senator indicated that he was coming down and particularly Senator Hruska would

like to ask you some questions. If you will be kind enough to wait a few moments we will see if Senator Hruska comes.

Will you come around, Justice Musmanno?

They tell me you were scheduled for tomorrow but you arrived today. We appreciate your arriving today rather than the day after tomorrow. We are so glad you are here. We all have problems keeping our dates.

Judge MUSMANNO. I cannot tell you how grateful I am that you will hear me this afternoon.

Senator MCCLELLAN. If you will give us a little background statement along with your identity now, we will be very pleased to hear from you.

STATEMENT OF HON. MICHAEL A. MUSMANNO, JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA

Judge MUSMANNO. Mr. Chairman, my name is Michael A. Musmanno, M-u-s-m-a-n-n-o, senior associate justice of the Supreme Court of Pennsylvania.

Shortly after the war I was appointed by President Truman as a judge at the International War Crimes Tribunal where I presided over what was known as the greatest murder trial in history, the *Einsatzgruppen* case.

I have written a number of books, one of them is entitled "Proposed Amendments to the Constitution of the United States."

I am tremendously concerned about decisions which we are receiving from the highest Court in the land, and I would like to direct myself particularly to one decision which has stirred up a great deal of discussion, controversy in some circles, and including myself, distress.

No respectable doctor would prescribe for a patient he has not seen, for a disease he has not diagnosed, or for symptoms he has not appraised. Yet the Supreme Court, in the *Miranda* decision, has written out a prescription to apply in all criminal cases regardless of the nature of the malady or the circumstances which fractured the bones of society. In many instances the prescription does not at all coincide with the nature of the malignant disease and, in consequence, many cancerous criminals and pestilential psychopaths are stalking the streets of the Nation, polluting the communities through which they move, endangering the lives and the well-being as well as the property of the law-abiding public. Maniacal killers, degenerative rapists, and vicious robbers are being released in the name of the law, simply because of the prescription of the Supreme Court does not fit the disease.

In the *Miranda* case, the Supreme Court said that no matter what the circumstances might be, regardless of the individuals involved, irrespective of the background, intelligence, education, or lack of it, of the person questioned, and, regardless of the particular circumstances in the particular case, the person who wishes to freely speak about the circumstances may not speak or be listened to unless he first drinks from the bottle of medicine which contains four pharmaceutical specifics; namely, that he has been warned he is not compelled to speak, that what he says may be used against him, that he is entitled to have an attorney and if he is indigent the State must supply him with legal counsel.

I do not say there is anything inherently wrong about that prescription but the Supreme Court has said that, no matter how healthy a person may be, no matter how willing he is to talk, he may not talk unless he downs a couple spoonsful of the indicated antitoxin. A man may dash into a police station shouting, "I shot my wife!" Before the police inquire into how and why he shot his wife, they must take down the medicine bottle and pour out the four wonder drugs and force him to drink. Of course, by this time the wife may die, any possible accomplices may escape, and society itself will suffer, but this is of no consequence as against the indespensable swallowing of the preventive potion prescribed by the Supreme Court.

Justice Clark in his dissenting opinion carries my feeling even further, and probably so. He says:

> Such a strict constitutional specific inserted in the nerve center of crime detection may kill the patient.

The patient being the long-suffering public.

Last February I was shocked as was the rest of the country to read in the newspapers of a man called José Suarez, who was freed in Brooklyn, N.Y., after he had confessed to stabbing to death his wife and five children, ranging in age from 9 months to 5 years. Suarez was released because the police, before receiving his confession, failed to administer to him the paregoric prescribed in *Miranda*. This case so shocked me that I called the judge in the case, Justice Michael Kern of the Supreme Court of New York. He told me that it revolted him to put this "animal" as he called the killer, on the street, but in the face of *Miranda*, he could not do otherwise. He referred me to the able District Attorney, Aaron E. Koota, and I asked Mr. Koota to send me a memorandum on the case, which he graciously did. This memorandum revealed the following:

Jose Suarez lived with his common-law wife and five children at 301 Hooper Street, Brooklyn. On April 27, 1966, the wife and the five children were found dead at that address. The detectives took Suarez into custody and asked him about the deaths. He denied knowing any of the victims and even denied living at 301 Hooper Street. The dead woman's brother-in-law was brought to the police station, and identified the defendant as the husband of Maria Torres. Suarez said he did not know the brother-in-law. He even refused to acknowledge the identity of his own mother and sister when they were brought to the police station. A receipt for payment of a hotel room was found in Suarez's pocket and the detectives recovered blood-stained clothing from the room. He was taken to the morgue and shown the bodies of his wife and his son, Joseph, Jr. He denied ever having seen them before and he was returned to the police station. Fifteen minutes after arriving at the police station he called for the Spanish interpreter and said he wanted to tell what happened. He then told how on April 23 he had gone to the movies with his wife and two of the children. When he returned home, he got into an argument with his wife who called him "bad names" and stabbed him on the leg with a knife. He took the knife away from her and stabbed her about the chest "I don't know how many times." He then cut and stabbed the baby, Joseph, Jr. and all the others. He admitted the ownership of the blood-stained clothing.

Now all this occurred before the *Miranda* decision. Suarez confessed on April 27, 1966. The *Miranda* decision came down on June 13, 1966.

The police could not look into a crystal globe in an effort to determine what the Supreme Court was going to say in a case the police had never heard of and had not yet been decided. But the Supreme Court declared in the case of *Johnson* v. *New Jersey*, decided June 21, 1966, that the *Miranda* prescription was to apply to all untried cases, regardless of the dates of the confessions.

One has to walk a precarious tightrope which stretches from illogicality to non sequitur in order to make any sense out of *Miranda* effective chronology. The Constitution declares that Congress shall pass no ex facto law which, of course, is proper and just. No one should be punished for an act which was not a crime when committed. But the Supreme Court, in the *Miranda* case, has in effect rendered an ex post facto decision against the police and all those endeavoring to prosecute crime. Now if it be argued, and I would not quarrel with that kind of argument, that it would not be just to deny to an accused person the benefit of a law passed for the benefit of all accused, even though the law was enacted after the commission of the alleged wrongful act, I must ask why did the Supreme Court limit the application of the *Miranda* criterion only to untried cases? If it was wrong to deny Suarez, who confessed in April, 1966, a law passed in June 1966, shouldn't the Supreme Court, in logic, justice, and propriety require the law to apply to those who had already been tried and convicted as they did in the *Gideon* case? The answer, of course, is that the Supreme Court is not required to be logical.

You may note that I have said that I have spoken of a law "passed" by the Supreme Court. I use that term advisedly because no student of the recent decisions of the Supreme Court can possibly exclude the hypothesis that the Supreme Court has entered into the legislative field. I am not being disrespectful when I say that the court has become a super-Congress. What we are doing here today would suggest that the times have brought about a reversal of the plan of the original builders of our constitutional form of government. Instead of the Supreme Court interpreting laws passed by Congress, Congress is now passing on the judicial legislation of the Supreme Court.

I do not mean to say that the Supreme Court has not at times legislated wisely. I must confess that I have rejoiced in some of the legislative enactments of the Court, but, as a lawyer, I am compelled to say that it is not a question as to whether the Supreme Court legislates wisely. As a student of the law, I would say that the Supreme Court has no right to legislate at all.

That the Supreme Court legislated in the *Miranda* case is evidenced by the statement in the majority opinion which speaks of the newly created requirements as "the principles announced today" and the "system of warnings we delineate today." Justice Harlan, joined in by Justices Stewart and White, said in his masterful dissent:

> I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell.

Justice Harlan said further:

> Legal history has been stretched before to satisfy deep needs of society. In this instance, however, the Court has not and cannot make the powerful showing that its new rules are plainly desirable in the context of our society, something which is surely demanded before those rules are engrafted onto the Constitution and imposed on every State and county in the land.

I trust that my remarks may not be interpreted as in disrespect of the Supreme Court. I respect it without reservation and, of course, as a citizen, to say nothing as a justice of the Supreme Court of Pennsylvania, I am bound by its decisions. This, however, does not mean that I may not or should not point out wherein I believe it is in error. Indeed, the dissenting opinions in the *Miranda* case go much further than I have gone in their criticism of the majority opinion which unfortunately was supported by only five of the nine Justices. Justice White, joined in by Justices Harlan and Stewart, said:

> In some unknown number of cases the Court's rule will return a killer, a rapist, or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. The real concern is not the unfortunate consequences of this new decision of the criminal law as an abstract, disembodied series of authoritative prescriptions, but the impact on those who rely on the public authority for protection and who without it can only engage in violet self-help with guns, knives, and the help of their neighbors similarly inclined. There is, of course, a saving factor: the next victims are uncertain, unnamed, and unrepresented in this case.
>
> Nor can this decision do other than have a corrosive effect on the criminal law as an effective device to prevent crime. A major component in its effectiveness in this regard is its swift and sure enforcement. The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good commonsense. If it were not, we should posthaste liquidate the whole law-enforcement establishment as a useless, misguided effort to control human conduct.

That is strong language, Mr. Chairman, and justified.

It is ironical, and I might even say a mockery of the law, courthouse, and justice, that the decision intended by the Supreme Court to protect the innocent from unjust accusation and save them from improper convictions should bear the name of the dangerous criminal, Ernest Miranda. The Supreme Court has made the *Miranda* decision a lighthouse in the law but it does not emanate light. Indeed, it projects shadows concealing rocks and shoals which endanger the ships of law enforcement.

Who is Miranda to enjoy the distinction of having his name immortalized, almost heroized, in a decision proclaiming supposed principles of justice, saving from harm the guiltless and the ensnared? On March 3, 1963, Ernest Miranda, 23 years of age, kidnaped an 18-year-old girl and forcibly raped her near Phoenix, Ariz. Ten days later he was arrested and taken to a police station where the victim picked him out of a lineup. Two officers then, in daylight and without any threats or promises, questioned him. In a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a statement admitting and describing the crime. This is the confession the Supreme Court declared illegal. There could be no question the confession was voluntary, nor could there be any doubt that the defendant, who had had a ninth-grade education, knew what he was doing. Yet, because the police had not forced on him a drink of the potion, the prescription for which the Supreme Court had not yet drafted, this felonious, brutal outlaw was released. Who benefited by the decision of the Supreme Court? Society? The police? Law and order? The courts? How about the victim who had had subjected to the most ignominious torture that can be visited on a young girl?

There could be no doubt about Miranda's guilt when he was released, but if anyone would say, how do you know he was guilty, he could

also have been innocent; that question has now been conclusively answered. Miranda was tried again and incidentally, while serving a term for robbery. This time, even without a confession, he was found guilty of kidnaping and rape. This is the robber, kidnaper, and rapist, now an inmate of the Arizona State penitentiary, whose name illumines the decision which is supposed to protect society, as well as the individual, but whose principal accomplishment is that it has thrown chaos and bewilderment into the battalions of law enforcement.

The *Miranda* decision is the *Dred Scott* decision of the 20th century, fettering the police in their efforts to protect society from violent criminals as the *Dred Scott* decision fastened the shackles of slavery on a substantial portion of the human race.

Not only has the *Miranda* decision bewildered the police, it has confused the courts. In November 1966, two small boys (ages 7 and 13) were found dead in a refrigerator in a house occupied by several people, including a woman called Wilma Eperjesi, this is in Fayette County, Pa. Miss Eperjesi was taken into custody by the police. She denied any knowledge as to how the fatal refrigerator occurrence came about and was released. Later on, the police came to the house to make an investigation as to a possible accidental cause for the two deaths. While the police were in the house, Miss Eperjesi called one of the police, whom she knew, into a room and confessed that she had closed the door on the two boys who died. On that confession, she was charged with the crime. Her attorney petitioned the court of Fayette County to suppress the confession and the court did so on the basis of *Miranda*. The Commonwealth appealed to our court and we reversed the lower court's decision. I wrote the opinion. In it I said:

> Once an utterance falls from the lips with extemporaneous naturalness, there is no way to declare it nonexistent. To order the nullification of such a statement would be like ordering one to reattach an apple to the limb from which it has fallen, not because of limb-shaking or tree climbing, but in consequence of the fruit's ripeness.
>
> When a policeman is investigating a crime or supposed crime it is his duty to note everything, listen to every voice, and study every object which may enter into a reconstruction of the untoward event, whose unknown origin he is seeking to ascertain. Trial courts should not impede officers in the fulfillment of their sworn duties. To so impede them is to imperil the safety of society. A person who has already killed, robbed, or burglarized, may repeat his violence. Thus, it is imperative that the policeman question all persons in the immediate territorial and chronological area of committed violence in order to take whatever precautions may be necessary to prevent a repetition of violence.

I endeavored in my opinion to distinguish the *Miranda* case, but I believe that if the defendant had appealed to the Supreme Court of the United States, the Supreme Court might well, under the *Miranda* decision, have declared the confession illegal because the policeman did not acquaint her with the four criteria of the *Miranda* decision.

The *Miranda* case cannot help but hinder policemen in the performance of their duty. To restrain a policeman from listening when statements are voluntarily made, even though it may later develop that that person is a suspect, is like restraining a policeman from drawing his pistol when someone in his vicinity brandishes a firearm. The list of policemen killed by criminal suspects is a long one, not the least prominent of this tragic aspect being the one of Policeman J. D. Tippit shot down in cold blood when he apprehended Lee Harvey

Oswald to question him concerning the circumstances surrounding the assassination of our beloved President Kennedy.

Imagine that policeman saying if he could talk to Oswald—"Before you speak, I want you to know that you can have an attorney. Before you speak or I can listen to you, I want you to know that if you don't have an attorney, we must get you one and we dare not question you." This man armed with a pistol and rifle and heaven knows what other weapons. That is what the *Miranda* case would have provided for in that disgraceful, shameful page of our history.

The lower court in the *Eperjesi* case said that once Miss Eperjesi mentioned "refrigerator" the policeman should have told her she had the right to remain silent. I won't go into my opinion here in detail, but I remember that the lower court ruled that when she said she closed the door on the refrigerator, that the policeman should not have put any other questions and that it was wrong for him then to ask her, "Do you know that the two boys were in that refrigerator?"

I say if he had not asked that question, he should have received the booby prize of the year. It was the most natural question in the world; but under the *Miranda* case, he wouldn't have been permitted to ask that obvious, natural, logical, demanding question.

It would be additionally bad reasoning not to ask the questions because the woman could have known about the refrigerator incident without being criminally involved.

Apart from the criminality involved, we have accidental deaths and the police should inquire, and they should investigate, and they should interrogate. You can't wait until the lawyer arrives in order to get this information which may help to prevent other crime.

Miss Eperjesi could have known how the fatal occurrence came about, without being a participant in it. To have told her at this moment that she did not have to speak, might well have caused her to believe, on the hypothesis that she was only a witness, that even as a witness she should not speak.

To require policemen to stop investigating just when they happen upon a clue, which may lead to solving a crime, and further protect society, would be like telling a deep-sea diver to surface when he sees the first sign of the sunken ship he is seeking. To compel policemen not to listen to volunteered statements while investigating a homicide, is to put stoppers in their ears and require them to snap handcuffs on their wrists. Police have the sworn duty not only to protect society from crime but also, by ascertaining how much heartrending accidents occur, to assist in preventing the closing of refrigerator doors and the spilling of scalding water on infants.

Of course, all this has nothing to do with third degree methods. The majority opinion in the *Miranda* case devoted considerable space to a discussion of coercion in the obtaining of confessions. I cannot state too emphatically my abhorrence of a coerced confession. No language can be strong enough, no invective can be forceful enough, no epithet can be sufficiently castigatory to condemn an utterance torn form unwilling lips or taken from a tongue forced into babblement from application of the scourge of whip or torture. But that is not what we are talking about here. An involuntary confession is about the most worthless document that can be found in the length and breadth of the land.

No court will permit into evidence a confession which is written with a captive hand.

We are talking here about voluntary confessions, which the Supreme Court has outlawed unless a certain ritual is followed. I say that it is a stultification of commonsense to say that one cannot listen to a confession that is spoken with a willing tongue and a free spirit in the temple of truth, with the light of reason streaming through the open windows of an unrestrained conscience.

Senator McClellan, in his magnificent speech on the Senate floor on January 25, 1967, told of a self-confessed murderer in Columbus, Ohio, who was released because of the *Miranda* decision, he told of a robber who killed a hotel clerk in Seattle, Wash., but because of a confession, which, incidentally, was corroborated by other evidence, he was released on the basis of the *Miranda* decision.

In Evansville, Ill., a murder admitted his crime, but, because the prosecutor had not followed out the ritual of the *Miranda* decision, the State had to be satisfied with a manslaughter verdict. The able district attorney of Brooklyn, Aaron E. Koota, has stated that since the *Miranda* decision 96 out of 239 persons, suspects in homicide, robbery, felonious assault, and rape cases refused to make statements. In the past, refusals ran only about 10 percent. Mr. Koota declared:

> Most all these men will walk the streets as free men. These vicious crimes may never be solved. Recent Supreme Court rulings have shackled law-enforcement agencies, making it possible for vicious criminals to escape punishment.

It is not for me, Mr. Chairman, to tell you about the tide of crime in America rising like engulfing waves, of the heroic efforts being made by law-enforcing agencies, and of the impediments which hamper them in their valiant endeavors. You have made your own scholarly research, you have had highly competent men testify here on the subject. I can only say that I am alarmed when so conservative a newspaper as the New York Times, in an editorial entitled "Murderers at Large," declares:

> It would be an act of supreme judicial irresponsibility toward society to extend the present valid rules to the point where even freely given confessions were unusuable as evidence.

All this leads me to recommending to this distinguished committee that it approve of legislation which will have only one criterion with regard to confessions; namely, voluntariness. This voluntariness is to be ascertained from all the attendant circumstances. I believe that the trial judge, outside the presence of the jury, should hear evidence on the voluntariness of the confession. If he decides there was any element of coercion, promise or deception which led to the confession, he will be empowered to rule out the confession, even though the accused received the varying admonitions enumerated in the *Miranda* decision. The judge's decision in this respect will be final. If, on the other hand, he is persuaded the confession was voluntarily given, he then will permit both the prosecution and the defendant to introduce evidence before the jury supporting their respective contentions. He will then instruct the jury on the voluntariness. If twelve citizens chosen from all walks of life, being persons of good character and armed with the common sense one acquires in honest living, conclude the confession was voluntary, then it should be accepted as evidence in the case, otherwise not.

Obviously, I enthusiastically approve of Senate bill 674 and respectfully urge its enactment into law.

Senator McCLELLAN. Justice, I thank you most sincerely for giving us a very, very strong statement, one that should have an appeal to and persuade anyone who reads it.

Judge MUSMANNO. Thank you.

Senator McCLELLAN. I deeply appreciate it.

I only hope there will be other jurists who do not have a temptation to be timid in this area to help those of us who are trying to get the justices back on the track.

It grieves me when I think about the *Suarez* case you referred to, and I referred to others in speeches, and sit here today and hear testimony that Miranda admitted under oath and in court that he did rape the woman. There are those who are free today, who are guilty and who have confessed to their guilt and free simply because of the illogical injustice of the *Miranda* decision.

Now, what is your judgment about the impact on the crime rate in this country, when it becomes obvious and known throughout the criminal community that they are being freed, notwithstanding their guilt—their confessed guilt—of heinous crimes?

Judge MUSMANNO. I was a little bit surprised that the preceding witness, a very able police officer seemed to be a little reluctant to state whether this *Miranda* decision had any impact on the criminal element in the United States. There is no reluctance on my part to say that criminals have become emboldened, they have become encouraged, they have become further contemptuous of law and order because of the decisions handed down by the Supreme Court of the United States, declaring that before they can be even questioned about something, which obviously is within the purview of their knowledge and may prevent further crime, that they are entitled to tell to the police, representatives of the government, "I am not inclined to talk now, or let's wait a while."

Senator McCLELLAN. Well, you have heard me state here this afternoon the approaches to the problems that have been suggested—one, this moderate bill—I think it is a moderate bill. This will simply return us to the traditional system and procedures with respect to confessions that has prevailed in this country since the founding of our Government. This is S. 674, the bill which you have so strongly endorsed.

Then there is the constitutional amendment, which is cumbersome.

Judge MUSMANNO. I hope we don't have to come to the constitutional amendment, Mr. Chairman.

Senator McCLELLAN. Or, you can limit the jurisdiction of the appellate courts. No one really wants to do that. That is harsh. The fourth alternative is to do nothing. If we do nothing, this *Miranda* decision will continue to prevail and become a precedent that must be followed by law-enforcement officials, and, as you point out, under no circumstance does it mitigate or excuse the failure to follow the decision.

Judge MUSMANNO. It is evident from what the Supreme Court said in the *Miranda* case, that if a professor of criminal law, who obviously would be familiar with the elements of voluntariness, would say, "I

am going to confess to a crime, don't bother me with any admonitions, I want to tell you I did this," and he then confessed to a heinous crime, the Supreme Court would say, "No, no. Peremptorily, that man must be released because the magic phrases were not uttered.

Senator McCLELLAN. The courts are trying to protect the criminal element in this country, those who are engaged in habitual crime, the repeater. Don't you think this type person knows his rights pretty well?

Judge MUSMANNO. Yes, sir; indeed, very well.

Senator McCLELLAN. Knows it better than some courts, I expect. They get good counsel.

Judge MUSMANNO. Yes, indeed. You spoke about some judges being timid and unfortunately that is true.

Senator McCLELLAN. I appreciate that. They come here and testify on an issue where they are in disagreement with the court—as you came here to testify—you respect the court, I do, we all do. But if we cannot speak out and call attention to what we conceive to be the errors of the court and thus try to influence the change that is necessary by speaking out and giving the reasons why we think the court is in error——

Judge MUSMANNO. I never go by that beautiful, magnificent, marble building of the Supreme Court, with the flag flying, without the intensive urge to remove my hat, especially when I see those magnificent words, "Equality Under Law."

But this equality should apply to society as well as to the individual. What I started to say, Mr. Chairman, was that our chief justice of the Supreme Court of Pennsylvania, John C. Bell, would never be accused of timidity. And when he learned I was coming here, he asked me to convey to you, the chairman, his respects and then he asked me if I would submit to the chairman a statement which he prepared and which he would like, and I would be happy to see, placed in the record.

Senator McCLELLAN. Is that the chief justice of your supreme court?

Judge MUSMANNO. Yes, John C. Bell, Jr. He would like to have his statement included in the record.

Senator McCLELLAN. That will be printed in the record at this point. Please express to the chief justice our appreciation of his interest and of the contribution he is making to our difficult task here. Thank you kindly.

(The statement of John C. Bell, Jr., follows:)

STATEMENT OF JOHN C. BELL, JR., CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA

It is a matter of both common and Judicial knowledge that an appalling and brutal crime wave is sweeping our Country and is increasing six times more rapidly than our population, and I am sure that I speak for a great many Judges when I say that we are firmly convinced that our law-abiding Society is in great need of further protection by public authorities and especially by our Courts. Even before the recent astonishing decision of the Supreme Court of the United States in *Miranda v. Arizona*, 384 U.S. 436, which so greatly limited and restricted police interrogation and the admissibility of confessions by murderers, rapists and other dangerous criminals, law-abiding citizens were and have been deprived of adequate protection of the Law, and every person accused of crime has been not only adequately but overly protected by the Courts. This is crystal clear from the following rights which are granted an accused: (1) In a criminal trial there is no mutual exchange of evidence. A defendant does not have to inform the State the names of any of his witnesses or his evidence, while the State must list its

witneses on the Bill of Indictment; (2) a defendant does not have to take the witness stand and no comment or unfavorable inference can be drawn or argued therefrom; (3) a defendant can be convicted only if the State proves his guilt beyond a reasonable doubt, which is defined to be a doubt which would restrain a reasonable man from acting in a matter of importance to himself; (4) a defendant's confession (or confessions are) is not admissible in evidence (a) unless and until the corpus delicti has been proved, and (b) the State has proved that his confession was voluntary; (5) a defendant is presumed to be innocent, no matter how many terrible crimes he may have previously committed; (6) if a defendant has never been convicted of crime he can place in evidence his good reputation and that alone can be sufficient to justify his acquittal; and (7) a defendant cannot be convicted if one, just one, out of the twelve jurors believes that the State has not proved he is guilty beyond a reasonable doubt. Furthermore, after a jury's verdict of "guilty" a defendant can always appeal for a new trial, alleging a violation of his Constitutional rights, or an error of law in the trial of the case, or a prejudicial error in the Court's charge, while after a jury's verdict of "not guilty" the State has no right of appeal and no right to a new trial no matter how strong and overwhelming the State's evidence was, or how many and flagrant errors the trial Judge committed against the State.

I am convinced, as are also four members of the Supreme Court of the United States and countless trial Judges, that the decision in the leading case of *Miranda v. Arizona*—which expressly overruled two prior and by necessary implication many prior decisions of the Supreme Court and adopted new and additional tests, standards, and conditions for the further protection of all persons accused of crime, including the most hardened and brutal criminals—has greatly weakened the already inadequate protection of Society. Moreover, it is unsupported by the language or the spirit of the Constitution or by prior Court precedents. *Miranda* and its kindred successors will, without the slightest doubt, greatly reduce the number of confessions and thereby gravely jeopardize the safety, security, protection, and general welfare of all law-abiding citizens which are of paramount importance in every civilized society.

For these reasons, I urge—and in this Statement I am expressing my own views and convictions and do not know the views of the other members of this Court—the Congress and also the Supreme Court of the United States to substantially change or modify the principles, tests, and conditions laid down in *Miranda v. Arizona and permit the introduction into evidence of confessions which were voluntarily and without deception or coercion made by a defendant or by any person suspected or accused of a crime.*

I enclose, as an appendix, brief quotations from the Dissenting Opinion of Mr. Justice Harlan, with whom Mr. Justice Stewart and Mr. Justice White joined, in *Miranda v. Arizona,* which unequivocally support my views. It is noteworthy that Mr. Justice Clark went even further in opposing the new pro-criminal tests laid down in *Miranda.*

APPENDIX

Mr. Justice HARLAN in his dissenting Opinion said, inter alia, of the majority's Opinion:

". . . [it] in practical effect wipes out all confessions."

". . . the aim in short is ultimately to discourage confession at all."

"This requires a strained reading of history and precedent."

"Of course, the limitations imposed today were injected by necessary implication in case after case. What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court's new Code would markedly decrease the number of confessions."

"We do know that some crimes cannot be solved without confessions, that amply expert testimony attests of their importance in crime control and that the Court is taking a real risk with Society's welfare in imposing its new regime on the Country."

"One is entitled to feel astonished that the Constitution can be read to produce this result."

"Thirty States opposed these new restrictions and no State in the Country has urged this Court to impose the newly announced rules, nor has any State chosen to go nearly so far on its own."

"In conclusion, nothing in the letter or the spirit of the Constitution or in the precedents squares with a heavy-handed and one-sided action that is so precipitously taken by the Court in the name of fulfilling its Constitutional responsibilities."

Mr. Justice WHITE in his dissenting Opinion, in which Mr. Justice HARLAN and Mr. Justice STEWART joined, ably and wisely pointed out the fallacies inherent in and the dangers to Society resulting from the Opinion of the majority Court in *Miranda v. Arizona.* For brevity's sake, I shall quote only two sentences from his Opinion:

"The most basic function of any government is to provide for the security of the individual and of his property. *Lanzetta* v. *New Jersey,* 306 U.S. 451, 455.

". . .

"Without the reasonably effective performance of the task of preventing private violence and retaliation, it is idle to talk about human dignity and civilized values."

Senator MCCLELLAN. Senator Hruska.

Senator HRUSKA. I have no questions, Mr. Chairman, but I would join you in your expression of gratitude and appreciation for this very splendid analysis and comments on the *Miranda* case.

Judge MUSMANNO. Thank you. Thank you. I am honored that you did get here during some of my presentation. I highly appreciate what you just said, Senator.

Senator MCCLELLAN. Thank you very much.

Senator THURMOND. Justice Musmanno, I would like to commend you for appearing here today and presenting a magnificent statement.

I wish every judge in the United States could read this statement. I wish every Congressman could read it, and I hope the Supreme Court members will read it. I feel that your appearance will be most helpful and will be very valuable to this subcommittee.

Judge MUSMANNO. Thank you, Senator.

Senator MCCLELLAN. Mr. Wilson, Senator Hruska, I believe, would like to ask some questions. Thank you for waiting.

Senator HRUSKA. Thank you very much, Mr. Chairman, for that consideration. It does happen, as I told you privately, that action on the floor demanded my presence there on two subjects in which I was very keenly and directly involved and interested.

Thank you, Mr. Wilson, for being patient and waiting.

Mr. Wilson, you have had considerable experience working with the Office of Law Enforcement Assistance. Your department is a grantee under the program that office administers. Could you describe what your experience has been in this regard?

Mr. WILSON. Our experience, Mr. Senator, has been a satisfactory one.

We feel that the Office of Law Enforcement Assistance has given fair consideration to all proposals that we have submitted and have been helpful in the drafting of proposals that we have discussed with them.

For example, I have been notified by telephone, although I have not yet received the documentary support of this, that a proposal for the grant of $150,000 has been approved to enable us to undertake quite an ambitious program in the area of operations research, in which we will provide a task force of selected command officers to plan the general area of study, with law enforcement assistance providing salaries for technicians, salaries that are simply beyond the capacity of the Chicago Police Department to handle by themselves.

We feel that this project, which may require 2 or 3 years for its consummation, will provide, not only for the Chicago department but for other departments in the country, information on the police manpower allocation and the development of more sophisticated programs and techniques in dealing with our problems.

Senator HRUSKA. We sometimes hear of redtape in dealing with governmental agencies. What is your experience with so-called redtape in this connection?

Mr. WILSON. I am glad you mentioned it.

Senator HRUSKA. Perhaps I should have characterized it differently than redtape. After all, when public affairs are administered, certain conditions must be complied with; certain things must be verified and so on. Can you give us any suggestions in that regard?

Mr. WILSON. This is a matter of concern to me, not only insofar as the Office of Law Enforcement Assistance is concerned, but also in the Safe Streets and Crime Control Act of 1967. It would be very simple if they would just roll up a barrel of money at the corner of my desk and say, "Go ahead and spend it."

From my viewpoint, this would be highly desirable. I can recognize, as you do, that in public affairs controls must be exercised. But I would like to cite a couple of incidents where, because we didn't have the barrel of money at the right hand to undertake the things at the time I felt they should be undertaken, other action had to be resorted to.

Police service is a service that operates with a certain measure of urgency. That is, we are confronted with situations that require action now. We can't wait.

Last year, we were considering a personal radio and had contemplated requesting an appropriation of over $2 million to expand the backbone of our system, so that personal radios with a power output of a watt and a half would be able to communicate with our communications center. We discussed this problem with some scientists at Illinois Institute of Technology Research Institute and we entered into a contract with them to resolve this problem. They felt that it would be possible to develop a system of transponds—a device the policeman could carry when he left his car, a device, part of the transceiver in the car, which would enable the officer, if he were several blocks removed from his car to receive any messages that were dispatched over his car radio, and in turn to activate the car radio and send the message with a 25-watt output, no matter how far he was from the car—that is, a matter of three, four, or five blocks; the advantage being, that we would save $2 million in our backbone expansion.

I was certain that we could have gotten enough money from OLEA to undertake this contract. But I was also aware that if we did this, and the contract we entered into with IITRI was, I think, in October last year, that it would probably have taken us 4 or 5 or 6 months to get the project underway. It so happened that there were some funds in our budget, and I took those funds and put them to use. We now have prototypes in operation and we have had them for some time, within a matter of 6 months. In other words, the problem was solved by about the length of time it would take, normally, to get these funds.

Senator HRUSKA. You mean by presenting an application to the OLEA and getting it processed, justified, verified, and confirmed?

Mr. WILSON. Yes, I don't say this critically, but I do state it as a fact.

Another example, the President's Crime Commission recommended that the police utilize community service officers to deal with tension situations in more hazardous police districts. In preparation for this summer, we appointed in our districts a community service sergeant. In six of our districts, we appointed six cadets who were indigenous to these districts, that is six to each of six districts. But we needed more cadets than we had available.

I would have liked at this time—and this is a month ago—to have been able to go somewhere and get enough money quickly so that we could have put those cadets on the job, have them trained and in operation before spring. We can't do this through our budget. This was a need that was not anticipated last fall. It came upon us suddenly—the idea really coming from the President's Crime Commission.

But we had no place to turn to get this kind of money. Here was involved, for the number of cadets we would have liked to have had, maybe $300,000 or $400,000.

I mention these two examples to emphasize my feeling that in some way there should be a provision for speeding up decisions. I don't know whether the law, as drafted, authorizes the Attorney General to delegate his responsibility of decision to State agencies.

For example, many States, including Illinois, have committees appointed by the Governor to deal in this area. And, perhaps, if the Attorney General was authorized to delegate some of this decisionmaking to that level, that we might be able to expedite the operation. There is a need in police service, I am convinced, for expediting it.

I am not qualified, really, to say how this should be done.

Senator HRUSKA. The bill does establish several objectives for which Federal assistance would be made available to the State and local governments.

Do you have a list of priorities in your own mind, in your own department, in your own experience, assuming that only limited amounts of Federal funds would be available under this bill?

Mr. WILSON. Well there are many uses that we could make of the Federal funds. The particular choice would be dependent in part on the size of the funds available.

For example, one of the lowest priorities in our building construction program for the Chicago Police Department is the construction of a new police academy. I put it at the bottom because I feel that the quality of the academy is determined by its staff rather than by the building it is housed in. And that, from an operation viewpoint, it is more important to get at an earlier date area headquarters and some new district stations rather than to go into construction of a police academy. If we could get support for the construction of an academy, this I would give a high priority to.

Senator HRUSKA. Are you familiar with the text of the bill? Title I pertains to planning grants. Title II provides for grants for law enforcement and criminal justice purposes.

Are you familiar enough with the bill's provisions to be able to express a judgment as to whether the Department of Justice under such an arrangement would become a partner in the administration of your department in connection with the granting of money under this program?

Would not the Department have to pronounce judgment on the projects you propose? Would it have to form judgments on its own part as to whether or not your recommendations should receive greater priority than some other recommendations? Have you examined the bill in this regard?

Mr. WILSON. Well, not quite, but I do not interpret the provisions of this act as being, as providing for conditional grants in aid. I do not think this concept is encompassed in the bill.

However, certainly, if someone has the responsibility of deciding on the soundness of the proposal, they must make the decision. I don't see how you can avoid it.

Senator HRUSKA. That would go even to priorities, would it not?

Mr. WILSON. I would think so.

Senator HRUSKA. Do you think someone in the Department of Justice can determine a priority better than you can in your department?

Mr. WILSON. No. But I don't think the bill says they will.

Senator HRUSKA. It says the plan must be approved. Suppose they say of the priorities you have, well, cadets are fine, but we think it is more important to raise salaries of the people now on the force. They could make that decision, could they not?

Mr. WILSON. Yes, they could.

Senator HRUSKA. They would have the power to make it.

Mr. WILSON. I presume they would.

Senator HRUSKA. Maybe they will say the cadets are more important than the personal radios. Maybe it would comport with your idea and maybe it would not. But they would have the power to do that under this bill.

Mr. WILSON. As I interpret it, they would. On the other hand, I think they are men of good will, men of sound judgment, men who are interested in the objectives of the bill; and if it is wisely and courageously administered, I think it will do good. I am not worried about the hazards that may lurk within it.

Senator HRUSKA. Well, I will agree that they are dedicated men acting in good faith, and men who are striving to do the right thing, However, I doubt very much, Mr. Wilson, that too many people will go along on the proposition of their knowing more about the priorities in your police department than you do.

Mr. WILSON. Well, I don't think the bill says that they do.

Senator HRUSKA. It says they shall be the judge of what kind of program you are going to have. You can develop a plan but they have to approve it. If they do not think it is wise or judicious, they will not have to approve it.

Mr. WILSON. I suppose this is a risk we have to take. I don't know how you are going to oppose it.

Senator HRUSKA. Is there some way we can describe in terms of the law the purposes for which a given amount of money should be used? And then have that money available to men like yourself in charge of very big and important departments—it would not be a barrel of money and it would not be granted indiscriminately. It would be granted conditionally, but on a wider basis than a discretionary power to act upon a particular blueprint plan. Would an arrangement of that kind be feasible in your judgment?

Mr. WILSON. Who, if you have such an arrangement, would decide that the request made was a sound one?

Senator HRUSKA. The terms of the law. The law could describe categories of activities within a police department to which Federal money can be devoted. For example, it could be for communications and men. You would get your radios if you thought radios were first priority. It could be for additional personnel or it could be for increasing salaries up to a given point. But you would exercise your own good judgment as to the priorities and how the money should be devoted.

Do you think that would make sense in the situation like this, to get away from the delay that you speak of in connection with your personal radios or cadets?

Mr. WILSON. The administration of such a law is an extremely difficult one. I think it would be even more difficult to formulate the type of law that you have in mind unless you completely oversimplify it.

For example, you might merely provide for 50 percent of the police budget be paid by the Federal Government without any conditions. I am not sure that we would make as much progress in the improvement of the quality of police service in this country under such a provision as we would if we operated as planned in the proposed bill.

Senator HRUSKA. Your department is one of the original 15 participants in the FBI's National Crime Information Center. Could you make a brief reference to it and how it is coming along?

Mr. WILSON. It is coming on very well. We are one of the first departments that had random retrieval files for persons wanted and stolen property, and it was logical that this department with, I think, 14 or 15 others, should be selected to participate in the program that is being developed by the FBI.

Senator HRUSKA. That random file, that is one of those big storage wheels, and they sometimes call it random access, do they not?

Mr. WILSON. That is correct. It provides immediate response to an inquiry in miliseconds. And by feeding into the files of the computer in Washington, D.C., information on automobiles that are stolen and persons who are wanted on felony warrants, we are able to get our information in so that inquiries made anywhere across the country would result in the recovery of stolen Chicago cars and wanted Chicago criminals. It works excellently. We have examples of makes almost every day of the week.

Senator MCCLELLAN. Senator Thurmond?

Senator THURMOND. No questions for this witness, Mr. Chairman.

Senator MCCLELLAN. We have one more witness.

Mr. Greenhalgh, I notice you have a statement. Would you identify yourself. Do you wish to read your statement, Mr. Greenhalgh?

STATEMENT OF WILLIAM W. GREENHALGH, PRESIDENT PRO TEMPORE, MONTGOMERY COUNTY COUNCIL OF MARYLAND, AND CHAIRMAN, PUBLIC SAFETY POLICY COMMITTEE, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

Mr. GREENHALGH. First of all, Senator, arrangements were made this morning that I was to substitute for the speaker coming tomorrow, for the National Association of Counties, Judge Curry. He is ill and will not be here.

Senator McCLELLAN. We can put his statement in the record at this point.

(The statement of Charles E. Curry follows:)

STATEMENT ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES BY CHARLES E. CURRY, PRESIDING JUDGE, JACKSON COUNTY, MO., BEFORE THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, ON THE SAFE STREETS AND CRIME CONTROL ACT OF 1967, S. 917, APRIL 20, 1967

Mr. Chairman, I am Charles Curry, Presiding Judge of Jackson County, Missouri and a member of the Board of Directors of the National Association of Counties. At the National Association of Counties recent Legislative Conference, the "Safe Streets and Crime Control Act" was our Crime Committee's principle item of study. The basic conclusion reached by our Committee's deliberation is very aptly set forth in S. 917, Findings and Declarations Section, which is as follows:

> "Crime is essentially a local problem that must be dealt with by state and local governments. But sustained and substantial national assistance is necessary to aid these governments in coping with lawlessness that has become a serious problem of national significance."

Therefore, the National Association of Counties endorses S. 917 as a very necessary item in implementing the foregoing Declaration of Purpose.

Unquestionably, one of the principle conclusions of the Commission on Law Enforcement and Administration of Justice's Report is the need for an unparalleled effort to improve the coordination and cooperation of our literally thousands of agencies dealing with the problem of crime prevention and crime control. Such is absolutely essential if we are to devise and implement the new procedures, methods, and programs necessary to adequately confront our crime crises. To proceed with the same fragmented approach we are now burdened with, is unthinkable. The legislation you are presently considering, S. 917, does recognize this need, however, in our view, fails to adequately provide for it. The legislation does provide the Attorney General with a "sense of direction" in this area of cooperation and coordination by such phrases as—

> "and to encourage coordination in planning, operations, and research by law enforcement and criminal justice agencies throughout the Nation."
>
> "encourage plans which encompass the entire metropolitan area, if any, of which the applicant is a part;"

However, with the expertise in the field of "grantsmanship" that our local governments have now developed and with the pressure now being exerted on our local officials to do something more about the crime problem, we are confident that a stronger Congressional mandate is necessary than presently exists if we are to obtain the coordination and cooperation we desperately need.

Unless there is this strong requirement for coordination and cooperation, we are confident that once the legislation is enacted, many, if not most eligible local governments will feel compelled to apply for planning funds without waiting to devise what in the long run would be a much more desirable cooperative arrangement to handle planning on a multi-governmental basis. We recognize the desirability of providing administrative flexibility and we feel our recommended amendment would provide for this. The basic change we suggest relates to the critical element of planning and organizing for an improved and increased effort to control crime. Planning can be the basis for accomplishing the coordination or pooling of activities that is so vitally necessary in metropolitan areas and among rural counties. Planning can encourage and facilitate the improvement of intergovernmental cooperation of our local law enforcement and criminal justice agencies.

In our view, the establishment of a population factor as the criteria for eligibility in Title I (Planning Grants) will hinder a coordinated-cooperative approach rather than stimulate it. It is our recommendation that the legislation be amended by the inclusion of the following section:

> "With regard to grants made pursuant to Section 102. other than those to states. the Attorney General shall in the absence of substantial reasons to the contrary, require that such grants be made to combinations of units of general local government composing at least an entire county."

We are not suggesting the county government be the only unit eligible for a planning grant. What we are saying is that the *planning* for crime control should

encompass more than the "core central city". It should encompass the core central city, its surrounding suburban communities and those law enforcement and criminal justice functions of the county which, geographically speaking, are applicable to the entire county. Crime respects no political boundaries. It is not an insular program.

In that some persons might understandably view our recommendation as a parochial one, I should like to make several observations which support the merit, feasibility and acceptability of the county, as the planning unit for crime control. Simply stated, the county is an acknowledged unit of established local government providing the largest possible area within which one can base planning activity. Secondly, politically speaking, most people can relate to a county-wide approach to the problem. Counties are deeply involved in crime control as evidenced by the fact they employ approximately 56,000 persons in the area of police protection and 32,000 persons in correctional institutions and last year spent approximately $625,000,000 for these two categories, not to mention their many other direct and indirect related activities.

Additionally, our country's welfare efforts are administered on a county-wide basis. Our welfare programs are totally concerned with that segment of society whose social and economic status makes them most susceptible to a life of crime. This fact is especially clear with respect to the young and it is at their age where most criminal careers begin. It is essential that our planning be more than how better to apprehend and convict the criminal. We must make preventive activity an essential part of our planning and programs and our country-wide welfare programs must be structured and coordinated with local government overall crime prevention efforts. Our proposal for county-wide planning would not require merger of programs or Police Departments nor would it preclude individual local agencies from qualifying for grants under Title II and III, as long as they had participated in a county-wide planning effort. It merely requires that through a planning process, they relate to each other.

The question may well be raised as to why stop with a single county, why not "require" the entire metropolitan area to plan together. Quite frankly, we feel that from a practical and political viewpoint, county-wide planning is the maximum we can expect at this time. This does not rule out multi-county cooperative activity where it is feasible, but at this stage in the development of crime control, we feel a county-wide approach should be the minimum. Besides, 60 percent, or 130 out of our 219 SMSA's are within a single county.

RURAL AMERICA

There are 2,483 counties out of a total of 3,049 having a population of less than 50,000. One fourth of our nation's population live in these counties and crime is increasing there. The section on "Rural Arrest Trends", in the Uniform Crime Reports for 1965, shows that in rural areas, murder and non-negligent manslaughter inceased 19.2% over 1964 and aggravated assaults increased 6%. In the same time period, with the exception of auto theft, offenses against property also increased. Stolen property crimes increased 15%; fraud—9%; violations of narcotic drug laws—27%. Criminal homocides for youths under 18 years—47% and forcible rape in this same age group increased 22%. One fourth of all Americans living in rural areas should not be arbitrarily excluded from federal assistance for better law enforcement programs.

We appreciate the fact that counties under 50,000 could join together to provide a basis of 50,000 thereby qualifying for a planning grant under the bill as now written. The concept of a multi-county cooperative arrangement in our *sparcely* populated areas is certainly something to be desired and encouraged, a fact that we endorse and support. In the area of industrial development, health, education and a number of other governmental activities, multi-county planning is now often a practical and feasible approach. However, we seriously question whether the requirement of planning for law enforcement and criminal justice on such a large geographical basis in our rural areas is, at this time, a feasible one. We would recommend that whenever a county government of any population provides law enforcement services on a county-wide basis, including subcontracting with incorporated municipalities or that the planning activity to be financed by a grant is directed toward that objective, then such county should be considered eligible for a 90% planning grant. The need for this exception is extremely important to counties presently under 50,000, but subject to burgeoning advance of a metropolitan population or suffering a particularly acute crime

control problem. This would, of course, require additional funds, a fact recognized by our NEXT recommendation.

INCREASED AUTHORIZATION

Unquestionably, crime is a problem which must be recognized on a national scale to the same extent as are such problems as air and water pollution, health, education and welfare. Like poor health or polluted streams, crime will keep costing and costing—unless we move massively to control it. S. 917 authorizes $50,000,000 for the fiscal ending June 30, 1968 with an anticipated request of $250,000,000 more for fiscal year 1969. In our view, those amounts are inadequate and fail to recognize the high priority we must assign this problem if we are to successfully confront it. The National Association of Counties recommends that at the minimum, the authorization be increased to $150,000,000 for the first year, with corersponding appropriate increases for the authorization for fiscal year 1969.

DETENTION FACILITIES

One of the most important areas in the whole subject of crime and its control and prevention, as President Johnson pointed out in his Crime Message, is the problem of juvenile delinquency—or more realistically—juvenile crime. Fifteen year-olds commit more crime in this country than any other age group. Sixteen year-olds follow a close second. More than 50 percent of the arrests for burglary are for youths under eighteen.

In this respect, NACO feels the provision for construction type grants under Title II is vital.

National statistics alone indicate that juveniles will be most strongly affected by any new methods this Title may stimulate. Yet, juveniles, the source of future criminals, are the most discriminated against in our present system of criminal justice. The national survey conducted by the President's Crime Commission found that in 93% of the country's juvenile court jurisdictions, covering 44% of the population, there is no place for the pre-trial detention of juveniles other than a county jail or police lock-up. In 1956, over 100,000 juveniles were confined in adult institutions—presumedly because no separate juvenile facilities existed. I don't think I must elaborate on the harm done to a youthful offender by being thrown into a typical adult detention facility. Certainly, this is not rehabilitation, but stimulation to further crime, further hardening against the law and society.

As national statistics indicate, the problem of separate facilities is most acute in smaller counties with limited and strained budgets. Additionally, these youthful offenders, following a national migration pattern, often end up in our larger cities as adult criminals, another reason to not ignore our rural areas. Even more undesirable, is placing abandoned, neglected or runaway juveniles in adult detention facilities, a practice pursued in many smaller communities without shelter facilities under their welfare departments.

We call these problems to the committee's attention for this reason. *I would desire the members to take a closer look at this Title to consider making it more explicit with regard to providing for juvenile detention facilities.* We cannot over estimate the importance of this one aspect in the development of a criminal mentality. The most important area of crime prevention and control today is the rehabilitation of the juvenile offender. We feel this area is important enough for Congress to spell out these dangers and explicitly provide for separate detention facilities for juveniles and for specific amounts to be allocated for such facilities. This would serve to direct Congressional intent to the high priority this type of construction should have with regard to the "innovative function", mentioned in Section 203 (a). The Juvenile Delinquency Prevention Act of 1967, (S. 1248) recognizes the importance of this problem and proposes grants for the prevention, treatment and control of juvenile delinquency. But we do not feel that the existence of this proposed legislation, not yet scheduled for a hearing in the Senate, should preclude this committee from including provision for the construction of juvenile detention facilities in S. 917. We urge the committee to consider the relationship of the juvenile to the crime committed in our society, and to not take a chance that federal assistance will not be available for detention facilities.

SUMMARY

In summary, we feel that the effective response to this legislation at the local level will be spontaneous and appreciated, and that if a program of this dimension is authorized and funded, and that the continuing integrity and responsibility of

local governments to solve this problem is respected, we can expect to soon start making the kind of impact on this problem that will be necessary if we are to adequately confront it. Finally, I would urge that Congress do all it can to assure that this new grant in aid program be flexible and that it encourage and not stifle local response to local problems by complicated application procedures and inadequate appropriations. Local governments directly need the planning, research construction, etc. assistance money provided for in this legislation. It appears to be the only way at this time that local governments will be able to bear the burden that lies ahead.

We appreciate the opportunity of presenting our views.

Thank you.

Mr. GREENHALGH. There are only two points that the National Association of Counties would like to make: that the county should be the basic planning unit under S. 917, and the Association would appreciate if you would give more consideration for more money than the original grant.

Senator MCCLELLAN. The bill is confusing as to municipalities and counties, is it not? There are four or five areas where the county would have jurisdiction and responsibility, whereas the municipality would not, as I see it.

Mr. GREENHALGH. On the record, I am county councilman from Montgomery which is a suburban county near the District of Columbia. We have had that problem already about certain municipalities within the framework of our county.

Senator MCCLELLAN. I think we have got to study this bill.

Mr. GREENHALGH. They just wished me to bring that to your attention.

My credentials, briefly, are as follows: I am a former U.S. attorney for the District of Columbia. I have had 8 years as Federal prosecutor, both through the main Justice Department and also in the District. I have been for the last 4 years director of the legal internship program at Georgetown Law Center, which is a university-oriented public defender for the District of Columbia.

I am a full professor at Georgetown, professor of criminal procedure.

I also come before you as an elected public official in the capacity of very much testifying in support of S. 917.

I think this is probably one of the most important pieces of legislation that I have seen on the Federal horizon for many, many years. I testified in support of OLEA when it came through here in 1965. I feel even more desperately now that this legislation should go through.

I think it is probably helpful with regard to why we need this legislation, and I would like to read just a short statement with regard to this point.

Mr. Chairman, members of the Judiciary Committee, I am indeed privileged today to be permitted to address myself to the Safe Streets and Criminal Control Act of 1967 (S. 917), which, I contend, is fundamental to the improved administration of criminal justice in the United States. Though somewhat delayed in its appearance on the American scene, it represents a timely effort to bring relief to a field of the law in which some of us have frustratedly been laboring for several years. As an elected official in a local self-governing community, I submit that this legislation is essential to the Nation's welfare.

History is always helpful as to the necessity of legislation. In that regard, perhaps a rapid glance at relatively recent Supreme Court

decisions is the most critical area of law enforcement affecting Federal and State criminal procedure can assist us. In the late 1950's, 1960's and, for that matter, up to the present time, the Supreme Court of the United States has embarked on a series of decisions in the fourth amendment pale which have greatly influenced law enforcement in the Federal system.

Starting approximately in 1958, it began to lay down new guidelines to Federal officers by reinterpreting the law of probable cause for making an arrest without a warrant and for the issuance of an arrest and search warrant. Such landmark cases as *Roy Jones*, *Giordenello*, *Draper*, *Henry*, *Rios*, *Cecil Jones*, *Wong Sun*, *Ventresca*, *Hoffa*, all have become courthouse weapons in the daily battles fought in the Federal arena. Also, in 1958, the Court, again relying on its Federal supervisory power, enunciated a further rule of exclusion of evidence in the *Miller* case by holding that a Federal law enforcement officer in making an arrest with or without a warrant or executing a search warrant in fixed premises must announce his authority and purpose before breaking and entering.

During the period while the Court was busily engaging in its Federal restatement of constitutional law pertaining to the fourth amendment, most of the States were equally as busy ignoring these rules of exclusion because of *Wolf* decided in 1949. Then in 1961 came *Mapp* and throughout the land nothing was heard in State law enforcement circles except wailing and gnashing of teeth. Thus, the Supreme Court specifically held that by applying the same constitutional standard forbidding unreasonable searches and seizures, the exclusionary rule as used against the Federal Government since *Weeks* in 1914 was thereby enforceable against the States through the 14th amendment.

Subsequent decisions since *Mapp*, such as *Fahy*, *Stoner*, *Preston*, *Clinton*, *Aguilar*, *Beck*, *Standord*, *One 1958 Plymouth Sedan*, *James*, *Riggin*, *Schmerber*, and *Cooper* have merely incorporated Federal standards of reasonableness in light of the "fundamental criteria" laid down by the Supreme Court applying the fourth amendment. The only exception of fourth amendment federalization was *Ker* in 1963 which held that the States did not have to follow the *Miller* case since the Court was merely interpreting a Federal statute and not the Constitution. But the Supreme Court has not yet completed its reintegration of the fourth amendment. In the mill at the present time are *McCray*, decided 5 to 4 two weeks ago—(sufficiency of probable cause), *Hayden* (evidentiary search), *Wainwright* (point of arrest) and *Sibron* (constitutionality of "stop and frisk" law). This last case when decided, will undoubtedly have considerable impact in six States and others where such legislation is contemplated.

To date, resistance by some of the States to *Mapp* borders on intransigence. Others have grudingly endeavored to live with it, but do not follow the Supreme Court with decisional uniformity. Yet a few apply it and its progeny as the law of the land. Primary culpability in defiance thereof almost universally rests with the trial courts, who cannot bring themselves to exclude otherwise admissible evidence predicated on lack of probable cause or unreasonable search and seizure. They believe that the criminal is not to go free because the constable has blun-

dered. Thus, if the trial courts refuse to compel sanctions, neither do the prosecutors, and as a natural consequence State law enforcement officers see no reason to comply. I mean this last sentence very much.

As one who has lectured to law enforcement organizations, prosecutors' offices and defense associations in Virginia, the District of Columbia, Maryland, and Delaware since 1958, it is my opinion that it is imperative that local law enforcement officers be trained to work within the framework of these fourth amendment decisions.

The Safe Streets and Crime Control Act of 1967 provides the mechanism by which specialized training in the law of probable cause and search and seizure can be made possible. It envisions planning grants, innovative training programs and capital grants for such critical projects as police academy centers. I heartily endorse this legislation as one more weapon in the domestic war on crime.

Senator McCLELLAN. Thank you very much. Any questions, Senators?

Senator HRUSKA. I have no questions.

Senator THURMOND. I have no questions.

Senator McCLELLAN. Thank you very much.

The Chair wishes to put in the record a letter from Samuel W. Barrow, of Rockville, Md. It is quite interesting and points out that 4 years ago, 1964, he established a shopping center out in Rockville. He lists the number of stores and the nature and kind of stores that are in the shopping center and the size. Since that time, 1964, every store has been held up, burglarized, or robbed at least twice, and some at least four times. The bank has been held up three times and the A. & P. Store was set on fire.

The letter goes on to protest that they pay $19,000 taxes a year and yet have had to hire policemen after hours and have special cars to protect their property.

I think that is a reflection of conditions in this country, and the courts as well as the Congress must act to give some needed assistance to law enforcement.

(The letter referred to is as follows:)

ROCKVILLE, MD., *April 17, 1967.*

Senator J. L. McCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR McCLELLAN: As you are a Member of the Committee on Appropriations of the District of Columbia, I should like to bring to your attention a definite personal experience on Crime within five miles of the Capitol of the United States, on the District Line in Prince George's County, Maryland.

My partners and I have built a shopping center known as the Southern Avenue Shopping Center on Southern Avenue at Chesapeake Street. This center contains an A. & P. Store, a Dry Cleaner, a People's Drug Store, Humble Esso Service Station, Southern Maryland Bank and Trust Building, a Beauty Parlor, Barber Shop, Liquor Store and a Miniature Race Track. We opened this center in March 1964. Since that time, every store has been held up, burglarized or robbed at least twice and some at least four times. The Bank has been held up three times. The A. & P. Store was set on fire.

The local police cannot give us any assistance. They claim to be understaffed and also lack jail space if they could make arrests. They do, however, suggest that we might possibly hire their police, when off duty, to act as armed guards!

When private citizens find it necessary to protect their own properties, by the use of personally hired armed guards, while paying taxes of more than Nineteen Thousand Dollars, per year, it seems high time that something is done to Protect

Law Abiding Citizens (who pay their taxes, and contribute to every citizen's endeavor) from the Criminal Elements of their neighborhood.

We will appreciate anything you and your committee can do to assist us in maintaining an orderly business establishment.

Yours very truly,

SAMUEL W. BARROW,
Trustee, Southern Avenue Shopping Center.

Senator MCCLELLAN. That concludes today's hearing. We will come back in the morning and we will resume at 10 o'clock.

(Whereupon, at 5:05 p.m., the subcommittee recessed, to reconvene on Thursday, April 20, 1967, at 10 a.m.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

THURSDAY, APRIL 20, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 o'clock a.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan (presiding), Ervin and Kennedy of Massachusetts.

Also present: William A. Paisley, chief counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. We will proceed.

Mr. Cahn, will you please identify yourself for the record?

STATEMENT OF WILLIAM CAHN, DISTRICT ATTORNEY OF NASSAU COUNTY, STATE OF NEW YORK

Mr. CAHN. My name is William Cahn. I am district attorney of Nassau County, N.Y., which is a suburban community of over a million people, and is often referred to as the bedroom of organized crime.

I would like to state at this time that it is my pleasure and privilege to testify before this committee with regard to the problem of wiretapping.

Senator MCCLELLAN. How long have you been a practicing attorney?

Mr. CAHN. I have been a practicing attorney since 1949. At the present time, I am president of the New York District Attorney's Association and I am vice president of the National District Attorney's Association. I have been district attorney of Nassau County since September of 1962. In January of 1950 I was appointed an assistant district attorney and served in that capacity until my appointment and election as district attorney. In 1954 I formed and headed the Nassau County District Attorney's Rackets Bureau. Most of my work, therefore, was concerned with the investigation and prosecution of organized crime. In all, I have spent well over 17 years in the field of law enforcement.

Senator MCCLELLAN. Are you representing your association as well as yourself?

Mr. CAHN. Yes, sir; I represent both the National District Attorney's Association and the New York State District Attorney's Association. And, I speak as the district attorney of Nassau County.

Mr. McClellan. You are speaking for the association, as well as yourself?

Mr. Cahn. Yes, sir.

Senator McClellan. Very well. Proceed.

Mr. Cahn. Let me state at the outset, my strong recommendation that the Congress enact legislation banning wiretapping by private persons and permitting official wiretapping by law-enforcement officials pursuant to court approval and control. The proposed Senate bill which is presently before this subcommittee for consideration; that is, bill No. S. 675, with certain changes hereinafter discussed, would effectively accomplish the desired end.

It is my considered view that new provisions of law are necessary so that there will be available to the forces of law enforcement, those investigative and prosecutory devices which are indispensible in the war on crime.

The present state of the law of wiretapping is that wiretapping by State law enforcement officials and divulgence of the wiretaps as evidence in court, does not violate the U.S. Constitution; but, according to various judicial decisions, including some rendered by the U.S. Supreme Court, it does offend against section 605 of the Federal Communications Act.

Senator McClellan. When you say it is not unconstitutional, has the issue ever been decided squarely by the Supreme Court, in reference to authorized wiretapping?

Mr. Cahn. Yes; I believe that there have been decisions by the Supreme Court.

Senator McClellan. How long ago?

Mr. Cahn. As far back as in the 1950's, Senator McClellan.

Senator McClellan. I do not know whether we may be sure that they would so hold again.

Mr. Cahn. I am a district attorney, sir, and not a prophet. I could not say.

Senator McClellan. But, so far the constitutionality has been sustained?

Mr. Cahn. That is correct, sir.

Senator McClellan. And, the only issue here is, as stated in the most recent Supreme Court decision, that it offends against a section of the Federal Communications Act.

Mr. Cahn. That is correct, Senator.

Senator McClellan. You may proceed.

Mr. Cahn. Notwithstanding these decisions, the case law of the highest court of my home State, the State of New York, has approved New York's permissive scheme of official wiretapping pursuant to court order and use of such wiretap evidence in criminal trials.

Senator McClellan. They only authorize it for use in criminal trial, it could not be used in a civil suit, could it?

Mr. Cahn. No, sir. Thus, we have the unhappy situation where a law-enforcement official who is executing the wiretap policy of his State, as approved in the State constitution and in statutes and judicial decisions, technically may be guilty of violating section 605. This seriously weakens law enforcement.

As I have previously indicated, it is my urgent recommendation that the Congress enact, as soon as possible, legislation permitting court

approved and controlled official wiretapping. Since Senate bill S. 675 is now before this subcommittee for consideration, I should like to address my attention to the provisions of that bill.

I believe that this bill could constitute a serviceable remedy for the problem which I have just discussed, if it were changed in certain respects.

The bill should be revised so as to strike subdivision (c) (3) of section 8, which provides that the applying authority, as a condition of obtaining a wiretap interception order, must show that "no other means are readily available for obtaining that information . . ."

If this clause is permitted to remain in the bill, it could seriously undermine its effective operation. It would be difficult to make the demonstration required by this provision, or, it might require weeks of surveillance to show, e.g., that a person involved in felony gambling, only conducts business over the phone and does not carry or keep evidence of illegal transactions taken over the phone. At the very least, this subdivision furnishes another ground for challenging the validity of wiretap evidence at a suppression hearing and would undoubtedly result in lengthy and complicated hearings of uncertain outcome.

Senator McCLELLAN. Your point may be well taken. Of course, in drafting this bill we were trying to give every concession to other means, in the hope that wiretapping would be used only where it is difficult to secure evidence otherwise. When it is going to take 5 months, 6 months or even 2 months to get evidence by other means, I would not regard that as "readily available." I do not know, of course, how the words would be interpreted.

Mr. CAHN. That is the very point I bring out, it is most difficult to determine how the courts would determine the word "readily".

Senator McCLELLAN. It might be by lengthy litigation.

Mr. CAHN. That is correct, sir.

Section 8 provides in subdivision (d) (2) that each order authorizing a wiretap interception shall specify "each offense as to which information is to be sought . . ." A provision should be added to the bill providing that if the wiretap interception discloses evidence of other offenses not specified in the order, this evidence may be used to the same extent as evidence of crimes which are described in the order.

Senator McCLELLAN. Do you think under the bill as now written, let us say, if you were trying to convict someone for interstate gambling, and in the course of the detection you discovered that they were using narcotics, then that information and evidence could not be used, and you feel the bill ought to be amended so as to cover any crime specified in the act?

Mr. CAHN. That is correct, sir, so long as the basic original order is granted and proper, then I believe that any crime that comes across that telephone should be used. And, I think it important that the act should make this clear.

Senator McCLELLAN. Very well.

Mr. CAHN. Finally, it is my view that State judges should be relieved of the requirement of section 9(a) that judges granting wiretap orders should transmit copies of them to the Administrative Office of the U.S. Courts. It seems to me that such a provision establishes an

administrative relationship between the Federal and State judicial establishments, which is inconsistent with the spirit and rationale of the Supreme Court's holding in *Stefanelli* v. *Minardi* (342 U.S. 117) and incompatible with the constitutional scheme which constitutes the State judiciary, a coordinate judicial apparatus of equal standing and dignity. Moreover, the administrative burden which this provision would cast upon the State judicial system is more extensive than might appear on a casual reading of this section. If statistics on State wiretap orders are required, they would certainly be furnished to any committee of Congress upon request by any administering authority in a State judicial system. I respectfully submit that such a procedure is to be preferred over one which establishes a status of administrative accountability between the State and Federal judicial systems.

Senator McCLELLAN. You would have no objection to it as to Federal wiretapping?

Mr. CAHN. No, sir.

Senator McCLELLAN. But, you would draw the line, that if it is authorized by the State, it is primarily under State jurisdiction, and it is a State function?

Mr. CAHN. That is correct.

Senator McCLELLAN. And, such reports would be made and administrative records kept as the State law would require?

Mr. CAHN. That is correct, sir.

Senator McCLELLAN. Very well.

Mr. CAHN. In any event, I emphatically urge the Congress to enact legislation permitting official wiretapping by State officers under some such scheme of safeguards as that which I have previously discussed.

Many types of criminal cases can rarely be proved except by wiretap evidence. Among these are organized gambling offenses, governmental corruption, labor racketeering and indeed, all of the types of wrongdoing which may be described under the heading of organized crime.

Senator McCLELLAN. In regard to the contention that we do not need any wiretapping; that it is too expensive and costs more than the results produced; and we do not want to adopt a procedure that might invade the privacy of people's homes even in seeking evidence in serious criminal cases. I ask, do you agree with that?

Mr. CAHN. No, sir. And, I discuss that more fully later on.

The failure of law enforcement to control these types of organized wrongdoing will have profound implications for the welfare of our society. Ever since the Kefauver committee of the U.S. Senate released its report in the early 1950's. It has been known that organized crime, through the investment of funds obtained from illegal gambling is increasing its operations in other criminal areas like narcotics. It is using its vast criminal profits to infiltrate virtually every phase of legitimate business and is threatening to gain control of the economy of the country. The McClellan committee of the U.S. Senate has warned of this alarming tendency, and New York State Attorney General Louis Lefkowitz. has told of the activities of hoodlum elements in the banking, lending, and securities fields and of the control which such activities has given them over lawful enterprises.

It has been estimated by the U.S. Department of Justice that illegal gambling reaches an annual volume of $7 billion. Other experts have given estimates up to $50 billion. No matter what the amount, however, there is no question that organized gambling is the life's blood of organized crime, and one of the greatest menaces to the health of free institutions is this vast, corrupting economic power of organized crime.

The value of wiretapping and electronic surveillance in the investigation and prosecution of organized crime, and its leaders, is acknowledged by District Attorney Frank S. Hogan, whose office has been most successful in this field. He stated that it is the single most valuable weapon in law enforcement's fight against organized crime. It has permitted us to undertake major investigations of organized crime. Without it, and I confine myself to top figures in the underworld, my own office could not have convicted Charles "Lucky" Luciano, Jimmy Hines, Louis "Lepke" Buchalter, Jacob "Gurrah" Shapiro, Joseph "Socks" Lanza, George Scalise, Frank Erickson, John "Dio" Dioguardi, and Frank Carbo.

A majority of the members of the President's Commission on Law Enforcement and Administration of Justice, believe that legislation should be enacted granting carefully circumscribed authority for electronic surveillance to law-enforcement officers.

Despite this recommendation, the President of the United States has advised the Congress to enact the Right to Privacy Act of 1967 to outlaw all official and private wiretapping and electronic eavesdropping except in matters involving national security. I believe it would be a grave mistake to pass this measure. Its harmful effect on law enforcement would be enormous in every area of the country. The consequence of this bill would be to deprive local law enforcement of by far its most effective investigative devices, wiretapping and electronic eavesdropping. These devices are often used to procure leads in areas where wiretaps and eavesdrops are not themselves introduced in court, but the information to which it leads is most vital and clear.

It is clear that we must put a stop to gambling and the other practices of organized gangsterism which provide the funds for the domination of our business and economic life. But how shall we stop them? Experience shows that it cannot be done without wiretapping and that big-time hoodlums continued to do business on the telephone even in States permitting official wiretapping, since it is an indispensible aid to wide-ranging illegality. Unless we permit official wiretapping, we will seriously compromise law enforcement at a time when the crime rate is rising alarmingly and well-organized interstate crime is outdistancing our efforts to control it.

Indeed, crime in the contemporary age has become a social problem of such vast dimensions and such overpowering urgency that it challenges the very foundations of organized society and raises the profound question whether free government is competent to preserve itself against this pervasive, virulent challenge of sinister private power.

This is a crucial period in our national history. Failure to curb large-scale lawlessness within the next 10 years may bring about a fundamental change in our social order, and may permit the disease

of corruption so thoroughly to pervade our common life that all later efforts to reverse the trend may be unavailing. The extent of hoodlum infiltration and dominion is already so considerable that law enforcement's efforts in some sectors take on an aura of futility—especially when viewed against the progressively accelerating growth of venal private power responsible only to extra legal objectives.

Indeed, it is not an exaggeration to say that unless we permit wiretapping, organized crime will more effectively consolidate its hold over the American economic establishment. From this base of economic power, as well as from the position of dominance which is derived from its influence over highly strategic local and national unions, it may achieve a stranglehold over our economy amounting to a power of veto over whether it shall stop or go, which industries or business firms will be allowed to stay in operation and which shall be destroyed. It is hardly necessary to add that when men of such caliber possess dictatorial power, they will use it to their own advantage and to the community's detriment.

While the overwhelming majority of unions are led by reputable people, a small minority with disproportionate power are amenable to the control of hoodlum forces. Wiretapping is an indispensable tool in the investigation and prosecution of labor racketeering.

My office was successful in preventing Vincent Squillante and other underworld racketeers from gaining control of the garbage industry in our community. This was costing the people of Nassau County hundreds of thousands of dollars a year in added costs for garbage collection. We successfully prosecuted underworld racketeers who set up illegal unions for the control of the jukebox industry in Nassau County. This operation extorted from the honest jukebox dealer and the tavern owner, many thousands of dollars each and every year by the use of an illegal union operation. We were successful in breaking monopolistic control in the milk industry which cost the consumer of Nassau County 2 cents more on every quart purchased. We successfully prosecuted underworld infiltration into the barbering industry and prevented a holocaust in Nassau County when 30 sticks of dynamite were seized. This dynamite was to be used against recalcitrant barbershops who would not bow to the demands of the underworld racketeers. We were also successful in breaking a counterfeit phonograph record ring which not only deprived the artist of royalty but the Federal Government of the proper taxes due. On many occasions we were successful in preventing organized racketeers from corrupting our police officials in order to set up gambling operations in Nassau County. In one case we successfully prosecuted a group who had offered the head of the district attorney's vice squad $1,500 per month, per phone, to set up operations. Without wiretapping and electronic surveillance, these cases could not have been brought to a successful conclusion.

Indeed, virtually every single rackets prosecution initiated by my office has depended on wiretap evidence and could not have been conducted——

Senator McCLELLAN. May I interrupt. Are you saying that in all of these cases you have referred to—the prosecutions, and results that you relate—were achieved as a result of wiretapping?

Mr. CAHN. The successes which we achieved were due to wiretapping itself, or the information which was received as a result of wiretapping or electronic surveillance, Senator.

Senator MCCLELLAN. That is what I mean.

Mr. CAHN. Yes, sir; no question about it.

Senator MCCLELLAN. You could not have gotten the evidence, you could not have prosecuted the suspects, you could not have combatted this organized crime in these areas to corrupt the business community and the official life, without the use of surveillance techniques?

Mr. CAHN. That is correct, sir; no question about it.

Senator MCCLELLAN. This all happened since you have been in office?

Mr. CAHN. This all happened since I took control over the rackets bureau of the Nassau County district attorney's office, and since I myself became district attorney.

Senator MCCLELLAN. I think the Attorney General said he would like to be cited some instances where good has come from it. I have a newspaper clipping quoting the Attorney General in this respect.

This is from an editorial in the Milwaukee-Wisconsin Journal:

> Security is to be found in excellence in law enforcement in courts and in corrections. That excellence has not been demonstrated to include wiretapping.

Mr. CAHN. I cannot agree. As I go on to say, Senator, virtually every single rackets prosecution initiated by my office has depended on wiretap evidence and could not have been conducted without it. And I stand behind that statement 100 percent.

Senator MCCLELLAN. Will you document these cases from the files in your office?

Mr. CAHN. Yes, sir.

Senator MCCLELLAN. Had you not been permitted to use wiretapping, what would have been the difference in the present situation of respect for law enforcement and racketeering control in your jurisdiction?

Mr. CAHN. There is no question in my mind that many of these rackets and much of this control would still be going on in Nassau County.

Senator MCCLELLAN. All right, proceed.

Senator KENNEDY. Could I interject a question, Mr. Chairman?

I am wondering if you are generally familiar with the network of organized crime around the country, not in a specific way, but in a general way.

Mr. CAHN. Yes, I believe I am, Senator Kennedy.

Senator KENNEDY. I am wondering if you feel that in your county, and generally in New York there is one of the most conscientious efforts being made to attack the problems of organized crime?

Mr. CAHN. That is correct, sir.

Senator KENNEDY. Are there similar efforts in other parts of the country?

Mr. CAHN. There is no question about that, too.

Senator KENNEDY. I think the material you presented here demonstrates that the nature and the threat of organized crime is extremely compelling. But many of us are trying to determine whether there is a correlation between the control of the threat and the use of

wiretapping. For example, in parts of California, where they do not permit wiretapping, they still have, as I understand, a rather successful attack in this organized crime field. So, what I am trying to find out is whether it is not really possible to confront the problem of organized crime without bugging and wiretapping. This is what they are doing, apparently, out in California, and they do not have many of the advantages, or what you would certainly consider the advantages, of wiretapping that you have described today. I am wondering if you can help me in figuring out why this is so.

Mr. CAHN. Senator, I will have to just in very general terms, refer to a specific case, because it is still under investigation. But, my office, the Nassau County district attorney's office in Nassau County a small—not too small—community in Long Island, as a result of wiretapping, has come across an international organized gambling syndicate with tentacles throughout our entire country, including California, Senator Kennedy. And, I submit to you that it would be entirely impossible, it is entirely impossible for any law enforcement agency to effectively deal with this type organized gambling problem without the use of wiretapping. I submit to you that the State of California, anywhere in the State of California, could not have come across the evidence which we came across as a result of wiretapping, without the use of this most effective weapon.

I have been to jurisdictions now throughout the United States with the evidence which I have come across. But, I would like to bring this to your attention, sir, that there is no question in my mind that the agency which most effectively could deal with this particular problem is probably the Federal Bureau of Investigation. Senator Kennedy, I cannot even go to them with the information which I have because my evidence, insofar as the Federal procedure is concerned, is tainted. And, if it were at all brought out that the results of an investigation by the Federal Bureau of Investigation came as the result of my wiretap evidence, all of the evidence, all of the so-called poisonous fruits would be thrown out completely.

And, I submit again, and I repeat, as successful as it may be believed that the State of California is in dealing with organized gambling, I cannot get myself to believe that they can come across and effectively deal with an organized gambling problem without the use of wiretapping, because the most effective weapon in the use of organized gambling has to be, of necessity, the telephone.

Senator KENNEDY. I respect the very useful work that you are performing in law enforcement. Of course, on the other hand, the Attorney General of the United States, who has prime responsibility for Federal efforts in the field of law enforcement, and has made an extensive study of the effectiveness of bugging and tapping, has come up with some rather dramatically different conclusions than you have. So, it is a temptation for us, who do not have the familiarity that you and the Attorney General and the Organized Crime Section of the Justice Department have, to conclude that it is extremely difficult, if not impossible, to try to assess the adequacy of the empirical evidence in regard to the relationship between convictions and wiretapping.

Mr. CAHN. Senator Kennedy——

Senator KENNEDY. You present a good deal of evidence for one side, and I am sure it is very helpful to the members of the committee.

Mr. CAHN. I hope so, sir. And I may say that I have nothing but the utmost respect for Attorney General Clark. But, as I told the committee right at the beginning, I started and headed the Nassau County District Attorney's Rackets Bureau in 1954. And, since that time my major responsibility in that office has been the investigation and prosecution of organized crime, and, therefore, I have developed a familiarity with organized crime throughout the country.

I am not the last word, certainly. But, I must tell you of my own particular experience, and of the failure that I believe would have resulted if I had not had the information to which wiretapping led, or the evidence itself.

In one particular instance we had the prosecution of an illegal labor union trying to infiltrate the juke box industry. Because for the first time, in my experience, that wiretapping was not permitted by a judge, one particular defendant was lost. And, we had all ready to submit to the court for evidence the exact telephonic communication, which, in my opinion, was conclusive evidence of the implication of this particular individual.

Senator KENNEDY. Just a final question, because I know the committee wants to continue with your testimony. Could you give us some idea of the range of taps being conducted by your department? Are you getting to that now?

Mr. CAHN. I am getting to it right now.

In 1965, Senator, 35 court orders involving 45 telephones were requested by the Nassau County District Attorney's Rackets Bureau. These wiretaps were successfully used to break up a $20 million a year policy operation involving organized racketeers and as a result of these wiretaps convictions were obtained in an attempted extortion and coercion case and in a shylocking case.

In 1966, 13 court orders involving 19 telephones were requested and used in a $20 million a year felony bookmaking operation involving some of the top syndicated bookmakers in the country. The taps were also used to successfully prosecute a criminal usury case. Success in these cases would not have been at all possible had we not had the weapons of wiretapping and electronic surveillance.

I repeat, gambling, shylocking, usury, extortion, provide the funds, giving vast economic power to organized crime. Such power enables the holders to wield enormous political power as well. This staggering fusion of political and economic power would give to organized crime, a hold on American life such as no private interest has ever before exercised in our history. This condition once attained will be difficult to reverse since its containment will then require the kind of sustained, long-range, far-reaching corrective action which American society has never been able to initiate and maintain except in time of war or depression.

Government's inadequate efforts to control crime cause our citizens to lose faith in the law and law enforcement, indeed, in the process of free politics itself. Ineffectual government leads to cynicism, a resort to unofficial remedies, and a willingness to do business with evil and when it appears futile to cooperate with good, and the only feasible solution seems to lie in making one's peace with triumphantly ascendant antisocial forces. This perhaps explains the willingness of

certain business firms to deal with hoodlums and the reluctance of some citizens to discharge civic duty by coming forward to testify against racketeers.

Indeed, no society can long survive once its individual members are deeply persuaded that their vital self-interest lies solely in a course subversive of the legal order and the public interest it secures.

Despite a political system which guarantees men their liberty, how can we call them free when gangster elements can prevent them from entering a business of their choosing or from freely competing with others in any lawful area of activity? For there is no true substance to liberty if it can be asserted only at the tr. sient pleasure of private despotism, and its exercise subjected to the heavy exactions of a terrorism which brutalizes and plunders and suspends a coercive omnipresence over the works of men.

Gentlemen, does this not affect our national security? To think otherwise is profound naivete.

Opponents of wiretapping often fail to realize that the invasion of privacy for good cause shown is an ancient prerogative of law enforcement in a free society and well within the permission of our constitutional tradition. Indeed, "search and seizure" pursuant to court order is a procedure specifically approved by the U.S. Constitution——

Senator ERVIN. I would like to ask you if under the fourth amendment of the U.S. Constitution and comparable provisions of State constitutions it has not been, since the foundation of the Republic, and still is, the practice for law enforcement officers acting upon order of the court to invade the private homes of individuals for the purpose of ascertaining whether there is any contraband or illegal material there, and for the purpose of obtaining evidence for use in criminal cases?

Mr. CAHN. Yes, sir.

Senator ERVIN. And, that practice is as old as the Republic, is it not?

Mr. CAHN. That is exactly the matter to which I refer, sir.

Senator ERVIN. Now, is there any greater invasion of privacy in the case of an officer going into a private home under a search warrant, under those circumstances, than in the use of wiretaps on the telephone?

Mr. CAHN. I think not, Senator Ervin. And, I refer in a few seconds to that particular point.

Senator ERVIN. And, certainly, if the officer obtains no information by wiretapping that is used, and it is not exposed, there is less invasion of privacy than when he goes into a private home, is there not?

Mr. CAHN. That is correct, sir. That is my opinion.

Senator ERVIN. So as you see, the principle of a reasonable search and seizure under article 4 of the Constitution and similar provisions of the State constitutions is the same as the principle which would underlie wiretapping?

Mr. CAHN. That is exactly the point to which I am now referring.

I say indeed, search and seizure pursuant to court order is a procedure specifically approved by the U.S. Constitution and the constitution of several States, and the most intimate correspondence in files so seized may be read and publicly divulged.

If one carries the antiwiretap thesis toward its ultimate bounds, then such invasions of privacy should also be abolished. And, it is but a step from this conclusion to its logical consequence that the subpena duces tecum should also be eliminated since it involves a persisting intervention in private affairs and private correspondence and letter communication which sometimes approaches formidable dimensions. By the same reasoning, the policeman ought not to be allowed to do any privacy-invading things which he may now do legally, for example, to eavesdrop without electronic devices; or to shadow suspects; or to employ the "stakeout" tactic which involves intensive surveillance of intimate details of private life over long periods of time and without geographic limit; or to use binoculars or telescopes; conversing with suspect who is not aware of his identity and position; or to receive information from informers since these practices too, involve some interference with privacy. Also, what can one say of the U.S. Census and its inquiry into the minute details of personal life? The fact is that "search and seizure" and subpenas duces tecum are much more frequently granted than wiretaps and often involve a greater penetration into private life as do the various types of surveillance.

When the argument in opposition to the doctrine of unlimited privacy is stated plainly, the unsoundness of that doctrine becomes apparent.

If a crime were taking place in a man's bedroom, few people would object to the invasion of that bedroom by police to stop a criminal act in progress or to arrest the criminal. Regulated wiretapping in New York is limited to this type of situation by the statutory requirement contained in section 813(a) of the Code of Criminal Procedure, that the applicant for a wiretap order "show reasonable ground to believe" that evidence of crime may be obtained by tapping the phone in question. If a bedroom may be invaded, on a judgment of reasonable ground or probable cause to believe that a crime is being committed within it, it is difficult to understand why the less sacred telephone wire cannot be invaded on a similar showing.

The police officer is not interested in infringing upon the privacy of law-abiding citizens. The police officer is not interested in private conversations. The police officer monitoring interceptions is interested only in those conversations which deal with crime. I do not know of one single case where it was claimed that a law officer had published some item of information learned from wiretapping outside the course of his official duties.

As the President's Commission has noted, the telephone is enormously effective as an aid to crime. If we immunize it from devices of crime detection, we surrender to criminals a whole technology for their unimpeded use. Civil libertarians opposed to official wiretapping under proper safeguards are advocating a philosophy of privacy appropriate to a sparsely populated society.

Even if official wiretapping entails some small interception of embarrassing conversations, even if in some instances a slight invasion of privacy results, this would not be sufficient to disqualify it from acceptance, for we must ask ourselves whether the small increment in added privacy in respect to telephone conversation is worth the terrible cost in added crime and in the increasing power of organized

crime which would result from a policy of banning wiretapping and other electronic eavesdropping.

I think it is fair to say that neither in functional nor social value terms can the case for the right of privacy be asserted with any rational force to have greater weight than the argument in favor of a policy which permits wiretapping only by law enforcement officials upon proof to an authorizing court amounting to reasonable ground that evidence of crime will be obtained from the prospective wiretap sought to be authorized.

It is difficult to escape the conclusion that those who oppose all official wiretapping have not really undertaken the hard effort at thought required in weighing the competing social and individual interest involved. They reject wiretapping out of hand as though it imposed great burdens on the structure of freedom while conferring only trivial benefits. Actually, the reverse is true. Relatively few wires are tapped by the law enforcement authorities in any given jurisdiction during the course of a year and comparatively few persons suffer an invasion of privacy: moreover, those whose privacy is invaded are mostly criminals or those dealing with them. (In fact, former District Attorney Edward Silver, of Kings County, esitmated in the late 1950's that his office procured convictions from about 80 percent of the wiretaps it conducted). Furthermore, the contents of such conversations are never disclosed to the public, except for those portions evidencing criminal acts which are used in criminal trials. Moreover, the right to be safe from criminals is as important as the right to privacy.

Senator McCLELLAN. May I ask just one question. From your experience in this—you have the wiretapping law and have operated under it for a number of years—in the case of a wiretap where irrelevant conversation takes place, even thought the one monitoring may hear it, if this conversation or any part of it is irrelevant, that is not admitted?

Mr. CAHN. It is not admissible, it is not relevant, and it is not material, and it is not made at all public. And Senator, law enforcement cannot be less interested in it.

Senator McCLELLAN. I understand. The point I want to emphasize is, if you make the tap and hear conversations and even record it, that part of it having no relevancy to the issue of the crime with which the accused may be charged is not admitted and not made public?

Mr. CAHN. It is not admitted and not made public.

Senator KENNEDY. Could you give us some idea as to the number of phone conversations that have been tapped and the number of conversations that have actually been productive, so at least we get some idea of the relationship between those that are productive and those that are not?

Mr. CAHN. I am coming to the figures now, Senator Kennedy, provided me by the Nassau County Police Department. In my own particular figures to which I referred, it is difficult to say the exact number of conversations on each tap which proved productive. Suffice it to say that the individuals whose phones were tapped provided the information which led to successful conclusions of the prosecution.

Senator KENNEDY. But we do not know, for example, how many innocent conversations they listened in to to get a certain lead, do we?

Mr. CAHN. No, sir. It would be almost impossible to give you those figures.

Let me give you an example——

Senator KENNEDY. For example, in that milk case which you were talking about——

Mr. CAHN. This milk case was rather peculiar, Senator Kennedy, because the phone itself was being used only by the individual in whom we were interested, and the family, for instance, never bothered to use the phone. And, he used the phone primarily for his business. And I can say to you that practically every telephone conversation he had, this particular individual was calling milk firms who were engaged in this monopolistic practice. So, practically every phone call he had gave us information which was most useful. In other areas families may be using the phone. In other particular instances the individual in whom we are interested may not use the phone each and every time to conduct his business, there may be some social use of the phone, too. After all, it is most difficult—and we as law enforcement officers have to be quite patient in filtering out the proper phone conversations which will lead to successful conclusion of prosecution. And we completely disregard all other materials.

Senator KENNEDY. Do you transcribe it?

Mr. CAHN. We do not transcribe it.

Senator KENNEDY. Who makes the decision? Does the person listening on the other end make the decision on the spot as to whether certain conversation is relevant or not.

Mr. CAHN. Yes, it has to be done that way. The transcription, of course, the recording goes on. We do not necessarily have men constantly on the machine listening to the telephone.

Senator KENNEDY Do you take everything down on the tape?

Mr. CAHN. Yes.

Senator KENNEDY. And, that includes all private conversations?

Mr. CAHN. That is correct, sir.

Senator KENNEDY. Every conversation?

Mr. CAHN. But, the individual who listens and monitors the tape eventually must make his own decision, and he has to have knowledge about the case, as to which particular conversations are relevant and important. Those are transcribed. The others are not, sir. And eventually they are dstroyed.

In 1965, because of an unusual amount of bookmaking activity in Nassau County, 147 wiretap orders were requested. One hundred and one in bookmaking cases; 11 in policy cases; nine in prostitution cases; eight in burglary cases; one in a pornography case; five in grand larceny cases; two in rape cases; two in narcotic cases; two in forgery cases and one in an arson case.

Because of these wiretap orders 127 bookmaking arrests resulted. Thirty-seven police arrests; 12 prostitution arrests; two pornography arrests; 30 burglary arrests; six robbery arrests; four grand larcency arrests; one rape arrest; and four narcotics arrests.

As a result of the information obtained from these wiretap orders, 11 arrests were made for other crimes.

In 1966, 78 wiretap orders were requested: 49 for bookmaking, six for policy, two for prostitution, four for pornography, three for bur-

glary, four for robbery, two for narcotics, two for forgery, two for homicide, two for felonious assault, one for illegal gambling, and one for criminally receiving.

Because of these arrests, 120 bookmaking arrests resulted: 29 policy arrests, 11 prostitution arrests, seven pornography arrests, 19 burglary arrests, two robbery arrests, three narcotics arrests, four forgery arrests, and two felonious assaults arrests. As a result of the information obtained from these wiretap orders, 16 arrests were made for other crimes.

At this particular time, gentlemen, I have requested the police department to continue their work and see if they can provide for this committee the number of convictions that resulted.

Senator McClellan. I was going to ask if you could give us the number of convictions that have resulted from this.

Mr. Cahn. I would not have had these figures at all if I insisted that that be done at this particular time. And so, if you will bear with me, gentlemen, I will have them sent to you as soon as they are available.

Senator McClellan. All right. Will you give a statement along with them explaning them so that we will understand their relationship to wiretapping?

Mr. Cahn. Yes, sir.

Senator Ervin. Mr. Chairman, I would like to ask a question I think is relevant to this.

In 1965 you applied for 147 wiretap orders?

Mr. Cahn. The police department did.

Senator Ervin. That is what I mean. And if my arithmetic is correct, there were 223 arrests.

Mr. Cahn. That is correct, sir.

Senator Ervin. Then, in 1966 the police department applied for 78 wiretap orders, which resulted in 179 arrests.

Mr. Cahn. That is correct, sir.

Senator Ervin. What was the total population of your district; that is, Nassau County?

Mr. Cahn. The population is now approximately a million and a half people, sir.

Sentor Ervin. Now, the overwhelming majority of all of the arrests which were made as a result of these wiretaps were for crimes which were largely commercial in nature; that is, entered into illegally for the purpose of getting a monetary gain?

Mr. Cahn. That is correct, sir.

Senator Ervin. And, these wiretaps are not wiretaps that had anything to do with the home or the offices of people who were merely ordinary citizens who may commit crimes on the spur of the moment as a result of some sudden provocation?

Mr. Cahn. No, sir. We could not obtain a court order if that were the case, sir. These wiretap orders—and Nassau County has insisted now that when the police seek a court order, since it is the district attorney that has to sustain that court order in court, that we have the cooperation of the police department in coming to the district attorney first and getting our approval. And the standard that we have set is rather high. We try not to promiscuously wiretap. We use it as

an effective weapon and not just as a weapon, a sort of gunshot device where we are just shooting and not knowing what we are shooting at.

Senator ERVIN. And, the police were acting under New York law?

Mr. CAHN. Yes, sir.

Senator ERVIN. It used to be thought to be one of the geniuses of our system of government that the State could enforce their criminal laws according to their own laws, and that that gave us as many laboratories as there were States to make experiments with respect to laws, which experiments could be adopted by other States if they were successful, and which would not hurt any but the particular State where the experiment was carried on if they were not successful. Do you not believe that this is a better system for the enforcement of criminal justice than to try to standardize everything and make it uniform under directions from Congress?

Mr. CAHN. I am inclined to agree with you, Senator; yes, sir.

Senator ERVIN. Do you not have quite a different field to deal with, where you have a heavier urban population, for example, than a rural population?

Mr. CAHN. There is no question but that what you say is slightly true.

And now, it is time for us to decide whether the relatively few wiretaps made in the course of a year on the phones, mostly of criminals or their associates, represent such an intolerable evil that we would prefer to let organized crime flourish out of control rather than to permit such tapping to continue.

Senator KENNEDY. May I ask you a question on this material which you just commented on?

I am interested in the nature of these offenses because I am trying to relate these offenses to the attack on organized crime. I wonder whether the arrests for prostitution, pornography, and some of the others really are related to what we normally think of as organized crime.

Mr. CAHN. The prostitution cases may very well have, Senator Kennedy, because this is also a tool of organized crime. The pornography case is obviously not.

Senator KENNEDY. The rape cases?

Mr. CAHN. No, the rape cases are definitely not. I know, for instance——

Senator KENNEDY. Arson?

I was just wondering because you talked in the most dramatic terms earlier in your testimony about the nature of organized crime and how its tentacles were reaching all over the country. And you said that wiretapping is one of the effective means of combating it. But then looking at the types of wiretaps that were requested, and which have been installed, I am not sure I would be completely satisfied that that relationship is as close as might be suggested by your earlier testimony.

Mr. CAHN. Senator Kennedy, there is no question in my mind——

Senator KENNEDY. I think it would be very helpful since I have not had a chance to review the rest of your testimony, to know how you could say of th ese local bookmaking cases that arrests and even fines for these local bookies could have any significant effect on organized crime

that existed in California or anywhere else. And the same goes for the prostitution and arson and rape cases. I am hopeful that you will spell that out, because if these taps are just secured to get at individual local gamblers and prostitutes, then as important as it may be, to stop these particular acts, I fail to see the close correlation between those cases and combating the threat of organized crime on a national level, which you mentioned in your very effective earlier testimony.

The thrust of the information you have just given us is to contradict your prior statement.

Mr. CAHN. Let me say this, that I urge once again that the bookmaking and policy cases in which the district attorney's office obtained wiretap orders had direct relationship with organized crime, with organized bookmakers, syndicated bookmakers throughout the entire United States. As I just informed you, the one case we are dealing with now is international in scope, bookmaking, bookmaking on sporting events only, they do not even bother with horseracing. These bookmaking cases, Senator Kennedy, may involve organized bookmaking, organized crime within the city and State of New York, and may not necessarily involve an organized syndicate throughout the country. But if these funds were traced to the individual syndicate at the local level, I am sure from my own experience you will eventually be able to trace the use of those funds to a national syndicate, and a national organization.

As I said——

Senator KENNEDY. I think that your point would be more dramatically and effectively made, if I may say so, if you could show some such close correlation between the various tap orders which are granted for the specific minor local offenses and the higher echelons of organized crime, and if you could prove that taps are the only way to control such local offenses. You are here to tell about Nassau County, and we have to respect your qualifications on this subject as it affects that county. But to the extent that organized crime is coordinated in this national syndicate that you have spoken of earlier it is hard to see how the arguments you make provide any justification for wiretapping for local crimes, and especially local misdemeanors. I think that there is a difference.

Mr. CAHN. Yes, Senator Kennedy. The wiretap orders to which I previously referred that were requested by the district attorney's office, these are within my own personal knowledge. And I know that these wiretap orders dealt with organized crime throughout the entire country. Having just the approval of the wiretap orders, I know with what they deal, and I know that in most instances they deal with syndicated crime within the local area.

But I want to make it clear that I am in favor of wiretapping for the use against the criminal, and for use in crime detection. And, I would prefer to see very little restriction on that. It would be very difficult for me to tell the mother and father of a kidnaped child, well, it is entirely possible that we may have the return of your child if we use wiretapping, but since it does not involve national security, and since the one who is suspected of taking the child is not part of any criminal syndicate, we cannot use it. I would not want to be placed in that position, Senator Kennedy.

Senator KENNEDY. No, sir. But we also do not want to be wrapped up in polemics. Could you give me any instance where wiretapping has been effective in kidnapping?

Mr. CAHN. Yes, sir. In *People* against *Angelo John Lemarca* in 1956 in Nassau County where I was coprosecutor, one of the effective pieces of information was obtained as the result of a tap on Mrs. Weinberger's phone, the mother of the kidnaped baby, a most effective piece of information.

Senator KENNEDY. But actually, that is a consentual interruption; that is, the owner of the phone consented to someone's listening in—I do not know the facts, but is that not the case?

Mr. CAHN. It was an important, vital piece of evidence that led to the eventual conviction of Angelo John Lamarca——

Senator KENNEDY. That was with the consent of the one who occupied the home and took part in the conversation; was it not?

Mr. CAHN. Yes, that is a monitor.

Senator KENNEDY. There is quite a bit of difference between listening with the consent of the user of the phone and having a tap on some place else where there is not consent.

Mr. CAHN. Angelo John Lemara did not know he was being tapped on the other side.

Senator KENNEDY. But obviously that is a consented to overhearing. You were given the subscriber's permission to listen in; were you not?

Mr. CAHN. Yes.

Senator KENNEDY. All right. What we are talking about here are instances where such permission is not granted. I think there is an important distinction in that; is there not?

Mr. CAHN. I agree.

Senator KENNEDY. Can you give me another case?

Mr. CAHN. Thank heavens, Senator Kennedy, Nassau County does not have too many kidnap cases.

Senator KENNEDY. I am thankful, too.

Mr. CAHN. And, I could not give you any others. This was one that was successfully prosecuted. Unfortunately, however, the return of the baby was not effected.

Senator KENNEDY. I assume, of course, that the taps that you mentioned on page 20 of your testimony were not also consent agreements.

Mr. CAHN. No, by no means. These are all strictly known as wiretap orders with the approval of the court, not monitors.

Senator KENNEDY. After a showing of probable cause?

Mr. CAHN. After the probable cause.

Senator ERVIN. May I ask this. Whether the wiretap is placed with the consent of one of the parties or not, the objective of the wiretap is exactly the same, is it not, to ascertain largely whether the crime has been committed and the identity of the criminal?

Mr. CAHN. That is correct.

Senator ERVIN. Are you not under the impression from reading about kidnaping cases, and the reports about them, that kidnapers very frequently use the telephone as a means of contacting the families of persons kidnaped for ransom?

Mr. CAHN. Yes, sir; that is correct, sir.

Senator ERVIN. Now, are not pornography cases largely commercial? In other words, that is, the sale and distribution of obscene materials. And are not these materials printed and circulated and sold as an organized business, in effect?

Mr. CAHN. That is why I said, it is possible. I do not believe, if I remember correctly—I do not want to create a false impression—I do not believe that in this instance organized crime was involved. There was a peculiar reason why we even used wiretapping in this particular case.

Senator ERVIN. But, as a general rule is it not true that pornography is a very extensive business throughout the United States?

Mr. CAHN. Oh, yes; Senator.

Senator ERVIN. And narcotics cases and prostitution cases are very frequently cases which involve the major source by which organized crime obtains its rewards?

Mr. CAHN. That is correct, sir.

Senator ERVIN. And regardless of whether organized crime can be organized within one district or one State, and even though it has no interstate implications, it is just as bad for that district or that State, is it not?

Mr. CAHN. That is correct.

Absolute freedom of privacy is an impossible ideal on which to found an orderly society. The Supreme Court of the United States has already recognized this obvious fact as evidenced by the development of the "clear and present danger" doctrine. The U.S. Supreme Court has not hesitated to affirm the social interest even at considerable cost to individual freedom when the social interest was seriously threatened. Every policy championed as a means of increasing individual freedom, privacy or security should be carefully evaluated to determine the freedom or privacy that would be lost as well as the freedom or privacy that would be gained from its implementation where the process of law enforcement, therefore, is rendered more difficult and is weakened, relatively fewer criminals will be arrested, convicted and incarcerated and thus relatively more criminals will be given the freedom to act out their antisocial inclinations. As a consequence, our streets and parks will be rendered relatively less safe and the privacy of our homes subject to invasion by burglars and thieves. Thus, the freedom of action of law abiding citizens will, accordingly, be constricted to a greater extent than would otherwise be the case if a policy of telephonic privacy is selected which forbids even those interceptions which are justified by proof of criminal activities.

In New York State, where wiretapping and electronic surveillance under court control and court order is permitted, here in New York State where this so-called invasion of privacy is possible, there has been no hue and cry by our citizens that this process involved serious abuse of the freedom of privacy. Quite the contrary, our success in criminal prosecution as a result of wiretapping and electronic surveillance has constantly been praised.

Today the telephone is as much an instrument of crime as the gun. It is a weapon of crime. It is a weapon of the racketeer. It has had and will continue to have a devastating effect upon the economy of

our country. The public interest requires the adoption of a Federal program permitting judicially ordered and controlled wiretapping by State law enforcement officers. It is an important and vital investigative technique, the only effective weapon against the use of the telephone as an instrument of crime.

I do not mean to suggest that wiretapping is an automatic cure for all that ails us, nor a guarantee of success, nor that its use alone will bring to a state of social perfection. After all, many of our local and State police agencies have been using wiretaps in evidence for some time now. But, I do believe that it would be a tragic policy to deprive us of an extremely effective and helpful crime-fighting weapon at a time when crime is increasing and organized crime is challenging the forces of law and order as never before. At such a time of crisis there is no sense in making things easier for lawbreakers and conceding victory without a struggle. When one is engaged in a war for survival, the niceties of a quieter age must give way to a more vigorous regime of practice (see *Korematsu* v. *U.S.*, 303 U.S. 217; *Hirabayashi* v. *U.S.*, 320 U.S. 81)

I believe it is vital that Congress pass a law permitting wiretapping by State officials under restrictions such as those contained in the laws of New York with little limit on the type of crime in which it may be employed. The New York legislative program on wiretapping includes well-designed curbs on private wiretapping and carefully controls tapping by public officers. It strikes a reasonable balance between individual privacy and the individual right to life free of criminal molestation.

The fact is that a significant percentage of the most important criminal convictions in New York State in recent years have been based upon wiretap evidence or information. Without it hundreds of hardened thugs and dangerous enemies of society would be roaming the streets instead of reposing safely in jail, as they now are.

Law enforcement will not preserve our country as a healthy and decent place in which to live if it is not given tools with which to ply its trade effectively. Wiretapping is only one of those tools, but it is one of the most effective in the armament of crime control. Unless we can free ourselves from dogmatic emotionalism and rigid, ritualistic doctrinairism, unless we can look at our situation realistically and effect a more careful and thoughtful balance of interests, unless we can shake off political inertia and move quickly and energetically in the direction that reason counsels, our way of life as we have known it for two centuries, may be nearing its end.

Thank you very much for your attention, gentlemen. And once again, let me express my sincere appreciation for this very kind invitation to come and speak before you this morning.

Senator McCLELLAN. Thank you, Mr. Cahn.

I do not know that we have received a more forcible and persuasive statement before this committee in the course of these hearings. I have not regarded wiretapping as the most important legislation before the committee, although I regard it as important and essential to law enforcement in some areas. If we do not authorize wiretapping, law enforcement is being deprived of a tool, just as you have illustrated. Law enforcement is also being deprived of the right of interrogation of

a suspect. It is being deprived of the use of confessions of a suspect. It is being denied these tools that I feel are vital to carry out effective law enforcement in some areas of crime.

It seems to me that we are giving more and more advantages to the criminal. And crime continues to rise.

Some say that the fact that a guilty person escapes punishment, that a self-confessed murderer or rapist is not punished, has not necessarily increased the crime rate, or has not contributed to an increase in the crime rate. What is your view about that?

Mr. CAHN. There is no question in my mind, Senator, that changes have to be effected in the area of criminal law. It is my personal opinion that some of these changes have gone a bit too far, to the detriment of law enforcement. In some cases it may be a bit early to determine the full and complete effect of judicial decision. I certainly believe that the decisions were made in sincerity and dedication. I do believe, however, that insofar as the law enforcement officer on the street is concerned, that he believes at the present time he is being handcuffed. To some extent I must of necessity, agree.

Insofar as confessions are concerned, my experience has taught me that it is perhaps one of the most important pieces of evidence insofar as a prosecutor is concerned. And, where one has to sit and beg an individual not to talk to you, it must of necessity result in fewer statements, fewer confessions. In my opinion, fewer statements and fewer confessions are going to result in fewer convictions.

Let me repeat, it is not that the decision was not made with sincerity or dedication. But, I do believe that it must eventually prove itself to be detrimental to effective law enforcement. And, I do not believe that voluntary confessions should be restricted by some unreal and unwanted fear that exists. Because if we continue to place the mantle of disrespect around the police officer by certain judicial decisions, I think we are in danger. We must continue to recognize, and we should hope that the people continue to recognize, that the policeman on the beat is there as a friend, and not as some ogre or monster, to be distrusted, and to be whipped and to be discredited.

I am hoping that sooner or later an eventual meeting ground will be set up which will provide for the law enforcement officer, his proper tools, and which will provide the fullest range of guarantees for those who are charged with crimes.

Senator MCCLELLAN. The question I asked you—I made reference to some of these tools being taken away, but the thrust of the question I asked was, does the guilty escaping punishment, escaping detection, apprehension and punishment, does that contribute to the increase in crime?

Mr. CAHN. In my opinion, there is no question about that.

Senator MCCLELLAN. When a self-confessed, guilty person has been convicted, and then the case is reversed under circumstances where it has to be dismissed, and this sets a precedent where others equally guilty in the same circumstances have to be dismissed, irrespective of whether the decision is right or wrong, legal or otherwise, does it have any effect upon the increase in crime?

Mr. CAHN. I think so. Because, Senator, I am old fashionsd. I believe that if there are no law or punishment prescribed for the viola-

tion of a law, crime would increase 100 fold. And, I believe that if there is a laxity in law enforcement, whether it be through judicial decision, whether it be for technical reason or not, crime is going to increase because the criminal himself will feel safer and freer to ply his illegal trade.

Senator McCLELLAN. If it has the result of making those inclined to commit crimes and disobey the law feel more free and bold to commit crime, then the whole theory of punishment is wrong?

Mr. CAHN. That is right, there is no need for it.

Senator McCLELLAN. Just call them all sick and put them in the hospital until they want to walk out and commit another crime.

I have here a wire dated April 17 for Mr. William Raggio, the executive vice president of the National District Attorney's Association.

You say you represent this association?

Mr. CAHN. Yes.

Senator McCLELLAN. Without objection, I will put his wire in the record at this point.

(The wire referred to follows:)

[Telegram]

RENO, NEV., *April 17, 1967.*

Hon. WILLIAM PAISLEY, *Chief Counsel,*
Subcommittee on Criminal Laws and Procedures,
Judiciary Committee, U.S. Senate, Washington, D.C.

Regret my schedule will not permit my attendance before Senator McClellan's subcommittee April 20. I am firmly convinced that legislation to control wiretapping and eavesdropping is essential, but that permissive legislation should be enacted authorizing use of such devices by law enforcement officials under court control in matters of serious crime. I refer you to the resolution adopted by National District Attorney Association at midwinter conference in Los Angeles in March 1967 copy of this resolution being airmailed to you by executive secretary. I am advised that William Cahn of New York and Charles Moylan, Jr., will appear before your committee on April 20.

WILLIAM J. RAGGIO,
District Attorney, Washoe County, Nev.,
and President-elect National District Attorneys Association.

Senator McCLELLAN. We have a resolution concerning wiretapping from the National District Attorney's Association which was adopted at the mid-winter conference, March 18, 1967.

Mr. CAHN. That is correct, sir.

Senator McCLELLAN. Without objection, the resolution will be printed in the record at this point.

(The resolution referred to follows:)

RESOLUTION ADOPTED BY NATIONAL DISTRICT ATTORNEYS ASSOCIATION, CHICAGO, ILL., AT THE MID-WINTER CONFERENCE IN LOS ANGELES, CALIF., APRIL 18, 1967

RESOLUTION

Whereas, great concern is being expressed about the increasing use of electronic surveillance devices, involving both the interception of wire and radio communications and the monitoring of private conversations; and

Whereas the Association initially recognizes that privacy of communication is essential if individuals are to think and act creatively and constructively; and

Whereas, on the other hand, the controlled usage of such electronic and mechanical devices can be most effective in the prevention and solution of serious crimes and in the protection of individuals who might be victims of crime; and

Whereas, such usage is often necessary and the sole means of affording such prevention, detection and protection; and

Whereas, some measures are clearly necessary to prevent the indiscriminate use of such electronic devices, especially by those individuals and groups engaged in illegal activities or activities not primarily in the public interest; and

Whereas, there presently exists lack of uniformity and resultant confusion in the existing laws dealing with this subject and the interpretation of such laws; and

Whereas, a majority of the members of the President's Commission on Law Enforcement and Administration of Justice have recognized this situation and have recommended that legislation be enacted granting carefully circumscribed authority for electronic surveillance to law enforcement officers;

Now Therefore, Be It Resolved that the *National District Attorneys Association* urges the enactment of appropriate federal and state legislation which would grant authority, on application of district attorneys, attorneys general and the Attorney General of the United States, on behalf of law enforcement agencies, and under court control, for electronic surveillance in connection with the prevetion and solution of serious criminal offenses, as well as in matters involving state and national security.

Be It Further Resolved that such legislation be in form so as to not preclude the right of an individual to preserve a record of his own conversations and transactions; and

Be It Further Resolved that effort be made to make such legislation uniform throughout the various jurisdictions, insofar as procedures and controls are concerned and that this be accomplished, if necessary, by the enactment of permissive legislation on the part of the Congress.

Done at Los Angeles, California, this 18th day of March, 1967.

Senator MCCLELLAN. Senator Ervin?

Senator ERVIN. I practiced law very actively and for many years, always on the side of the defense. And, as the result of my experience in trying, I think I could say, thousands of cases, I have the opinion that virtually all, or the overwhelming majority of men who are arrested for crime, and particularly those who are arrested for serious crimes, already know that they do not have to confess, and they already know that anything they say derogatory to their case can be used against them, and they already know that they have a right to a lawyer, and have a right to remain silent until they got a lawyer, and then have a right to act on his advice.

I would like to ask you what your observation and experience has been with respect to most persons charged with crime already knowing the things the Supreme Court majority held in *Miranda* have to be stated to them.

Mr. CAHN. I think the majority of the people do know that, Senator Ervin. And, I am sure that your experience as a defense lawyer has proven to be correct. Certainly, it has been my experience that this is true.

Very frankly, I do not remember any case, except perhaps dealing with a very young child, and then we as prosecutors have nothing to do with the case. But, even the teenager today is going to be more familiar with his own particular individual rights than the police officer.

Senator MCCLELLAN. As far as adults are concerned, as a practical matter about the only one who does not know these things is the man who has a complete defense on the ground of insanity, is that not true?

Mr. CAHN. That may be, sir.

Senator MCCLELLAN. So that the result, as a practical matter, is that Federal and State courts throughout the United States are every day

being compelled to free self-confessed criminals simply because the police officer did not tell them something they already knew?

Mr. CAHN. But in all fairness, Senator—I do not know how long this will continue—this comes as the result of a decision and its applicability, and its retroactive applicability. The question now comes, will the new rules and regulations as set down by these decisions act as a handcuff on law enforcement. I believe it will. But, I certainly feel that in all fairness more time should be given.

Senator MCCLELLAN. As a matter of fact, when the average lawyer is summoned, as he has to be under these rules, he has to come virtually to the stationhouse, to advise the client. He has no opportunity to investigate the circumstances of the case before he gets there, and every lawyer that has enough intelligence to have a license to practice law will tell his client not to say anything.

Mr. CAHN. If he did not, I think the case would probably be subject to reversal for lack of proper counsel.

Senator MCCLELLAN. Just one thing. I take it, you agree with me in that Daniel Webster spoke a truth when he said:

> Every unpunished murderer contributes to the insecurity of every man's life.

Mr. CAHN. Yes, sir; I do.

Senator KENNEDY. Are you familiar with the Crime Commission report?

Mr. CAHN. I am in the midst of reading it now, Senator Kennedy.

Senator KENNEDY. Particularly the part of it that talks about wiretapping.

Mr. CAHN. Yes.

Senator KENNEDY. As I remember—and any comments that you want to make on this will certainly be welcome—the thrust of that report is that really in dealing with organized crime what would be most helpful, if we are to have the wiretap, is to be able to obtain strategic information about the complexities and the nature of the organized crime. They seriously questioned whether using wiretaps was justified in the smaller problems that might be considered insignificant in comparison with the larger problems—they questioned the real need for it in this area.

But as to major organized crime figures, some observers have suggested that it might be extremely difficult to get a court order based on probable cause, because it would be so difficult to show probable cause as to specific crime for these people who are the important and significant organized crime figures in this country.

This is one of the problems that we have to wrestle with. I think all of us are generally sympathetic to the good of eliminating the scourge of organized crime.

But, in your own experience would you not agree that the most helpful kind of information a law-enforcement official might receive from a tap is not specific evidence of a specific crime as to which there is already probable cause but this kind of strategic information for the purpose of getting a general view of what certain people are saying and doing?

Mr. CAHN. Senator Kennedy, there is no question that the information which is received as a result of wiretaps can be most helpful even though the evidence of wiretapping itself may not be introduced

in court. There is no question that it can lead to other information, and sometimes provides the basis of another wiretap order which will result in some conviction for a very serious crime, or crimes involving organized racketeers. There is no question about that.

Senator KENNEDY. Of course, you really just come about that information casually, do you not?

Mr. CAHN. No, sir. I cannot submit to the characterization of casual.

Senator KENNEDY. You must, however, admit the enormity of the problem of getting probable cause.

Mr. CAHN. But, unless we get the probable cause we cannot get the wiretap.

Senator KENNEDY. That is exactly the point I am trying to make. I would think in the attack on organized crime what would be most effective is to find out who the kingpins are rather than the local bookies. It would appear to me—I only spent a year in the DA's office—but it would appear to be easy to pick up the bookies' boys. Those are not the real problems. The problems are how you get the bigshots. It seems to me that if there could be any legitimate reason for wiretapping in organized crime, it is how to get the bigshots. And the problem you have is how to get probable cause as to the bigshots because you have very little to go on in trying to reach them without listening in on an inordinate number of calls of little shots and innocent people.

Mr. CAHN. The probable cause comes from the little shot and it is through the wiretapping of his telephone. And, I think sometimes we give them credit for more brains than they actually have. Very often, Senator Kennedy, we will hear the little man on the totem pole say, "look, I think my wire is being tapped, and go right on talking, with information that is eventually going to lead to his conviction. And, sometimes mistakes are made and the bigshot gets on that phone. And, that is all we need, in many, many instances.

Sometimes I believe that they think that there are no police officers who speak a foreign language, because suddenly when they want to become very secretive they go into a foreign language. And we have policemen who speak practically every language spoken in the United States. And this is absolutely correct, it is an effective weapon to get Mr. Kingpin, because Mr. Kingpin finds it most difficult or almost impossible to operate without the use of the telephone. Even if he knows there is the possibility of his or the telephone to which he is calling being tapped, he has to use it sometimes. And, maybe more knowledge is the one piece of evidence that we are looking for, and it may—certainly I think you will agree, if he cannot use the phone, it is going to impede his operation. And if we are successful in doing that, I think we have done a great service to the people of our great country.

Senator MCCLELLAN. I notice on page 201 in the President's Crime Commission report, speaking of New York, it says—

> Over the years New York has faced one of the Nation's most aggravated organized crime problems. Only in New York have law enforcement officials achieved some level of continuous success in bringing prosecutions against organized crime. For over 20 years New York has authorized wiretapping on court order. Since 1957, bugging had been similarly authorized. Wiretapping was the mainstay of the New York attack against organized crime until Federal court decisions intervened.

That is from the section on organized crime.

Mr. CAHN. I think it is a significant statement and an indication of the powerful use to which wiretapping can be used.

Senator MCCLELLAN. Mr. Moylan.

STATEMENT OF CHARLES E. MOYLAN, JR., STATE'S ATTORNEY FOR THE CITY OF BALTIMORE, MD.

Mr. MOYLAN. Senators, my name is Charles E. Moylan, Jr., and I am here in really three capacities. Along with Mr. Cahn of Nassau County, I am here as a representative from and a member of the Board of Directors of the National District Attorney's Association.

I am also here in a second capacity as the president of the Maryland State's Attorney's Association. In Maryland we call it States attorney instead of district attorney.

And finally, I am here in my own most direct capacity as the State's attorney for the city of Baltimore, a city of 950,000 people in which occurs 65 percent of the crime in the State of Maryland.

I am here, Senator, to testify with respect to both Senate bills 674 and 675. I share the feeling that I thought you, Mr. Chairman, indicated by implication a few moments ago, that if I had to establish a priority in importance between the two bills, as important as I think S. 675 is with respect to wiretapping, I think that S. 674 with respect to confessions is even more pressing on law enforcement today.

And first of all, I believe you have already received from the Chicago office of the National District Attorney's Association the copy of the resolution with respect to *Miranda* v. *Arizona*. It was adopted on March 18 in Los Angeles at the midwinter meeting. I happened to be the author of that resolution. The effect was that we recommended to the Senate, and indeed to the entire Congress, the passage of legislation such as Senate bill 674, not simply for the salutary effect that it would have upon Federal law enforcement itself, but because we also feel that it is a very valuable and very articulate expression of what we, the National District Attorney's Association, feels is the national consensus of feeling on just what fundamental fairness is.

Senator MCCLELLAN. I am going to direct that this resolution be placed in the record at this point.

(The resolution referred to follows:)

RESOLUTION

Where the *Miranda* vs. *Arizona* case introduced new principles of law dealing with the use of confessions and admissions in the prosecution of criminal cases,

Whereas for many years the law of our nation had applied a test of voluntariness to the admissibility of admissions and confessions, and

Whereas these new principles enunciated in *Miranda* vs. *Arizona* are very restrictive and have had serious impact on the prosecution of criminal cases and on law enforcement throughout the nation, and

Whereas, Legislation is needed to restore the voluntary test in the federal and state court, and

Whereas, such legislation is in the best interest of the law-abiding citizens and reflects the national consensus on what constitutes fundamental fairness as envisioned by the due process clause of the Fourteenth Amendment and would, therefore, beneficially affect state actions.

Therefore be it resolved that the National District Attorneys Association at its Midwinter Meeting in Los Angeles, California, on March 16, 1967, unanimously urges appropriate legislation to accomplish the purpose herein stated.

Mr. MOYLAN. I might point out one of the reasons that the national district attorneys felt that 674 was so important to us was because, even though it directly deals only with the Federal law enforcement problem, it very definitely has a profound effect upon law enforcement in all of the States. Because of the rationale behind the hopefully temporary five-man majority of the Supreme Court in so revolutionary a fashion changing the law since 1961—with *Mapp* v. *Ohio* with respect to the fourth amendment in 1961 overruling *Wolf* v. *Colorado* in 1942; on the sixth amendment right to counsel *Gideon* v. *Wainwright* in 1963 directly overruling *Betts* v. *Brady* in 1946; with the self-incrimination case of *Malloy* v. *Hogan* in 1964 directly overruling the time-honored case of *Twining* v. *New Jersey* in 1908—that the rationale employed by the Court in changing these time-honored decisions is that of Mr. Justice Frankfurter; that the due-process clause of the 14th amendment is a flexible concept, and, indeed, can change as the national consensus of ideas and ideals change on what is fundamental fairness. I think that an expression in enacting this law by the Congress of the United States would speak to the Court very loudly as to just what the national consensus is on fundamental fairness. Even though the direct impact of the bill would be simply on the Federal law enforcement function, it would have to have a profound bearing on the Court's thinking as to what those minimal constitutional standards are which should apply to the States. I think it might well lead to a rethinking of *Miranda* v. *Arizona* and *Escobedo* v. *Illinois*, and a return to the voluntariness standard that preceded these recent decisions.

The effect I see, the detrimental effect—and I might say, Senators, I believe sincerely it is a devastating effect—on local law enforcement of *Miranda* v. *Arizona*. I can speak only of my own jurisdiction. I know that several months ago I had my own staff of 33 survey the important felony cases that they had lost in the courts of Baltimore City, the criminal courts of Baltimore City, where we had a confession that clearly, under the old voluntariness standard, could have been admitted and would probably have led to conviction, but where, not being able to offer that confession into evidence, the case was lost, and the man, whom we feel was guilty, walked free.

We found, in a very conservative estimate, 72 cases out of a survey of roughly 500. It is a limited number that we can survey, because we are simply speculating when we talk about the effect of *Miranda*, since the only time when we really had the police taking the confession, and suddenly we could not use it in court, was in the transition period, where the case, the interrogation started shortly before *Miranda* and the case came up for trial after *Miranda*, in June of 1966.

Senator MCCLELLAN. What has happened to those 72 cases?

Mr. MOYLAN. There have been adjudications of not guilty, Senator, rape cases, murder cases, the entire gamut.

Senator MCCLELLAN. Were they actually tried, or did they have to be dismissed?

Mr. MOYLAN. Most were tried. A large number were tried. And, the State lost by directed verdict. In a number of them we had so little

to go on without the confession that we were forced to enter a "nolle posses," or "stet," as we called it in Maryland, in the case, and another the State dropped the case, or we attempted with some flimsy vestigial piece of evidence to take it to the court, and it was thrown out of court.

Senator McCLELLAN. Whereas you feel reasonably confident that had the use of the confession been available to you the result might have been quite different?

Mr. MOYLAN. Very definitely, I think we would have obtained convictions, these were all felonies, many of these were murder cases and rape cases, and the estimate was a very conservative estimate, I am confident that it affected many hundreds of cases in this period. But, the individual assistants searching their recollections for cases they recalled would recall the more serious rape and murder cases to mind.

I will give, if I might, three illustrations, because I think they are illustrative of the problem.

Senator McCLELLAN. Let me ask you this, and then you can give your illustrations.

What you have just testified to conveys the information that of the number of cases you surveyed, some 70 self-confessed murderers, rapists, and people who have committed other serious crimes are now loose on society by reason of the *Miranda* decision.

Mr. MOYLAN. Yes, Senator, 72 in the city of Baltimore alone in a period of several months.

Senator McCLELLAN. I mean, just in your jurisdiction?

Mr. MOYLAN. That is correct, Senator.

Senator McCLELLAN. You are confident from your experience, and from the evidence you have, and the nature of the confessions, that most of them or all of them would have been convicted?

Mr. MOYLAN. I am Senator. And I am going to give one example that typifies many of these, and I think really illustrates the point.

Senator McCLELLAN. Very well.

Mr. MOYLAN. An individual by the name of George McChan was convicted. As an assistant in Baltimore City I convicted him myself in 1963 of a series of shotgun robberies. He was sentenced to 40 years in the penitentiary. Two years later, by virtue of one of the fourth amendment *Mapp* v. *Ohio* considerations, he was granted a new trial.

He came back a second time in the courts of Baltimore, was convicted a second time, and again sentenced to 40 years in the penitentiary.

That second conviction was affirmed by the Maryland Court of Appeals. It was within the 90-day period in which he might have applied for certiorari to the Supreme Court of the United States when another Maryland decision applying a first amendment freedom-from-religion case to Maryland threw out all of our earlier cases not yet final, where a grand jury had been required, or a petit jury, before applying for service, to indicate whether they did or did not believe in God.

But at any rate, the individual who had been twice convicted was sent back for a third trial. And at the third trial, though the evidence was clear in the first two, *Miranda* v. *Arizona* had intervened before our third trial of McChan. Without the confessions, which met the old voluntariness test, we had nothing with which to convict him. He was found not guilty.

He was released on a Friday night. And by Tuesday night, 72 hours later, one person was shot in Baltimore City and another individual was shot and killed in the course of an armed robbery of a tavern at 1 o'clock in the morning and McChan is the man—I have to say allegedly guilty, because he has not yet been tried formally—who has been indicted for that murder, 72 hours after being released on a third trial where the evidence under *Miranda* was not admissible in a third trial, whereas it had been clearly admissible and led to convictions in the first two trials.

Senator McCLELLAN. You could give other examples; could you not?

Mr. MOYLAN. Very definitely.

The *David Jenkins* case is before us. He was sentenced to death for first-degree murder, a horrible robbery-murder, hacking a man to death with a meat cleaver. He got a new trial on technical grounds. And on the next trial we were not able to use a confession against him. But through a compromise we were able to get a plea of second-degree murder. And he is serving 18 years.

Senator McCLELLAN. What did he get the first time?

Mr. MOYLAN. A death sentence. And if we had not been lucky enough to get the compromise the second time around he probably would be walking free today.

Rather than going into Senate bill 675—I know the committee has to adjourn—I will just summarize my feelings on S. 674, confessions.

We have seen in Baltimore and throughout Maryland the virtual elimination of the confession. We very occasionally—we used to get it in 20 to 25 percent of our cases, and now we are getting it in 2 percent of our cases. The confession as a law-enforcement instrument has been virtually eliminated. And I think this is ironic. But one thing the Federal courts do not take into account, they say you don't have to use the search and seizure of physical goods, you don't have to use the confession, that law enforcement should become more sophisticated and should apply the technological sciences such as do the Federal Bureau of Investigation, the Internal Revenue Service, Scotland Yard, or what have you. And what I think the Federal courts have failed to grasp is that in the cases they deal with involving the FBI and the Treasury Department they are dealing with ongoing crimes, where there is a counterfeit ring, or a Mafia, or a Communist Party, or a Ku Klux Klan, where it is going to continue, and you may be able to employ the long-range Scotland Yard-FBI techniques of penetration and surveillance over a period of weeks or months. And yet to pick cities such as Baltimore, dealing with tens of thousands of spontaneous crimes, burglaries, rapes, yokings, where a man walks up a street and the crime is over in 5 minutes, and then he is gone, and there is not available, even if we could afford the price, the metropolitan police departments the techniques that are available to an FBI or a Scotland Yard. And without the confession we are handicapped to an extent that is absolutely frustrating law enforcement.

Senator McCLELLAN. Have you failed to secure indictments of prosecutions for crimes that have occurred since the *Miranda* decision, simply because the decision handicaps your policeman in trying to pursue an inquiry and interrogation to elicit information that would be useful in the trial of the case?

Mr. MOYLAN. I know, Senator, that we have failed even to take cases to grand juries in many, many cases. It is a large volume of cases. It is impossible to give a precise estimate. It is purely speculative in this area, because once the police do not obtain the confession, the case goes no further, and as a result there is no way to record the number of cases quantitatively in which we are frustrated. But it represents many, many percentage points. I am confident that 15 to 20 percent of those cases that would have gone to the grand jury pre-*Miranda* are not even reaching that stage today.

Senator MCCLELLAN. You wrote me as chairman of the committee on the 7th of March this year citing a number of cases. Do you have any objection to your letter being made a part of your testimony?

Mr. MOYLAN. None whatever, Senator.

Senator MCCLELLAN. It may be printed in the record.

(The letter referred to follows:)

STATE'S ATTORNEY OF BALTIMORE CITY,
Baltimore, Md., March 7, 1967.

Re effect of *Miranda* ruling on criminal prosecutions in the city of Baltimore.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I am writing in response to your letter of November 21, 1966, requesting information on the effect which the Supreme Court decision in the case of *Miranda* v. *Arizona* has had on criminal prosecutions in the City of Baltimore.

The information I am about to give to you is, at best, a rough approximation and is only partial in nature. The State's Attorney's Office of Baltimore City handles only those criminal prosecutions serious enough to be tried at the Circuit Court level, which, in Baltimore, is known as the Supreme Bench of Baltimore City. Literally, tens of thousands of minor offenses are tried daily in our nine Municipal Courts, which, in many jurisdictions, would be referred to as Magistrates' Courts. Prosecutors to not participate regularly in those trials. Although the Maryland distinction between felony and misdemeanor is extremely confused, those cases heard by our higher Circuit level Courts would be the cases which, in most states, would be classed as felonies, and those cases heard by our Municipal Court would be classified in most states as misdemeanors.

A second factor which makes this estimate, at best, an approximation is that we have not kept any running statistics on the effect which *Miranda* v. *Arizona* has had on our cases. After receiving your letter, I requested my Executive Assistant State's Attorney to survey all members of the staff and to take from each of these Assistant State's Attorneys his recollection as to what, if any, cases had been affected by *Miranda*. As each of approximately thirty men looked back over well over one hundred cases per man over the past six months, it follows that though the more significant cases may have stuck in memory, the details of the more minor cases may have dimmed into oblivion. I must also point out that since the early fall of 1966, at least four regular trial Assistants have left this office. They were not included in our informal survey, and they almost certainly had some cases which were affected by *Miranda*.

The very best recollection, however, of our existing staff of Assistant State's Attorneys would indicate that at least 72 indictments have been adversely affected by *Miranda*. 64 of those indictments are now closed, with the State either entering a stet or a nolle prosequi in the case because of insufficient evidence with a confession rendered inadmissible by *Miranda* or a verdict of not guilty being entered against the State with the inadmissibility of a confession being a very significant factor in that verdict. 8 other indictments are still open, but the Assistant State's Attorney assigned to the case has indicated to me that because of *Miranda* there is no hope whatsoever of the State winning the case.

I must point out that there are many more cases which unquestionably will be affected but of which no Assistant as yet has knowledge. With the backlog of

3,200 cases awaiting trial and most of which will arise in a routine assignment rather than being already assigned to an Assistant State's Attorney as a special case, it is inevitable that *Miranda* will be a factor in many of these cases.

I will give a very brief résumé of some of the significant cases adversely affected by *Miranda:*

Peterson et al. robbery series

The State was forced to enter Nolle Prosequi's against four defendants—Ronald Peterson, Willie C. Robinson, Nimrod Davis, Jr., and Joseph Johnson—who were involved in ten separate indictments. These various indictments charged eight robberies, four burglaries, ten larcenies, and one mayhem against a large number of victims. The crimes covered a time period that ranged from January 28, 1965, through December 27, 1965, and involved property in a total amount of $12,200. Confessions had been given to the police in all of these cases, but without the confessions being admissible, there was no other evidence legally sufficient to hold any of the defendants.

George McChan

The George McChan case is particularly significant. McChan was initially convicted in 1963 for a series of shotgun robberies and was sentenced to 40 years in the Maryland Penitentiary. Because of a search and seizure question growing out of the Supreme Court decision of *Fahey* v. *Connecticut*, the Court of Appeals of Maryland reversed McChan's convictions and sent him back for retrial. In 1965, he was retried and reconvicted and again sentenced to 40 years. While his second appeal was pending, the Maryland Court of Appeals announced its decision in the case of *Schowgurow* v. *State* which threw out our old Grand Jury system for First Amendment reasons and entitled everyone whose conviction had begun under an old Grand Jury indictment but which was not yet final to come back and obtain a new trial under a new indictment. McChan, whose second appeal was then pending, took advantage of this situation; and when he was brought before the lower court for what would have been his third trial for a series of armed robberies, the State was forced to enter a Nolle Prosequi, because the decision of *Miranda* v. *Arizona* had intervened and prevented the use of a confession against him at the third trial which had been indispensable to the earlier two convictions, McChan remained in the penitentiary temporarily, however, because of his alleged involvement in a riot at the penitentiary in the summer of 1966. He was ultimately acquitted of the riot charges and was released. He was re-arrested within four days of that release and charged with robbery and murder, which charges are currently pending.

Edwards murder case

On October 11, 1966, an Assistant State's Attorney had to enter a Nolle Prosequi against one John Edwards who was charged with the murder on March 5, 1966, of one Arthur Bowman. The reason for the Nolle Prosequi was that a statement which was clearly inadmissible under *Miranda* was the only substantial evidence against the defendant.

Ritter murder case

On October 4, 1966, an Assistant State's Attorney had to enter a Stet in the murder indictment against Ritter, because the confession, clearly inadmissible under *Miranda*, was the only substantial evidence against the defendant.

Cooper robbery and burglary case

On November 7, 1966, one Robert Wayne Cooper, who was charged with robbery and burglary, was acquitted in the opinion of the Assistant State's Attorney who handled the case, because the confession, which was the only significant evidence against the defendant, was, under *Miranda*, ruled inadmissible.

Aldridge burglary series

In this case, the State was forced to enter a Nolle Prosequi against three defendants for a series of 16 burglaries, because a confession was inadmissible under *Miranda*.

Hamilton burglaries

In this case tried on January 26, 1967, a motion to suppress a confession under *Miranda* was granted. This led to verdicts of not guilty in six burglary indictments.

Hopkins burglary case

On January 24, 1967, verdicts of not guilty were entered in three burglary indictments against the defendant, because a confession was ruled inadmissible under *Miranda.*

Gantt murder case

On August 6, 1966, the defendant, Gantt, was found not guilty of murder after his confession was ruled inadmissible under *Miranda.*

Maddox murder case

In this case, a defendant, on January 16, 1967, was found guilty of murder in the second degree. A statement was ruled inadmissible under *Miranda.* The Assistant State's Attorney who tried the case feels that had the statement been admitted the verdict would have been for first-degree rather than second-degree murder.

Robinson arson case

On October 11, 1966, the State entered a Nolle Prosequi in the arson indictment against the defendant, because without the confession, clearly inadmissible under *Miranda,* there was not sufficient evidence to prosecute.

Predictions as to two other murder cases

Because these two cases are still pending, I hesitate to release the names of the defandants or the indictment numbers. In one of these, however, a conviction for first-degree murder and armed robbery was obtained in 1964, and the death penalty was handed down. Under the *Schowgurow* ruling, already mentioned, the case, which had already been affirmed by the Maryland Court of Appeals but for which the time for applying for certiorari to the Supreme Court was still running, was remanded for a new indictment and new trial. It is our considered judgment that without the confession, which would appear to be inadmissible under *Miranda,* the chances of reconvicting this defendant are less than fifty-fifty. In a second case involving murder and rape, not yet tried for the first time, it is the firm feeling of the Assistant State's Attorney assigned to that case that if the confession under *Miranda* is ruled out, there will be no alternative to a verdict of not guilty.

I hope this brief summary of a few of the cases in Baltimore City which were affected by the *Miranda* decision will be of some help to your committee. The area is certainly worthy of further study.

Very truly yours,

CHARLES E. MOYLAN, Jr.,
State's Attorney.

Mr. MOYLAN. I cite 20 or 25 cases that may have failed as a result of *Miranda.*

Senator MCCLELLAN. You don't mean that the cases you list in the letter constitute all the cases?

Mr. MOYLAN. By no means. Those are the more outrageous examples that come immediately to mind, that more graphically illustrate the point.

Senator MCCLELLAN. What impact would you say that this has upon crime, the increase in crime? Has this caused frustration because of the shackling of what has heretofore been legitimate and constitutional techniques?

Mr. MOYLAN. I think first, we know there is a significant quantitative effect on the crime rate itself, because of the type of persons we are dealing with in crimes such as robbery and burglary, the statistics show us are recidivists and even after serving a 20-year sentence go out and repeat, and if found not guilty, as opposed to serving their 10-year sentence, the possibility of their repeating crimes again in a much shorter period of time is obviously enhanced.

We know that there has been a quantitative increase in time. But I don't think this is all the detrimental effect. We feel—and this is a

palpable thing, you can reach and touch it—that in dealing with your police departments, your law enforcement officials, there is this feeling of incredible frustration as to whose side the courts are on; are they with the criminal or are they with us? And it is almost impossible to rationalize to the man on the beat when it appears that suddenly it is he himself who is being attacked in judicial decisions rather than the criminal, as to why he cannot use those techniques that he has been using for years that he thinks meet the demands of fairness and which accord with just the commonsense approach of any citizen.

And I think the third and perhaps the detrimental effect has been on the public itself. The public is certainly looking upon the judiciary, the law enforcement, the legal procedures, and indeed the government, as being somehow off on some philosopher's cloud, in some other world, and not tuned in to the reality of law enforcement. There is no way that the individual citizen who knows that a person—and feels that a person has committed a crime—when he sees that person acquitted on a purely technical ground of very recent origin, that member of the public looks upon all of us with a jaundiced eye.

Senator McCLELLAN. Do you feel that this has some impact upon the morale of the policeman?

Mr. MOYLAN. Very definitely.

Senator McCLELLAN. Not that they don't want to do their duty, but to the extent that they are frustrated in knowing how to do their duty without making themselves vulnerable to judicial criticism.

Mr. MOYLAN. I think that very definitely is true, Senator. There is a great deal of truth to the current axiom that we are demanding that the policeman make the split decision at 3 o'clock in the morning in some alley that the courts may debate for the following 5 years, and even at the end of 5 years debate is split by a 5 to 4 vote.

Senator McCLELLAN. You expect the policeman on the beat, under circumstances surrounded with danger, to act, as you say, on the spur of the moment, in a split decision. But then if he makes a wrong decision, why the case involved may go to the Supreme Court. And there, after months of deliberation, they also make a split decision but instead of in a split second, they deliberate for months and make a split decision. Is that correct?

Mr. MOYLAN. That is very definitely the feeling of our policemen.

Senator McCLELLAN. So that it is frustrating. Now, I would like for you, if you will, to supplement what you have testified to on this issue by giving us, if you can, if a survey has been made, or if you can make one, how many of the 72 have since been arrested and charged with crime.

I don't know whether any of them have been convicted or not in the short time. But you mentioned one that is back in the throes of the law, and there may be some others. If it is not too much trouble, just take this 72 as kind of a criterion as to what is happening throughout the country. I don't know that it would be exactly representative, but it gives us some indication of the impact these decisions have on crime and the increase in crime. If these people who are released are committing crime again or are back in prison, they obviously wouldn't be committing these crimes today. Therefore to that extent the rate of crime would be decreased. And to the extent that

they do commit crime again, to that extent the rate of crime is increasing, isn't that correct?

Mr. MOYLAN. I can have that checked into. And I am sure it would be a significant figure even over a 9-month period.

Senator MCCLELLAN. I would like for you to submit that for the record, if you will.

Go ahead.

Mr. MOYLAN. I know that the time of the committee is short. So very briefly, in all three capacities, again I simply indicate my support of Senate bill 675, the wiretapping bill.

Senator MCCLELLAN. You heard Mr. Cahn testify, did you not?

Mr. MOYLAN. Yes.

Senator MCCLELLAN. You may go ahead.

Mr. MOYLAN. Maryland is one of the roughly half a dozen States around the country, along with Oregon and New York, that does have a limited wiretap or electronics surveillance now available to us. I don't think that we or the others use it quantitatively to the extent that New York does. But we do have available to us the right, if the State's attorney himself applies to a judge and takes in sworn witnesses and makes out an application for the court order, with all of the probable cause that normally goes into an application for a search-and-seizure order, if he can point out that this is the only reasonably accessible means by which we can ascertain the crime, in those circumstances, and pointing out a very definite phone with a very definite purpose in mind, he can obtain a court order.

In Maryland we have found that despite the fact that the Maryland law permits us to do this, the lack of a Federal law such as Senate bill 675 has operated effectively to frustrate us. The Baltimore Metropolitan Police Department does not have wiretap operators. Even when we are operating with the court's permission, we or any other law-enforcement officer must depend upon the cooperation of the local telephone company. Our experience with the Chesapeake & Potomac Telephone Co. in Maryland is that they will not honor the local judge's order for fear that they would be violating the law of Congress and would get themselves into trouble with the Federal Communications Commission. So even though we can obtain the court order, we cannot utilize that order, because without the cooperation of the telephone company there is no effective way with personnel available that we can place a wiretap.

As an indication that it does not lead to any great quantitative abuse in the two and a half years that I have been State's attorney, and the year and a half before that deputy State's attorney, in the 4-year period we have in Baltimore City had cause to utilize either an order for a wiretap or an electronics surveillance, the eavesdropping device, only on six occasions, but in four of those occasions it has very definitely led to convictions that would not otherwise have been obtained without it.

Senator MCCLELLAN. In what area of crime?

Mr. MOYLAN. It does not, as in Senator Kennedy's question, get to the massive cartel of organized crime. In one it dealt with some members of the State legislature who were also attorneys attempting to shake down a defendant in a Baltimore City courtroom by promising

to get a witness out of town so that he would not testify against that defendant for the sum of something in the neighborhood of $5,000.

Senator McCLELLAN. That involved corruption of officials?

Mr. MOYLAN. Corruption of officials.

We obtained convictions against both, and would not have but for the wiretap which we had in that particular case.

In another case an individual from New Jersey had come into Maryland representing one of the black-market pharmaceutical houses, and was distributing the amphetamines and barbiturates, the pep pills and goofballs to teenagers all over the north Baltimore area. We obtained an electronics eavesdrop order in that particular case, and obtained a conviction against them, and actually recovered contraband which he had which was in the neighborhood of 200,000 of pep pills and amphetamine.

Senator McCLELLAN. That number of pills, or that number of dollars?

Mr. MOYLAN. That number of pills. And in this and several other areas we find that the lack of the real ability to utilize our Maryland law because the phone company is fearful of the congressional law prevents us from really getting into the organized crime area.

Senator McCLELLAN. You say it is a useful tool, though, and needed?

Mr. MOYLAN. It is a useful tool, very definitely needed.

The frustrating thing when we deal with the lottery industry and with the bookmaking is that we get the small operator on the street where the policeman can make direct surveillance and can observe the operation. But we can never trace it to the man higher up, to Mr. Big, the banker, and higher up, with techniques such as this. We find that in the bookmaking area, at least, in the Baltimore area today the telephone is used almost exclusively. A bettor may call in from a phone in Baltimore City, but will not even call the bookie in the city, he will call to an adjoining county. The money might be delivered that afternoon to Anne Arundel County. So that one simple placing of a bet may involve three different jurisdictions. And without the ability to find out what is going on on the phone we are virtually powerless. And today we are seeing in the bookmaking area, at least, a device that I am sure this committee is familiar with by the name of a cheesebox. I don't want to retread old ground if the committee is familiar with this.

Senator McCLELLAN. Just briefly.

Mr. MOYLAN. The cheesebox is a device—we will find a bookie coming into Baltimore, renting a room in a low-rental area of town, an empty room, and calling the telephone company and saying, "I am going to be in town for a period of months, I am a salesman, and I want to rent two phones."

The phone company will come and install two telephones right here in this room on the floor. He says his furniture is coming a week later.

He will then take a cheesebox, a rather simple electronic device—it took a genius to come up with it, and it only costs $16 to reproduce.

He disconnects the two phones and connects them with each other through this cheesebox. Then he can lock the door and leave that

apartment and never come back. He could never be found on the scene of the crime. He will continue to pay his phone bill by money order or cash, and he will pay the rental of that room by money order or by cash, and he will never return to that vacant room. But between 11 and 1 o'clock every morning he will, from California, 3,000 miles away, or from a public phone booth 100 yards away, or his home, or any other place, shifting around, call in to the one phone, and it will activate it. And all the people wishing to place the bets have the number of the second phone. So they during that 2-hour period can keep calling in to the second phone. There is no recording made or no record in the phone company by which they could check this phone being used. It is transferred over immediately, it comes in one phone and goes out the second back to this man either a hundred yards away or 3,000 miles away. And there is no way that the phone records, even if they could be subpenaed, would show any record of this conversation.

Senator McCLELLAN. The only way that you could catch that kind of an operation is by wiretapping?

Mr. MOYLAN. We would have to get into the wires themselves. The people can go and break into the room, and all they will find is an empty room with two phones sitting on the floor with a $16 box sitting halfway in between.

Senator McCLELLAN. Is that the device frequently used?

Mr. MOYLAN. We are finding it more and more in the area. The phone people tell us that some of the sophisticated devices that are being used in this area today are incredible. This was the primitive early model, like the Hiroshima bomb.

Senator McCLELLAN. There are more sophisticated ones now?

Mr. MOYLAN. There are blue boxes and black boxes that can be carried in an ordinary businessman's attaché case that can enable you to pick up your phone in Baltimore, and if you want to call somebody in Las Vegas and pay off big money, you don't call Las Vegas, because there would be a record of that, you call Washington, D.C., information, and you get six of the digits out, and just before the last digit comes out a high frequency beep goes into this phone, and it suddenly hooks you into the Washington system, and you start dialing again, and call Los Angeles. And the record of that is that it was Washington information that called Los Angeles rather than a particular phone in Baltimore.

The technological sophistication of these people today—you could repeat the process, your phone call from Baltimore to Los Angeles could go by way of Miami to Los Angeles, to Portland, Oreg.—there is no limit to the number of different systems you can connect into.

Senator McCLELLAN. What kind of surveillance, aside from the wiretap electronic device, could possibly detect and discover that sort of an operation?

Mr. MOYLAN. Unless there were a penetration agent, which takes literally years, who worked himself up into the criminal organization, short of that there would be no way to detect anything like this.

Senator McCLELLAN. You can't always do that; can you?

Mr. MOYLAN. And you cannot always do that. And frequently those penetration agents end up themselves——

Senator McCLELLAN. And that risks the life of the man who penetrates; doesn't it?

Mr. MOYLAN. Very definitely. And local police departments just don't have the personnel available for that FBI-Scotland Yard-CIA type of penetration effort.

I think that if I could sum it up, the frustrating thing is that the court on the one hand is telling us to abandon the time-honored devices—now, under *Mapp* v. *Ohio* you apply an exclusionary rule and don't use the physical evidence which you have used in the past, and now under *Miranda* you get rid of confessions—but when they are telling us that on the one hand, they are saying, use instead more sophisticated, scientific techniques. And yet when we listen to an admonition on the one hand and turn around and attempt to use a more sophisticated technological technique, we find that we are absolutely frustrated by not being permitted to go into this area either.

Senator MCCLELLAN. They tell you to use them and they deny you the use of them.

Mr. MOYLAN. That really is the case. It is a case of damned if you do and damned if you don't. We cannot use the old method or the only available alternative which we are aware of.

Senator MCCLELLAN. Any questions, Senator Ervin?

Senator ERVIN. When the Government, whether it be the State or Federal Government, prosecutes a man for crime, the prosecution has to prove two things beyond a reasonable doubt; does it not? First, that a crime has actually been committed; second, that the accused is the person who committed the crime?

Mr. MOYLAN. That used to be all we had to prove.

Senator ERVIN. That was the fundamental law prior to some of these legal jungles we have wandered into lately?

Mr. MOYLAN. Yes, Senator.

Senator ERVIN. Now, a confession, even voluntarily made, is not admissible under the law to establish the fact that a crime has actually been committed?

Mr. MOYLAN. Basically that is true. We have to prove the corpus delicti, the fact that the crime is committed. We may use a confession to help, but we have got to have some independent corroborating evidence. We essentially do that without a confession.

Senator ERVIN. In other words, a prosecution would totally fail if there were not independent evidence of the corpus delicti itself?

Mr. MOYLAN. That is correct.

Senator ERVIN. So as a practical matter, a voluntary confession is ordinarily used as a method of identifying the perpetrator of the crime rather than showing the crime itself?

Mr. MOYLAN. Very definitely.

Senator ERVIN. Now, is it not true that in many cases the confession was a decisive factor which convinced the jury of the guilt of the accused?

Mr. MOYLAN. In many, many cases. And particularly do we find this true in those crimes where there simply is not an eyewitness to the murders, to the rapes, particularly if the rape victim died or was not able to identify the assailant in the dark, or the confession was the single decisive factor in establishing the identity of the assailant.

Senator ERVIN. And is it not true, especially in urban centers, that in a high percentage of crimes the crime was committed under cir-

cumstances where the victim does not have a reasonable opportunity to identify the perpetrator of the crime?

Mr. MOYLAN. Absolutely. The yokings, the rapes, all of these were at night. And we are finding more and more even in armed robberies the use of the stocking mask, the mask over the face, to frustrate eyewitness identification.

Senator ERVIN. So for that reason it is highly important to the enforcement of the law that a voluntary confession should be admissible to establish the identification of the perpetrator of a crime which has been established by independent evidence?

Mr. MOYLAN. Very definitely, in these areas, at least. If we were talking about embezzlement, larceny, to just confessions, the lack of them wouldn't hurt us very much.

But when you are talking about murder, rape, robbery, burglary, the typical felon is violent, those are the areas where we are dependent upon the confession.

Senator ERVIN. And it handicaps you in a most crucial aspect of law enforcement; that is, identifying the perpetrator of a crime established by independent evidence?

Mr. MOYLAN. Very definitely.

Senator ERVIN. Now, can you imagine, either from the standpoint of theory or from the standpoint of practicality, any more convincing evidence of the guilt of a party than his voluntary confession that he committed the crime with which he stands charged?

Mr. MOYLAN. The most convincing of all. That is why the juries are convinced by it. And juries always have that lingering doubt if they do not give that confession.

Senator ERVIN. Now, as a matter of fact, except in cases of what you might—you might call repeated and hardened criminals, the average man talks about the things he is thinking about. And where he has committed a crime he thinks about the crime, and it is very natural for him to talk about it, isn't it?

Mr. MOYLAN. It comes out.

Senator ERVIN. So from the standpoint of rehabilitation of those who violate the law, a confession is a desirable thing, in that you can't do much to rehabilitate a man unless he is willing to confess that he has been wrong, can you?

Mr. MOYLAN. Absolutely. I think a man who beats the rap is not one who is anxious for rehabilitation. He is simply enforced in his belief that crime does pay.

Senator ERVIN. Now, if I recall correctly, the Uniform Crime Report for 1965 states in substance that of those persons who are sentenced for crime, for serious offenses, 46 percent of them repeat their crime or some similar crime within 2 years of their release from serving a former sentence. What has your experience been in prosecuting criminals in Maryland in respect to crimes of this type?

Mr. MOYLAN. I know subjectively from my own personal prosecution of roughly 4,000 cases, and the experience of our office, and indeed in talking to the warden of the State penitentiary, that probably our recidivist rate runs even a little bit worse than the national rate.

By the time we get a 28- or 30- or 32-year-old burglar, robber, we find that he has been in six or eight penal institutions dating all the

way back to the time when he was 16 or 17 years old. We find a terrible rate of recidivism.

Senator ERVIN. I would like to ask you a few questions to educate laymen as to exactly what is involved in a random case. Is it not the case, as general rule of law, that an appellate court can make its decision in a case on appeal on the basis of the record made in the trial court?

Mr. MOYLAN. Yes.

Senator ERVIN. Now, I will ask you, if the record in the trial court doesn't indicate that the *Miranda* case this man Miranda was charged with kidnapping and criminal assault on a woman?

Mr. MOYLAN. Yes; in Arizona.

Senator ERVIN. And he was arrested by the officer, and detained in custody, and no coercion was practiced upon him, and there was no inducement held out to him to confess, and no third degree methods were employed. And then after a lapse of 1, 2, or 3 hours he voluntarily told the police who had him in custody that he had committed these crimes. And he was convicted of those crimes, wasn't he?

Mr. MOYLAN. Yes.

Senator ERVIN. And that is the record on which the case was tried in the courts of Arizona?

Mr. MOYLAN. And affirmed in Arizona.

Senator ERVIN. And then it came here to the Supreme Court. And the majority opinion, instead of dealing with the facts, or making their decisions based on the facts in the *Miranda* case, contains page after page of quotations from the citations of various persons who were not witnesses in the court of Arizona and who were not subject to cross-examination either.

Mr. MOYLAN. Going all the way back to the Magna Carta, I believe, Senator.

Senator ERVIN. You don't have to comment on this, but when I read that I came to the conclusion that the majority thought that perhaps society didn't need too much protection from criminals, but that criminals needed protection from law enforcement officers.

So the decision of the majority was based, as far as facts were concerned, not on the facts adduced in the trial court in Arizona, but on the writings of persons who were not witnesses in Arizona, and whose qualifications were not revealed, and who were not subjected to cross-examination.

Mr. MOYLAN. That is right. And I believe the justices themselves, at least in the three-man majority, occasionally used the phrase "policing the police" instead of judging the individual case on its merits, but seizing the occasion, rather, to propound the general formula for law enforcement all over the country.

Senator ERVIN. Chief Justice Marshall said that when a court undertook to interpret the Constitution it should do it on the basis that the people who drafted and ratified the Constiution meant what they said. Is that not a good rule for interpretation?

Mr. MOYLAN. I think an excellent rule.

Senator ERVIN. Now, is it not the function of the Court to interpret the Constitution for the purpose of ascertaining what the Constitution means and give an effective— —

Mr. MOYLAN. I think so, within limits. I might differ just a little bit there. But I don't differ with the major thrust of your argument. What the Court is doing in this whole revolution since 1961 is bringing into the due process clause of the 14th amendment various provisions of the first 10 amendments which prior thereto had limited only the Federal Government. And the reason it is doing it, and reversing some of its old decisions, is because they hold, as I think is best expressed by Mr. Justice Frankfurter some years ago, that the due process clause is an elastic clause, and can change with changing times, that in this enlightened society, we might do something contrary to fundamental fairness while this would not have been so regarded back in 1850 or 1789. However, even though I think they have that right to be flexible, at least judicial restraint is called for, that the States ought to be out in front of the Supreme Court rather than the Supreme Court in front of the States, that they are propounding simply those minimal standards, not setting up an ideal that they hope law enforcement will aspire to 100 years from now, but setting up simply the minimal standards. And this is the reason I think they have misread the national consensus on fundamental fairness. And I think that is why Senate bill 674 has a profound importance far beyond what it would do directly for the Federal law enforcement system, because it is the most effective Gallup poll or Harris poll of what the national concensus is in this area.

Senator ERVIN. Of course, there are differences of opinion among the bar now. But I think that anyone who reads the original Constitution with the provision for amendment will have to come to the conclusion that James Madison and others who drew that instrument thought that the meaning could not be changed except by an amendment made in the manner prescribed by article 5. They didn't intend to vest the judges with constitutional amending capacity or lawmaking capacity.

But the due-process clause might be described legally as a clause that is general in its terms, as contrasted with such specific things as some other provisions of the Bill of Rights, such as the self incrimination clause of the fifth amendment.

Now, has it not always been a rule of construction of documents and laws and the Constitution that where you have a general clause and a specific clause, that the one which is entitled to be given the superior power is the specific clause rather than the general?

Mr. MOYLAN. Very definitely, that is good common law statutory interpretation.

Senator ERVIN. Now, the *Miranda* case attempts to justify the new requirements laid down in that case by what we ordinarily call the self-incrimination clause of the fifth amendment, does it not?

Mr. MOYLAN. Yes.

Senator ERVIN. Aren't these the words of the self-incrimination clause of the fifth amendment: "No person shall be compelled to be a witness against himself in any criminal case"?

Mr. MOYLAN. Those are the precise words.

Senator ERVIN. Now, those words became a part of the Constitution in 1791. And I would ask you, from the time they became a part of the Constitution in 1791 down to the 13th day of June 1966 when the

Miranda decision was handed down, was it not held that they had no possible application to voluntary confessions?

Mr. MOYLAN. None whatsoever.

It simply meant that a man is not required to take the witness stand at the trial. And that is the reason that, even beginning in 1937, when a more conservative court began to overrule certain confession cases, it utilized not the self-incrimination clause, but just the more general due-process clause of the 14th amendment.

Senator ERVIN. In other words, they held that under the due process clause a voluntary confession was admissible, and an involuntary confession was not admissible; and until the *Miranda* case they hold that a person charged with a crime could not even invoke the self-incrimination provision of the fifth amendment as a basis for excluding his confession.

Mr. MOYLAN. That is correct.

Senator ERVIN. The question was decided in the first instance, was it not, by the trial judge who heard the evidence and saw the witnesses and was best able to decide whether the confession was prima facie voluntary or not?

Mr. MOYLAN. The trial judge in Phoenix held that it was not involuntary. The Arizona Court of Appeals, Arizona's highest court, affirmed his decision. And then it was for the first time at the Supreme Court level that the fifth amendment was brought into the discussion.

Senator ERVIN. Now, you have undoubtedly had many cases prior to the *Miranda* case in which objection was offered to evidence upon the ground that it was involuntary and therefore inadmissible under the due-process clause or a comparable provision of the State constitution. That is the question which is a question of fact in the first instance by the trial judge, is it not?

Mr. MOYLAN. Yes.

Senator ERVIN. I would like to ask you, it is not a difficult decision in the great majority of cases for the judge to make, is it?

Mr. MOYLAN. Certainly they have made it in all cases. Sometimes it is more involved than others. But basically with all of the guidelines that the Supreme Court gave us in 1937 through 1965, trial judges and jurists did make that decision, the totality of circumstances, weighing all of the factors, they finally decided whether John Jones' confession was voluntary or was not voluntary.

Senator ERVIN. You needn't comment on this, but in my opinion the judge who is not competent and can't be safely trusted to make the decision after seeing the witnesses and hearing the testimony as to whether the confession is voluntary or not cannot be safely trusted to make any other decisions as a judge. And that would apply to every other function that he has to fulfill as a judge. I have to pass in voluntary confessions many times as a judge. And as a result I would say they are not very difficult one way or the other. Some of them, as you say, are more complicated than others. But most of the time it is a rather simple question.

Mr. MOYLAN. Rather simple, generally.

Senator ERVIN. Now, if you give the words of the Constitution which I quoted, the self-incrimination clause, literal meaning, they can't possibly have any other reference whatever to a voluntary confession, can

they, in the first place, because they only apply to compelled testimony, and a voluntary confession is voluntarily made?

Mr. MOYLAN. Yes, it would not be compelled.

Senator ERVIN. And in the second place, as you observed a while ago, they cannot apply to a confession made by a person in the custody of an arresting officer because he is not a witness in that capacity, is he?

Mr. MOYLAN. It would never apply to antecedent to the actual courtroom appearance in its original meaning.

Senator ERVIN. It would only require a witness to testify under the rule of court, something of that kind?

Mr. MOYLAN. Very definitely.

Senator ERVIN. And in the third case it cannot apply, because a conversation between an arresting officer and a suspect is not testimony in any case of this kind? In other words, the third reason that it cannot possibly apply according to the English language is because it can only apply where it is a judicial decision?

Mr. MOYLAN. Very definitely.

Senator ERVIN. So it is really difficult to me—you needn't comment on this—I am incapable of comprehending how any man who believes in attributing to simple words their plain and obvious meaning could ever reach the conclusion that the self-incrimination clause has any possible application to a voluntary confession.

I won't ask you to comment on that.

Mr. MOYLAN. I know it troubles most lawyers.

Senator ERVIN. I just can't follow the mental process of understanding how anyone who believes the Constitution ought to be interpreted according to what it says can reach the conclusion.

Now, doesn't the Court itself recognize that it was changing the meaning of the Constitution because the majority opinion refers in several instances to the requirements we enumerate today?

Mr. MOYLAN. Yes. And that is the reason it did not make it retroactive.

Senator ERVIN. By making it appear as part of their own confession—I will say according to their own confession—they were making a new law on that basis?

Mr. MOYLAN. And they acknowledged as much.

Senator ERVIN. That knowledge existed among them at that time.

And I will ask you, whether the very next week they were not confronted by the question in *Johnson* v. *New Jersey*, whether they would make these new requirements which they said were justified by a provision of the Constitution that had been there for 175 years applicable to cases which arose before the *Miranda* case?

Mr. MOYLAN. They were confronted with it.

Senator ERVIN. And they held in the *Johnson* case that it would not be retroactive?

Mr. MOYLAN. Because they acknowledged that the case had been relying upon their earlier pronouncements.

Senator ERVIN. So thereby they rule that the confession as it has been for 175 years under the Constitution had changed its meaning on the 13th day of June 1966.

Now, can you think of any rules that could be better drawn to prevent anybody from ever making a voluntary confession than the requirements laid down in the *Miranda* case?

Mr. MOYLAN. The four rules laid down there are intended to cover the waterfront. The whole purpose is to keep the defendant from confessing.

Senator ERVIN. And under the rule in the *Miranda* case if you had a very highly educated dean of a law school in the United States who was arrested for speeding, and he made a confession without being warned of these constitutional rights, it wouldn't be admissible evidence?

Mr. MOYLAN. It wouldn't be admissible under *Miranda.*

Senator ERVIN. What percentage of criminals charged with serious crimes do you think there is who do not already know that they don't have to say anything, and who do not already know that anything that they say can be used against them, and who do not already know that they have a right to a lawyer?

Mr. MOYLAN. The bulk of them, if they are over 21 years of age and have been in court before, know their rights. And under the old rule that the bill would return to, this is one of the factors that you would look at. Perhaps not warning a man who is 17 who has never been in trouble, would render a confession involuntary. But if it is the 30-year-old repeated offender, then it is deemed that he is courtwise enough to know his rights. And that is why I think the old standard was an immeasurably superior one to the one we have today.

Senator ERVIN. So under *Miranda*, as a practical matter, courts are compelled to dismiss cases in which serious crimes are charged because in many of those cases a police officer doesn't tell the accused something which the accused already knows?

Mr. MOYLAN. Absolutely. There is no discretion left. The rule is absolute under *Miranda.*

Senator ERVIN. And the tragedy, is it not, is that this decision tilts the scales of justice in favor of the criminals against society and the victims of crime, overlooking the fact that society and the victims of crime are just as much entitled to justice as the accused?

Mr. MOYLAN. Very definitely, Senator.

Senator ERVIN. Thank you.

Senator MCCLELLAN. Thank you very much.

If I had time I would ask a few more questions. But time is short.

We appreciate your appearance very much. The material that we asked you to supply, please do so at your convenience. And anything you want to add to your statement you may do so in a supplemental statement which we will place in the record.

Mr. MOYLAN. Thank you.

Senator MCCLELLAN. The committee will stand in recess until 2 o'clock.

(Whereupon, at 12:40 p.m., a recess was taken until 2 p.m. this same day.)

AFTERNOON SESSION

Senator MCCLELLAN. Mr. Martin.

Mr. Martin, will you identify yourself for the record, please sir.

STATEMENT OF JOHN J. MARTIN, CHAIRMAN OF THE MICHIGAN COMMISSION ON CRIME, DELINQUENCY, AND CRIMINAL ADMINISTRATION

Mr. MARTIN. Senator McClellan, I am John B. Martin, the chairman of the Michigan Commission on Crime, Delinquency, and Criminal Administration, which was recently appointed by Governor Romney at the request of former Attorney General Katzenbach to complete the work on State level of the National Crime Commission.

I have come down here today to testify with respect both to the Safe Streets and Crime Control Act and your bill on wiretapping.

Senator MCCLELLAN. Very well. We welcome you. We appreciate your interest and your assistance.

You have a prepared statement, I note.

Mr. MARTIN. Yes.

Senator MCCLELLAN. You may read that if you like, and we can discuss it.

Mr. MARTIN. Thank you.

I appreciate the opportunity to come before this committee to testify with respect to the Safe Streets and Crime Control Act of 1967 (S. 917). This bill, based upon the extensive research of the National Crime Commission as set forth in its report, "The Challenge of Crime in a Free Society," is the first comprehensive effort to put the strength of the Federal Government behind law enforcement at State and local levels.

The Michigan Crime Commission, recently established by Governor Romney and containing in its membership some 56 representatives from all areas of public and private life having an interest in or responsibility for the control of crime in the State of Michigan, has studied carefully the provisions of S. 917.

Based upon this examination the Michigan Crime Commission strongly supports the objectives set forth in the bill in the belief that assistance from the Federal level is necessary if State and local crime control efforts are to be fully effective. We believe that the approach to this problem taken by S. 917 is a sound one in that it relies upon State and local initiative to develop adequate plans for law enforcement and criminal justice, specifies the standards by which such plans shall be judged, and provides a source of grants for the carrying out of such plans when approved.

Such grants may provide for the preparation and adoption of comprehensive plans of law enforcement and criminal justice, for the carrying out of such plans when made and approved, and for research and demonstration projects which give promise of providing significant new information or of testing new approaches to the control of crime.

Our approval of the general objectives of the bill, however, is qualified in two ways. First, it is our feeling that Federal, State, and local governments would benefit from coordination of planning at the State level. We believe, therefore, that the failure of the bill to make provision for some such coordinated effort is a real defect. We are not suggesting that every local plan should be subject to a veto at the State level. We are, however, urging that every local plan be submitted to a

coordinating agency of the State designated by the Governor of each State on or before the date of submission of such plan to the Attorney General of the United States, for such analysis and comment as the State may wish to make upon the proposal being submitted.

The purpose of this is threefold:

1. To enable the State, with its knowledge of other plans being submitted and of the general crime control situation within the State, to make suggestions both to the local unit or agency submitting a plan and to the U.S. Attorney General with respect to possible improvements which could be made in the plan prior to its final approval.

2. To thus enable the local unit of government to have the benefit of knowledge as to other and possibly related plans and projects within the State particularly where these are geographically related.

3. To enable the U.S. Attorney General to have the benefit of the overall knowledge of the crime control situation within the State which is not available to the local agency submitting its plan.

If the above procedure were to be followed, it would not in any way delay the submission of local plans. It would, however, enable the U.S. Attorney General to be more fully advised as to each plan and its impact on State and local law enforcement and to suggest possible modifications as a condition of approval in connection with the adoption of each plan. It would bring about a far more carefully thought out development in the field of crime control for each State than will be the case without such coordinated thinking.

We had had some experience with this in other Federal programs where the local unit is authorized or directed to submit proposals to a Federal agency, but without any notice of any kind to the State government, and the result is that the State government is proceeding without any knowledge of what is going on at the local level at all, and we think that there ought to be some coordinating force working there which is not an impeding force, but it gives an opportunity for the State to make suggestions both down and up, to develop a more comprehensive and effective crime control operation.

Senator McCLELLAN. Someone has suggested that the Governor be given the veto power. Would you favor that? Or do you think that goes too far?

Mr. MARTIN. No, I think perhaps that goes too far—goes farther than necessary.

We simply want the opportunity to comment and to discuss the proposals that are made.

Senator McCLELLAN. What you are saying is that you think the Governor or some authority appointed by him should screen the plans, thus giving them the opportunity to make comments and suggestions before submission to the Attorney General.

Mr. MARTIN. That is correct.

Senator McCLELLAN. Not give the Governor the power to veto, but authority to examine and make an effort to coordinate a plan, with other plans in the State. That is what you are driving at?

Mr. MARTIN. Yes, it is.

The second qualification to our approval of S. 917 should be that the bill should specifically authorize the Governor of each State to designate the office, agency, department, or combination thereof, responsible for the preparation of the State law enforcement and criminal justice plan. Now I am just talking about the State plan.

Senator McCLELLAN. Can't they do that now? Won't this bill authorize them to do that?

Mr. MARTIN. No. This bill just simply says the State shall prepare a plan, but it doesn't indicate who in the State prepares the plan.

I want to make the same suggestion that the same procedure be set up as is in the Older Americans Act, which allows the Governor to designate the agency to draw up the plan. That is all.

Senator McCLELLAN. I understand. Do you think it is necessary to spell it out here? Doesn't the Governor have the authority to say the State may submit a plan?

Mr. MARTIN. Well, there can be various agencies. You see, some States have Governors with more authority than others. And there are States where the Governor is just an elected official along with other elected officials.

Senator McCLELLAN. What you want it to do is say the State under the direction of the Governor or any authority designated by him may submit a plan?

Mr. MARTIN. That is right.

Senator McCLELLAN. I see no objection to it. I think it would be done anyhow.

Mr. MARTIN. Well, it doesn't always work that way. We think it would work more smoothly.

Senator McCLELLAN. Well, you may be correct.

Mr. MARTIN. Well, the rest of my statement simply says about what I have been saying—that the simple designation of the "State" as the agency for the preparation of such a plan does not indicate who within State government is responsible for its preparation. This may need to vary from State to State but to avoid confusion or conflict it is certainly necessary to authorize the Governor, as chief executive of the State, to designate the office, agency, or department which he deems best fitted to prepare such a plan for the State as a whole. This is the more true since any comprehensive plan must cover all aspects of crime control including prevention, apprehension, and arrest, preparation for trial, trial, conviction, and disposition upon conviction, whether prison, probation, or parole.

As President Johnson said in his message transmitting the National Crime Commission report:

> Treating each reform as an isolated matter will create conflicts and loss of effectiveness throughout the system. Thus, the grants under this provision will require that comprehensive plans be developed that take into account the interrelationship among all aspect of law enforcement, courts, and corrections, as well as closely related social programs.

Senator McCLELLAN. Any entity of 50,000 or more might submit a plan. But what can it deal with other than maybe the training of police, and buying equipment? It can have nothing to do with the State penitentiary or correctional institutions.

Mr. MARTIN. Actually this is what this bill contemplates, Senator. It contemplates a plan that is much broader than just how do you enforce the law.

Senator McCLELLAN. I think this has to be studied. I would like to see coordinated plans to cover a whole State. The municipalities submit plans to the State authority and let them relate the plans to a statewide program. I would grant exceptions, certainly, where exceptions could be made by the Attorney General, for example, if he found a State was not acting, not interested, not aggressive in trying to submit a plan. I would not deny a municipality or other entity from securing the benefits of this act. But if we could get them coordinated on a statewide basis as a rule that would be far better.

Mr. MARTIN. Well, the point I was making is a little bit different than that, and that is that a comprehensive State plan ought to include some thinking on the questions, for example, of prevention, and of what do you do on the other end in the treatment of prisoners, to rehabilitate them or make sure they don't keep coming back all the time. It ought to be across the board.

Senator McCLELLAN. Some of those areas a municipality itself cannot cover in its plan.

Mr. MARTIN. That is right.

Senator McCLELLAN. That is why I say I would like to see an overall plan if we could get it.

Mr. MARTIN. We are in agreeement on that, sir.

Senator McCLELLAN. I am sure we are.

Mr. MARTIN. Just to finish my statement here. The provisions of S. 917 are designed to meet an urgent situation. We believe that it should be passed with the amendments suggested at the earliest possible opportunity and that work should commence without delay for the preparation of State and local law enforcement and criminal justice plans. Such work cannot begin too soon.

Senator McCLELLAN. Thank you, very much.

Mr. MARTIN. Now I would like to comment on 675, if I may.

Senator McCLELLAN. That is the wiretap bill?

Mr. MARTIN. Yes. I have a stronger statement which you have in your hand, but I don't want to read all of this.

Senator McCLELLAN. Let the statement be printed in the record in full, and you highlight it if you like.

Have you been present today and heard the testimony of preceding witnesses?

Mr. MARTIN. Yes, I heard the testimony this morning, and I was very much impressed with the testimony of both of the witnesses this morning as to the importance of having wiretapping available, particularly in the area of organized crime. And that is really the area that we have directed our thinking to on the commission.

Senator McCLELLAN. Do you have some problem with organized crime in Michigan?

Mr. MARTIN. We do. We have a situation in Detroit, so that Detroit gets mentioned usually when this subject is under discussion.

I am sure that you will recall then Police Commissioner George Edwards appearing before your committee at one time and testifying as to the situation on organized crime in Detroit. He is now on the Federal bench, and as a matter of fact is a member of our commission, as is also Judge Edward Piggins, who is also a former Detroit police commissioner, and a man who testified very recently before

your committee, Ray Girardin, who I know took the position that wiretapping should not be permitted.

Senator McCLELLAN. He felt there wasn't any benefit from its use.

Mr. MARTIN. He is the only dissent on our 56-man commission.

Senator McCLELLAN. You mean out of 56 members of your commission, he is the only one that dissents?

Mr. MARTIN. This statement that I have here has been submitted to all the members of the commission, and he asked me particularly to make it clear that since he had testified before on this, that——

Senator McCLELLAN. This statement you are submitting now on S. 675, represents the views of the other 55 members of the commission.

Mr. MARTIN. Yes.

Senator McCLELLAN. Including your own.

Mr. MARTIN. There are slight variations on individual points, but basically this is accepted by all members.

Senator McCLELLAN. Very well. We are glad to have this supporting evidence.

Mr. MARTIN. I would like to move to about page 5—by saying first of all that the earlier pages deal with the problem of organized crime as we see it, and the need for some use of wiretapping or electronic surveillance to deal with it.

The principal problem in this field is the difficulty of getting witnesses, as you know. And the reason that you cannot get witnesses—I mean live witnesses in many cases—is because of the fear which organized crime injects into this whole picture.

Since you cannot get live witnesses in many cases, you have to have the opportunity to conduct electronic surveillance in order to obtain whatever evidence you can get to link the people on the bottom with the people on the top. This is where the difficulty is. The difficulty is not in convicting the ordinary pusher of narcotics or the ordinary prostitute. The difficulty is in linking that kind of an operation up through two or three levels of leadership, to the people at the very top. And unless you can use electronic surveillance, or whatever term you want to use, you simply don't get at these people at the top. They just go scot free.

At the same time we recognize the vital importance of not unduly infringing the rights of citizens to privacy. And the problem, it seems to us, is the problem of balancing the interests, balancing the interests of society to protection against the interests of the ordinary citizen to privacy.

So I would say that we start from the position that the willful use of devices to overhear and record communications between others without their consent, unless otherwise authorized by law because of an overriding public consideration, should be prohibited. A violation of this provision should bring criminal punishment, leaving the option of private lawsuit to the private parties.

Then, because we believe that organized crime presents such overriding public considerations, the use of electronic surveillance should be permitted as the principal exception—not the sole exception—to the general prohibition against the "willful overhear," but only where certain clearly defined restrictions operate upon its use.

In other words, we would eliminate the use of these devices for things like domestic investigations, and commercial espionage, private uses of that kind.

We don't see any reason why those should be encouraged. In fact, we think they should be barred.

We see no reason to treat electronic surveillance not directly involving wiretapping differently from wiretapping. Modern technology is amazingly adaptive, and will in time make available an array of scientific "overhearers" some of which can be adapted to other innocuous instruments just as happened with the telephone. The need for timely treatment of both under one head is upon us.

We believe that each authorization of surveillance must be so restricted as to have a minimum impact upon innocent speech. By imposing the limitations upon surveillance which are listed below, our objective is to create an opportunity for surveillance but require its use to be so discriminating as to hold to the judicial standards of reasonableness as defined within due process. We recognize, I should say, that we have a sword hanging over us in the *Berger* case which is now in the Supreme Court, and which has been argued. Depending upon the outcome in that case, our discussions here may not be of much consequence, because if the Court goes far enough, it won't be any use to talk about court-ordered overhearers, or court-ordered electronic surveillance. It just won't be possible to do it at all. But I don't want to prejudge that case.

In that connection, I would call the attention of the committee to a very fine brief, the amicus brief, prepared by Dr. Robert Blakey for the National District Attorneys' Association, which is an extremely useful document dealing with the constitutional aspects of one of the State laws—the New York law, permitting electronic surveillance.

Senator McCLELLAN. I believe we have this as a part of the subcommittee files.

Mr. MARTIN. I would also call attention to the draft statute which Dr. Blakey attaches to some testimony. I don't think he gave this before this committee, but it is a draft statute similar to 675, to your bill, but I would say a more refined or a more thoroughly worked-over bill.

Senator McCLELLAN. We would be glad to have that. Let us have a copy of that as an exhibit.

Mr. MARTIN. I think you would find that useful.

These are the suggestions we would make for limiting use of electronic surveillance:

(1) The application for an ex parte order of authorization for an "overhear" [1] shall be in writing upon oath, stating facts which give rise to reasonable grounds to believe that "fruits and instrumentalities" of the specific crime may be thus obtained. That is the usual provision with respect to warrants for search and seizure.

(2) Those who may apply for use of the "overhear" should be limited to the prosecuting officer of the jurisdiction upon his own signature or that of his assistant in charge in the event of his absence from the jurisdiction. We would not let this be in the hands of just anybody.

(3) We believe the overriding need to supervise "overhears" does not permit exceptions even under the "emergency situation." Consequently, the court should expect the personal appearance of the applicant with sworn testimony to justify the grant of this discretionary judicial power.

[1] The term "overhear" used as a noun is interchangeable with the term "eavesdrop" or "electronic surveillance" use in the broad sense to include wiretapping.

(4) Only a limited number of "overhear orders" could be in use in a jurisdiction at any one time. The number of orders should be severely limited and certainly not greater than is clearly required to detect major crime, particularly organized crime. With a severe limitation upon the number of orders it would appear that the investigating agency will be compelled to select its surveillance cases with maximum care.

(5) The order should set out the particular telephone line or the particular physical location to be within surveillance and the method to be used.

(6) The order should limit the surveillance to 30 days from the date of the order. A renewal for the same duration should be granted only on a showing of productivity or an explanation of nonproductivity. For example, it may take better than a week to install the surveillance device. On the day following installation, the individual may take a 2-month vacation.

(7) The statute should designate the judicial officers by whom authorization may be granted. We suggest the power be limited to judges of the U.S. district courts and judges of the several States' courts of general trial jurisdiction. A copy of each order shall be filed forthwith with the administrative officer of the supreme court of the jurisdiction.

(8) Affidavits should attach to the application which set out that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried."

Senator McCLELLAN. What about a time element—where it would not work because of a time element?

Mr. MARTIN. I am sorry, I didn't quite understand that.

Senator McCLELLAN. Well, law-enforcement officials may get information that something is going to happen at a certain place, and if they can get in there and get that telephone tapped, they would be able to get evidence of the crime. You say that other procedures have been tried, all procedures have been tried, or appear to be unlikely to succeed if tried.

Mr. MARTIN. I think the second phrase takes care of the time element—appears unlikely to succeed, yes.

Senator McCLELLAN. It might be argued.

Mr. MARTIN. Right.

(9) A statutory list of investigations to which an "overhear" order might apply could expand or contract with the changing social situation of another generation. Today, however, certain Federal crimes are of such danger to the public welfare that they should be specified by the legislation. These are: Murder, kidnaping, extortion, bribery and corruption of government officials, the transmission of wagering information, the interstate and foreign travel or transportation in aid of racketeering enterprises, fraudulent counterfeiting, uttering and dealing in counterfeit obligations and securities of the United States, espionage, sabotage, treason and sedition, and the communication, receipt, tampering with and disclosure of restricted data pertinent to the operation of the Atomic Energy Commission and the national defense establishment, organized forms of gambling, prostitution, shylocking, arson, fraudulent bankruptcy, labor racketeering, and traffic in drugs or any conspiracy involving the above offenses. And I stress the words

"organized forms of gambling," et cetera, because mere gambling or mere prostitution we don't think ordinarily requires this kind of surveillance.

On the State level the list should be limited to murder, kidnaping, extortion, bribery and corruption of public officers, organized forms of gambling, prostitutiaon, shylocking, arson, fraudulent bankruptcy, labor racketeering, and traffic in drugs or any conspiracy involving the above offenses.

(10) To guarantee the accuracy of the "overhear" the preservation of tapes made should be required. These should be presented to the authorizing court at the time of expiration of the grant or at the time of renewal. The tapes should then be given the court's seal and retained by the court. Introduction into evidence should be limited to those sealed.

(11) Notice to the party named in the "overhear" order that the order was issued and conversation recorded should occur within 1 year after the termination of the grant. This would give the individual an opportunity to challenge the propriety of the order's issuance. While it would come too late for him to do anything about the search itself, he would have an opportunity to limit the use of this information and to strike it from the court's possession. This provision could be expected to go a long way toward guaranteeing that the surveillance device would be carefully used. This would do much to dispel the fear of all citizens that "overhear" orders had been issued as to them at some time in the past.

Because there may be situations particularly in organized crime where a disclosure of surveillance would not yet be in the public interest, a judicial officer should be empowered to postpone for cause for such period of time as necessary the filing of the inventory.

(12) Opportunity by the defense to challenge the legality of the "overhear" should be preserved by requirement of a disclosure by the government at the time of indictment that it intends to use evidence directly or indirectly obtained through electronic surveillance. The defense, thereupon, would bring its motion to suppress. The court decision on the motion should be appealable by either side.

(13) The statute should require the court administrator to report to the legislature annually the number of applications, grants, and prosecutory results.

(14) A comprehensive study should occur during the next few years of the manner, problems, and results of this limited legitimization of "overhear" surveillance. We suggest the limiting of a statute to 8 years' operation so that its workings, accomplishments, and validity can be reviewed before any long-term renewal.

The deliberations which will occur in reaching a decision of such broad impact obviously test basic concepts of social order. While it is probable that organized crime will never disappear entirely nor that justice will be complete in all respects, we recall a comment of the Wickersham Commission made over 30 years ago:

> Because these things are not absolutely attainable, it does not follow that we should not strive for them, nor that they may not be attained to a high degree.

Many of the recommendations in the foregoing statements are contained in S. 675. It provides a carefully specified procedure for ob-

taining judicial approval for electronic surveillance in both Federal and State courts. Such approval under State law may apply with respect to all crime covered by State statute. It is the burden of our statement that such authority should be restricted primarily to organized crime.

We do not believe that such surveillance need ordinarily be extended beyond this point. We urge that S. 675 be revised to include those matters contained in our statement and not now included in the bill. So revised we believed the bill will provide protection for society without undue interference with rights of privacy.

Senator McCLELLAN. We are going to study your recommendations with respect to the legislative provisions.

We like to have these proposals analyzed and studied by others, and have them come in with their suggestions, because as busy as we are we cannot necessarily discover our own errors or omissions sometimes, and we appreciate help from others who look at these proposals from a detached point of view, and have time to analyze them.

Mr. MARTIN. We appreciate that. And, Senator, we are vitally concerned in Michigan to be of maximum help to you in developing a statute that will meet all the constitutional requirements, and still do what society needs.

Senator McCLELLAN. Do you have any comments on 674, the confessions bill?

Mr. MARTIN. No, I don't sir.

Senator McCLELLAN. You have not studied that one.

Mr. MARTIN. I have looked at it but not sufficiently.

Senator McCLELLAN. You have no doubt about the need for wiretapping as an instrument, a weapon in combating particularly organized crime?

Mr. MARTIN. Yes. Wiretapping under court order, yes.

Senator McCLELLAN. You wholeheartedly endorse it. As I understand, only one man out of the 56 on your Commission doesn't endorse it?

Mr. MARTIN. That is correct.

Senator McCLELLAN. Thank you very much. We appreciate your presence and your assistance.

Mr. LOUIS DAMIANI. Will you come around, please.

Gentlemen, each of you identify yourself for the record, please.

STATEMENT OF CAPT. JOHN KELLY, FORMER DETECTIVE, NEW ORLEANS POLICE DEPARTMENT

Mr. KELLY. Mr. Chairman, I am John M. Kelly, Jr., former detective, homicide division, New Orleans Police Department.

I appear here today in your committee to present to you my statement for passage of Senate bill 798, Local Law Enforcement Survivors Compensation, for officers killed while apprehending or attempting to apprehend persons for committing Federal crimes.

I am deeply grateful and humble to those of you who give my thoughts your consideration.

I fully realize too that I accepted a great repsonsibility to appear here in behalf of so many thousands of law enforcement officers

throughout the United States and the District of Columbia. I sincerely hope that I am capable and meet this challenge for them and their loved ones.

The Louisiana State Legislature has recognized the need to supplement a police officers pay, in recognition for enforcing State laws, to a maximum of $50 per month, in addition to their salaries from cities and municipalities.

We feel that this recognition by the State of Louisiana has helped greatly in the recruitment of young men to enter the field of law enforcement, and helped to retain experienced police officers on the job. However, with the constant turmoil and increased dangers in Louisiana as well as all other sections of the United States to police officers—departments remain far below their required strength.

We further feel that recognition by the Federal Government of the dangers faced today by police officers in enforcing Federal laws will help considerably not only in recruitment but retaining of the experienced offiers who otherwise are retiring on pensions at the earliest possible date.

The enforcement of Federal laws by local enforcement agencies cannot be overlooked since the enforcement of the laws by local agencies is essential to the Federal Government, because of the need of immediate action on the part of the local agencies and the inadequate number of Federal law enforcement officers.

The cost to the Federal Government to implement Senate bill 798 would be negligible, in comparison to the services already rendered and expected of local law enforcement officers in the future.

I might add to this statement, Mr. Chairman, if I can. The burden that is being placed on the police officer throughout the United States today, because of the recent decisions and demonstrations that we have throughout the United States has been a terrific impact on the rank and file officers who must face these tasks constantly throughout the day, night, and be first on th scene of any of these crimes that may be committed.

I hope that you will consider this bill further and pass it.

Senator McClellan. We shall certainly consider it further. I don't have the power to pass it. But I am very much in sympathy with what it would do. From news stories we see every day I am sure the policeman begins to wonder who is his friend.

Mr. Kelly. That is true, sir.

Senator McClellan. You have my sympathies, sir, and the very depths of my appreciation, for the willingness and labor the police undertake to perform their duties with the crime situation that confronts them today. They are harassed not only by the demonstrators and the marchers and people who are indifferent to law and order, the hardened criminals, but now are having trouble and cannot do their duty properly because of restrictive rules—anything they do is suspect, it would appear, in the courts. And I can sympathize with them very much. They are our first line of defense, the barrier that gives the protection to our home, to our safety. And if we permit that barrier to be broken down, no one is going to be safe. When they go out and risk their lives under conditions today, I feel they ought to be fully compensated, well compensated. They ought to be well trained

first. We are not giving them the training. We should do that. And they should be well compensated. And they should be respected and given a position of recognition. If one of them goes crooked, he ought to be severely punished—severely punished. I have no sympathy for that. If he is getting good pay, and in a position of honor, a position of distinction, trying to serve his community and represent it—if he then goes crooked, I think there ought to be a very severe penalty. But until he does, as long as he does his duty, not only should he be respected and highly compensated, but we should take a little different attitude toward him today than what we are taking.

I am on the side of the law enforcement official. I will tell you that. I make no apology for it. I say that for the record. I am today, I will be tomorrow.

Mr. KELLY. God bless you, sir.

STATEMENT OF LOUIS R. DAMIANI, CHAIRMAN OF THE LEGISLATIVE COMMITTEE, FRATERNAL ORDER OF POLICE

Mr. DAMIANI. Senator McClellan, I would like to thank you for the opportunity of appearing before you in behalf of Senate bill 798. I am Louis R. Damiani. I am the national legislative charman for the Fraternal Order of Police.

Mr. Chairman, the Fraternal Order of Police is an organization of full-time police officers, organized over 50 years ago. We represent the policemen, sir, for the good of the policemen legislation. I am a policeman myself. I work the streets. I have been a policeman for 17 years, sir.

Senator MCCLELLAN. In New Orleans?

Mr. DAMIANI. In Philadelphia.

We represent policemen all over the country.

The idea for the formation of the police survivorship bill originated at a seminar attended by policemen of all ranks and from all parts of the country in December of 1965. Over 100 law enforcement officers came to Chicago at their own expense or sponsored by their organizations. This was an informal seminar allowing for any topic to be discussed bearing on the plight of the policeman in these troubled days. Policemen are especially aware of the low morale experienced by their fellow officers. At this time they were troubled by the effect of the civil rights bill and civil disturbances causing an ever-increasing workload on them.

We are not against civil rights for anyone, sir, but all the burden fell on local law enforcement officers, with demonstrations, riots, and what-have-you.

During the course of the sessions, it was decided that the two most important features they would like to see come out of Washington in the form of legislation would be a tax break bill and a police survivorship bill.

The police survivorship bill covers any policeman killed in the line of duty involving a Federal crime only. The estate would receive $250 a month for 99 months, or a grand total of $25,000 per family. If the wife should remarry and is childless, the payments would automatically stop. If the children reach the age of 18, complete high school and

do not wish to continue their education, the payments would stop. However, if the children decide to continue their education, the payments would continue until they reach 21 years of age. In no event would the total payments exceed $25,000.

The police in their daily routine are asked to perform many different services for the Federal Government for which they receive no compensation. In some small towns they are asked to accompany the postmaster to the bank when large sums of money are to be deposited. The Federal Bureau of Investigation, Secret Service, postal inspectors, immigration officials, Interstate Commerce, and practically every other agency of the Federal Government at some time have requested assistance of the police departments in the various cities, towns or boroughs. When a policeman takes his oath of office, he swears allegiance to the Constitution of the United States, the State government and the municipality for which he works. The Federal Government makes no contribution toward his salary or fringe benefits. The State, in some cases, contributes toward his pension. The local authorities must support him in every way.

We often speak of the hazards of a policeman, but rarely think about the extra expenses incurred by a policeman because of his occupation. A good case in point is the acquisition of life insurance. A family life insurance policy for average workers covering the insured for $5,000 and $1,000 for wife and each child would cost $19.80 per month. However, a policeman's benefits would be lowered to only $3,000 coverage, with the same monthly payments, because of his hazardous occupation. A policeman's family would stand to lose $2,000 because of the career that he has chosen to safeguard other families.

The Department of Labor and Statistics admits that police vacancies are the hardest to fill in these troubled days with the crime rate at its highest level. The President is well aware of this condition and has so stated in his State of the Union mesesage to Congress.

We feel this bill would bring about much closer and more harmonious cooperation with all Federal agencies and local law enforcement officers at a very small cost to the Government. Needless to say, the morale boost that it would give policemen throughout the country could not be measured in dollars and cents.

Several bills were put in to cover policemen that are totally disabled in the same circumstances. We feel that the two features together would make a much more attractive piece of legislation and yet amount to little more expense to the Government. FBI statistics show that 13 policemen were killed in the line of duty in federally connected offenses during the years 1960 to 1965, inclusive. If the survivors of these men were all collecting checks at this time the Government would be paying a total cost of $39,000 at the present time. This figure can be used as a scale for the next 6 years. A life insurance company in Philadelphia has advised me, since the FBI has no available statistics concerning policemen totally disabled in performance of duty involving commission of a Federal crime, that we could multiply this number by six and arrive at a fair estimate. This would mean we could anticipate a need for $18,000 for policemen totally disabled and $6,000 for those killed in the line of duty, or a total of approximately $25,000 per year.

I would recommend that the first appropriation be put in for $75,000 as there are no statistics available for those injured. However, if the consensus of opinion should be that the bill should not only apply to those killed in action and extending it to those injured might jeopardize the bill, I would rather delete the section relating to those disabled and keep it in its original form.

Our prime purpose in presenting this bill and its passage is to raise the morale of the policemen presently employed and to offer an incentive for future applicants. The policeman is much more aware of the difficulties involved in recruiting prospective applicants than the public. He is most anxious and eager to obtain the best future coworker possible as this could one day amount to another form of insurance to him.

The breakdown as far as the cost would be—the FBI statistics show in the last 13 years 13 policemen were killed. The total would be $5,500. The last 6 years, $500 a month. Seventy-eight disabilities would cost $25,000, grand total of 6 years, $150,000.

Policemen know the morale problems of his fellow workers. This is the only reason this bill was put in.

We are not looking for utopia, or a windfall. All we want to do is show with all these demonstrations and what is going on today, and everything else coming out of Washington, we are looking for something from Washington to show the men that Washington is thinking of the policemen on the street, not just give him an ever-increasing workload. It is easy to tell a man do this, do this, do this. But we must be able to tell the man—this is your compensation for doing this.

For the 13 policemen killed ——

Senator McCLELLAN. Do their widows get nothing at all?

Mr. DAMIANI. I could show you this right here, Mr. Chairman. On Friday, April 7, in suburban Lancaster County, a chief of police was killed—these were the headlines in the papers. "Police Chief in Gun Fight in Maytown Bank." "Police Chief Shot to Death in Bank Holdup." This is a typical case. A one-man police department, a bank holdup. The officer would have been covered had this bill been law.

The only coverage this police chief's wife will get, and I have a letter from the solicitor, is what any other person would get, whether it be a garbage collector, truck driver. This is the workman's compensation insurance. His wife and one daughter will receive $34 a week for 500 weeks and $750 to go directly to the mortician.

This is almost a uniform scale throughout the country. In some of the larger cities it is a little different. But very often the men that are killed are from the small areas. The rural areas, with one- to four-man police departments. This man gave his life in the performance of his duty. He wounded two of the men in the bank robbery. He did everything he could have done as a policeman.

Senator McCLELLAN. What did his family get?

Mr. DAMIANI. $34 a week for 500 weeks, for his wife and child.

Senator McCLELLAN. You propose to give them more than that.

But $250 a month is not a lot.

Mr. DAMIANI. That is not a whole lot.

Senator McCLELLAN. $250 a month is about $60 a week. There they got how much a week?

Mr. DAMIANI. There they got $34 a week.

Senator MCCLELLAN. That is about double what they get. Do you want any of that material in the record?

Mr. DAMIANI. Yes, sir; I would like this letter in the record.

Senator MCCLELLAN. All right. The letter may be received and printed in the record.

(The letter referred to follows:)

LAW OFFICES,
ZIMMERMAN, ZIMMERMAN, MYERS & GIBBEL,
Lancaster, Pa., April 17, 1967.

Re Marvin E. Foltz, East Donegal Township.

Officer GEORGE J. SCHREDER,
Lancaster Police Department,
Lancaster, Pa.

DEAR OFFICER SCHREDER: I am Solicitor for the Board of Supervisors of East Donegal Township, Lancaster County, Pennsylvania, and you have requested me to advise you of the benefits, if any, accruing to the widow of Chief Carvin Foltz, who was killed preventing a bank robbery in Maytown, East Donegal Township, on April 7, 1967. The bank involved was a branch of the Union National Mount Joy Bank.

Chief Foltz was covered by workmen's compensation insurance issued by the Maryland Casualty Company, of Baltimore, Maryland. He left to survive him a widow and a daughter, nineteen years of age. Under the law of Pennsylvania relating thereto, the widow will be entitled to receive, by reason of the death of Chief Foltz in the course of his employment, the sum of $34.00 a week for a period of five hundred weeks and a funeral allowance not to exceed $750.00, which latter is payable directly to the mortician.

Inasmuch as the Township had just started a regular police force, there was no provision for pension nor was there any life insurance or insurance of any kind other than the workmen's compensation above-noted.

Very truly yours,

B. M. ZIMMERMAN.

Senator MCCLELLAN. I think the Attorney General has made some suggestions for amendments which we will consider. I have a letter from Hon. Santiago Polanco-Abreu, Resident Commissioner, Commonwealth of Puerto Rico, with a statement for the record. The bill does not include Puerto Rico. The Commissioner asks that Puerto Rico be included. Let the letter and attachment to it be filed as a part of the record.

Mr. DAMIANI. I think it would be a wonderful thing to include Puerto Rico.

(The letter and statement referred to follow:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVE,
Washington, D.C. March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Subcommittee on Criminal Law and Procedure, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have read in the *Congressional Record* that your Subcommittee on Criminal Law and Procedure will be having hearings commencing on March 7 with respect to a number of crime bills.

I would like to call your attention to what is probably a drafting error in S. 798, your bill to provide compensation to survivors of local law enforcement officers killed while apprehending persons for committing federal crimes. As the bill is presently drafted, it applies only to policemen employed by the States or the District of Columbia. I am sure you are aware that Puerto Rico has a police force which is entrusted with the responsibility of enforcing both the local criminal laws and the federal criminal laws. Needless to say, it would be unjust to exclude these law enforcement officers from the benefits of these bills.

I hope that you will agree that an amendment is in order, and I would appreciate knowing if you will be willing to support such an amendment on my behalf.

Cordially yours,

SANTIAGO POLANCO-ABREU.

TESTIMONY OF SANTIAGO POLANCO-ABREU, RESIDENT COMMISSIONER OF PUERTO RICO

Mr. Chairman, I wish to take this opportunity to point out that S. 798 and many of the companion measures would not, as presently drafted, provide compensation to the survivors of local law enforcement officers in the Commonwealth of Puerto Rico who are killed while apprehending persons for committing Federal crimes.

I am confident that this omission is simply an oversight which this Committee will see fit to correct. In making its determination on this issue, the Committee may find helpful the following information about law enforcement operations in Puerto Rico.

In no substantial way does law enforcement in the Commonwealth of Puerto Rico differ from that in the States. The federal criminal laws extend to Puerto Rico (see 18 U.S.C. Secs. 5, 10), and the Police of Puerto Rico are obligated to enforce these laws as well as the criminal laws of Puerto Rico. (Laws of P. R. Ann., Title 25, Sec. 221b). The two agencies in Puerto Rico entrusted with law enforcement, the Police of Puerto Rico and the Criminal Investigation Corps, are both non-federal in nature, having been created by the Legislative Assembly of Puerto Rico (P.R. Law No. 77, June 22, 1956; P.R. Law No. 107, June 29, 1965). Both are under the ultimate control of the Governor of Puerto Rico and are supervised and directed by Superintendent of Police, who is appointed by the Governor with the advice and consent of the Puerto Rico Senate. And, of course, both are supported and maintained by Commonwealth funds.

Thus, the police system in Puerto Rico is fundamentally the same as those in the States and there is no good reason for excluding law enforcement officers in Puerto Rico from the benefits contemplated by the bills under consideration. In fact, I suggest that since the police of Puerto Rico have been given the responsibility of enforcing federal criminal laws, they must also be given any correlative benefits.

I respectfully request that the Committee insert in the bill a definition of the term "State" which includes the Commonwealth of Puerto Rico.

Senator MCCLELLAN. Thank you very much, gentlemen.

We have some matters here for the record.

Mr. DAMIANI. Mr. Chairman, if I may, Major Duling from Richmond could not be here. He asked if I could submit his report.

Senator MCCLELLAN. It may be printed in the record.

(The statement of Major Duling referred to follows:)

STATEMENT OF MAJOR FRANK S. DULING, COMMANDER, INVESTIGATIVE OPERATIONS, BUREAU OF POLICE, RICHMOND, VA.

In 1965, 83 police officers lost their lives in the performance of their duty. These men laid down their lives in order to make their communities safe for the citizens. But what is to become of the families of such officers?

In most cases these families must face the future with little or no recompense for the husband and father that give his life for the community. The family is forgotten and left only with words of sympathy, which won't help to raise a child.

As police officers we realize that our lives are on the line everyday. We know that we might have to give our life in order to save someone from danger or to prevent a crime. We know all of this; but we also know that most of us are ill prepared to face the ultimate consequence.

The lack of preparedness comes not from our atttude, because we recognize this as a necessary element of our profession; but, the lack of preparedness comes from low salaries, restricted pensions, and the inevitable result of low salaries—little or no insurance.

Today in most communities there is no fund to provide any survivor benefits for the families of men who lose their lives in the performance of their duty.

Localities and other jurisdictions, for varous reasons, have failed to set up such benefits.

In Richmond, for example, should an officer lose his life in the line of duty his survivors would receive the sum of $75.00 per month from the Police Benevolent Association for one year. No other funds are available except for survivor benefits under Social Security and, of course, whatever insurance the man might have set up for this eventuality.

No one ever thinks that he will be the one—and after it happens, it is too late.

Several professional police organizations offer low cost group insurance but many of the men are financially unable to invest even in low cost insurance.

Certainly this is a strong moral factor when the men see the family of a fallen comrade, deprived of husband and father, condemned to a future of insecurity and shattered dreams.

Some law enforcement agencies have taken steps to provide for the survivors of such gallant men. Notable among these in the Federal Bureau of Investigation which provides a lump sum payment of $1500.00 to the family from the Ross Memorial Fund. In addition there is a contributory agent's fund that also pays a lump sum. The Civil Service death benefit and annuity which are paid are also contributory.

Some state agencies provide for insurance payments under state retirement plans; but these are also contributory.

We, as working police officers, are concerned over this seeming lack. Throughout our working society provisions are made for employees including fringe benefits that would be of assistance in this case. After all a member of our armed services who loses his life in defense of our nation knows that certain benefits will be available to his survivors. On the other hand the Police Officer who is the front line assault in society's war for personal safety and protection from crime is often forgotten.

At this time it might be well to point out an excerpt from "The Challenge of Crime in a Free Society", the report by the President's Commission on Law Enforcement and Administration of Justice:

"In the field of law enforcement and administration of justice the Federal contribution is still quite small, particularly in respect to the support it gives the States and cities, which bear most of the load of criminal administration. The present level of Federal support provides only a tiny portion of the resources the Sates and cities need to put into effect the changes this report recommends".

This quotation was in reference to the various Federal Programs instituted to combat juvenile delinquency, such as the Neighborhood Youth Corps, the Job Corps, the Youth Opportunity Centers, etc., but the Commission might well have been referring to the Federal Contribution toward the law enforcement officers whose job it is to police the States and cities. President Johnson stated in his 1966 Crime message to Congress:

"Crime does not observe neat, jurisdictional lines between city, State and Federal Governments * * *. To improve in one field we must improve in all. To improve in one part of the country, we must improve in all parts".

Those of us who have chosen law enforcement as a career are very happy and pleased that the Congress is considering such legislation as S. 798. Certainly this is a move in the right direction. A move which will, we hope, encourage more young men to enter the honored profession of law enforcement.

It is also hoped that through the enactment of such legislation as S. 798 the states might take the charge and help to remember these gallent men rather than forget them. I know that the families of police officers everywhere would welcome this element of security and the officer himself might well do a better job knowing that provisions have been made for his loved ones should he be called on to surrender life or limb in the performance of his duty. After all, we must remember that a man does his best work when he knows that all is right with the world.

Senator McCLELLAN. We had here this morning Mr. Allen E. Pritchard Jr., Assistant Executive Director, National League of Cities, who was to testify this afternoon, but he had to catch a plane and was unable to stay over for the afternoon session. Therefore, the Chair directs that his prepared statement be printed in the record at this point.

(The prepared statement of Mr. Pritchard referred to follows:)

STATEMENT IN BEHALF OF THE NATIONAL LEAGUE OF CITIES BY ALLEN E. PRITCHARD, JR., ASSISTANT EXECUTIVE DIRECTOR, NATIONAL LEAGUE OF CITIES

Mr. Chairman and members of the committee, my name is Allen E. Pritchard, Jr., Assistant Executive Director of the National League of Cities. The National League of Cities is a nationwide organization representing 14,300 member municipal governments, large and small. Through a representative process, delegates representing these municipalities convene annually in a national Congress of Cities to formulate our National Municipal Policy. This Policy sets forth the aims and purposes of municipalities. It suggests broad areas of responsibility for municipal, state and Federal authorities on a variety of matters affecting local governments. I will refer to this policy at several points in my statement.

Crime is a problem of major concern to all cities. Its product is a climate of tension and fear which stagnates urban growth and makes implementation of programs to improve urban conditions immeasurably more difficult.

Cooperation among all segments of the urban community is absolutely necessary to find lasting solutions to our urban problems. Crime and the community's reaction to it discourage this cooperation.

Trust in community leadership by those whom development programs are designed to help is needed for these programs to succeed. Crime and the community's reaction to it erode this trust.

Freedom of movement without fear is essential to life in an urban community, but society can not be assured freedom from fear of crime solely by the activities of the policeman on the street. Increasing the efficiency of the policing agencies is only a reaction to the existence of other conditions which breed and support crime. Increased police activity alone can not solve the crime problem. The National Municipal Policy of the National League of Cities notes that—

"The preservation of law and order is fundamental to the maintenance and extension of our constitutional freedoms * * * It is essential * * * that the delicate balance between the maximum degree of public safety and the greatest degree of individual liberty be maintained. We can neither afford the anarchy of uncontrolled liberty nor the impressive destruction of individual freedom found in the totalitarian state."

The reduction in the current tension which exists as a result of the conflicts between vigorous law enforcement and prized individual rights will not be found in the courts alone. Our ultimate goal of reduced tension and crime will be the product of a wide range of social, economic, and environmental programs—a balanced attack on all elements which contribute to crime, including a comprehensive program of criminal justice.

An important phase of the total attack on crime in urban America involves the utilization of Federally aided urban renewal and poverty programs, the new Model Cities Act, manpower training, and other important programs in which the Federal, state, and local governments have joined to correct conditions which lie at the roots of the crime problem. This phase—the attack on poverty, unemployment, inadequate training and education, poor housing and urban blight—will not produce dramatic changes in the present crime picture, but ultimately such programs will result in a permanent reduction of crime by eliminating some of its basic causes. It is not the purpose of these hearings to discuss these programs, but they can not be ignored since they do relate directly to the objectives of this legislation.

The rising crime rate poses a serious challenge to us all. We have all read the statistics on crime, and we recognize that there were over three million serious crimes reported in our country last year, directly involving approximately six million Americans as offenders or victims; and we know that there are many unreported crimes which would greatly increase this figure.

A national commitment is needed if we are to control and reverse the rising tide of crime. The purpose of the Safe Streets Act is to encourage state and local governments to improve their law enforcement and criminal justice systems as part of this national commitment. The National League of Cities views the Act as another opportunity to demonstrate the effectiveness of creative Federalism in solving a serious national problem. We urge its speedy approval by the Congress.

The President's Crime Commission report makes many helpful recommendations as to how local law enforcement and criminal justice agencies can improve their capability to control crime. Some recommendations, such as those relating to modification of police recruitment standards or changing police procedures for taking juveniles into custody, can be implemented by administrative changes without significant cost implications. These will find broad support and speedy implementation in many cities.

The great majority of the recommendations and other improvements yet to be devised will require increased expenditures by those jurisdictions who must implement them. Local governments will be hard pressed to implement such improvements and thus reduce crime quickly without a new source of financing, as existing local revenue sources are already severely strained. The Safe Streets Act provides the essential, albeit minimal, financial aid to assist local jurisdictions in establishing comprehensive criminal justice programs.

Turning to the specific provisions of the Act, I want to identify some specific features of concern.

We believe increased planning and coordination among the various agencies of local government is necessary to successfully reduce crime. Our National Municipal Policy recognizes this need when it states:

"The days when a municipality can delegate crime control to its police department alone have long past. While police departments still serve as the frontline of law enforcement, all local government offices and departments concerned with criminal justice—from prevention through detection, apprehension, prosecution and rehabilitation—must be marshalled to take action in the area of controlling criminal activity. In addition, every relevant public agency must be enlisted into this effort. Whether it be street planning, lighting, parks, licenses and inspections or the multitude of other services provided by each municipality, the activities of those civil employees who perform such functions should be carried out with full consideration of crime factors in mind."

The Demonstration Cities Program and its requirement for comprehensive planning and broad community involvement has greatly hastened the process of coalescing community and local agency interest, abilities, and resources to produce constructive results. A recent report on the achievements of the Demonstration Cities Program to date by Arthur D. Little & Co. points to how it has stimulated coordinated planning. It states: "Officials of several cities have indicated to us that the problem of planning a program application has brought together city agencies, that have never before met in the same room, to discuss means for achieving common objectives. In this process, new lines of communication and understanding have already been established." We believe that the planning requirements of the Safe Streets Act can achieve similar beneficial results, where comprehensive planning has not already been initiated.

The National League of Cities does have some reservations about possible ways in which the planning requirements may be administered. We have discussed these problems with officials of the Justice Department, and, while we have been advised that these problems will not arise in implementation of the Act, we wish to note them for the record.

First, we believe that a major emphasis on planning at the state level, as suggested by the Attorney General in earlier testimony, might retard urgently needed urban programs to control crime. Many states do not now have sufficient experience in urban law enforcement problems. Crucial time will be lost while the States develop expertise in these fields to make effective plans.

Second, we hope that the 50,000 population limit in the planning requirements will be used to encourage *coordination* of planning. It should not be used to require *consolidation* of law enforcement efforts in small jurisdictions, although that may be the eventual result.

Third, we believe that cities which have already engaged in comprehensive law enforcement planning should not be required to duplicate these efforts under any new formalities to be required by the Act. Further, we urge that, in the first year, funds be made available under Title II of the Act to help those cities implement their plans. If there are no funds for action programs during the first year, the effect of the Act will be to encourage delay in implementing presently planned programs. To provide adequate funds for action programs in those communities which have already done comprehensive planning and also to provide the funds required for planning programs under Title I and demonstration program under Title III, we feel that more money will be needed for fiscal 1968 and the $50 million presently contemplated.

The National League of Cities endorses multi-jurdisdictional planning where it is feasible. Because the functional relationships between various units of local government vary widely throughout the country, the Act can not be wedded to a specific planning structure, though a minimum population for a planning unit may be prescribed. In many instances, a city will be the logical local planning unit. In other cases, it may be a county. In some areas, including metropolitan areas with populations far is excess of the 50,000 population minimum, planning may be the function of a council of governments, representing a number of units of general government. There should be assurance, however, that the planning will be the function of a unit of general local government or a unit representative of general local government, such as a council of governments.

Section 204 of the Act requires a plan to be on file with the Attorney General if a community is to secure a grant under Title II. We believe that a means should be devised to encourage review and revision of these plans to keep them up to date. Programs under the Safe Streets Act will stimulate may new ideas in law enforcement; provision should exist to encourage incorporation of these new ideas into previously existing law enforcement plans. Also, communities getting their funds from the Safe Streets Act may find new problems in the area of law enforcement or view problems, which they have already discovered, in a new light; and provision should be made to incorporate these new views into the existing plan. Whether provision for review of plans is made by statute or administrative regulation, we believe that such review is necessary.

Turning to Title II of the Safe Streets Act, I call attention to Section 202–a–2. This section imposes some unnecessary restrictions on the effectiveness of the Act. This section provides "Not more than one-third of any grant under this section shall be expended for the compensation of personnel, except that this limitation shall not apply to the compensation of personnel for time engaged in conducting or undergoing training programs and specialized personnel performing innovative functions."

It is generally recognized that salary structure is an important element in improving law enforcement. Application of the one-third limit on salaries from grant funds might present a stumbling block to the payment of realistic salaries as part of a plan to improve law enforcement. A National League of Cities survey, conducted in February 1960, found that 65.5% of those police departments surveyed were being operated below authorized strength and 80% of those operating at authorized strength believed that more officers were needed. The major use of a grant might logically be for salaries to initiate a new program to improve personnel, one which, with local acceptance, could later be financed from local funds. A lateral entry system or a program to increase clerical staff and free professional staff for law enforcement duties, both recommended by the President's Crime Commission and endorsed by the National League of Cities, would not involve any new classes of personnel whose salaries would be exempt under 202–a–2 but grants to aid such a program might greatly improve law enforcement by enabling police departments to obtain better personnel at higher levels in the department. We believe that the comprenhensive planning requirements, which must be complied with for a city to qualify under Title II, would provide sufficient protection so that grant funds would not be applied to salaries that were not part of a general law enforcement improvement programs. Further, the salary limit may encourage police departments to substitute equipment improvements for more essential changes in personnel structure to maximize aid potential. We know of no other similar salary limitation in Federal grant-in-aid programs and recommend that the one-third salary limit not be included in this Act.

Also under Title II, we seriously object to the 5% annual improvement formula with a single base year. It is unrealistic to insist that cities commit themselves to an endless upward cost spiral in order to maintain program eligibility. Local communities face a variety of serious problems, not only in law enforcement, but also in housing, education, and transportation, to name some others. Because of limited revenues, cities must establish a scale of priorities to attack these programs, and, because of differing economic, social and political conditions, these priorities will necessarily be different. No Federal program should attempt to mandate a uniform cost priority for all cities, as the 5% improvement requirement does. Each local government must be encouraged to decide, according to its particular circumstances, which of its various functions most immediately merits the assignment of resources. Many cities have serious law enforcement problems

that clearly warrant Federal financial aid of the kind available under the Safe Streets Act, but some of these same cities will have other problems that demand the priority on their resources. These communities should not be told that they must forego attacking other serious problems—some even related to crime—in order to maintain eligibility under the Safe Streets Act, particularly when they can not be sure that a grant will ever be forthcoming. Crime presents a serious problem for most cities, but to say unequivocally that it is so serious a problem that all cities should increase expenditures if they want help at some undetermined time, regardless of the gravity of other local problems, is unrealistic.

The 5% improvement requirement must be considered as part of the total grant formula. When so considered, it means that local governments must make a substantial commitment of local funds before any Federal funds may be forthcoming under this Act. A community which has not maintained eligibility during the first years of the program will be confronted with a 15 or 20% improvement expenditure to re-establish eligibility. This will deter participation in the program even if help is badly needed. Like most Americans, local governments wish to apply their scarce dollars in places where they will earn the greatest return. The urban renewal program provides a return of at least two dollars to the community for every one dollar invested, and the Model Cities and poverty programs provide varying degrees of return, generally averaging nine Federal dollars for each local dollar. It is doubtful that the Act's current formula will be considered competitively attractive.

Under these circumstances, a local government might very reasonably determine that the most productive method to reduce its crime problems would be to resort to the environmental programs attacking the roots of crime, referred to earlier in my statement. These programs would not have the immediate positive effect contemplated within the Safe Streets Act, but, because of their greater investment return, the community could logically conclude that other programs with more favorable matching formulas would better serve long-range needs.

We recognize that there is an escape clause, Section 202–d, but we can not be sure how such a clause will be applied. A city which has an exceptionally high expenditure in the base year might have real difficulty in maintaining its eligibility for a grant, particularly since it would not be determined until its application for a grant was well into the processing stage, whether it would qualify under 202–d for the exemption from the eligibility requirements. There may also be serious administrative and accounting problems in determining what is an expenditure for law enforcement and what is not. This would be a particular problem in the field of crime prevention, community relations and rehabilitation of offenders.

The Act seeks to stimulate innovative approaches to law enforcement problems. If a city has a new approach to one aspect of the law enforcement problem which is consistent with its comprehensive plans, matching formulas should encourage development of this idea without regard to whether the community has increased its total expenditures. Failure to develop such an innovative program, because of the burden of the improvement requirement, would be contrary to the purposes of the Act.

The Act has the laudable purpose of encouraging area-wide planning. The grant program will stimulate this often difficult planning process. The improvement formula will discourage this process. If each party to the plan must commit itself to an annual increase of 5% in its law enforcement expenditures, with no assurance that each jurisdiction increasing its expenditures to remain eligible will eventually receive a Title II grant, the ultimate effect of this improvement requirement will be that only those communities that feel they can meet the improvement requirement will join in such a plan, and the area-wide quality of such plans will be lost.

The National League of Cities firmly believes that the positive attack on crime called for by the President and contemplated in this Act should ultimately result in a reduction of the costs of law enforcement, though the effectiveness of the law enforcement process will constantly improve.

Cities are proceeding with many other city and city-Federal programs with the firm hope that, among their real products, will be counted reduced crime. Many of these programs are extremely expensive and place severe demands upon local revenue and leadership. To be successfully initiated in a city, there must be some assurance of future cost reductions stemming from high initial investments. City leadership faces added difficulties with such programs if there is no hope of reduced public safety expenditures.

Federal programs should not insist that local units constantly increase expenditures; instead, they should encourage the search for new techniques to produce desired results with a reduced financial burden. Emphasis should be on development of innovative programs in a reduction of crime—not upon increased expenditures.

With adequate financing, flexible planning, and some needed administrative changes in local police departments, the rising tide of crime can be reversed. The National League of Cities enthusiastically supports the concept of the Safe Streets Act of 1967 and believes that, with a few minor modifications which we have suggested, it can, in combination with other Federal-local attacks on crucial urban needs, be a very effective instrument in reversing our rising tide of crime.

Senator McCLELLAN. We have also received a statement from Mr. C. Beverly Briley, mayor, Nashville, Tenn., Vice Chairman of the NLC Committee on Public Safety—a statement that he made to the House Judiciary Committee on March 23, commenting on the Safe Streets and Crime Control Act of 1967. He has requested that his statement be made a part of our record.

Without objection, it is accordingly done, and it will be printed in the record at this point.

(The prepared statement of Mr. Briley referred to, follows:)

STATEMENT IN BEHALF OF THE NATIONAL LEAGUE OF CITIES BY C. BEVERLY BRILEY, MAYOR, NASHVILLE, TENN., VICE CHAIRMAN, NLC COMMITTEE ON PUBLIC SAFETY

Mr. Chairman and members of the committee, my name is C. Beverly Briley, Mayor of Nashville, Tennessee, and Vice-Chairman of the Public Safety Committee of the National League of Cities, I appear here today in behalf of the National League of Cities, a nationwide organization representing 14,300 member municipal governments, large and small. Through a representative process by which delegates representing the cities of each state come together annually in a national Congress of Cities, this organization determines its National Municipal Policy. This Policy sets forth the aims and purposes of municipalities. It suggests broad areas of responsibility for municipal, state and federal authorities on a variety of matters affecting localities. I will refer to this policy at several points in my statement.

Crime is a matter of particular importance to the cities of America because of its growing incidence in cities and the climate of fear it creates. When we think of increases in crime or the words "crime in the streets", we have a tendency to think of the major cities in America, but interestingly enough, the greatest percentage increase in reported serious crimes last year occurred in communities of less than 10,000 population. Growing crime is therefore a problem of cities of all sizes.

Law enforcement is basically a local responsibility. As such it imposes grave responsibilities upon cities, their public officials and their citizens. The Natonal Municipal Policy of the National League of Cities spotlights the dilemma we face.

It states:

"The Preservation of law and order is fundamental to the maintenance and extension of our Constitutional freedoms. Every municipality is responsible for the protection of life and property within its jurisdictional boundaries and must develop and maintain an efficient law enforcement agency within the limits of its resources * * * It is essential, however, that the delicate balance between the maximum degree of public safety and the greatest degree of individual liberty be maintained. We can neither afford the anarchy of uncontrolled liberty nor the repressive destruction of individual freedom found in the totalitarian state."

Public safety, particularly freedom of movement without fear, is essential to life in an urban community. But society cannot be assured freedom from crime solely by the activities of the policeman on the street. The goal we seek will be the product of a wide range of social, economic and environmental programs coupled with a comprehensive program of criminal justice. Our need is for a balanced attack on all elements if we are to win the war on crime.

Through the urban renewal and poverty programs, the new model cities act, manpower training and a number of other critical programs, Federal, state and local governments have joined to attack conditions which are at the roots of the crime problem. This phase of the attack on poverty, unemployment, inadequate training and education, poor housing and urban blight will not immediately produce dramatic changes in the present crime picture, but ultimately such programs will result in a permanent reduction in crime by eliminating some of its basic causes. The purpose of these hearings is not to discuss these programs, but we cannot ignore them. I will refer to them again because they are directly related to this legislation.

The National League of Cities supports the concept of the Safe Streets Act of 1967. It will certainly stimulate state and local governments to make improvements in their law enforcement and criminal justice systems which they could not make without the commitment of the Federal government to help them. We see it as another opportunity to demonstrate the effectiveness of Creative Federalism.

We all know that crime problems in the United States have made headlines not only here at home but throughout the world. These reports of our growing crime problem hamper not only our domestic progress but also our attempts to win friends abroad.

To put the gravity of the problem in its proper perspective, twice as many Americans died last year as a result of criminal acts in their own country as died fighting the war in Viet Nam. Last year there were approximately 3,060,000 serious crimes reported. This means that even allowing for some duplication of offenders and victims, approximately 6 million Americans were directly involved in serious crime either as offenders or victims, and the larger estimated number of unreported crimes would greatly increase this figure.

Crime is a grave national problem and only by a national commitment to eliminate the factors which contribute to crime and by positive programs to control crime, as called for in the President's Message on Crime, which the Safe Streets Act seeks to implement, can we ever hope to reverse the trend and provide a safer climate for all members of our free society.

The report of the President's Crime Commission, a thorough analysis of the problems of law enforcement and criminal justice facing the country today, makes numerous helpful recommendations on how local law enforcement agencies can improve their capability to combat crime. Some of the recommendations, such as those relating to modification of recruitment standards or changing police procedures for taking juveniles into custody would involve principally administrative changes without significant cost implications. The great majority of the recommendations will require increased expenditures by those jurisdictions who must implement them. Local revenue sources are already severly strained. If local governments are to develop truly comprehensive programs, including efficient law enforcement agencies utilizing advanced scientific equipment and techniques for patrol, communications, record keeping and information retrieval, as advocated by the Crime Commission Report and our National Municipal Policy, new sources of financing must be found.

Looking at the specific provisions of the Act, we believe increased planning and coordination among the various governmental units and their agencies is necessary to improve our attack on crime. Our National Municipal Policy recognizes this need when it states:

"The days when a municipality can delegate crime control to its police department alone have long past. While police departments still serve as the front-line of law enforcement, all local governments offices and departments concerned with criminal justice—from prevention through detection, apprehension, prosecution and rehabilitation—must be marshalled to take action in the area of controlling criminal activity. In addition, every relevant public agency must be enlisted into this effort. Whether it be street planning, lighting, parks, licenses and inspections or the multitude of other services provided by each municipality, the activities of those civil employees who perform such functions should be carried out with full consideration of crime factors in mind."

The Demonstration Cities program and its requirement for comprehensive planning and broad community involvement has greatly hastened the process of combining community and local agency interest and abilities and resources, to produce constructive results. A report prepared by Arthur D. Little and Company and released just last week notes:

"Although none of the money Congress appropriated has yet been spent, there is good reason to believe that one of the major contributions of the model cities program may well have already been made.

"Officials in several cities have indicated to us that the problem of planning a program application has brought together city agencies that have never before met in the same room to discuss means for achieving common objectives. In this process new lines of communication and understanding have already been established. For the first time in a few cities real efforts are under way to establish working relationships between line city agencies and independent school boards. In some places, this has led to the establishment of more long-range working relationships, involving efforts at sharing information and coordinating activities.

"The application planning process has also brought new groups into the general urban development effort. The program has provided an opportunity for citizens' groups and private firms, as well as other private agencies, to analyze the role they might play in attacking urban problems, and for the city government to consider the area in which the contributions of these groups is vital to effective programs."

We believe that the planning requirements of the Safe Streets Act can achieve similar beneficial results, where comprehensive planning has not already been initiated.

The proposed planning requirements of Title I do have some drawbacks however. We question giving priority in the allocation of planning funds to state-wide planning if the Act is to be implemented as proposed by the Attorney General in testimony before this Committee last week.

A number of states have restricted their law enforcement activity to highway patrol and other traffic control work, and rarely do states become deeply involved in urban law enforcement problems. For this reason, many states do not have the historical interest, the personnel, the appropriations or the expertise to cope with the complex problems of urban law enforcement. Perhaps the states should be more deeply concerned but it would be unfortunate if planning so urgently needed for a total attack on crime in our cities was delayed while the states expanded their personnel and developed the expertise necessary to deal in the areas in which they have not been previously involved.

The Legislation before you would authorize a $50 million appropriation for fiscal 1968, and a $300 million appropriation is proposed for fiscal 1969. The Attorney General, in his testimony before you, stated that 1968 appropriations would be assigned to planning efforts under Title I and the continuation of the law enforcement assistance program under Title III. No money would be available for action programs under Title II during the first year of the Act. This assumes that no planning of the type envisioned by the Act is currently being done, but this is not so. Some communities have been, or are currently, engaged in comparable planning activity. With perhaps small modifications in their plans, such cities could be ready to move ahead with action programs soon after passage of the Act. These communities which have done, or are doing, extensive planning in connection with their law enforcement processes, should not be required to make new plans under Title I requirements in order to be eligible for Title II aid. Such requirements would cause a wasteful duplication of effort and result in a penalty for those communities which entered the planning process before passage of the Act.

Further, cities which are prepared to implement sound programs should not be required to wait a year to obtain Title II grants but should be eligible immediately upon passage of the Act for grants to carry out the programs they have planned on their own and without the benefit of Title I assistance. Unless such cities—cities otherwise eligible under the program—can expect Title II grants during the first year, the effect of the Act will be to encourage delay in implementing presently planned programs.

The National League of Cities endorses inter-jurisdictional planning on a broad scale where it is feasible. We are not wedded to a specific planning structure. In many instances a city will be the local planning unit. In other cases it may be a county. In some areas, including metropolitan areas with populations far in excess of the 50,000 population minimum, planning may be the function of a Council of Governments representing a number of units of general government. We do not believe the Act should dictate the specific planning unit even though a minimum population for a planning unit may be prescribed. There should be

assurance, however, that the planning will be the function of a unit of general local government or a unit representative of general local government such as a Council of Governments.

The 50,000 population limit for qualification for planning and action grants is intended to encourage *coordination*. Such grants should not be used to require *consolidation* of law enforcement efforts in jurisdictions of less than 50,000 population, although consolidation may eventually result. The grant provisions of this Act would not provide sufficient motivation to alter the historical concept that police activities must be responsible to representative governing bodies. To secure consolidation of police functions short of consolidation of governments in metropolitan areas would, in our opinion, further delay the attack on critical local crime problems. The crime problem is much too urgent to tolerate such delay in the attack on it. While in my jurisdiction we have been successful in consolidating the units of government in the metropolitan area, this was a long and tedious process and one which, though I believe desirable, has not been repeated throughout the country.

Planning activity should be coordinated on a broad area-wide basis, but the implementation of such planning can be the responsibility of local jurisdictions. Title II grants should only be available to such jurisdictions if their programs are consistent with the plan. Congress has already adopted a similar device under Title II of the Demonstration Cities act.

Under Title II of the Safe Streets Act, I call your attention to Section 202–a–2. This section imposes some unnecessary restrictions on the effectiveness of the Act. This section provides "not more that one-third of any grant under this section shall be expended for the compensation of personnel, except that this limitation shall not apply to the compensation of personnel for time engaged in conducting or undergoing training programs and specialized personnel performing in innovative functions.

It is generally recognized that salary structure is an important element in improving the law enforcement. Application of the one-third limit on salaries from grants funds might present a stumbling block to the payment of realistic salaries as part of a plan to improve law enforcement. A National League of Cities survey conducted in February, 1966 shows that 65.5 percent of those police departments surveyed were operating below authorized strength and 80 percent of those operating at authorized strength believed that more officers were needed. A lateral entry system, recommended by the President's Crime Commission and endorsed by the National League of Cities, would not involve hiring of any new classes of personnel whose salaries would be exempt under 202–a–2, but grants to aid such a program might greatly improve law enforcement by enabling police departments to obtain better personnel at higher levels in the department. Thus the major use of a grant might logically be for salaries to initiate a new program, one which, with local acceptance, could be later financed from local funds.

We know of no other similar salary limitations in Federal grant in aid programs and recommend that the one-third salary limit not be included in this Act.

Also under Title II we question whether the 5% annual improvement formula with a single base year is realistic. The proposed formula presents several problems:

First: Expenditures for crime control represent about one-fifth of the total expenditures of local governments. The Crime Commission Report documents that local governments spent more than $2.7 billion for the prevention and control of crime in the fiscal year ending June 30, 1965. We estimate that this expenditure will easily exceed $3 billion in fiscal 1967, the proposed base year for the improvement requirements. Even if all the money requested by the bill is authorized and appropriated, local governments will be required to spend an additional $150 million for crime control in fiscal 1968 for a $50 million Federal commitment and an additonal $300 million over the base year to maintain eligibility plus 40% of any matching grant or as much as 500 million for a proposed Federal commitment of $300 million in fiscal 1969. When one remembers the Attorney General has said that priority consideration will be given to state programs, the improvement requirements become even less palatable for local governments.

Second: Like most Americans, local governments wish to put their scarce dollars in places where they will earn the greatest return. The annual improvement requirement goes even beyond the maintenance of effort provisions of other Federal grant programs and will put this program at a serious disadvantage in

local determinations as to which Federal grant programs scarce local funds should be allocated. Making highly unlikely assumptions, most favorable to local governments, that $300 million will be appropriated for fiscal 1969, that all of it will be apportioned to Title II programs and that no funds will be apportioned to the states, the program still does not compare favorably with other Federal programs. To utilize the full $300 million for action programs in fiscal 1969 local governments would be required, as I have already stated, to spend an additional $150 million in fiscal 1968 and $300 million in fiscal 1969 to maintain eligibility plus $200 million as their share of the Federal matching grant. A total of $650 million for a $300 million return or a $2 return for every $6.5 required to be spent.

No other grant program listed in the National League of Cities comprehensive Federal Aids Manual requires so many local dollars to be spent for so few federal dollars to be returned. The Urban Renewal Program provides a return of at least $14 to the community for every $7 invested and the Model Cities and Poverty Programs provide varying degree of return, generally averaging $9 federal dollars for each local dollar.

Under these circumstances a local government might very reasonably determine that the most productive method to reduce its crime problems would be to resort to the environmental programs attacking the roots of crime referred to earlier in my statement. These programs would not have the desired immediate effect of the Safe Streets Act, but because of their greater investment return, a community could logically conclude that they would better serve its long-range needs.

Third: Different communities face different problem situations. Determining which of its functions most immediately merits any increase in expenditures should be left to each local government to decide according to its particular circumstances. Most communities may have a serious problem with law enforcement that clearly warrants Federal financial aid of the kind available under the Safe Streets Act. Some other communities may have other problems that are more serious and demand the priority on their resources. These communities should not be enticed to forego attacking other serious problems—some even related to crime—in order to maintain eligibility under the Safe Streets Act when they do not wish to use it immediately or when they cannot be sure they will ever use it.

Finally: We recognize that there is an escape clause, Section 202–d, but we cannot be sure how such a clause will be applied. A city which has an exceptionally high expenditure in the base year might have real difficulty in maintaining its eligibility for a grant, particularly since it would not be determined until its application for a grant was well into the processing stage whether it would qualify under 202–d for the exemption from eligibility requirements. There may also be serious administrative and accounting problems in determining what is an expenditure for law enforcement and what is not. This is a particular problem in the field of pre-crime prevention, community relations and rehabilitation of offenders.

The goals of the Safe Streets Act can best be achieved by a matching formula without the improvement requirement. The Act seeks to stimulate innovative approaches to law enforcement problems. If a city has a new approach to one aspect of the law enforcement problem which is consistent with its comprehensive plans, matching formulas should encourage development of this idea without regard to whether the community has increased its total expenditures. The burden of the annual improvement requirement could well be so great on a particular community that it would not be able to institute a new program even with Federal funds. Failure to develop such an innovative program because of the burden of the improvement requirement would be contrary to the purposes of the act.

The act has the laudible purpose of encouraging area-wide planning. The grant program will stimulate this often difficult planning process. The improvement formula will discourage this process. If each party to the plan must commit itself to an annual increase of 5% in its law enforcement expenditures, with no assurance that each jurisdiction increasing its expenditures to remain eligible will eventually use Title II grant, the ultimate effect of this improvement requirement will be that only those communities that feel they can meet the improvement requirement will join in such a plan, and the area-wide quality of such plans will be lost.

The National League of Cities firmly believes that a positive attack on crime as called for by the President should ultimately result in a reduction of the

costs of law enforcement, though the effectiveness of the law enforcement process will constantly improve.

We are proceeding with many other city and city-federal programs with the firm hope that among their real products will be counted reduced crime. Many of these programs, to be successfully initiated in a city, must provide some assurance of future benefits from high initial costs. We face added difficulties with such programs if there is no hope of reduced public safety expenditures.

We should not insist that local units constantly increase expenditures, instead we should strive for new techniques to produce desired results with a reduced financial burden. Emphasis should be on development of innovative programs and a reduction in crime—not upon increased expenditures.

The National League of Cities strongly supports the concept of the Safe Streets Act of 1967. We believe, however, that this act can better achieve its goals with the few minor modifications we suggest.

Senator McCLELLAN. Without objection, the Chair will direct that additional statements, resolutions and a select number of letters that the committee has received from citizens, public officials, and others interested in the legislation pending before the committee which we have under consideration, be printed in the record at the conclusion of the hearings today.

I may say the first group of correspondence contain letters that we have received from judges, attorneys general, prosecutors, county attorneys, and professors of law. The second group of letters are from chiefs of police from all over the country. The third set of letters is a representative sampling of letters we have received from the general public.

I think the record would not be complete without showing the public interest in these bills, and also recording the views as contained in the letters to us from policemen and prosecuting attorneys, and judges who could not spare the time or expense to come and testify personally. We are very glad to have their views and their support of legislation that we are considering and hope will be enacted into law.

(The correspondence referred to follows:)

STATEMENT OF RANDEL SHAKE, DIRECTOR, NATIONAL CHILD WELFARE COMMISSION, THE AMERICAN LEGION, IN CONNECTION WITH HEARINGS ON S. 917 BEFORE THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES, SENATE COMMITTEE ON THE JUDICIARY, MAY 10, 1967.

Mr. Chairman and members of the subcommittee, The American Legion appreciates the opportunity to present its views on legislation aimed at reducing the incidence of crime and the strengthening of local enforcement and criminal justice systems.

Our interest in this legislation stems from our long activity in the area of prevention and control of juvenile delinquency. For over 40 years The American Legion has conducted a child welfare program which has had as its purpose assuring care and protection for veterans' children and improving conditions for all children. During this period, The American Legion and its affiliated organizations have expended in excess of $200 million for children and youth. One of the principal activities of our child welfare program, historically, has been our effort to reduce juvenile crime.

Our position is and has been that the prevention of crime is essentially a local responsibility. We have on numerous occasions, through our child welfare program, initiated or supported state legislation related to the establishment or improvement of juvenile court service, detention facilities for juveniles and the improvement of standards for juvenile training schools.

Without relinquishing our traditional position that prevention of crime is basically a community responsibility, we recognize that there are some functions in this area which can be best performed at the national level. These are continuing functions and include stimulation of research, assistance for training personnel, compilation of national statistics and establishment of standards.

We wish to register our support particularly for those parts of Title II and Title III of S. 917 which would provide federal assistance to the states and local communities for training of law enforcement personnel and for the encouragement of research and the development of demonstration projects. The American Legion has encouraged such federal support for a number of years and the current policy of our organization on this matter is stated in Resolution No. 5 adopted at our National Convention in Miami Beach, Florida, October 18–20, 1960, which reads as follows:

Whereas, Juvenile Delinquency rates have continued to increase each year since 1949 and have reached a point of national concern; and

Whereas, Our traditional methods of prevention and control of juvenile delinquency apparently are not sufficiently effective to reduce delinquency and specialized research activities are indicated; and

Whereas, one of the most serious hindrances to the control and treatment of juvenile delinquency is the lack of trained workers in this area; and

Whereas, The American Legion recognizes that the control and treatment of juvenile delinquency is essentially a responsibility of parents and the local community but has reached a point that warrants leadership and assistance by the national government; Now, therefore, be it

Resolved, That The American Legion, in national convention assembled in Miami Beach, Florida, October 17–20, 1960, urges the Congress to enact legislation which would provide federal matching funds to the states to assist with the financing of demonstration projects and research activities in the area of juvenile delinquency and the training of personnel in methods more effective to its prevention and control.

Although this resolution was adopted in 1960, much the same situation prevails today. Juvenile delinquency rates continue to climb and the most serious barrier today to progress in the corrections field is the critical shortage of trained personnel.

The American Legion, in recognition of the problem of insufficient numbers of qualified personnel, has taken steps, although limited in scope, to alleviate this problem. For a number of years The American Legion Child Welfare Foundation has assisted a number of police officers by furnishing them with a part of their maintenance expenses while attending the Delinquency Control Institute at the University of Southern California. Upon completion of a 12 weeks training course, the officers return to their home communities where they are assigned to work with juveniles. Such training has paid real dividends to those communities which have sent representatives to this Institute.

Funds from our Foundation have been used to finance a training institute at Rutgers University for juvenile training shcool personnel and a summer training program at Tulane University for individuals working in the corrections field who had received no previous specialized training.

Our organization is aware of the tremendous responsibility resting upon the members of the Congress, particularly at this point in history. We are also conscious of the need for establishment of priorities in the appropriation of funds at this time in order to balance the needs of the nation with its ability to pay.

We consider the problem of increased crime to be our leading domestic issue at this time and a problem that has been too long overlooked—a problem that threatens the vitals of our country.

In conclusion, it is our belief that the training, research and demonstration projects features of S. 917 provide an excellent opportunity for effective efforts to reduce crime and juvenile delinquency in this country and we earnestly urge the enactment of this legislation.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF THE ATTORNEY GENERAL,
Harrisburg, Pa., April 14, 1967.

DEAR SENATOR MCCLELLAN: Recently Governor Shafer wrote to Senator Edward V. Long with reference to a bill which he introduced (S. 928). I believe that the Governor's comments are appropriate, and I am enclosing a copy of that letter for your information.

Sincerely yours,

WILLIAM C. SENNETT,
Attorney General.

Enclosure.

APRIL 13, 1967.

HON. EDWARD V. LONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: I have before me your recent letter asking my views on S. 928 which you introduced in the Congress. I understand this bill would completely outlaw the use of wiretapping and other electronic listening devices, except in situations involving national security.

My views, in summary, are:

I oppose S. 928.

I wholeheartedly endorse the legitimate use of any technological instrument as a weapon against crime, including the use of both "wiretapping" and any "electronic listening device," provided such use is under the strict control of courts of competent jurisdiction, and is restricted to use by legitimate law enforcement officers to ferret out specific onerous crimes and criminal conspiracies.

The national security is today being threatened by crime more so than ever before in our history, as evidenced by the recent report of the President's Commission. We must not limit an effective war on crime just as we would not restrict a total effort against any foreign aggression.

If we allow the use of electronic devices to prevent an enemy nation from endangering our national security, why should we prohibit the use of such devices to prevent or help eliminate a present domestic danger? If necessary, we would rely upon our Armed Forces to overcome subversion either from within or without. Crime today in the United States presents a clear and present danger which must be overcome.

The effects upon the community of narcotics, gambling, prostitution and other criminal activity, the interstate character of such activity, and the use of modern technology by criminals are well-known and well-documented.

In my view, we must utilize every weapon to eliminate crime from our society, preserving, of course, those ancient rights guaranteeing due process to all citizens. Therefore, I urge the adoption of such measures as will allow the use of these devices under appropriate order of courts of competent jurisdiction.

Sincerely,

RAYMOND P. SHAFER.

U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
San Diego, Calif., March 29, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have just read the statement of J. Edward Lumbard, Chief Judge of the Second Circuit, before your committee on March 8, 1967, and I take this opportunity to put myself on record as to approving in toto his presentation.

Sincerely,

JAMES M. CARTER,
Chief Judge, Southern District of California.

U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
San Diego, Calif., March 31, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: The excellent and logical statement of the Honorable J. Edward Lumbard, before your Committee on March 8, 1967, voices my opinions, and is fully approved of by me.

Respectfully,

FRED KUNZEL,
U.S. District Judge.

COMMONWEALTH OF PENNSYLVANIA,
40TH JUDICIAL DISTRICT,
Indiana, Pa., April 13, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate Building, Washington, D.C.:

I notice by the Legislative Bulletin published by the Pennsylvania Bar Association that you are Chairman of the Senate Crime Laws and Procedure Sub-Committee. I further note that you are holding a hearing on a series of anti-crime bills including Senate Bill No. 674, which is designed to assure the admissibility of voluntary confessions.

I was a Prosecuting Attorney for twelve years and am now on my twelfth year as a Judge. I am deeply concerned about the crime situation in United States.

It is my opinion that a voluntary confession and the information gathered by the police as a result of a voluntary confession should be admitted in evidence in the trial of a case.

In the trial of cases today of course I am bound by late decisions of the United States Supreme Court and we try all cases in the light of those decisions. I think, however, I have the right to say that I believe that these decisions are based upon some rather fuzzy, mental, sob-sister gymnastics. I am very much interested in the rights of the individual but I am also interested in the rights of society generally.

Incidentally I enjoyed hearing you speak when you were at Indiana University.

Very truly yours,

EDWIN M. CLARK.

STATE OF ALABAMA,
OFFICE OF ATTORNEY GENERAL,
Montgomery, Ala., January 24, 1967.

Hon. JOHN L. MCCLELLAN
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have your letter under date of January 17, 1967.

In reply to your inquiry dated November 21, 1966, you are advised that Alabama has not yet enacted legislation as a result of *Miranda*. The State Legislature has not yet considered legislation apparently required by *Miranda*. However, an Alabama Bar Committee will recommend to the Bar the sponsorship of legislation to make it possible to comply with *Miranda*.

This proposed legislation, amending Alabama statutes already providing for State payment of counsel in indigent criminal cases, will, according to current thinking in the Bar Committee, provide for temporary appointment of counsel on request of police authorities by circuit judges at the preliminary stages of interrogation of indigents. Provision must also be made for payment of private appointed counsel fees. I expect such legislation to be introduced early in the next regular session of the Alabama Legislature with Bar approval. As stated, such legislation will make it *possible* to supply counsel at the interrogation stage as required by *Miranda* at a time that such was and is yet impossible.

Neither the attorneys or judges to whom I have talked are so naive as to believe that such legislation will be effective. The attorney appointed for interrogation will simply send word to his client to remain silent and no statements will be forthcoming.

While this legislation will probably be adopted in order to make it *possible* according to the book to comply with *Miranda*, it will be a futile and empty gesture because of the impossible situation created by the Supreme Court of the United States in *Miranda*. The Alabama Legislature may be of the opinion that it is useless to levy a tax and appoint and pay counsel to advise indigents to remain silent during interrogation, but I believe with Bar approval the legislation will pass.

Miranda is simply a law passed by the United States Supreme Court, which in effect prohibits the introduction into evidence of admissions or confessions or the fruits of uncounseled interrogation. This law, according to five justices, is in the Constitution. I doubt if Congress or the Alabama Legislature can by mere statute effectively amend what the present majority call the Constitution.

I respectfully suggest that you may begin thinking in terms of a constitutional amendment or amendments and hope that, if adopted, the terms thereof will be reasonably construed by the United States Supreme Court.

The excerpt from *Miranda* quoted in your inquiry may be thought by some to hold out some hope for an alternative method for complying with *Miranda*.

However, I can conceive of no State or Federal legislation that could as a practical matter soften the blow that *Miranda* has struck at law enforcement. If confessions, shown to be voluntary, are again to be recognized, the strait jacket, denied by the justices in the opinion, but in fact locked on by them, can only be removed by a law enacted into the Federal constitution. Such an amendment would simply make confessions or admissions, shown to be voluntary, admissible.

I would certainly favor legislation punishing those who would coerce confessions, but I believe that reasonable persuasion by police interrogators before counsel is expressly demanded is essential to proper law enforcement.

Very truly yours,

MACDONALD GALLION,
Attorney General.
By BERNARD F. SYKES,
Assistant Attorney General.

GEORGE VAN HOOMISSEN,
DISTRICT ATTORNEY FOR MULTNOMAH COUNTY,
Portland, Oreg., January 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: In answer to your letter of November 21, 1966, since we have been operating such a short period of time under the *Miranda* decision, it is impossible to give you a definitive answer regarding the effect of the decision.

However, after *Escobedo* and before *Miranda*, the Oregon Supreme Court handed down *State* v. *Neely*, 239 Or 487, 395 P2d 557 (1964), 398 P2d 482 (1965), wherein the Oregon court adopted what was then understood to be among state courts the minority *Escobedo* rule regarding advice to defendants. Because of the *Neely* case we here in Oregon had a transition period during which most of our major police agencies modified their procedures. Unfortunately, for purposes of analysis we did not maintain any statistical data regarding the effect of *Neely* on admissions, statements and confessions; and to date we have not maintained statistical data on *Miranda*. Although I am able to say that *Miranda* has caused dismissal of several felony matters and resulted in the inadmissibility of some statements, I cannot demonstrate it. I assume that both *Neely* and *Miranda* have prevented our police departments from solving a certain number of cases, and I am referring your request for information to the City of Portland Police Bureau and the Sheriff's Office of Multnomah County with the request that they send any additonal data they may have.

No legislation has been proposed at the local level. We do have a statute which is very similar to the McNabb-Mallory rule. Although to date our court has not adpoted McNabb-Mallory, and the statute has not been interpreted to require exclusion because the statement is taken between arrest and prior to the time defendant appears before the magistrate, our court indicates such a ruling is in the offing.

I regret we are unable to present data for you, and hope the police departments mentioned will be able to assist.

Respectfully,

GEORGE VAN HOOMISSEN,
District Attorney.
By DESMOND D. CONNALL,
Chief Deputy, Criminal Department.

OFFICE OF THE PROSECUTING ATTORNEY,
MAHONING COUNTY,
Youngstown, Ohio, January 10, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SIR: Please accept my most sincere apologies for the belated answer to your letter dated November 21, 1966. In some manner it became mixed up with other papers and was mislaid.

I am familiar, of course, with the *Miranda* decision as well as with other recent Supreme Court decisions involving criminal law.

It goes without saying, I think, that this case will make the obtaining of confessions and admissions much more difficult for law enforcement officers. As of this writing I know of only one case in which we feel not be able to use a confessions because it was not obtained in accordance with *Miranda*. The local police officers would probably be in a better position to develop statistics than this office.

I feel it safe to assume that cases where *Miranda* had stopped an investigation have not been bound over to the Grand Jury in accordance with the Ohio practice. I also feel that it will be extremely difficult for anyone to draft Federal Legislation which can circumvent the very positive finding of the majority in the *Miranda* case, but I certainly wish you well.

If this office can be of assistance, please let us know.

Very truly yours,

CLYDE W. OSBORNE,

DISTRICT ATTORNEY GENERAL,
FIFTEENTH JUDICIAL CIRCUIT OF TENNESSEE,
Memphis, Tenn., February 15, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate,
Committee on Judiciary,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you very much for your letter of February 10 regarding your proposed legislation on the admissibility of voluntary confessions, wire tapping, and the outlawing of the Mafia and similar crime syndicates. It makes me feel a lot better, in fighting the day-to-day battle against crime, to know that we have someone of your stature and capabilities working to protect the law abiding people of this country, and the victims of crime.

I feel that it is most appropriate for the United States Congress to take the lead in passing this much needed legislation because, and I say this with no bitterness but in an objective manner, I feel there is no doubt but what some of our overzealous Federal courts have placed all law enforcement agencies and the public in the present sea of confusion in which we now find ourselves.

With regard to your proposed Federal bill on wire tapping, I am enclosing herewith a bill which I drafted in 1963, to present to the Tennessee State Legislature. I did present this bill but was not successful in getting it passed. I plan to again attempt during the 1967 Tennessee Legislature to get this same bill passed. I believe that the provisions of this bill which I drafted substantially meet the requirements set out in your proposed Federal legislation as far as allowing state law enforcement officials to wire tap. In any event, if the bill you are sponsoring is passed, we would on a local level scrupulously abide by the provisions of your act.

You will also note in the bill which I have drafted that it would be unlawful to eavesdrop by electronic and other devices. I put this provision in my bill because of the insidious nature of some of our present electronic devices, and the effect the use of such devices could have if used by unscrupulous and unauthorized persons.

If I can be of any further assistance to you in your efforts to get your bills passed, I would be most happy to do so.

Respectfully yours,

PHIL M. CANALE, Jr.,
District Attorney General.

DIVISION 2, CIRCUIT COURT,
Springfield, Mo., March 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have your letter of March 20th, together with copies of S. 674 and S. 675, together with excerpts of your remarks which you made to the Senate. I am heartily in accord with your thoughts in this matter.

We have been spending a great deal of time in Southwest Missouri with our law enforcement officers in an effort to try to help them understand the import of some of the recent Supreme Court decisions. I do not believe that the decisions have had any effect on the over-zealous or dishonest officer. In other words, the policeman who would subject a suspect to third degree methods in order to obtain a confes-

sion and who would then lie about it on the witness stand, will still lie under the present rules and will state that the suspect waived his rights when in reality he did not. On the other hand, the law abiding policeman, who in my opinion comprises the great majority of our officers today, has been handcuffed and hamstrung by these decisions to a point where he is confused, embittered, and despondent. In the last analysis, it is the duty of Congress to rectify the situation, and I applaud your efforts to date.

I would be glad to add my voice to other judges and prosecutors across the land who see in the present rulings a clear-cut danger to our society if you think my testimony would be useful. However, as our County has no budget for a trip of this magnitude and as I am unable to finance it at this time out of my personal funds, coupled with the fact that our Supreme Court discourages the appearance of judges before legislative bodies unless subpoenaed, I would not be able to come unless this procedure was followed.

Best wishes in your endeavor. I know you are on the right track.

Very truly yours,

DOUGLAS W. GREENE.

DIVISION 2, CIRCUIT COURT,
Springfield Mo., March 10, 1967.

Hon. JOHN MCCLELLAN,
U.S. Senator,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have recently read, with great interest, your comments concerning your intention to hold hearings for the purpose of determining what legislation is necessary to correct the intolerable situation in law enforcement which has been caused by the Supreme Court of the United States by virtue of its interpretation of the meaning of the Fifth Amendment in recent decisions such as Miranda vs. Arizona.

I have been a practicing attorney for twenty years; I have been the Prosecuting Attorney of my home county, which contains over 150,000 people; and I have had considerable experience in the trial and defense of criminal cases. I am the senior Circuit Judge of this circuit and have been in office as judge more than six years. Felony convictions, which used to be almost routine in cases where confessions which had been voluntarily given were used in evidence, have become almost a thing of the past. Prosecutors today are reducing felony charges to misdemeanors to which defendants will plead in order to obtain a conviction at all. It would be funny if it wasn't so serious. As you know, most judges are effectively muzzled by Canons of Judicial Ethics which have been promulgated and adopted by Supreme Courts without even consulting the trial bench and which state, among other things, that a judge should not criticize or comment on the actions of judges. However, I do not believe such sanctions would have any force or effect in regards to testimony given under subpoena before your committee.

I urge you to make the broadest use of your subpoena power and to call witnesses from the police, prosecuting and district attorneys, and trial judges who are, through no fault of their own, castigated and criticized for the Supreme Courts action in this field so that your Committee and the Country can get a true picture of what is going on in the field of law enforcement in America today.

Although I have never met you personally, I have a very high regard for you by reason of the work you have done in the past in this very important phase of American life.

With best personal regards, I remain,

Very truly yours,

DOUGLAS W. GREENE, *Judge.*

CRIMINAL DISTRICT COURT,
PARISH OF ORLEANS, SECTION F,
New Orleans, La., March 17, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Having read in the attached article, "Fencing in Supreme Court" that you are Chairman of the Senate's subcommittee on criminals and judicial procedures, I am taking the liberty of enclosing a copy of reasons for

Judgment which I rendered in a narcotics case wherein, under my oath and at considerable violence to my sense of justice, I maintained a defense motion to supress evidence.

May I ask Senator, that you take a couple of minutes from your day to read the enclosed opinion. You may use it in any way desired.

I am sending a copy of this letter to my Senators, Ellender and Long inasmuch as I have previously given them a copy of the opinion. I had the honor of being Senator Long's classmate at Louisiana State University Law School and I believe he feels basically the way we do.

I applaud you for your speech in the Senate wherein you are quoted as having stated:

"We must stop, and stop now, the release upon society of self-confessed, vicious criminals because of the trivial technicalities invoked in recent decisions which were vigorously denounced by the other four Justices as unsound and harmful to the administration of justice."

I trust that your efforts will prove fruitful and I hope that I may have the pleasure of meeting you in person.

Sincerely,

OLIVER P. SCHULINGKAMP,
Criminal District Judge.

OFFICE OF THE DISTRICT ATTORNEY,
FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA,
Montgomery, Ala., March 16, 1967.

Senator JOHN L. MCCLELLAN,
Chairman, Committee on the Judiciary,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I apologize for not answering your letters of November 24, 1966, and February 10, 1967, until this time but I do want to congratulate you and express my appreciation for the work you are doing in trying to help maintain law and order throughout the country.

In my opinion, the U.S. Supreme Court by its rulings in *Giddeon, Escobedo, Mapp* and *Miranda* are responsible in a large part for the increase in the crime rate. I say this because its decisions, and especially the *Miranda* decision, have lowered the morale of the law enforcement agencies and at the same time, have encouraged the criminal by letting him believe that he can get by with most anything.

In my circuit, after *Miranda* was handed down, the police adopted the attitude of "What's the use?" However, by schooling, lectures and instruction, I believe that we have changed their thinking and have showed them that there is still hope even though in many instances we cannot get a conviction because of the lack of a statement for the defendant. Most of the defendants, even though caught redhanded in the act, immediately ask for a lawyer and refuse to give any statement whatsoever.

The following cases are cited which may be of help in your work.

In the case of *State vs. Wilson and Whitt*, the defendants committed five armed robberies. Whitt confessed to all five charges but Wilson refused to make any statement whatsoever. Whitt stated that Wilson was with him and was the one who planned the crimes. In four cases, we were unable to corroborate the testimony of Whitt and so could not proceed against Wilson. However, we were able to corroborate Wilson's testimony in one case and succeeded in getting a conviction in that.

In *State vs. Gunther and Stalker*, both defendants were charged with robbery on October 11, 1962, in that they got in an automobile of a man who was waiting for his wife to finish teaching school, took him out in the country, severely beat him, robbed him and left him for dead. Stalker was arrested, tried and convicted a few months after the robbery took place. Gunther, being a juvenile, was certified to the Circuit Court for trial as being incorrigible, which decision he appealed to our State Court, thereby preventing us from trying him until the present time. Both defendants at the time of arrest talked freely about the robbery, going into the most minute details but, of course, were not warned in accordance with the *Miranda* decision. The victim is at this time not positive in his identification of Gunther and, of course, we cannot use his statement when we try him next month.

In *State vs. Isom*, the defendant killed a man and the patrol car arrived within two minutes after the shooting. Isom walked up to the patrolman with a pistol in his hand and the patrolman asked him "Did you do it?" Isom was convicted and he appealed to the State Court. Our Court of Appeals reversed the case, citing *Miranda* and we have now brought it to the State Supreme Court on certiorari. I cite this case to show the effect the *Miranda* decision has had on even State Appellate Judges. Sometimes it would appear that the lower federal courts as well as the state courts try to out do and get further out than the five judges on the U.S. Supreme Court.

In the case of *State vs. Asberry, Floyd, Ivery and James*, the defendants were charged with four burglaries. All defendants except Floyd gave statements which implicated Floyd, who demanded a lawyer and refused to make a statement. We were only able to corroborate the accomplices' statements in one case and so could not proceed against Floyd in the other three.

The decision worked to the disadvantage of the defendant in one case in which the defendant had killed her husband. There were no eye witnesses, the defendant called a lawyer and refused to make a statement. She waived preliminary hearing and was bound over to the Grand Jury. The day her case was to be presented to the Grand Jury, her lawyer talked to me and told her side of the story, which clearly proved self-defense. If she had told us this in the beginning, no case would ever have been made against her.

I have read the bills that you have introduced and believe that their passage will help the law abiding citizens of the nation and will go a long way towards maintaining law and order.

Sincerely yours,

D. W. CROSLAND.

COMMONWEALTH OF VIRGINIA,
TENTH JUDICIAL CIRCUIT,
Richmond, April 12, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I appreciate so much your letter of April 6, 1967, with enclosures, including excerpts from your very fine and forceful speech released January 25, 1967, on the urgent situation occasioned by the high rate of crime in this country. I have also read the enclosed proposed bills and hope it will be the pleasure of your Committee to approve same and for the Congress to enact them.

I appreciate very much your invitation to me to testify before your Committee regarding the desirability of this legislation, but regret that due to my heavy trial schedule I will be unable to do so.

With all good wishes,

Sincerely,

EDMUND WALLER HENING, Jr., *Judge.*

COMMONWEALTH OF VIRGINIA,
TENTH JUDICIAL CIRCUIT,
Richmond, March 10, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I was delighted to see that you recently stated for the news media your concern about the nations rising crime rate, partly due to the Supreme Court's decision rigidly limiting the admission of voluntary confessions.

After four years as Commonwealth's (Prosecuting) Attorney and ten years as Judge of this Circuit having criminal jurisdiction, I firmly believe that the *Miranda* Case and others have placed too many safeguards around the criminals to the point that innocent people are no longer properly protected.

I hope that you will continue to work for balancing the Scales of Justice in favor of innocent members of the public.

Respectfully yours,

EDMUND W. HENING, Jr., *Judge.*

RESOLUTION OF THE JUDICIAL CONFERENCE OF VIRGINIA, ANNUAL MEETING, MAY 12, 1967.

Whereas, the President of the United States has expressed his concern over the increase in the rate of crime in this country; and

Whereas, various government agencies have likewise expressed the necessity for corrective measures to reduce criminal activity and for the prosecution of crime; and

Whereas, the recent 5 to 4 decisions of the Supreme Court of the United States have substituted a limiting test for the admissibility of confessions into evidence in place of the long-standing and traditional test of the voluntariness of any such confessions; and

Whereas, among various bills introduced at the current session of the 90th Congress aimed at eradication of crime and the prosecution and punishment therefor, there are included several bills purporting to re-establish the test of "voluntariness" as the rule to govern the admissibility of confessions into evidence,

Now therefore, be it resolved by the 1967 Annual Meeting of The Judicial Conference of Virginia, this 12th day of May, 1967, as follows:

1. That Congress is hereby urged to enact Senate Bill 1194 and Senate Joint Resolution 22; and

2. That copies of this Resolution be sent to all members of Congress representing the Commonwealth of Virginia, and to all Senators whose names appear as co-patrons on the Foregoing Bill and Resolution.

CRIMINAL COURT, FIFTH CIRCUIT,
Cookeville, Tenn., March 7, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I was very much pleased to read a UPI Washington dispatch in last Sunday's *Nashville Tennesseean* that you plan to investigate some of the aspects of recent decisions of the Supreme Court, especially those which have "unduly restricted legitimate law enforcement practices."

I am sure that many people who are engaged in the administration of justice will look forward anxiously to some remedial legislation along this line.

In more than 30 years in the circuit and criminal courts of this Circuit, which is composed of 11 counties in the rural section of Middle Tennessee, I do not remember any instance where an innocent man has ever confessed that he was guilty of committing a crime.

Sincerely yours,

JOHN A. MITCHELL, *Judge.*

STATE OF MINNESOTA,
BUREAU OF CRIMINAL APPREHENSION,
St. Paul, Minn., March 8, 1967.

Re hearings by U.S. Senate Subcommittee on Criminal Laws and Procedures, March 7, 8 and 9, 1967, regarding U.S. Supreme Court decisions affecting local law enforcement.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
U.S. Senate, Washington, D.C.

DEAR SENATOR: As suggested by Mr. Quinn Tamm, Executive Director of the International Association of Chiefs of Police, a review of the experience of our corps of investigators was made on the above subject. The results thereof and comments follow.

In one area, five court hearings have been conducted under the Miranda ruling in what we refer to as the Rasmussen-type hearings in Minnesota whereby the activities of the officers regarding the securing of evidence and the taking of statements are scrutinized, and often thereafter they are thrown out before the case ever gets into court. In one of these cases, the original charge of auto theft was dismissed and an agreement was made to plead to a lesser offense of tampering with a motor vehicle brought about by the exclusion of some of the evidence.

Comments by one of our old and experienced investigators is as follows:

"Also it has been my experience that when called to a Rasmussen hearing, the defense attorney is not only concerned about the Miranda ruling, but is conducting a fishing expedition to determine how much evidence we have against the defendant, he will also imply that the suspect was interviewed, threatened, pressured and beaten, and then advised of his rights, and that a statement is then taken which the defense attorney claims was taken without the defendant understanding what his rights were.

"It is the opinions of some Juvenile Court judges in this area that juveniles cannot waive their rights unless their attorney is present."

In the Minneapolis-St. Paul area, one of our men was involved in seven cases where this type hearing was held. In one, a burglary, a defendant was dismissed, the facts therein being that an accomplice admitted his guilt and testified against the defendant. Our Laboratory expert testified in reference to ballistics, and the evidence suppression was granted on the basis, first, that there could have been a million to one chance of a ballistics duplication; and, also, the Probate Court which heard this matter held that the defendant's rights were violated because he was being implicated by an admitted accomplice.

One of the investigators remarked that there has even been an active move afoot to bring this type of hearing into Municipal Court so that the lower courts are being restricted in their ability to bind a case over to District Court, based on the fear of being overruled. Judges of the lower courts, upon receiving a move for suppression of evidence, both written and material evidence, are apt to go along with the defendant's request *assuming* the police were illegal in their actions.

Further comment by this investigator was the fact that due to the Miranda ruling, investigative techniques have been forced to change, and investigations are now definitely restricted to what witnesses say (if there are any witnesses) and physical evidence (if any is found). The Miranda ruling practically prohibits questioning and restricts police officers' activities in numerous ways.

In a recent case (within the past month) employees of the Minnesota Mining and Manufacturing Company were suspected of carrying out an amount of silver nitrate. In questioning employees for information, it was necessary to be very cautious and restricted in the presentation of questions because no suspects were developed until after a least 30 persons were questioned. The two who turned out to be definite suspects were questioned routinely, along with the others, and did not become definite suspects until later. This investigator said that in order to develop a case of this nature, in order to be within the scope of the Miranda ruling, he would have to warn each person he talked to before starting the interview. It is his opinion that this warning approach, if used in questioning everyone, would result in little, if any, cooperation. A willing witness frequently has taken the attitude that he doesn't want to get involved, that the police are only interested in pinning the crime on someone and, therefore, by the warning of Miranda, a willing witness will clam up, remain silent and be uncooperative. Miranda prohibits interviewing that in the past has allowed one to fill in the vacant or void areas. This investigator felt that also this encouraged the allowing of immunity for one individual in exchange for his testimony against others, thereby allowing him to go free. As in the one case mentioned above, this might not work either, since in the case mentioned the court held that the defendant's rights were violated because he was implicated by an accomplice.

This investigator said he had heard two defense lawyers recently comment about their clients written admissions in such a way that when these hearings take place, motions to suppress would be granted because confessions are becoming a thing of the past and not admissible unless the defendant's lawyers are present at the time the statement or confession is taken. This investigator felt that when questioning has to be restricted, guarded, and not of a probing nature for fear of assuming an accusatory nature prematurely, one can easily recognize that Miranda is restricting police investigations. The Miranda case fails to provide a time lapse needed by police officers to cover situations that might arise, an example of which is that when an arrest is made and other circumstances arise of an emergency nature such as a search of the premises or the observance of another suspect in the area that requires attention, either way the officer acts is wrong.

A case arose in the last year under similar circumstances where a man called the sheriff up by telephone. The sheriff answered in a routine manner, and the man making the call said he had shot and killed his neighbor. While this case did not come up for hearing because the man was committed to a mental institution, it was thought that possibly under the Miranda case this man might have exonerated

himself by virtue of his confession before receiving any warning. It is my belief, however, that such a confession would be upheld, but I can easily see that under the present trend it might not be.

Another investigator ran into this situation in a case known as State of Minnesota vs. Anton Olson. The matter involved the shooting and killing of two police officers in Morrison County, Minnesota. The hearing was held in Ramsey County as a result of change of venue requested by the defense attorney. District Judge Marsden in this case ruled inadmissible a statement of admission made by the defendant. In addition, the sawed-off shotgun allegedly used in the shooting was ruled out as evidence, although the gun was located in the Mississippi River on information supplied by the defendant. The judge applied the Miranda ruling in this case. The offense occurred before the Miranda decision was delivered, and the ruling of Judge Marsden occurred in August 1966. In this case, the State, in order to obtain a confession, changed the two first degree murder charges to murder in the third degree. I might add in this connection that the statement taken from Olson in this case was after all warnings were given *except* that the State would furnish an attorney if he could not afford one. In this case, the defendant was a farmer with all the usual resources, tractors, machinery, barn, house and crops, and the belief he had funds for legal services seemed most reasonable. In this case the defendant had come into the police station and said he killed an officer before anyone had even asked him a question, and on this basis he was not released. This was the only saving feature and, had this man been released, I feel sure some vigilante action would have been taken, and I feel that will come to pass in the future unless the trend is reversed.

I am enclosing articles from the St. Paul Pioneer Press of August 4 and August 5, 1966 commenting on Judge Marsden's rulings, which I feel you will find interesting.

We have another case in this area at Hibbing, Minnesota in April or May 1966 where one Ronald Keiser was charged with stabbing a girl to death. He gave a signed statement admitting this, and later demanded a hearing which was held before the Supreme Court, and the confession was thrown out. This caused a tremendous furor in that part of the country. I do not have complete details in my possession, but perhaps Powell Majerle, Chief of Police, Hibbing, Minnesota, who is also an IACP member, will furnish the facts in this case.

I am enclosing comments in the St. Paul Dispatch of Thursday, March 2, 1967 of William B. Randall who is Vice President of the National District Attorneys Association, and former President of the Minnesota County Attorneys Association.

We find that the hearings resulting from recent Supreme Court decisions are most time consuming. Most every such case takes from one to three days, and we had one take five days. Even our Laboratory personnel have been called in several times, thus disrupting their work on other matters. With these one or two hearings in each case, plus the actual trial, if it gets that far, the police officer finds much of his time thereby taken up. Police departments are almost universally handicapped by a shortage of personnel, and these present procedures only add to the problem.

Furthermore, the tendency today of the courts seems to be to over-emphasize the right of the criminal at the expense of the rights of the public or the individual or the victim of the crime.

Sincerely yours,

ROY T. NOONAN, *Superintendent.*

COUNTY OF HAMILTON,
Cincinnati, Ohio, March 3, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In reply to your letter of February 10, 1967, concerning various bills presently before the Senate, I submit the following:

Bill S. 674—The bill as written is workable and acceptable. The only suggestion I would make is that some thought be given to that portion of the Miranda decision dealing with exculpatory or inculpatory statements. Perhaps some word should be inserted so that if an accused makes an exculpatory statement, which later turns out to be false, this false exculpatory statement could be used to impeach the accused.

Bill S. 678—I would suggest a change on page 4, line 15, after the words "dedicated to" insert "violate criminal laws of the United States or any State, or commit unlawful acts" etc.

Bill S. 675—This bill is acceptable in its present form.

You recognize, of course, that Bill S. 678 does not generally apply to state law enforcement.

I feel that if the three Bills you have suggested were passed they would provide additional necessary armament for law enforcement.

I have been a member of the Prosecuting Attorney's staff for twenty years, and during that twenty years this office has enjoyed an excellent reputation in the community for its manner of administering justice. It is difficult for me to understand why so many people (many in high office) seem to fear law enforcement and that which it represents. This statement applies to those in the legislative branch of government. They seem to be apprehensive and unsure of those of us who are not seeking to harm or hurt anyone, but trying to protect society from those who would abuse society. It seems to me this theme must be sold.

I wish you a great deal of success in the handling of these important pieces of legislation.

Yours very truly,

MELVIN G. RUEGER,
Prosecuting Attorney.

OFFICE OF THE MARICOPA COUNTY ATTORNEY,
Phoenix, Ariz., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
U. S. Senator,
Chairman, Committee of the Judiciary,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I apologize for having taken so long to answer your letter of Februry 1, 1967, concerning Senate Bills 674, 675 and 678. Thank you for sending them.

The reason for the delay; I was re-trying the Ernesto A. Miranda case for the crimes of Rape and Kidnapping. As you probably know by now, we were successful through the use of his confession to a lay person. Without the confession Mr. Miranda would be a free man on these charges, since this was the only evidence we had to convict on. Even the Judge trying the case stated, after it was over, that he would have had to direct a verdict of acquittal if we had not had this confession. We were lucky to find out that he had made the confession since, as I previously stated, without it we had nothing. Of course his attorney intends to appeal to the Supreme Court on the basis that since the first confession (to the police) was no good, neither was this one.

After reading the three Bills you plan to introduce, I can only say I found all three excellent and sincerely hope they will be enacted into Law. I have read where a wiretap bill may be introduced limiting its use to the scope of national security. I think this is too much of a limitation.

I believe as your Bill states, that wire tapping should be allowed at all times when a judge has heard the evidence and has determined there is probable cause for said wire tapping. We need everything we can get to search out the criminal and obtain evidence to convict him. I believe your Wiretap Bill goes to this end.

The Mafia Bill would also be a big step forward in the elimination of organized crime in the United States.

I want to thank you very much for asking my views. I hope they will be helpful to you and that you will be successful in getting the Bills passed during the present session of the Congress.

Sincerely yours,

ROBERT K. CORBIN,
County Attorney, Maricopa County.

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE COMMONWEALTH'S ATTORNEY,
Louisville, Ky., February 15, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Committee on the Judiciary,
Subcommittee on the Criminal Laws and Procedures,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: This will acknowledge receipt and thank you for your letter of February 10, 1967 enclosing a copy of Senate Bill 674.

A return to the rule of "Totality of Circumstances" in determining the admissibility of confessions is conceded by experienced prosecutors to be the proper answer. Such, as we understand, is the purpose of Senate Bill 674. The awesome examples of miscarriage of justice contained in the copy of your "Excerpts" are decidedly verified in the courts here in Louisville, Kentucky.

The only objection to your Bill, as we see it, is constitutionality. The constitutional concepts proscribed by Miranda apparently will not be changed by the present Court. Would not a direct attack by Constitutional Amendment be more expedient and certain? We believe the entire country would back you on such a proposal.

If your aides have prepared memorandums on the constitutionality of proposed Senate Bill 674, we would greatly appreciate a copy of same.

Respectfully,

EDWIN A. SCHOERING, Jr.,
Commonwealth's Attorney.

OKLAHOMA CITY, OKLA., *February 21, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I received your letter of February 10 with the enclosures. Let me congratulate you on your address you gave before the Senate on the crime situation.

The bills you enclose will certainly help law enforcement. I find no fault with them. If there should be a fault, it would be that they are not strong enough in favor of law enforcement. However, I fully realize that the thinking nowadays of Legislatures and Congress it would be difficult to get through that which aids law enforcement to any great extent.

I sincerely hope that Congress appropriates the three hundred and fifty million dollars to aid law enforcement and there will be enough members of Congress who will insist that the money do just that and not let it be just another deal where the government spends the money to, in effect, bribe and beg people not to break the law.

Under the guise of spending the money to prevent crime it seems that the ten million dollars heretofore appropriated and placed in the hands of a Department of Justice official was being used not to aid local law enforcement in the least. It seems that they wanted a program that was "imaginative" and unusual to prevent crime and that they specifically told us that it could not be used for any ongoing activities of law enforcement. What the local police needs is up to date equipment, more policemen, and better pay. I know of nothing that will prevent crime better than to have enough patrol cars to properly patrol the areas where crime flourishes. Oklahoma City is like a lot of other cities that cannot hire even the quota of police allowed. This because of the low pay and the ridicule which policemen are subjected to constantly.

I am unalterably convinced that the best deterrent to crime is sure swift detection and prosecution with sure, swift, adequate punishment.

Respectfully,

CURTIS P. HARRIS,
District Attorney.

COUNTY OF SAN DIEGO,
OFFICE OF DISTRICT ATTORNEY,
San Diego, Calif., February 21, 1967.

Senator JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you very much for your letter and enclosures of February 10, 1967.

I am heartily in accord with your remarks in the United States Senate and with your views of the very real need for legislation such as proposed by Senate Bills 674, 675, and 678, as well as legislation which will deny Federal courts, including the Supreme Court, jurisdiction to reverse judgments of convictions in

State courts which are based in whole or in part upon confessions voluntarily given.

You and the Subcommittee on Criminal Laws and Procedures and the Committee on the Judiciary are performing a truly great service to our country and to the law-abiding citizens by your efforts to provide the weapons and the means by which law enforcement can carry out its duty of protecting our people and combatting the tremendous menace of crime rampant across the nation.

You have my every wish and prayer for complete success in your legislative program.

Thank you for requesting my views.

Sincerely,

JAMES DON KELLER,
District Attorney.

STATEMENT OF FRED E. INBAU, PROFESSOR OF LAW, NORTHWESTERN UNIVERSITY

S. 675—FEDERAL WIRE INTERCEPTION ACT

Wiretapping is an indispensable investigation technique for many types of serious crimes and particularly those involving organized or syndicated criminals. It should be legally authorized although, to be sure, only upon court controlled conditions.

S. 675 is a commendable step in this direction but in my opinion it does not encompass a sufficient number of criminal activities. Wiretapping should be allowable in the investigation of any offense as long as its usage is subject to the types of controls set forth in S. 675. Some critics of wiretapping practices allow only for its use in national security cases; what these critics overlook, it seems to me, is that we are faced with a great internal threat to our security and particularly from organized, syndicated crime. To bar wiretapping except in national security matters is to ignore the threat posed by society's internal enemies.

Rather than repeat much of what has already been presented to you and your colleagues I would like to endorse wholeheartedly the statement of the Honorable J. Edward Lumbard, Chief Judge of the United States Court of Appeals for the Second Circuit presented before your Committee on March 8, 1967. Among his various recommendations was one that Congress authorize appeals by the Government from Court orders suppressing wiretap evidence once a bill, such as S. 675, has been enacted. Here in Illinois our experience has been that the authorization of prosecution appeals from pre-trial orders suppressing evidence has had a very salutary effect. Although we have not had experience with wiretap suppression orders, since wiretapping is not permissible in this jurisdiction, a similar salutary effect would prevail with respect to wiretap situations.

S. 674—ADMISSIBILITY IN EVIDENCE OF CONFESSIONS

I am in thorough sympathy with the objectives of this bill and hope Congress will enact it although much doubt remains as to its constitutionality in view of the Supreme Court's decision in *Miranda* vs. *Arizona*. If enacted into law S. 674 would at least afford an opportunity for the Supreme Court reconsideration of its 5 to 4 decision in the *Miranda* case. It is not inconceivable that a change in the composition of the Court in the next few years may result in a reexamination of the *Miranda* doctrine and perhaps in an overruling of that decision—just as *Miranda* itself overruled the earlier decisions in *Crooker* and *Cicenia*.

S. 1194—JURISDICTION OF SUPREME COURT CONFESSION CASES

I do not favor this Bill because I think there should be Appellate Court review in confession cases. The principal objective underlying this Bill (an avoidance of such decisions as *Miranda*) may well be accomplishd by the Senate's insistence upon future Supreme Court appointments from the ranks of Federal Estate Court Judges who have in their prior decisions and opinions evidenced a viewpoint of moderation with respect to the confession issue as well as other issues in the criminal law area.

S.J. 22—CONSTITUTIONAL AMENDMENT REGARDING CONFESSIONS

As already indicated, I favor the voluntary test of confession admissibility but I do not approve of the restriction contained in S.J. Res. 22 regarding Appellate Court review.

Another constitutional amendment that should be given serious consideration is one proposed by Illinois Supreme Court Judge Walter V. Schaefer which would permit comment at the trial upon the accused's failure to submit to a pre-trial judicial investigating officer's interrogation into the accusation. This proposal is set forth in a recent book by Judge Schaefer entitled "The Suspect and Society" published by Northwestern University Press, Evanston, Illinois.

If constitutional amendments are sought to correct the present confession situation, I think consideration should be given at the same time to the abolition of the present exclusionary rule with respect to improperly obtained physical evidence.

In view of all the efforts that will be exerted in the near future by way of the training and improvement of the police, we should be able to control improper police procedures other than by the currently favored method of turning guilty persons loose in order to teach the police a lesson. It just simply does not make sense to me that we should be spending the millions of dollars required to rehabilitate drug addicts while at the same time turning loose drug peddlers selling or possessing narcotics because a court finds that the police acted improperly in seizing the evidence. If a complete abolition of the exclusionary rule may be unobtainable we could at least hope for a modification of it along the lines developed by the State of Michigan in its constitutional conventions. In Michigan the exclusionary rule applies in general principle but exceptions are made in cases where narcotics or dangerous weapons are seized on a person outside of his home.

Perhaps what I am suggesting in these present comments is that consideration be given in constitutional convention to several of these basic fundamental constitutional road blocks now confronting the police of this country.

[From the Journal of Criminal Law, Criminology and Police Science]

THE NEXT SUPREME COURT APPOINTMENT

Several commissions have been appointed by the President of the United States to make studies and recommendations regarding the crime problem. At the President's urging, substantial federal funds have been appropriated to improve enforcement and diminish the causes of crime.

As commendable as these measures are, there remains another necessary Presidential step to be taken, when the occasion arises, and that is with respect to the next vacancy, or vacancies, on the Supreme Court of the United States. At least one such vacancy, due to resignation, is expected in the very near future.

To replace any one of the present members of the Court—and particularly one of the "conservatives"—with someone who is an adherent of the ultra-liberal philosophy currently embraced by some of the Justices would be a grave mistake.

The next appointee to the Supreme Court—and, indeed, *any* future appointee—should be an able, experienced *federal or state court judge* who, by his judicial decisions and opinions, has evidenced a viewpoint of *moderation* with respect to the issue of individual civil liberties and public safety.

Although a judge's prior decisions and opinions constitute no guarantee against future deviations, they do afford a rational basis for selection.

A selection from within the Judiciary itself would serve as an inspiration to the Bench at large. It would also enhance the stature of the Court.

FRED E. INBAU.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT,
Detroit, Mich., May 12, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman of the Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: As a member of the Michigan Crime Commission, I have served with the Honorable John B. Martin as a member of the Committee on Organized Crime of that Commission.

Our committee has had occasion to consider the problem of legislative action in the field of electronic surveillance and has had occasion to review the statement previously made to your Committee by Mr. Martin.

Both as an appellate court judge and as a former Police Commissioner, I believe that federal legislation prohibiting wiretapping and eavesdropping is

a must. There should, in my judgment, be no general exemptions, even for law enforcement, except when based on search warrants issued in a court of law. Such search warrants should issue only on probable cause and should be required to be specific as to time, place, object and method of search. They should, in my opinion, be restricted to crimes against national security, kidnapping, murder, and the most important activities of organized crime.

Over and above this brief comment, I associate myself generally with the careful statement on this problem previously made to your Committee by Mr. Martin.

Trusting this will be of assistance in your Committee's deliberations, I am

Sincerely yours,

GEORGE EDWARDS.

PORT ALLEN, LA., *March 29, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senator, Chairman, Criminal Laws and Procedures Subcommittee, Senate Judiciary Committee, Senate Office Building, Washington, D.C., and
Hon. DANTE B. FASCELL,
Member of Congress, Chairman, Legal and Monetary Affairs Subcommittee, House Judiciary Committee, House Office Building, Washington, D.C.

GENTLEMEN: We wish to join other Judges, District Attorneys, Law Enforcement Officers and Law Abiding Citizens in expressing our disapproval of the *Mapp, Gideon, Escobedo, Miranda* and other recent Supreme Court decisions destroying our criminal laws. We also disapprove of the Supreme Court amending our Constitution as they have done on many occasions in recent years. Frankly, we believe it is past time for Congress to do something about these things.

Unless something is done to nullify the effect of recent Supreme Court decisions crime will continue to increase regardless of what else is done. The President's proposed crime prevention program is only a waste of billions of dollars and giving him more absolute control of our state and local affairs.

Your kind and prompt attention to these serious matters is urged because of the great importance to all of us.

Respectfully yours,

G. ROSS KEARNEY,
Judge, Div. B, 18th Judicial District of La.
DANIEL P. KIMBALL,
Judge, Div. A, 18th Judicial District of La

OFFICE OF THE COUNTY ATTORNEY,
Wichita, Kans., February 15, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you very much for your letter of February 10, 1967, supplementing your Miranda decision letter.

The Wichita Police Department has done a considerable amount of work looking towards supplying the information requested in the last letter, and on behalf of law enforcement in this community may I please state that we appreciate what you are doing to attempt to pass legislation which will effectively combat the growing law enforcement problem which we are facing.

I am most interested in your Bill No. S. 674 as it will have a derivative value to us if passed, because it will be directly calling to the court's attention the fact that the Congress of the United States is not content to have law enforcement completely hamstrung.

Thank you very much and you may be sure we are assemblying the data and we will give you further information such as we have at our disposal after having examined the contents of your latest communication.

Yours truly,

KEITH SANBORN,
County Attorney.

OFFICE OF THE COUNTY ATTORNEY,
Wichita, Kans., April 20, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Enclosed is a copy of a letter from our Wichita Police Chief which is an analysis of a number of matters which have occurred within our department since the Miranda ruling. It appears to me that one of the most serious problems created is the uncertainty where certainty should exist. This permeates law enforcement and it has percolated into the District Courts in the uncertainty as to the application of what heretofore had been considered settled rules of law.

I do not believe that all of this springs from the Miranda case by any means. I believe it is the general upheaval and reevaluation in the field of criminal law. I sincerely believe that the most cogent reasoning which could be brought to bear on this problem consists in the opinions of the learned Justices who dissented.

It is not my function as a lawyer to criticize the courts. It is my function as a lawyer to apply the decisions of the courts without reservation or purpose of evasion. However, candor compels me to say that our observation thus far is that preparation and prosecution has been made substantially more difficult and that imbalance exists wherever any rule is enacted which prevents the search for the truth by civilized means. Equally serious problems with the new confession rule are the derivative evidence rule and the poison fruits dilemma presented to the officers every time they must make a decision as to whether to proceed with interviews of persons who may have been involved in the commission of crimes.

Thank you for writing and I am sorry that your answer has been so long in forthcoming, but as you are well aware, everybody connected with law enforcement has had substantially increased duties to perform without a requisite increase in persons with whom to accomplish these new duties. I appreciate receiving the letters on these important matters to law enforcement.

Sincerely yours,

KEITH SANBORN,
County Attorney of Sedgwick County, Kans.

THE CITY OF WICHITA,
POLICE DEPARTMENT,
Wichita, Kans., March 30, 1967.

Mr. KEITH SANBORN,
County Attorney, Sedgwick County,
Care of Sedgwick County Courthouse, Wichita, Kans.

DEAR MR. SANBORN: Your interest in the controversy about the effects of Supreme Court rulings on law enforcement processes is very encouraging. Those of us in the police field are seriously affected by the resulting chain reactions. These have developed in all Courts as a result of Judges being so concerned that their decisions may be over-turned by higher Courts. We are struggling to find some hope to the solution of this dilemma.

There follows a few typical cases in point. These case histories were submitted by Detectives.

1. In April, 1966, a defendant shot and killed a man and shot his wife twice in an attempt to kill her. Officers arrived moments after the offense had occurred. The gun was turned over to the officers. The man at this time was advised in detail of his rights by more than one officer, including the Station Captain. The defendant waived his rights at that time and told the officers about the incident. Within 2½ hours of the time of the incident, he had given detectives a one hour detailed statement of events, his plans, his preparation, his thoughts and as to the time he made the decision to do what he had done. The planning was quite detailed, as were all of his actions quite detailed. The detectives prior to talking with the defendant again advised him in detail of his rights and to the use of the telephone. He declined use of the phone and waived all rights. The defendant was intelligent and wanted to talk. As a result of the statement, he waived rights of search by signing waiver of search forms for his automobile and his residence. Evidence was obtained as a result of these searches. The case

was reviewed by higher echelon, along with members of the County Attorney's staff, and it was believed it was an excellent first degree murder charge along with an attempt first degree murder charge, predominately on the basis of the man's statement concerning his plans, premeditation and attempt and actions. Defendant was charged first degree murder and attempt first degree murder. *The day before the case was tried in preliminary court, the Miranda decision was handed down.* After hours of deliberation the court decided that although we had met all of the standards necessary at the time of the incident for admitting the tape into evidence into this case, that it now no longer met the standards required under Miranda. The reason being we had not informed him if he could not hire an attorney one would be furnished for him. As the result of the confession not being admitted into evidence, it was decided that the waivers of search which had been signed were not admissible. Therefore, all of the evidence obtained as result of the confession and as result of the waivers of search was not admissible. The end result was that a case which appeared to be a good first degree murder, first degree attempt murder charge, was that the jury came back with the decision of third degree manslaughter and attempt third degree manslaughter.

2. There were several robbery-assaults, predominately in the downtown area. The victims of these assaults were drunks who were unable to furnish us with much information or make any identification. Information was eventually developed that there was about twelve juveniles ranging from age 16 to 17 involved in these robbery-assaults. The information was not suitable for the obtaining of a warrant. Normal procedure would have been to bring these young juveniles in and talk to them, confront one with the other in an attempt to build a case for prosecution. The Miranda decision has defined this practice as coercion. We realized that due to the age of the juveniles and the type crime, that if we could build a case it would undoubtedly or most likely be referred to the District Court and therefore Miranda would apply. It was decided to go ahead and round up the juveniles rather than wait to build a case for fear that if they continued someone could be badly hurt. These juveniles were rounded up. We did apply Miranda. Due to no identification and lack of evidence, we were able to charge only one as a delinquent, getting him referred to the District Court. The others were charged as miscreants and turned over to the Juvenile Court. The significance of this particular investigation is that although our information was proved to be good, Miranda prevented us from properly investigating the case. Time element made it necessary to get these young juveniles stopped before somebody got hurt. Therefore, instead of being able to build first degree robbery charges on more than one, we had no choice but to take them out of circulation and let them know that we knew what they were doing and charge them as miscreants as above stated. It might be added that some of the County Attorney's Staff was contacted before the above action was taken and concurred that this was the best procedure to use in this particular case due mainly to the restrictions of the Miranda decision.

3. Under H–97848 one Kenneth R. McKibben was charged along with four other co-defendants on second degree burglary and grand larceny. At the time of the complaint and warrant being drawn, McKibben was serving a sentence on a different charge in KSIR. Prior to Miranda and Escobedo the four co-defendants were tried and received sentences. However, due to McKibbens' incarceration, he did not become available for trial on this case until after the two above Supreme Court decisions. One of the most important items of evidence was a written confession taken from McKibben prior to Miranda, which contained all the admonitions except the appointment of counsel for indigents. Therefore, when this case came to trial after Miranda, it was discovered that the confession taken prior did not meet the qualifications of the new policy. This case was dismissed without trial and the man went free.

4. Just recently in the series of high school and junior high school burglaries which have occurred the latter two months of 1966 and the first month of 1967, four juveniles were apprehended in one school. As a result of questioning the four juveniles we were able to get the name of two adults who had been involved with them, in most of the school burglaries where vaults were entered. We were able to secure search warrants for houses and automobiles belonging to the two adult suspects and were successful in obtaining enough evidence against one of the adults to charge him with one or more of the burglaries. However, the second adult suspect who we have reasonable grounds to believe in talking

with the 17 year old juvenile and the 22 year old adult defendant, is totally involved with these subjects in all the burglaries where safes and vaults were entered in the city as well as Sedgwick County. However, on reading the Miranda warning to this one adult suspect, he immediately stated that he did not want to talk further about the matter and wanted to talk with his attorney, and with the interview ending there we have been unsuccessful in building a solid burglary case against him although on 1-24-67 a warrant was issued by the County Attorney's office charging him with one burglary of a high school in the county and we think that we might be able to get one or more warrants on burglaries in schools in the city, however, we have some question as to whether these cases will ever get through Court of Common Pleas and this defendant will be bound over to District Court. This is a good example, however, had we not been confronted with the Miranda decision, the 17 year old juvenile and the 22 year old defendant were both willing to repeat their stories in the presence of this second adult defendant or suspect and no doubt would have admitted his involvement when he realized that these individuals had told their portion of participating in all of these burglaries which may amount to somewhere in the neighborhood of 25 to 30 cases.

5. On January 4, 1967 Sgt. Mead had occasion to run a polygraph test on Paul D. Wood, 19wm, in connection with application for employment. On this test the question was asked if Mr. Wood had ever stolen anything. At this time Sgt. Mead received a reaction on his machine. At the conclusion of the running of this test and upon reviewing the chart with Mr. Wood, he admitted to Sgt. Mead several thefts which he was involved in. Due to the fact that Mr. Wood was not in the Police Station being questioned in connection with any crimes, he had not been advised of the Miranda warning and because of this and because of the fact that he admitted these thefts to Sgt. Mead without this warning, there was no prosecution concerning these thefts since it was a voluntary thing on this man's part and he had not been advised of his rights.

6. Under J-19419 Harry D. McClain, 24cm, was charged with forgery and uttering, along with a Frank M. Brown, 35cm. McClain admitted this crime but Brown would not, therefore the two defendants were placed together and after McClain told his story Brown stated he was also involved. He admitted writing this check for McClain to cash and received $20.00 for his share. The case originated before the new rulings; however, they were in effect at the time we went to trial and the judge dismissed the case on Brown because of using one defendant against the other to secure the confession.

7. No doubt the Miranda warning has also affected the investigation results under the Crestview Bowl, J-32943, Oklahoma Tire & Supply, J-50291, Pickering Sales, J-50290 and Wolf Retail Liquor Store, J-48808, because after reading the warning to them, the defendants under all of these cases refused to talk to me at all. In all, six subjects were charged under these cases; however, in the burglary of the Wolf Retail Liquor Store, although three subjects have been bound over in the Court of Common Pleas, we have never recovered the safe hauled out in this case because not any one of the three defendants will discuss the case with me.

The following remarks made by Detective Sergeant:

"In addition to these instances pointed out by the detectives previously mentioned, some of the things that I would like to relate as far as to how the Miranda and Escobedo Decisions have affected law enforcement by this Department are as follows:

At the present time there is no provision for providing an attorney or attorney fees until such time as the defendant has been formally charged and arraigned in the Court of Common Pleas. After reading that portion of the Miranda warning, "if you cannot hire a lawyer the Court will appoint one for you", following the previous warning, "you have the right to talk to a lawyer and have him present with you while you are being questioned", and then followed up with the admonition about the Court appointing one in the event the suspect is without funds to hire a lawyer, they then want an attorney present for the questioning. There is no provision for this, nor funds or provision for having one appointed prior to the formal arraignment of the suspect or defendant.

The widespread publicity on the Miranda Decision has resulted in many of those individuals even presently in the juvenile age groups that they can quote you the Miranda warning almost verbatim. Recently a 16 year old was picked up who had never been in trouble and the first thing he stated was that he would not say anything until he had an attorney and that we had to provide him one

and have one present while he was being questioned and that when he wasn't able to pay for an attorney, one would have to be appointed for him.

Another fact where Miranda has definitely hampered clearances of cases and building a case against another defendant, is that previous to Miranda we were able to confront a co-defendant with the oral statement of one, and in many instances obtain an oral statement, as well as a written and taped statement, from the second defendant or even a third or fourth. And as a result of this we could pyramid the cases and many more cases were cleared and many more defendants were named in warrants along with the defendant who gave the first statement. It is now ruled in Miranda that the second defendant's statement is not considered voluntary.

I feel that there are a lot of inequities in the justice now being meted out inasmuch as we have one defendant who wants to clear his conscience in regards to his wrong-doings, but he is the only one then that is charged as having a conscience and wanting to get these things off his chest and will go ahead and talk even though he's being given the Miranda warning. I feel these are definitely inequities and double standards as far as this Miranda Decision is concerned."

A Detective Captain says:

"Many times in the past months we have been called upon to describe how the Miranda decision is affecting us in law enforcement. We are only able to cite a few instances where there has been a direct bearing; however, the cause and effects of this decision are much deeper and more expanded than we are able to prove. My reason for saying this is due to the way we in law enforcement have always operated in the past on information. In this day and age, information is becoming worthless to us as we are unable to use this without physical evidence to back it up. I will try to outline an example for you as to what I mean.

A few years back if we would pick up John Brown on burglary charges and he would give us a full statement admitting burglaries that he was involved in and then would tell us that on so many of these burglaries a Robert Smith was with him, we could then pick up Robert Smith, confront him with Mr. Brown's testimony in the presence of all parties, and then could take a statement from him in regard to his activities. This would be in those days a free and voluntary statement and admissible in Court. Then this system would work with him, telling us the ones he was involved in and would also pyramid on to other people who were with him on other burglaries. Therefore, you can see we would be able to clear an unknown number of burglaries. Therefore we cannot say the Miranda Decision has kept us from clearing 10 burglaries or 100 burglaries a month as it is an unknown number.

We are told that we cannot use one person against another to force a statement as this takes the statement out of the realm of free and voluntary. We have lost one felony case in Court on this exact operation.

I hope this report clarifies to you why I say we cannot measure the damage that the Miranda Decision has done in law enforcement.

As you can see, the new rulings do have very serious effects on the success in our work in crime control. After recent conferences in Honolulu with the American Academy of Forensic Science and in Chicago with the First National Symposium on Law Enforcement, Science and Technology, sponsored by the Office of Law Enforcement Assistance, U.S. Department of Justice, we are firmly convinced science alone cannot ever fill the gap. Science in based on truth and fact. We would that all Courts could base judicial proceedings on truth and fact of guilt or innocence rather than imaginary violations of criminals rights.

The theory that crime can be controlled by spending fantastic amounts of tax payers money to enlarge, train, and better equip Police Departments is very unrealistic. The facts are that no Police Department can possibly have not been seriously affected in obtaining confessions. Consequently it is obvious that additional police alone is not the answer, as long as the Courts will not admit reasonable and proper confessions or statements.

Doctor Kenneth McFarland of Topeka, Kansas, has developed a very realistic plan for law enforcement. A brochure of his statements on this subject is enclosed. We agree one hundred per cent with his point of view. If sufficient number of Americans could understand the truth of the matter as presented by Dr. McFarland the dilemma would be well on the way to elimination.

Thank you once again for your serious interest.

Respectfully,

E. M. POND,
Chief of Police.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, May 10, 1967.

Hon. JOHN J. MCCLELLAN,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: It is my sincere belief that S. 917, "The Safe Streets and Crime Control Act of 1967," is one of the most important measures before this session of the United States Congress.

As you are aware, the National Crime Commission depicted in great detail the needs of law enforcement and correctional agencies at the State and local levels. Attorney General Arthur J. Sills and Commissoner of Institutions and Agencies, Dr. Lloyd W. McCorkle, have impressed upon me the need for extensive federal financial aid if the many progressive programs they, and others in their fields, consider essential are to be realized. Advanced facilities for the treatment of offenders, the establishment of regional police training schools, and the creation of a statewide communications network are but a few of the more significant advances which we anticipate as a result of increased federal aid.

On behalf of all law enforcement and correctional officials, and indeed the people of this State, I am appealing to you to lend your wholehearted support to the enactment of "The Safe Streets and Crime Control Act of 1967."

Sincerely yours,

RICHARD J. HUGHES,
Governor.

COURT OF COMMON PLEAS,
TWELFTH JUDICIAL DISTRICT,
Dauphin County, Pa., May 19, 1967.

Hon. JOHN J. MCCLELLAN,
Chairman, U.S. Senate Judiciary Subcommittee,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have your letter concerning my Law Day address before the Harrisburg Rotary and other service Clubs with the Dauphin County Bar Association. Due to the pressure of my work, I was unable to reduce my address to writing. Nevertheless, I appreciate your inquiry.

I read recently a statement in the press attributed to Attorney General Clark that a check of some 2,000 cases in New York City revealed that only twenty suspects requested a lawyer after having received the Miranda warning at incustody proceedings in the Police Station. I do not recall that any explanation was given as to the method employed to arrive at these statistics which are almost, if not altogether, incredible.

If you have any background material as to the method by which these statistics were obtained, I certainly will be glad to learn of it. Even if they are reliable, which I doubt very much, there is still an urgent need for the passage of Senate Bill No. 674. As long as the MIRANDA doctrine remains as the last word of the Supreme Court, a most formidable stumbling block to law enforcement still exists.

Last evening Mrs. Kreider and I attended a small dinner party at which some Harrisburg business men and their wives were present. All expressed amazement and anguish in regard to recent U.S. Supreme Court decisions. The ladies, though not conversant with the tortuous process of reasoning by which these decisions were reached, feel very keenly that the safety of their persons and property has been endangered thereby. In fact, this was the topic of conversation which interested them the most. I find, as I am sure you do, that this sentiment prevails in all walks of life. All present expressed their admiration for the valiant struggle you and your fellow committee members are making for the safety of all of us.

Kind regards.

Sincerely,

HOMER L. KREIDER,
President Judge.

COMMONWEALTH OF PENNSYLVANIA,
BOARD OF PAROLE,
Harrisburg, May 17, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: Replying to your letter of May 11, 1967, in reference to *Pennsylvania Chiefs of Police Association Bulletin* and soliciting my views on Senate Bills 674, 675 and 917, I herewith submit my views.

I have devoted thirty-five (35) years in my chosen profession, Prisons, Probation and Parole. This service started as a guard, advancing to Warden. It covers a ten (10) year tour of duty in post-war Germany as Chief of Prisons and Parole (German) and directing the parole system for war criminals. I have been in my native State (Pennsylvania) directing the State parole system, since 1956.

During this period of service, I have interviewed and interrogated well over 100,000 individuals who were convicted by duly established Courts. Although the general philosophy of a criminal (recidivist) is that they want to believe everyone is doing the same thing they were convicted of, but they were not apprehended. To this end, they consider themselves unlucky that they were caught. A recent parole applicant, convicted of larceny (shoplifting) had only one complaint. He felt unlucky that he was caught and convicted *once* for an average of *fifty such criminal acts* and bemoaned the fact that his mentor was convicted only *once in five hundred* shoplifting acts.

His criminal history indicated a thirty-year pattern of shoplifting, during which period he maintained a respectable family life in his community, in which his wife and children maintained a comfortable existence all on funds derived from his pattern of criminal acts—shoplifting. This is an exceptional case, but many others fall into this pattern to a lesser degree.

This fits the parisitic criminal. However, the murderer or even the rapist, when apprehended, is relieved of inner emotions and will, at this time, volunteer a confession. This confession is highly important, in that in both rape and murder, usually only two (2) persons are present; the offender and the victim. Unless there are methods to learn the facts, details are available only when the accused offender reveals it. Confessions are not unusual. Religious training by many denominations encourages confessions, even for simple or minor acts against religious vows and principles. Why should a confession of a criminal act be treated otherwise?

Senate Bill 674 is necessary, if for no other reason, to permit the accused a chance to express his remorse. In many cases, this is a mental relief. The Bill incorporates sufficient safeguards to keep confessing voluntary. Without the use of voluntary confessions, we are indirectly encouraging criminal acts and the offender never fully realizes he did any wrong.

I have never experienced a true rehabilitation of the offender, without the offender realizing the motivation for his acts and with some remorse in his makeup. The Alcoholic Anonymous Program is successful because the first step in AA is to acknowledge the alcoholic addiction, i.e., "I am an alcoholic."

Some of our present programs for rechanging the criminal are based on excuses for his or her acts. This the criminal absorbs like a duck to water, fits his ego and his thinking. There is no excuse for crime or criminals. There is motivation for their acts. We know that there are parents unworthy of that label. Also, poor economic conditions, but that is no excuse for committing crime. I was born at a time when my folks were struggling economically, but crime was not our way of solving our hardships.

The use of electronic devices are available to the criminal and certainly the police should not have the restriction for their use. In Pennsylvania, we have a gun law—no one is permitted to carry a side arm without a special permit. The law's restrictions have no effect on those who are engaged in crime. They get them and they use them. Why then, restrict law enforcement?

I am familiar with the contents in Senate Bill 917. This, I believe, is a step in the right direction. States and urban areas with major crime problems cannot finance the type of crime controls necessary for an effective program. In the past, our State and local crime control budgets increased by an average of five percent (5%) annually. This did not keep pace with the increase in population growth or crime increase.

Therefore, before we stress new programs and innovations, let us review why some present programs were not effective. Take Parole Services. The President's Crime Commission advocates caseloads of thirty-five (35) when our present services are averaging close to one hundred (100) cases per agent.

We had a series of innovations under LEA and other Federal subsidized or supported programs. For the funds spent, you *did not* receive as much in return as would have been possible in subsidizing existing services, thus providing the workable caseload as is now advocated. I am not opposed to innovations, but I feel we should first determine what programs are effective and then financially support such programs, even if they are existing ones. My only concern is Title III and I caution that the emphasis on innovations *will not* be the major goal.

Senate Bill 917 is necessary and only with Federal funds subsidizing State and urban budgets can we meet the challenge.

The part of the crime problem that disturbs me most is why are ninety percent (90%) of crimes committed unreported. This issue needs a closer study than that covered in the President's Crime Commission Report. If the unreported crimes are ninety percent (90%), then our crime rate must be increasing at a rate greater than six percent (6%) of population growth, a rate of increase based on reported crimes. But, more important, have our citizens lost faith in our Administration of Justice? If so, why? If my reading of public sentiment is correct, then I believe that the citizen has little faith in our Judicial process, including the U. S. Supreme Court. This is an important issue and in our democratic process will be reflected at the ballot box. The years ahead will verify my observations and it will be an issue in State and Federal elections.

The Courts set the tone for our entire criminal justice system. This begins with law enforcement agencies and runs through the process to probation and parole. It is for this reason that the judicial process becomes the important factor.

Long delays and postponements in Court trials, frequently requiring victims, witnesses and others to appear again and again until the trial is ended. This factor alone discourages citizens to appear as witnesses or even the victim, in many cases. The drawn-out delays favor the accused and not the victim. It is this very factor that brings the judicial process under public scrutiny.

I have followed your hearings and believe that you are realistic in your approach to finding the facts. It is for this reason I have made this a lengthy reply to your request for my views.

You have the respect of law-abiding citizens and when you speak on a subject, you instill confidence and the majority of our citizens will follow you. Law enforcement is grateful that we have in our Congress a friend in Court.

Warmest regards.

Sincerely yours,

PAUL J. GERNERT,
Chairman.

JENKINS & JENKINS,
Knoxville, Tenn., April 28, 1967.

Senator JOHN MCCLELLAN,
Senate Office Building, Washington, D.C.

MY DEAR FRIEND: Remember me?

Well, I am as active as ever, feel like a spring colt, living life with the usual zest and pursuing my "trade" with the old-time vigor—four murder cases set during the month of May.

With more interest than I can possibly tell you I have read of your proposed legislation to counteract some of the decisions of the Supreme Court and which in my opinion as a criminal lawyer have resulted and will result in a traumatic effect on the administration of justice. As a criminal lawyer I would be expected to agree with some of the Court's decisions because they have afforded so many loopholes for the escape of the hardened criminal from the punishment he deserves. The reverse of this is true. As I look back over an experience of 47 years in trying cases in many Courts (now around 700 murder cases) I can think of so many cases that could have been thrown out of Court by the application of the present day rules of the Supreme Court and yet in all those cases I can't think of a single one in which there was a miscarriage of justice.

The rigid rules now in effect and especially those pertaining to the questioning of suspects, their confessions and the publicity given such cases by the news media have made it impossible to secure convictions in many cases of obvious

guilt, with the result that society stands aghast, confused and bewildered and suspicious of the integrity of the Courts, and the hardened criminals glory in the Champions of their cause, that is the Supreme Court of the United States. Certain members of that Court—at least five of them—apparently have their heads in the clouds. Would that they would come back to earth and give some consideration to the lives and safety of society in general.

I close by saying, "God save the United States from the Supreme Court of the United States."

I glory in the stand you are taking. Go to it.

Sincerely your friend,

RAY H. JENKINS.

SUPERIOR COURT OF RHODE ISLAND,
Providence, May 18, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: My attention has been called by the Council of Judges of the National Council on Crime and Delinquency, of which I am a member, to H. R. 5037 (Senate S 917) being a bill "To assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes."

I urge its adoption by the Congress as I believe it to be in the best interests of our Country.

Sincerely yours,

JOHN E. MULLEN,
Presiding Justice.

OFFICE OF THE PROSECUTING ATTORNEY,
Charleston, W. Va., May 26, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator from Arkansas, Senate Judiciary Committee—Subcommittee on Criminal Laws and Procedures, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I am extremely interested in the Safe Streets and Crime Control Act of 1967, which I understand is now being considered by the Senate and House Judiciary Subcommittees.

Recent Supreme Courts decisions and the report of the President's Crime Commission underline the necessity of legislation designed to achieve new plans and programs in the criminal law field. I have examined the Act and note its concern with a wide range of criminal justice, including police, courts, corrections and delinquency.

I am a member of Governor Smith's State Crime Commission and a member of the Executive Committee of the National District Attorneys Association in addition to my official capacity as prosecuting attorney.

I, wholeheartedly, endorse the Safe Streets and Crime Control Act of 1967 and would appreciate any activity upon your part to get this legislation passed as early as possible.

Very truly yours,

CHARLES M. WALKER,
Prosecuting Attorney.

OFFICE OF THE DISTRICT ATTORNEY,
EIGHTH CIRCUIT COURT DISTRICT,
Decatur, Miss., May 22, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: Please allow me to express my appreciation for the very fine work you are doing in Congress in seeking to enact legislation that will give some relief to law enforcement officers and prosecutors. I am convinced that the President's commission on law enforcement and administration of justice has not found the answer to our problem as shown by the February report and supplements thereto.

I have had numerous cases thrown out of Court, or otherwise dismissed, because of recent decisions of the United States Supreme Court. Throwing cases out because of slight technicalities is not good for the morale of law enforcement officers, who in general are doing a very fine job.

I am convinced that the coddling of known criminals is not the answer to our problem. The President's commission has missed the boat as far as I am concerned.

Please be assured that your efforts are appreciated.

With kind personal regards and best wishes, I am,

Sincerely yours,

W. H. JOHNSON, Jr.

SUPREME COURT OF THE STATE OF NEW YORK.
JUSTICES' CHAMBERS,
Brooklyn, N.Y., May 31, 1967.

WILLIAM A. PAISLEY,
Chief Counsel, U.S. Senate,
Committee on the Judiciary, Washington, D.C.

DEAR MR. PAISLEY: Please accept my sincere thanks for your letter of May 17th, which I have been endeavoring to answer since its receipt. The pressure of work has been so great that this is the first opportunity I have had to furnish you with the information you desire.

With reference to the question of importance of confessions in criminal cases, and specifically in regard to Judge Sobel's statistical survey, I must inform you as follows: After 25 years of active participation in the enforcement of the criminal law, as Assistant District Attorney, District Attorney, and a judge presiding at criminal trials, I am convinced that confessions are by far the most reliable evidence in criminal cases. Frequently one has doubts with regard to eye-witness indentifications, and this, I believe, is an area which causes great concern to prosecutors who, like every other citizen, are most anxious not to convict an innocent person. With respect to confessions, however, a false confession is almost always easily detected, and while there are false confessions from time to time, they are usually readily recognized and disregarded.

As far as Judge Sobel's figures are concerned, these figures are, in my opinion, most unreliable, as they were based upon a very small cross-section of the actual cases pending in this court during the period which Judge Sobel used as the basis for his investigation, the reasons being as follows:

Shortly after the decision in the U.S. Supreme Court case of *Jackson* v. *Denno* (378 U.S. 368), which arose in this court and in this state, the Court of Appeals of the State of New York laid down certain specific rules in a decision entitled *People* v. *Huntley* (15 NY 2d 78). This decision laid down certain rules which were later incorporated in the Code of Criminal Procedure of the State of New York (Sec. 813(f), (g), (h) and (i)). The statute and the decision required that in a case in which the People intended to offer a confession, they must serve notice thereof on the defendant prior to the trial. Defendant thereafter had an opportunity to demand a hearing to contest the voluntariness or the confession. This hearing had to be conducted prior to the trial.

After the decision in *Escobedo* and *Miranda*, any objections to the confession, based upon either of these decisions, were similarly to be determined in the course of this hearing. The District Attorney of this County adopted the practice of serving the required notice upon the defendant at the time the case was assigned to a trial part—usually two weeks to a month in advance of the trial. All that was required of the defendant was that he serve a notice on the District Attorney that he desired a hearing with respect to the issue of voluntariness of the alleged confession.

Judge Sobel, in the computation, used as the basis for his estimates only the cases in which the District Attorney served a notice that he intended to use the confession at the time of the trial. He failed to realize that prior to this time all of these cases had at least two preliminary conferences before the court for the purpose of disposing of the case by a plea to a lesser degree of the crime. My experience during these pre-trial discussions (I sit in a pre-trial part a great percentage of the time) has been that approximately 40% of all indictments filed result in a disposition in the pre-trial part. From my experience in these parts, I have ascertained that at least 75 to 80 percent of

the cases disposed of in the pre-trial parts were cases in which there was a confession by the defendant; and by far in the greatest percentage of the confession cases, the defendant was willing to plead to a lesser degree. The greatest majority of the cases, in which confessions had been obtained, were disposed of by a plea of guilty before the case reached the stage of being noticed for trial, and for that reason Judge Sobel's figures have no validity regarding the importance of the confessions, and he has eliminated a large number of cases in which the defendants had confessed and already pleaded guilty before the necessity for the service of the notice upon the defendant ever arose.

I pointed this out to Judge Sobel but as far as I have been able to ascertain he has never rechecked his figures or conducted any further survey, either to validate the existing figures or to disprove my assertion with respect thereto.

I am extremely interested in the Bill introduced by Senator McClellan to limit the appellate jurisdiction of the Supreme Court and jurisdiction of other Federal courts. I am afraid, however, of what the Supreme Court would do if it were offered the opportunity of passing upon the constitutionality of the Bill. I am include to believe it would hold that the Bill was unconstitutional and that only a constitutional amendment would remove the effect of the *Miranda* decision.

I am grateful to you for your thoughtfulness in forwarding to me the various legislative documents and Senator McClellan's speech. If I can be of further assistance, I shall be only too glad to cooperate, as I am convinced that we have gone much too far in protecting the accused. I have always been of the opinion that the first 10 Amendments were a limitation on the Government of the United States and were never intended to convey to the Federal government the right to limit the activities of the states in their enforcement of their penal laws. The colonists who adopted the Constitution were afraid of the Federal government, not of the state governments. That fact that for over 150 years the Constitution was so interpreted seems to me to bear out this point of view.

Sincerely,

MILES F. MCDONALD,
Justice.

MARCH 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Members of every law enforcement agency, as well as the law abiding public, I think, owe you their everlasting gratitude for your concern and activity in behalf of good law enforcement. Your understanding and that of other members of Congress regarding the admissibility of voluntary confessions, gives hope that something will be done about the crime problem.

Many of the Crime Commission recommendations would no doubt improve conditions, some only on a long term basis, but to fail to regain a proper balance between the rights of the public and that of the individual engaged in crime, insofar as the authority of law enforcement officers to investigate and use confessions voluntarily given is concerned, would be like building a strong baseball team and then attempt to play the game without the centerfielder.

There are as you know many causes of crime. Among them, the breaking down of law enforcement for political expediency, or other selfish gain and the exploitation of minority groups whose good members have not stood up strong enough for law enforcement because they have not realized that the majority of the crimes against the person have been committed against their people. Also the advocacy by some of the violation of the law that individuals or groups may think is unjust, and the philosophy of excuse whereby a person who does not have everything he would like to have, may be expected to resort to lawlessness, or because of a considered wrong in some other part of our society may be excused.

There is, another thing that we might well be concerned about and that is that some public appointed officials who should be taking a positive position on the type of legislation you propose, are not doing so. They say that we haven't had proof yet that such rulings as Mallory and Miranda have adversely affected the crime rate. One reason for this might be that reports from prosecutors, etc., cover only cases where there have been indictments. This does not cover what police officials across the country know from experience. It does not cover multiple crimes, nor multiple defendants that can't be detected.

In 1957, when testifying before the Senate Committee on Constitutional rights and the House Judiciary Sub-Committee we said that the Mallory ruling and others, would cause a rise in crime, and a lowering of clearance in the District of Columbia. Though crime had been reduced 35% in the five years before 1957, it has increased every year since. I believe the full increase has been about 200%.

I will not burden you here with a volume of cases but let us look at the case of James Killough, who made three voluntary confessions to the murder of his wife, was twice convicted but was freed under the law. I am sure that this case could not have been cleared under Miranda because we would never have gotten to the point where he would have shown the police where he threw her body. Without this there would have been probable cause to arrest but not probable cause to charge, because the evidence was circumstantial.

Apparently the only thing left under these rulings in this type of case, would be a law of chance. The chance that maybe the criminal will tell a friend of the crime who by some chance might report to police. Or by chance maybe he might be caught in the act the next time he commits a crime. There is no doubt that these rulings have gone too far, toward the criminal and have encouraged crime.

There are many other cases that I can remember which could not likely have been successfully prosecuted at all under present law. For instance when the Puerto Ricans shot up the House of Representatives and one escaped from the scene.

Having served in the Metropolitan Police Dept., Wash., D.C., for about 32 years, the last 12 as Chief of Detectives, retiring in 1963, I watch with interest your untiring work along with your committee, on behalf of good law enforcement and hope that you can get your recommendations through.

If at any time I can be of assistance to you please advise.

With best wishes to you, I am,

Yours very truly,

EDGAR E. SCOTT,
Deputy Chief of Police, Chief of Detectives (Retired),
Metropolitan Police Department, Washington, D.C.

CITY OF COLUMBIA, S.C.,
February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: I am in receipt of a memorandum from Mr. Quinn Tamm, Executive Director of the International Association of Chiefs of Police, relative to Bill #S. 674, which is a Bill to amend Title 18, U.S. Code, with respect to the admissibility in evidence of confessions.

Senator, I have looked at several major cases which were committed recently in our city. Frankly, I could cite many, many cases of this nature. We've found that the Supreme Court rulings have caused us considerable hardship in preparing cases for Court. They have, not only tied our hands in readying a case for Court, but burdened us in that three or four days are now required to prepare a case. In many instances, the suspects have gone free, when we knew they were guilty.

It is my personal feeling as a veteran law officer with 37 years service, 26 as Chief of Police, that the Supreme Court rulings have hindered law enforcement far more than anything that I can recall during my long career. The demonstrations by the youth on the Civil Rights issues were the beginning of crime increase in our nation. In addition to this, the Supreme Court rulings have added a "stumbling block" to the enforcement of law and order in our present day society.

Very truly yours,

L. J. CAMPBELL,
Chief of Police.

RECENT U.S. SUPREME COURT DECISIONS AFFECTING LOCAL LAW ENFORCEMENT

It is our opinion that the recent U.S. Supreme Court decisions in the "Miranda Case" have hindered law enforcement. The Supreme Court should give thought to the rights of law-abiding citizens as well as the undesirables. Under

presently-existing conditions, the law-abiding citizens, who are victims of rape, murder, and other type crimes, have no rights. The Supreme Court has leaned over so far that they have fallen off the cliff in favor of the criminals, in guaranteeing them of their personal rights.

CASE ILLUSTRATION NO. 1

A subject was apprehended running from a resident yard at 2:00 a.m. The residence had been burglarized. This subject was warned of his rights, that anything he said could be used against him in Court, that he had the right to engage an attorney before answering questions, and, if he could not financially afford one, the Court would appoint one, without cost. This *hardened criminal* was allowed to go free as he refused to answer any questions. The owner of this residence was unable to identify subject.

CASE ILLUSTRATION NO. 2

The Crystal Linen Service, 803 Main Street, this City, was entered on Christmas Day, 1966. The owner came by his business at which time two burglars ran out the back door. The owner could only describe them as two white males. The police apprenhended two men, one fleeing approximately two blocks from the business, who was later identified as one Kenneth Chapman. He refused to answer any question, giving only the name of Bill Spivey, which was false. During his incarceration (bond was set, but he was unable to make it), a report on his fingerprints was received, indicating that he was an escaped prisoner from the State of Georgia, where he was serving twelve years for bank robbery.

Subject # 2 in this case, one Walter Turner, refused to make any statement and demanded an attorney. After getting his prints off to the Bureau in Washington and a report there from, he had been released on bond, and it was learned that he was wanted for parole violation. As of this date, the subject is still at large. His car was found less than a block from the Crystal Linen Service with a complete set of burglary tools in it. The car was properly registered to Walter Turner of Georgia. He was indicted in this city for possession of burglary tools. These two subjects had entered this business establishment, moved the safe to the rear of the building where they were performing a "peel" job, and was surprised by the owner. They did not enter the safe.

"This case was marked "cleared" by the arrest of Chapman. His attorney advised him that, through the Police Department returning him to Georgia with no prosecution on this end, we were able to clear this case. Through advise of his attorney, he re-enacted the crime for us, so there is no doubt concerning this crime.

CASE ILLUSTRATION NO. 3

A man died and an autopsy was performed to ascertain the cause of death. Findings revealed poisoning. During the investigation, it was revealed that his wife had taken out a $5,000 life insurance policy on subject several months prior to death. The wife was brought to headquarters for questioning, but prior to leaving home she called her attorney who met her at headquarters. On the very first question, in the presence of her attorney, she was asked, "can you tell us about your husband having been poisoned; and this concluded the interrogation. The case is still unsolved.

I could, without any difficulty, cite many other cases where the "Miranda Case" has hindered law enforcement. Since this decision by the U. S. Supreme Court, cases that usually took one day to investigate, now take three to four days.

DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF POLICE,
St. Paul, Minn., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: On Friday, February 17, 1967, I appeared before your Subcommittee in the City of Milwaukee and at that time expressed to your Committee my views on the effects which the Miranda and other Supreme Court Decisions have

on our police endeavors. To reiterate these views and suggestions to you would be superfluous.

However, I feel that it is my responsibility, as a representative of local law enforcement, to bring to your attention the fact that without immediate legislation which will return to the police officer some of the tools that have been removed by the Supreme Court in the past six years, we cannot hope to stop crime, or even maintain the present holding action.

Certainly I have no quarrel with the President's Committee on Crime, nor with the proposals for the solution of crime in these United States. Since theirs is a sociological approach to the problem it is obvious that we will face many years before there is noticeable return on their endeavors.

Since crime will not wait and attitudes cannot be changed over night, it is only through direct action by concerned legislators, such as you and your committee, which will provide the law abiding members of our society some reasonable degree of assurance.

Sincerely,

L. E. McAULIFFE,
Chief of Police.

CITY OF MOUNTLAKE TERRACE, WASH.,
February 27, 1967.

Hon. JOHN L. McCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

SIR: I would take this opportunity, relative to your Committee hearings on March 7-8-9, to offer what support I can—and echo, I am sure, the sincere appreciation of all law enforcement officials, for your recognition of the situation now existing. The current trend of thinking in the area of 'civil rights' has obviously not included the one which the basic and most important—that right to own property and to live—both in peace and secure from attack.

The intent of the Constitution was to provide this to the society and, originally, from tyrannical acts of the Government. We have heard several prominent persons observe that the Supreme Court has been amending the Constitution, not interpreting it. Since you are interested in the results of the "Miranda" decision, it will be most interesting to see what will happen now that he has been again convicted in Arizona of those charges. It is the opinion of many law enforcement people and much of society that the Court should limit its interest to its basic responsibility; its service to the Congress, matters of corporate law, monopolies, anti-trust, etc., and terminate the right of appeal of individuals involved in crimes at the State Supreme Court level.

In the event you do not see a copy prior to your Committee hearing, I am enclosing a copy of Senate Joint Memorial # 10, State of Washington, 40th Session, which urges action in this area.

Peace officers are not an individual segment of our society—they are the representatives of society appointed to protect the masses against the individuals who elect to violate the rules by which we must all live. We must, first, take steps to properly select and train people for this work, but more important, 'weed' out the ones who are not capable of professional attitudes—regardless of their present position or length of experience and particularily those in command and administrative positions where their undesirable philosophy continue to infect the recruit officers. We may then refer to it as a profession and—with reforms in Courts and social conditions which contribute to crime, the Peace officer will become again a respected member of the community.

If the present trend is not stopped immediately, it will lead to more and more problem in securing men to fill positions as peace officers. Almost every City has budgeted positions which cannot be filled—not because of salary alone, although this is a factor in many cases, but because of a lack of interest in becoming part of what appears to be another case of the 'vanishing American'.

If it were not for the public support demonstrated in many of our Cities, such as ours, many officers would probably leave their positions. Some are waiting—most of them—for the "pendulum to swing back again." On this comment, one of our County attorneys has commented, "The time may come when the pendulum may start its swing, but we may find that the clock has been stolen and it will be impossible to ask who was the thief."

I have been advised that you are interested in possible witnesses to call for the hearings. I would suggest that any administrative official in law enforcement might be used and in addition, I would recommend Chief Frank Ramon, Seattle Police Department; Professor James Thompson, School of Law, Northwestern University (States Att'y for the State of Illinois at the time of the Escobedo trial and who represented the State in the appeal); Dr. Max Raffererty, Sup't of the California State Department of Education, the nation's largest school system, who has published many articles on this subject. Locally, in Washington, D.C., Columnist James J. Kilpatrick has some interesting comment on the Crime Commission report which he describes as "pedantic, professorial, antiseptic." He notes there is little perception in the report, of the link between crimes and punishment and that the area of punishment is very lightly treated in the whole of the 340-page report.

We wish you all possible success in the job your Committee is about to do—and, one which must be done.

Respectfully,

ROBERT C. FOX, *Chief of Police.*

THE DOORS ARE NOW OPEN, THE ENEMY CAN WALK IN

(By Dr. Max Rafferty [1])

> "The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and alarming advance * * * is engulfing insidiously the special governments into the jaws of that which feeds them. It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional matters. It is one which would place us under the despotism of an oligarchy."—Jefferson

Yes, boys and girls, it was old Tom who said this. Not Barry Goldwater. Not even Robert Welch. It was Mr. Democracy himself. And if this be treason, make the most of it.

I wanted to point this out right off the bat, just in case someone felt called upon to brand me a "Let's Impeach Earl Warren" member of the you-know-what. The author of the Declaration of Independence, the third President of these United States, the founder and patron saint of the Democratic Party is, I hope, above such suspicion, even in this murky era of guilt by association and rebuttal by labeling.

What brought about the quotation from the sage of Monticello was the recent United States Supreme Court decision opening the doors of New York classrooms to avowed Communists as teachers and counselors. Justice Tom Clark, in his scathing minority opinion, pointed out almost wistfully that his black-robed brethren had, "by this broadside, swept away one of our most precious rights—namely, the right of self-preservation."

It's true, you know.

When Uncle Sam goes, everything goes. The courts which protect us. The schools which educate us. The homes which nurture us.

As Justice Clark has said, the doors are open now. Open to the tamperer, to the burglar, to the wild-eyed fanatic with the torch. We seem to have the pretty dubious prospect of being the only great nation in all history to commit deliberate suicide.

But I guess this self-preservation stuff is stuffy and old-fashioned nowadays. After all, how important is a nation's right to defend itself as compared to a Communist's right to subvert it?

Not very, according to the court majority. "Academic freedom"—that's the important thing today, even though there are as many definitions of this highly subjective phrase as there are professors in our colleges. The high-court judges have formally given us notice that, in their own words, they "will not tolerate laws which cast a pall of orthodoxy over the classroom."

For "orthodoxy" read "patriotism"—Or even "simple decency."

O, brave new world that hath such judges in it!

Make way now for Prof. Timothy Leary and his glassy-eyed cult of LSD. And for the beatnik mouthers of the Filthy Speech Movement. And for the Mafia and Murder, Inc., for that matter. Nothing orthodox about them.

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[1] Dr. Max Rafferty is superintendent of public instruction and director of education in California, which has the nation's largest school system. He is the author of best-selling books on education.

Why not?

Good manners are orthodox. So are virtuous morals. So is clean speech. So is the ability to keep one's hands out of one's neighbor's pockets. If orthodoxy now casts a legal pall, it is not too farfetched to envisage the classroom of the future as a cross between a Communist cell and a burlesque runway where, in the immortal words of Cole Porter, "anything goes!"

If academic freedom now is more important than morality and love of country and sheer survival, then in its name literally anything goes. The lit is definitely off, and with it the traditional right of American parents ever since the founding of the Republic and long before to determine through their elected representatives just who should teach their children what.

Once, long ago, the Supreme Court in its arrogance trampled upon the conscience of the country. The Dred Scott decision legalized slavery in the North and presumably riveted it upon the nation for all time to come. Within a single decade, slavery was dead on this continent to the obbligato of great guns and to the outraged thunder of a betrayed and indignant populace.

So much for the infallibility of the court. Jefferson was right.

So was Lincoln, who once remarked wryly, "A judge is as apt to be honest as any other man. And no more so."

WASHINGTON STATE SENATE,
February 20, 1967.

To: Law enforcement personnel.

Re: SJM 10—Respect for law and order.

The deterioration in respect for law and order and law enforcement authorities greatly concerns some of us here in Olympia.

The causes are many and varied but a contributing factor has been the misinterpretation of our federal constitution by the Supreme Court of the United States. They have read into this document ideas which are not written there and which have hampered law enforcement and the protection of the public.

We have introduced SJM 10 which is a small step toward the solution of this major problem. I hope it will bring encouragement to you in the performance of your duties to know that action is being undertaken in this vital area.

I have the highest regard for the job being done under difficult circumstances by our law enforcement personnel.

Sincerely,

SENATOR JACK METCALF,
21st Legislative District.

SENATE JOINT MEMORIAL NO. 10 OF THE STATE OF WASHINGTON, FEBRUARY 1, 1967

To the Honorable Lyndon B. Johnson, President of the United States, and to the Senate and House of Representatives of the United States of America, in Congress Assembled, and to the Secretary of the Department of Health, Education, and Welfare:

We, your Memorialists, the Senate and the House of Representatives of the State of Washington, in legislative session assembled, respectively represent and petition as follows:

Whereas, It is self-evident in a nation dedicated to preserving the rights of all individuals that liberty and justice are not separate and distinct concepts; and

Whereas, It is also evident that if either concept is weakened both are in danger; and

Whereas, The concept of equal justice has been jeopardized by recent supreme court decisions which make conviction of criminals difficult or impossible because of technicalities even where the evidence is incontrovertible, or guilt is admitted.

Now, therefore, Your Memorialists respectfully pray that the Congress begin immediate action to amend the United States Constitution to clarify the relationship between the accused and the law enforcement authorities with a view toward both safeguarding the rights of the accused and, at the same time, making absolutely certain that the public is protected and that justice is upheld.

Be it resolved, That copies of this memorial be immediately transmitted to the Honorable Lyndon B. Johnson, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and to each member of Congress from the State of Washington.

DUPAGE COUNTY CHIEFS OF POLICE ASSOCIATION,
Woodbridge, Ill., March 7, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As legal counsel for the DuPage County Chiefs of Police Association, they have requested that I write to you expressing their views and suggestions regarding Supreme Court Decisions, specific examples of such decisions as Miranda.

I would say that the general feeling among these law enforcement people is that the Miranda decision and decisions of this nature have removed one of their most valuable tools in law enforcement investigation, and has substantially impaired their ability to be of service to the public at large. Also, the County of DuPage being a County represented by people of higher than average income, educational background, this overlaps also into the field of law enforcement, and the abuse of law enforcement officials as so eloquently recognized by the opinion in the Miranda decision is all but unknown in this jurisdiction. In the eighteen or more years of my own experience I only have on rare occasions witnessed or had reported incidents of questionable police behavior. As long as this constitutes no problem, the men in this jurisdiction feel a tremendous loss in effectiveness merely because possibly that in some jurisdiction there is a problem constituted and they failed to see why this cannot be handled on a case to case basis as to the individual rights rather than make a blanket preclusion of certain police procedures.

There have been certain cases wherein the Miranda decision confronts a problem. As a matter of fact my office is presently in collaboration with one of the local departments for investigating a possible homicide involving husband to wife. The Miranda decision is so very very explicit in police relying upon scientific evidence. In this instant case all of the scentific evidence, which type of evidence on careful review of all criminology would be glaring with its limitations, has been exhausted. After all Dick Tracy is the only one with a space coupe. The only hopeful solution to this possible homicide would be if the errant husband would acknowledge it. If all of the scientific evidence that we have would point toward this defendant, it still would not be sufficient as it is all corroborative to even commence a prosecution.

We have another case which we have just brought to a conclusion which uniquely brings forth a problem I am sure was farthest from the jurists minds, and that is a case which was solved akin to the old time bounty theory. Factually it is this: two young men were very much suspected in a major crime in this County, the Chief of the local department investigating being very cognizant of the Miranda decision was fearful of approaching the young men, fully admonished their fathers that they were suspected and that if he gained more evidence would return. He was hopeful that the father could prevail upon these young men. Within a day a reward of substantial proportion was posted for information leading to the arrest and conviction of those responsible. Immediately this local Chief of Police was awaited upon by two characters, each more evil probably than those involved, who immediately made statements interrogating these two lads, and thereby demanding their reward. Of course we commenced a prosecution. I give you this as a rather unique example of the pitfalls of this decision.

In discussing this generally with law enforcement officers many of them have various stories to relate wherein they have been advised by those subject to interrogation as to what all these rights are and that they the subject of the inquiry are somewhat so called immune.

As to my own view, I note that the biggest problem has been that the law enforcement officer's confidence in his own status has been all but destroyed and this is a feeling that runs rampant among law enforcement officials that they are almost hesitant to talk to anyone. This carries over to a point where they are placed in an actual position of fear being afraid during the course of an investigation that they will in some way make a mistake and thereby endure grave embarrassment. This has a very bad effect upon their activities. The dangers of this is something we cannot measure as it would be impossible to determine how many law enforcement officials are not making proper inquiry, due to this fear. This fear itself is a very natural thing with a conscientious offi-

cer trying to do his job and trying to do it right. He is in a position where he doesn't know what is right any more.

Very truly yours,

WILLIAM V. HOPF,
State's Attorney.

POLICE DEPARTMENT,
Fort Lee, N.J., March 7, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I want to go on record against the deplorable conditions created by the Miranda decision and its adverse effect on responsible law enforcement.

The Miranda decision makes it extremely difficult to obtain convictions against known criminals. Law enforcement officers are reluctant to pursue the questioning of suspects with the uncertainty of their position which could lead to a possible false arrest charge being lodged against the arresting officer.

There is no question that the Miranda decision is responsible for criminals being returned to society to prey again on the community without fear of paying their rightful debt for their criminal acts.

New technological advances in communications are being used by the modern day criminal element. Adversely, the small local law enforcement bodies have not been able to keep pace with the new advances made in communications because of the cost to the community.

The old bug-a-boo about back room interrogation is a thing of the past. Todays law enforcement officer is a highly educated and skilled professional, who is not only interested in his profession but is usually an active member of his church and community, taking part in many civic activities.

Morale, which is the crux of good law enforcement efforts is dwindling as a direct result of the Miranda decision.

In conclusion, let us reverse the trend in law enforcement and get back on the right road with the reversal of the Miranda decision.

Sincerely yours,

THEODORE E. GRIECO,
Chief of Police.

CITY OF FRESNO,
POLICE DEPARTMENT,
Fresno, Calif., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: This correspondence is directed to you in response to your request, through the International Association of Chiefs of Police, for information relative to recent Supreme Court decisions affecting the admissibility of confessions into evidence in criminal matters.

It appears to be well established that the Escobedo and Miranda decisions have had a decidedly adverse effect upon law enforcement. Examining the fact that law enforcement officers are not thoroughly schooled in constituional law, may shed some light on the situation. Contributing to the overall problem, however, is the difficulty with which lower courts apply the Escobedo and Miranda principles. In many instances they are arriving at decisions which are poles apart under very similar circumstances.

The number of convictions and guilty pleas have declined drastically since the pre-Escobedo days of 1963. This is in spite of the fact that felony arrests have increased 75% since 1963. The following table is included for reference.

City of Fresno, Calif.

	Felony arrests	Convictions or pleas	Percent
1963	1,475	546	37
1964	1,635	539	32
1965	1,539	379	24
1966 (+72%)	2,042	461	23

Figures such as those shown make a travesty of the efforts of dedicated law enforcement officers. In previous years and through 1963, there had been a gradual increase in the number of felony arrests and the percentage of those arrests which terminated in a conviction or plea of guilty. This trend, which I attributed to better police methods, was drastically reversed after Escobedo and the California decision in Dorado.

Fresno County Court records show that the fiscal year 1965–66 experienced a new high in the number of felony cases in which criminal informations were filed. In spite of this new high, the percentage of guilty pleas as compared to complaints filed, dropped to a new low. The percentage drop in guilty pleas amounts to 24% since the pre-Escobedo and pre-Miranda era. *One of the most disturbing facts, however, is that for the first six months after the 1966 Miranda decision, dismissals before trial are already higher than for the entire preceding year.*

It may appear rather trite to reiterate that the Supreme Court has contributed immeasurably to the above facts, but I am compelled to do so. *Advancements in training police personnel and the utilization of more science in crime detection methods are no doubt partial solutions to the mounting crime toll, but they certainly are not the complete answer. There are too many crimes in which no psysical evidence of value may be found and well trained investigators are definitely thwarted when they must tell a suspect that he has a right to say nothing to them.*

I hope that the above comments may be of value to you and wish you success in your attempt to remedy this situation. Certainly, as the dissenting opinion Miranda expressed, not other country in the world has ever had such restrictions nor are such restrictions founded on a constitutional basis.

In closing, I respectfully request a copy of your Bill S. 674 and, if possible, an abstract of the hearing to be held by your committee on March 7 through 9.

Sincerely,

H. R. MORTON,
Chief of Police.

CITY OF YONKERS,
DEPARTMENT OF PUBLIC SAFETY,
Yonkers, N.Y., April 11, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR: I know of your inquiry into the effects of the Miranda decisions on law enforcement agencies at all levels, and I am transmitting herewith some views for your consideration.

Immediately following the Miranda decisions, our community experienced a sharp rise in crime in most of the categories of the F.B.I. crime statistics. This trend is continuing. The areas most affected are burglaries and larcenies. There is usually a dearth of physical evidence and lack of eye witnesses for crimes of this type, hence if confessions and admissions are drastically reduced, the number of clearances of these crimes will diminish, and the burglar and thief will be permitted to pursue his course of crime.

Our experience has been, before Miranda, it was not uncommon for us to obtain voluntary confessions and admissions, which have been instrumental in many instances for convicting a suspect and gaining valuable, necessary information pertaining to other crimes. This vital and productive area of criminal investigation has disappeared since Miranda.

The figures from our records are illustrative of this point. In 1964 we had 129 burglary arrests, in 1965 we had 165 burglary arrests, but in 1966 there were only 126 burglary arrests. The Miranda decision was a definite factor affecting these figures. Since June 13, 1966 our Detective Division has conducted 4,183 investigations (with 573 arrests in 1966) and has not received one written waiver of rights and written admissions of past crimes. Our combined burglary and unlawful entry figures (as the F.B.I. requires them) disclose that we had a total of 157 arrests for these two categories with 95 occurring for the first half of 1966 and the balance of 62 for the second half of 1966.

I believe there are also intangible factors flowing from Miranda which cannot be pinpointed by statistics. The resourceful dedicated police officer, engaged in pursuing crimes, particularly against property, of necessity feels a sense of

frustration and demoralization. On the other hand, the criminal must be elated by Miranda, encouraging him to greater and more brazen efforts.

I have followed closely the efforts at the federal level to thwart spiraling crime against our nation, read with interest the efforts of the President of the Crime Commission. I have also read with great interest proposals forwarded to Congress by the President for making our streets safe. I believe many of these proposals to elevate the status of police officers to a professional basis are excellent.

However, the President's proposals, in my humble judgment, fail to provide the most indispensable tool, namely legalized wire tapping and eavesdropping. I would strongly urge the Congress to clarify and authorize wire tapping and eavesdropping for law enforcement officials. In appealing for this power, I am not unmindful of abuses that could arise, and I would also strongly recommend stringent safeguards, such as we have provided in our New York State Constitution for such procedures.

Finally, I would urge the Senate carefully review the qualifications and background of Federal Judges, whose confirmations they provide.

Respectfully,

DANIEL F. MCMAHON,
Commissioner of Public Safety.

DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF POLICE,
Portland, Oreg., January 10, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedure,
U.S. Senate, Washington, D.C.

SIR: Multnomah County District Attorney George VanHoomissen, through his Chief Criminal Deputy Desmond D. Connall replied to your recent request for experience regarding the Miranda decision. This office has been furnished a copy of this reply with a request for comment.

We are in the same position as the District Attorney's Office in that we are sure substantial damage to law enforcement has resulted from this decision. However, we find it most difficult to statistically substantiate this damage. In fact, the police are probably in a better position than others to evaluate the results of the decision as we are not only cognizant of cases lost in court, but are also acutely aware that many cases including homicides have not been solved as a direct result.

This office is particularly disappointed that the Oregon legislature is opening its biennial session this week without legislation on this subject to be considered. This is probably true because neither we on the local level nor the office of the State Attorney General can visualize legislation that would not be struck down by the United States Supreme Court.

Be assured we will watch your activities in the Congress with great interest and will forward any information coming to our attention that would be helpful.

Respectfully,

DONALD I. MCNAMARA,
Chief of Police.

THE VILLAGE OF INDIAN HILL, OHIO,
POLICE DEPARTMENT,
March 22, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR MR. MCCLELLAN: Since *Miranda*, we have had a great many discussions here among us on the Indian Hill Rangers force, and in the Hamilton County Police Association of which this Village is a member. We have had the benefit of speakers at Asociation meetings who have been both pro and con *Miranda*. As an isolated case, we conclude that *Miranda* made some sense, but as a general rule of law, it has crippled law enforcement agencies. Consequently, we have come to a conclusion which I feel I should like to have before the Senate Subcommittee on Criminal Laws and Procedures,

Prior to *Miranda*, the Courts always investigated confessions to ascertain whether or not they were voluntarily given. Certainly there is no reason why a confession voluntarily given should not be used against a person whether he has had counsel present or not. So my conclusion is that while the Courts might examine confessions with a greater degree of particularity and care than they did before with respect to whether they are voluntary or coerced, it seems to me that we ought to get back on the pre-*Miranda* situation, where a confession voluntarily given, and without coercion, is admisible into evidence.

Kindest regards and with good wishes for your endeavors on behalf of the law.

Sincerely yours,

JOHN H. DIEKMEYER,
Chief of Police.

VILLAGE OF GENEVA-ON-THE-LAKE,
Ashtabula County, Ohio, March 20, 1967.

Hon. Senator JOHN L. MCCLELLAN,
Democratic Senator from Arkansas,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I am writing this letter in support of your protest against the Supreme Court decisions and giving you my backing in this matter.

Speaking for myself and my fellow officers of this department, we would like to see a move towards a constitutional amendment to help the police of this great country, rather than laws that hinder the police from doing their job.

I know that in the past, it probably has been the stupid police officers causing "the infraction of the rules" by violating some criminal's rights has brought about these decisions of the Supreme Court. It seems to me that the Supreme Court has worried too much about the criminal's rights and has forgotten that there are quite a few million honest people in this great country that have rights too, against lawlessness and crime.

Crime, as you know, Senator, is climbing at an alarming rate and the only way to curb it is to give the police officer some tools to work with, such as good laws. The police officer can't be a miracle man in trying to solve a crime without the help of the law. He can only do so much.

Again, I say to you, Senator, I am backing you. We, the police, need help if we are to stop the rise in crime. I wish we could have met in person in order to discuss our views, but this being impossible, I am writing this letter and hope it meets with your approval.

If I can be of any more assistance in this matter, please feel free to call upon me. Thank you, Senator, for your time in reading this letter.

Sincerely,

EDWARD G. KEMERAIT, *Chief of Police.*

CITY OF WESTFIELD, MASSACHUSETTS,
POLICE DEPARTMENT,
March 17, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate,
New Senate Office Building, Washington, D.C.

DEAR SIR: I am enclosing a clipping which appeared in the Springfield Union issue of March 16, 1967.

This clipping will indicate one of the many instances in which police are hampered by the recent Supreme Court decisions. In this case a gang fight between young people with knives and razors ended with the murder of one young lad nineteen years of age.

Because of the decisions this group of young people could have gotten away with murder. Also because of the liberalized parole laws one of these youths who received a sentence of five years and a day in the state prison can be released on parole in fourteen months.

Everybody talks about the increasing crime situation but as yet it has not been attacked from the proper angle.

The report of the President's Crime Commission on Law Enforcement and Administration of Justice does not seem to have touched the real reasons for the crime situation as it exists today.

There is much talk about what to do to correct these conditions, but most of what has been done to date seems only to take the props away from the law enforcement officers who are charged with their duty of investigating crimes, apprehending criminals and bringing them before the courts.

It appears that in many of these decisions the Supreme Court in its deliberations has gone far beyond the intent or meaning set forth in the Constitution.

I hope that this clipping will indicate to you what we are up against, and this condition exists nationwide.

If there has to be an amendment to the Constitution or guidelines set down to control the Supreme Court or to reverse or circumvent their recent decisions I hope that your committee and Congress will effect what has to be done.

Very truly yours,

MALCOLM DONALD,
Chief of Police.

INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS,
Washington, D.C., March 18, 1967.

Re S. 674, 90th Congress, First Session.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: The International Conference of Police Associations representing over a quarter of a million police officers in the United States and Canada, wishes to be included in those who endorse your efforts to get legislation thru Congress to remove the handcuffs from policemen placed there by Supreme Court decisions.

We have in mind the fact that murderers and rapists are being released daily throughout this Nation because of the recent Supreme Court decisions that say their rights have been violated. What about the innocent people who were murdered or raped? What concern is there for the protection of the law-abiding citizen who is afraid to walk our streets?

Computers will not decrease crime. A well-paid, well-trained police officer walking the beat will decrease crime; he is the front line soldier in the war against crime. The same is true in the Army—expensive planes are fine but we still need the foot soldier.

The I.C.P.A., represents the soldier in the war against crime, however, without the help by Congress, the courts and an aroused citizen, we are going to lose the war against crime.

We endorse S. 674 on which you have been holding hearings. Give us the tools to work with and you will see tide turn in our favor and the war will be won.

Respectfully yours,

ROYCE L. GIVENS,
Executive Director.

POLICE DEPARTMENT, VILLAGE OF MAPLEWOOD,
Maplewood, Minn., March 14, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

HONORABLE SENATOR MCCLELLAN: It is with a great deal of interest and appreciation that I learn of your efforts to alleviate the effect of recent Supreme Court decisions and your support of law enforcement. The apathy of dedicated career law enforcement people as the result of recent restrictive Supreme Court decisions is very alarming.

I would like to relate an incident which I personally experienced in our police station recently. An office equipment salesman, a long time friend and solid citizen, came into the station and handed me a newspaper clipping from a Sunday edition of the St. Paul paper which I am enclosing a copy of. He said in a facicious manner, "Is this you?" I proceeded to relate examples of similar cases we have been exposed to and how we have to stop people from willingly and voluntarily telling us the truth, to advise them they have the right to remain silent, to have an attorney, and anything they tell us may be used against them in court. Incidentally, on more than one occasion, after telling them this, they

become alarmed and apprehensive and refuse to say more. Once they refuse we are prohibited from any further questioning or discussion of the case with them.

After I completed pointing out these problems to my friend, he took out his order book and inquired of our Policewoman if we desired to order any supplies. At this point I challenged him as to whether he had pointed out her rights in our competitive, free enterprise society to know he has good competitors and to get other prices before she placed any orders. It readily was obvious to him he wouldn't make many sales nor would any other salesman if he were required, to advise each of their customers of this before they made a sale. This anology, I believe, more than explains our problems of "no sale" in interrogation of suspects after we are obliged to tell them of their rights.

More and more we are faced with the sad fact that the search for truth is secondary in today's law enforcement and courts and instead it has become a great battle of technicalities. The honest citizen is the loser as well as the dedicated policemen when admitted criminals are turned loose to terrorize and prey on the public.

Again, I commend your efforts in behalf of law enforcement and urge and solicit your continued support.

Sincerely yours,

R. W. SCHALLER,
Chief, Maplewood Police Department.

THE CITY OF PIERRE,
POLICE DEPARTMENT,
Pierre, S. Dak., March 13, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: This replies to the memorandum from the International Association of Chiefs of Police, with regard to recent Supreme Court decisions effecting law inforcement.

The Miranda decision has had far-reaching effects on law enforcement particularly in the field of interogation, confessions and detention.

While our city is comparatively small at around 13,000 population, it can be assumed that the problems are much more pronounced in the larger metropolitan areas.

Very truly yours,

MORRIS MICHAELSON,
Chief of Police.

CHARLOTTE, N.C., *March 14, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: So much has been written and said on both sides of the issue of Supreme Court restrictions on police practices, that I am hard put to reveal anything novel. I feel that the effort to do so would only add to the quantity and not the substance of the debate.

I feel the need to have all reasonable tools at hand to do my job. Interrogation under most conditions is a very valuable and reasonable tool. Our investigative efforts are suffering because this method is available to us under only the most limited conditions. As a realist, I know the technique has been abused at times. But punishing all the police for the transgressions of a few (assuming transgressions did occur), in the final analysis harms the public, not just that segment it employs for protection. It would seem equally logical to indict all Americans because some commit crimes. The restoration of more liberal interrogation practices is not something to be done for the police—it is of benefit to the *American people!*

Needless to say, I endorse efforts that will help restore a bit of public peace of mind and confidence in government to maintain order. If the residents of this area of North Carolina qualify as valid indicia of national public sentiment, I think the people want to give their police proper means to gain control of the

crime problem. Specifically, they wonder why it is "wrong" to question persons suspected of crime. They wonder if it is really true that the police cannot be trusted to observe the rights of citizens. They want the police to discharge their duties positively and with authority. I think they resent the intrusion of the court, distinguished and lettered as it may be, into matters affecting *their* safety and freedom from fear.

Sincerely,

JOHN E. INGERSOLL,
Chief of Police.

COLORADO STATE PATROL,
Denver, Colo., March 9, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In recent years the law enforceemnt profession has been confronted with problems stemming from decisions handed down by all court jurisdictions from the lowest to the highest, but no case decision has had such a pronounced effect as the recent decisions handed down by the U.S. Supreme Court in the Miranda and Escobeda cases, along with other case decisions based upon the same general conceptions.

I am certain that every well informed police administrator will agree that more training is necessary to equip the officer with greater knowledge in the area of proper procedures in arrest, investigation and court preparation and presentation to more efficiently and effectively carry out his duties as a police officer. Furthermore, all law enforcement agencies and their personnel believe that their primary duty is to safeguard the rights of all the people, and to insure that this first responsibility of law enforcement is carried out. Many departments, including my own, have instituted instructions by the judiciary of the state to properly inform the officer in procedures which best accomplish this requirement.

Certainly no law enforcement agency seeks to deprive any person of his rights in any way and it is equally certain that the courts do not seek to deny any person of his rights afforded by the law of the land. However under the recent decisions in the cases in question here, the rights and actual safety of the majority are being undermined by the intense eagerness of the courts to assure the accused that all technicalities, language loop holes, procedural evasion routes, etc., are afforded him even at the expense of the real reason for a trial in the first place—that of establishing whether or not the person actually did commit the crime for which he is being tried.

Law enforcement agencies are being forced by court decisions to become justices themeselves to determine, not whether a crime has been committed and whether they have the person who committed it, but whether or not they have plugged all the quasi-legal and legal loop holes involved in order that the courts may be presented with the basic factual evidence to decide whether the person is in fact guilty of the offense for which he has been charged. Because of the trend of the courts for leaning over backward in favor of an accused person in all types of crimes, the law enforcement agency must base the decision to arrest, to investigate, to present evidence on previous court decisions and not on the facts of the case: Was there a crime committed and is this the person by whom it was committed?

Although the decisions in question here were handed down in crimes classified as felonies, the effects of these decisions are permeating the entire gamut of law enforcement from simple misdemeanors to murder. In the area of traffic law enforcement, wherein the Colorado State Patrol has its most important responsibility, the decisions have had an adverse effect not only on the personnel within the agency but the general administrative policies of the department as well. The decisions have created a disrespectful attitude on the part of the public toward the enforcement profession, as well as a dangerous attitude of distrust of the judiciary at all levels. Law enforcement has no answer for the injured innocent party in a court case who asks: "How can a person who has admitted his guilt have action against him dismissed on a procedural or language technicality that has nothing whatsoever to do with the facts of the case?"

The best interests of the majority are not being served when a person apprehended and charged with any type of crime is at liberty to say anything he chooses or to say nothing at all, can refuse to cooperate in any way with law

enforcement officers or the prosecution, then admit his guilt in court and still be acquited because the exact letter of the information and instructions given him by any one of the agencies involved was in error, the error itself having nothing whatsoever to do with the facts of the case.

Recently the Supreme Court of Ohio ruled in the case of a part time enforcement officer that, because of his part time affiliation with law enforcement, he should know his rights. Therefore, even though he was not made aware of his rights, his conviction in a manslaughter case was upheld. This example is included to point up the lack of uniformity in the highest courts in the land and serves to further complicate the complex problem of the police in attempting to carry out their sworn duties.

The attitude trend of persons involved in traffic cases has meant a steady decrease of respect for the right and wrong of the incident in relation to the safety of persons and property and the laws which were passed to insure these, and a steady increase toward the conception that the worst thing about a traffic accident is the civil claims portion rather than the legal and moral aspects.

If there is a continuation of the present trend of the courts of protecting the lawbreaker to the extent that the law-abiding citizen, who is still in the overwhelming majority, can no longer feel that he is protected from the free roaming of any and all kinds of criminally inclined persons, the incidence of traffic accidents for example will rise to enormous proportions without any foreseeable way to solve the problem.

The decisions in fact and in effect penalize the law-abiding citizen by increasing the cost of adjudication of all types of cases which he the taxpayer must assume. His confidence in those to whom he entrusts his safety and rights as a citizen is undermined and his respect and support toward the police and the courts is declining to a point of distrust and antagonism.

Changes have been made in nearly all functions of government to keep pace with the ever-increasing problems caused by war population explosion and increased mobility of a nation on wheels. Certainly it is now evident that the safeguards which have been instrumental in the swift progress of this country must now be altered and improved to take care of today's problems today. The laws must be improved in every way it is possible to do so to safeguard the rights and well-being of the majority of the people in this nation who do not break the law, as well as to guarantee that swift, impartial justice will be dealt the lawbreaker.

If the court decisions continue to free the criminal on technicalities to the ultimate detriment to society as a whole, it is suggested that the constitution be changed to insure the rights of the majority of the people instead of the criminal element who presently find very little deterrent toward crime in the courts today.

Very truly yours,

G. R. CARREL,
Colonel, CSP, Chief.

CITY OF EATON,
Eaton, Ohio, March 13, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I recently received a memorandum from my professional association, the International Association of Chiefs of Police, indicating your particular interest in hearing additional views and suggestions regarding Supreme Court decisions concerning law enforcement. It is certainly a pleasure to know of your interest in this matter because the decisions have created serious problems for law enforcement and we need distinguished persons such as yourself to lead an effort to correct the situation.

Your statement about tenuous technicalities giving freedom to criminals is so true—turning criminals loose because of minor technicalities or an insignificant error in procedure surely is not justice. Invariably society pays dearly for such actions.

Our major concern arises from situations in which we have a good suspect regarding a crime, yet lack sufficient information to formally charge him. We advise hm of his rights and this raises the first problem. Being a small city, and being short of funds like most cities, we cannot afford a television taping system or the like to provide proof that we have properly advised the suspect of his

rights. Therefore, we must rely on persons to witness our explanation of rights. Finding persons having absolutely no involvement in the case or with the police (no friends, relatives or acquaintances, for instance) is difficult at best and virtually impossible at 3:00 A.M. some morning when the questioning is not to be delayed.

Once we cross that hurdle the next one is often immediately in front of us. The suspect wants counsel and says he can't afford it. Since we don't have sufficient information to formally charge him and, therefore, give the court the responsibility for appointing counsel we are quickly stymied. And in Ohio appointed counselors are not paid unless the case actually goes to court. The problem is obvious.

So, somehow, counsel is obtained and we are ready to question. Likely as not we are pitting a $5,500 a year patrolman with a high school diploma against the suspect and his well-educated attorney. Such patrolmen make honest, and usually very insignificant, mistakes—the suspect and his counsel sit back, say nothing useful and yell "foul" at an opportune time in court.

Police morale is at an all-time low. Law enforcement is losing (and never obtaining) good men. We are working hard to improve training, salaries and working conditions, and stand ready to do whatever can be done to eliminate the above-described dilemma, but we need your help.

Sincerely,

HOWARD STOTTLEMIRE,
Chief of Police.

PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION,
March 6, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

MY DEAR SENATOR: This letter is written in my capacity as Chief Counsel for the Pennsylvania Chiefs of Police Association, and pursuant to a conversation held this date between myself and the Honorable Homer L. Kreider, President Judge of the Courts of the County of Dauphin, Commonwealth of Pennsylvania.

My friend, Judge Kreider, has advised me that he expects to appear before your Committee on Thursday, March 9, 1967, at your invitation, to offer testimony on behalf of U.S. Senate Bills 674, 675, 678, and 917.

The Pennsylvania Chiefs of Police Association is heartily in favor of the enactment of all of them.

We are of the opinion that there is no one that is as well qualified to pass upon the admissibility of confessions, the subject of Bill 674, as the Judge who presides over a trial and the jury who will hear the testimony of the witnesses and determine the credibility to be placed thereon.

I was, for sixteen years, a member of the Board of Pardons of this Commonwealth. During this time, I heard more than 17,000 appeals for executive clemency. I am firmly of the opinion, as the result of this experience, that the cause of justice will be harmed if the present pronouncement of the Supreme Court, relative to confessions, should stand. In my professional experience and in my public life, I am convinced that the safeguards presently invoked by the Courts of Pennsylvania are adequate in protecting the rights of those who may confess to criminal wrongdoing.

At the last Annual Convention of our Association, we unanimously adopted a resolution urging the use of wiretapping when, and only when, the same is subject to the strict control of the courts. I understand that this is the purpose which is sought to be achieved by U.S. Senate Bill 675, known as the Federal Wire Interception Act.

We are also in favor of both Senate Bills 678 and 917. We believe that those charged with the duty of law enforcement need all the assistance they can get in the war against such as the Mafia.

The results sought under Senate Bill 917, can be best achieved by keeping federal intervention to a minimum in its administration. We are wholeheartedly opposed to using such a Bill as a means to establish a federal police force.

I shall be pleased to have duplicate copies of all four of the above numbered Bills and copies of your addresses made on January 25 and February 23 of this year, forwarded to myself and to Francis J. Schafer, Executive Director of the Pennsylvania Chiefs of Police Association.

We are delighted that in Judge Kreider we will have a most eloquent spokesman on behalf of the citizens of the Commonwealth of Pennsylvania. We trust that you will heed his words, spoken out of a wealth of experience, both as a practitioner of the law and as a tested and humane jurist.

Respectfully yours,

WILLIAM S. LIVENGOOD, Jr.,
Chief Counsel.

COMMISSION GOVERNMENT,
Memphis, Tenn., March 13, 1967.

Hon. JOHN MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Having been in law enforcement for over 25 years, and vitally interested in the crime picture, and trend, may I take this opportunity to urge you to keep up the fine work you are doing to assist law enforcement.

We urgently need support, and new laws of search and seizure, and something definite on defining rules on confessions, and the admissability of confessions. This is also true on interrogations.

I admire you, and your efforts in this direction, and if I can assist you, or your efforts, please call on me.

Yours truly,

CLAUDE A. ARMOUR,
Commissioner of Fire & Police.

CALIFORNIA POLICE CHIEFS ASSOCIATION, INC.,
Monterey Park, Calif., March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SIR: As the Chairman of the Senate Subcommittee on Criminal Laws and Procedures. I earnestly request that you give serious consideration to legislation or even Constitutional Amendment to overcome the effect of some of the recent Supreme Court Decisions in the field of criminal laws.

The Miranda Decision has created many technical problems within the ranks of law enforcement. Arrests are being made by policemen but complaints are not issued by District Attorneys because of some purely technical errors.

In the field of search and seizure, narcotics cases in jurisdictions as small as ours are being lost for the same reason.

It is hard for me to imagine how this country grew as great as it has over the last 190 years while, at the same time, depriving the people of the rights enumerated in such landmark cases as Mapp, Escobedo, Miranda, and others.

I'm sure that Chief of Police Thomas Reddin of Los Angeles would make an excellent witness for your Committee and could document factual illustrations.

Many good wishes to you on this hearing. You have been fighting this battle for many years. Law Enforcement is behind you.

Very sincerely,

ALLEN SILL, *President.*

MARYLAND CHIEFS OF POLICE ASSOCIATION,
Baltimore, Md., March 10, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: The Maryland Chiefs of Police Association would like to go on record supporting S 674 intended to amend Title 18, U.S. Code, with respect to admissibility evidence of confessions. We feel very strongly in support of any legislation lessening the restrictions placed upon law enforcement officers in their efforts to perform their duties within the framework of our Constitution.

Please accept the commendation of this organization for the work performed by yourself and your subcommittee in respect to assisting the law enforcement officer to correctly and honorably perform his job.

Your very truly,

WILLIAM F. REYNOLDS, *President.*

DEPARTMENT OF POLICE,
Buffalo, N.Y., March 7, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: It is the writer's feeling the United States Supreme Court, as presently staffed, is embarked on a course ultimately destined to exclude confessions from evidence in criminal trials.

My experience has been a confession can be as reliable and competent as any parol evidence provided trial courts remain alert to assure an offered confession was voluntarily given. The experience in Buffalo has been most persons will not make any statement in the course of investigation of a crime when advised they are entitled to the presence of an attorney, and, if unable to afford an attorney, one will be supplied them.

I have reservations about amending our Federal Constitution, but it does seem possible Congress can enact legislation (without Constitutional Amendment) to give law enforcement officers, as part of their investigatory duties, some time to interview and interrogate a suspect and to provide for court admissibility of a confession obtained without force or duress.

I have enclosed herewith some specific examples of the effects of the Miranda decision on prosecutions in our local criminal courts.

Our Chief of Detectives, Mr. Ralph V. Degenhart, could provide your Committee relevant data. However, my opinion is Mr. Fred Inbau, Professor, Northwestern University Law School, is most able to present your Committee the views herein expressed.

Thank you for the opportunity given me to communicate with you.

Sincerely,

FRANK N. FELICETTA,
Commissioner of Police.

MARCH 6, 1967.

To: Frank N. Felicetta, Commissioner of Police.
From: Leo J. Donovan, Lieutenant Commanding Homicide Bureau.

SIR: The following is submitted pursuant to your direction to forward examples of the effect of recent United States Supreme Court decisions affecting the obtaining and admission in evidence of statements and confessions in criminal cases:

1. In this case, a crime that happened in the midsummer of 1965, a man was brutally beaten and robbed on Jefferson Avenue in the City of Buffalo. He died as a result of the beating and stabbings he received at the hands of two assailants. The assailants took a considerable amount of money from him and made their escape. They did everything they could to protect themselves from detection by wiping walls of their fingerprints, wiping their hands free of blood, taking a back route to leave the scence without being observed, changing their clothes, trying to destroy blood-soaked clothes, going downtown and purchasing new clothing, and later in the day, making arrangements to leave the city. They hired a third individual to drive them to New York. Information was gained by the Police Department as to the method they were going to use to leave the city, the make of the car, the name of the owner of the car, the license number of the car, and the intended route they were taking. This information was put over the Buffalo Police radio station, also over the State teletype, and a telephone call was made to the State Police on the Thruway. These individuals, enroute to New York City, were apprehended by the State Police near Syracuse. They were taken into custody, searched, a large amount of money was found underneath the seat of the car and personal property and money were taken from their possession.

The Buffalo Police Department dispatched two police officers to Liverpool, New York, to return the three to Buffalo. The two officers who were sent down

there were not connected with the Homicide Squad, nor with the Robbery Squad. They were sent down there for the sole purpose of transporting the suspects back to Buffalo. When they reached the State Police substation in Liverpool, New York, they were told by the State Police that the individuals had been searched, the car had been searched, and the property taken from the individuals and the car were turned over to the Buffalo Policemen to return with the suspects to Buffalo. On the way back to Buffalo, one of the suspects decided he wanted to say something and tell his part of the crime, to "get it off his chest", so to speak. He said he had to tell somebody. The officer in charge of the escort back to Buffalo told him they were not assigned to the case, that they were not representatives of the Homicide Squad or the Robbery Squad, and that when they got back to Buffalo, the suspects could tell their story to the Homicide Squad if they so desired. The one suspect said, "Well, I've got to tell somebody." He then blurted forth certain admissions that he and his partner were involved in the crime. The suspects were repeatedly told by the officer in charge of the detail returning them that they (the officers) weren't assigned to the case. Nevertheless, the suspects did make admissions which seemed at the time to be spontaneous.

On their arrival here in Buffalo, I was told by the officer in charge of the return detail that the suspects wished to make a statement to me and tell me what had happened. Before any questions were asked of them, the suspects were apprised of their rights by my telling them they were entitled to have counsel, that they were entitled to a lawyer now, at this time, before any questions were asked. They were also told they had a right to remain silent, that they didn't have to answer any questions, and that if they desired a lawyer, the Court would appoint one for them. They were not told that if they could not afford a lawyer, one would be appointed for them or provided for them. They were also told that anything they said would be taken down and used against them in Court. They seemed more than willing, especially the one defendant, to get it off his chest. He told me that if it hadn't been for the man dying we would never have gotten anything out of him, but, he said, "The man is dead; I feel as though I'm half responsible for it, and I want to tell my side of it." He said, "I want to get if off my chest." He was asked if he wanted a lawyer, and he said, "What for? I'll get a lawyer when I go to Court. A lawyer can't help me now." In other words, apparently he wanted to confess. A statement was taken from him. The suspects were arraigned in Court, a preliminary hearing was held in City Court, a Grand Jury indictment followed, and, before the Grand Jury, the suspects statements were read and two witnesses were presented, the wife of the deceased, and a friend of the deceased who was an eye witness to the suspects' escape from the scene of the crime.

The suspects were each indicted on five counts of Murder in the First Degree. Trial was set for early last April, but was adjourned because one of the lawyers appointed by the Court withdrew and another lawyer was appointed and was given time by the Court to familiarize himself with the case. Before the case was ready to go to trial, June 13th arrived and the Supreme Court handed down their rulings in the *Miranda* case. The *Miranda* rule affected this particular case in the following manner: The attorneys naturally seized upon the opportunity to ask for a suppression hearing to suppress not only the statements taken from the defendants, but also the admissons made by them to the Police Officers on the return trip to Buffalo. This case had to be resubmitted to the Grand Jury and an indictment sought without the use of the statements.

A date was set for a suppression hearing, to be followed by a Huntley hearing. In the suppression hearing, the officers testified, both State Police and Buffalo Police officers, as to exactly what happened. The Buffalo officers testified they were unwilling listeners or witnesses to the admissions made by these defendants of their way back to Buffalo, but they had to listen because they were in the same car with the defendants and the defendants insisted upon telling someone of their crime, they were full of remorse, they wanted to get it off their chests, and, upon their return to Buffalo, I was informed by the officer in charge of the return detail that these defendants wished to talk to me and tell me everything that happened; that before a single question was put to these defendants, they were fully advised by me as to the admonitions handed down by the Supreme Court up to this date (August 1965). They were told they had a right to have an attorney; they had a right to have him then, at the time of the questioning; they had a right to remain silent; they didn't have to answer any questions; they didn't have to say anything. They were also told that any-

thing they did say would be taken down in writing and could be used against them in a Court of Law.

In the statement of one defendant, Brown, that was the extent of the advice given him as to his rights. In the statement of the second defendant, Selwyn Lemon, he was told that if he wanted an attorney, one would be obtained for him. It came very close to fulfilling the admonition set forth under the *Miranda* rule.

The supression hearing before Judge Marshall was quite lengthy, and Judge Marshall ruled that the admissions made to the police officers on their trip back would be inadmissible. He called a conference with the District Attorney and myself, with regard to the statement of Lemon, and his advice to us was that it's very possible this statement could be admitted into evidence at the trial. He also said that if the defendants were convicted, there was a fifty-fifty chance of the decision being reversed on appeal.

A conference was held with the District Attorney, the Judge and myself, and the District Attorney said that if the statements were suppressed, it would weaken our case considerably.

At a conference between the defendants, their attorneys, the District Attorney, the Judge and myself, it was decided that the defendants would be permitted to plead to the lesser charge of Manslaughter in the First Degree. The facts warranted a prosecution for murder, but without the statements voluntarily made to the police officers it was doubtful the murder charge could be substantiated beyond a reasonable doubt. Had we been able to go to trial with the statements in effect, there is no doubt in my mind that these defendants would have been convicted of Murder in the First Degree. Their confessions were complete. They told everything about the crime, step by step, including the killing of the victim of their crime.

2. In this case, a fifteen-year-old boy stabbed to death a twelve-year-old boy during an argument one evening out on Chester Street. I first came in contact with this boy over at No. 6 Police Station. He was accompanied by his mother. I introduced myself to the boy and his mother, and told them I was there to talk to them about the events that had happened earlier in the evening. I said to them, "Before I ask you any questions, or before you give me any answers, I want to inform you that you are entitled to an attorney; you can have a lawyer present at this questioning; you don't have to answer any questions, and by that I mean you have a right to remain silent. Also, anything you say will be taken down in writing and may be used against you in a Court of Law. I further want you to understand that if you cannot afford a lawyer, one will be provided for you." With this, the mother of the boy spoke up and said, "I think that we should have a lawyer. We can't afford one, but if you say that you will give us one, I think we should have one." Thereupon, no questions were asked of her son with regard to his apparent participation in the killing.

This case went to Family Court. The boy was adjudged a Juvenile Delinquent, based on the allegations set forth in the petition that if he were an adult, he would have been convicted of Manslaughter in the First Degree.

I know that in my conversation with this boy and his mother, a voluntary statement would have been given had I been able to ask him questions. He wanted to tell the police what happened. If a statement had been taken from him, based on knowledge that I had of the facts of the case, it probably would have been exculpatory, and the boy not adjudged a delinquent.

3. In this case, still in litigation, a man was stabbed during an argument on the East Side. He was pronounced dead upon arrival at Emergency Hospital. A suspect was taken into custody about two and a half to three blocks from the scene of the crime, approximately ten minutes after the crime had occurred. I had instructed the officers who apprehended the suspect not to ask him any questions in any way. He was returned to the scene of the crime, and there was identified by witnesses who had been present at the time the stabbing took place. The suspect was taken to Police Headquarters, where I told him I wanted to ask him some questions with regard to his activities that day. I informed him he did not have to answer any questions, that he was entitled to a lawyer before he answered any questions, that he had a right to remain silent, that anything he said would be taken down and could be used against him in a Court of Law. At that time, he interrupted and said, "I can't afford a lawyer. I don't know any lawyers." I told him that if he could not afford a lawyer, one would be provided for him. He, in turn, said to me, "I think I'd better talk to a lawyer before I say anything." There were no further questions asked of this man, and a lawyer was provided for him.

4. In the case of Henry Scott, age 25, defendant, charged with Murder in the First Degree, Scott was arrested by the Homicide Bureau on January 31, 1966, for the slaying of Walter Alexander, age 37. Scott was indicted by a Grand Jury of Erie County on April 6th, 1966. The indictment was based on a statement given by Scott at the time of arrest, confessing to the acts constituting the crime of Murder in the First Degree and the indictment was set down on the trial calendar.

On June 13th, 1966, the Supreme Court of the United States handed down, on Writ of Certiorari, a decision in the case of Ernesto A. Miranda, Petitioner, State of Arizona, that affected the standing of several lawsuits, pending, by the Homicide Bureau and the District Attorney's Office, for trial. The defendant Scott was fully apprised of his rights at the time of his arrest, before the taking of any statement, oral or written. This conformed with the rules set down under Escobedo, but failed to set forth the indigency rule. In November 1966, Attorney Walentynowicz, for the Defendant Scott, was granted a suppression hearing before Judge Gaughn, to take place in the month of December 1966—but, an order had been signed by Judge Gaughn for an examination by Doctors Jennie D. Klein and Murray A. Yost of Meyer Hospital Staff, pursuant to Section 658 of the Cade of Criminal Procedure. It was the opinion of examiners that Henry Scott does not understand the charges against him and would not be able to participate in his defense. Had it not been thus, the defendant, Henry Scott, would have been freed, because his statement would have been suppressed as evidence at trial, under Miranda, and there was not enough other evidence to convict.

5. The case of Alberta Golivitzer, age 25, arrested February 3rd 1966, charged with Manslaughter in the First Degree, in the death of her son, Brian, 2 months old. A statement was taken from her at the time of her arrest, that conformed with Escobedo (U.S.), Gunner (N.Y.), Donovan (N.Y.), etc. She was indicted by the Grand Jury on 2/8/66, as charged and indictment was set down on the trial calender. On November 27, 1966, a suppression hearing was ordered and on appearance before Judge King of Supreme Court, in the County of Erie, a decision was handed down by him, suppressing the statement of the defendant and because the indictment was unsupported by independent evidence against the defendant, the indictment was dismissed because the statement revealed that the defendant Golivitzer was not advised that if she could not afford a lawyer that one would be provided for her, and that, if she so desired a lawyer, no further questions would be asked of her. The statement taken from her, at the time of her arrest, was good; it was only because of the admonitions set down under Miranda that it became fatal.

6. The case of Lowell Claxton, arrested November 11, 1965, age 40, charged with 483–B of the Penal Law (Carnal abuse of child over 10 and under 16 years of age) : Case tried in City Court of Buffalo on January 6th, 1966, before Judge Zimmer and defendant was convicted. At the time of his arrest, Claxton was advised of his rights under the then existing Escobedo rulings and he made oral admissions to the investigators of the Homicide Bureau. He refused to make a written statement. Claxton's conviction before Judge Zimmer of City Court of Buffalo was appealed by Attorney Peter Parino before Judge Marshall of the County Court of Erie, and due to errors made by the trial Judge of City Court, the conviction was set aside and a new trial was ordered and the case sent back to City Court. Attorney Parino applied for, and was granted, a hearing to suppress any statements or admissions made by Claxton at the time of his arrest. On February 28, 1967, in City Court of Buffalo, Judge Bellomo presided over the hearing to suppress. Attorney Parino invoked the Miranda rule, after questioning the arresting officers and bringing out before the Court the fact that his client had not been advised that, if he could not afford a lawyer, one would be provided for him, free of charge. Judge Bellomo suppressed any admissions or statements of Claxton, made to officers at the time of his arrest, and on motion by Attorney Parino the charge against the defendant was dismissed.

In my opinion, the recent admonitions set down by the Supreme Court in the *Miranda ver. Arizona* ruling, and the *Escobedo* case, have definitely adversely affected the workings of the police in the apprehension and questioning of suspects.

Respectfully,

LEO J. DONOVAN,
Chief, Homocide Bureau, Buffalo Police Department.

THE UNIVERSITY OF OKLAHOMA,
Norman, Okla., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SIRS: As a member of the International Association of Chiefs of Police, I was more than interested in your remarks to the Senate regarding recent Supreme Court Decisions, and your Senate Bill 674.

Law Enforcement officers are not only confused by some of the language of the Miranda Decision, but are further hampered by its application in our lower courts. As an example, a police officer recently contacted me regarding a police matter wherein two officers were interrogating a suspect. One of the officers carefully advised the suspect of his rights in the presence of the second officer. The accused was willing to talk. The second officer directed a question to the accused without personally (a second time) advising the accused of his rights. The Judge, in his wisdom, dismissed the case. I am sure that more specific examples could, if space permitted, be supplied.

Pertinent and valuable testimony during the hearing could be provided by Mr. Lewis B. Ambler, District Attorney, Bartlesville, Oklahoma.

Sincerely,

K. O. RAYBURN,
Director, Southwest Center for Law Enforcement Education.

CITY OF EUGENE,
POLICE DEPARTMENT,
Eugene, Oreg., March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SENATOR MCCLELLAN: We would like to take this means to express our support of the legislation you have introduced with respect to the admissibility of evidence of confessions.

We feel that the judicial branch of government has, in many ways, taken over a legislative function when it sets forth specific rules for arrest procedure. It will, then, require legislation in order to correct the situation and to place this authority back into the hands of the legislative branch. This is not to say that there has been no abuse, and we understand that when a confession has been received as the result of coercion that the courts should invalidate the evidence. On the other hand, we feel that when the statement has been given freely and voluntarily, and when the evidence of guilt is unmistakable, the criminal should not be released due to a minor technicality.

We wish you every success in your endeavors in this regard, and we stand ready to assist in any way possible.

Very truly yours,

H. A. ELLSWORTH,
Chief of Police.

POLICE DEPARTMENT,
Newark, N.J., March 9, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SENATOR MCCLELLAN: Your proposed "Safe Streets and Crime Control Act of 1967" has been well received by informed and concerned persons, both inside and outside of law enforcement. It must be agreed, as stated in the purpose of the bill, "Crime is essentially a local problem that must be dealt with by State and local governments." Many police agencies have achieved remarkable results in some of the areas of concern in your bill. Their efforts have pointed the way and indicate that with proper support, progress can be made. It is indeed heartening to know that legislation committing the power and resources of the Federal Government is proposed.

Your bill is of particular interest to the Newark Police Department at this time. Newark has consented to host the 1967 Northeast Grad Seminar of the Traffic Institute. The area involved encompasses eleven (11) states from Mary-

land north. As you probably know, the Traffic Institute is one of the leading police administration schools in the country.

Seminar sessions will be held on May 10th, 11th and 12th at the Military Park Hotel, Park Place, Newark. On the afternoon of May 11th we hope to schedule a panel discussion on "The Impact of the President's Crime Commission Report." Our hope is to obtain a highly qualified panel and panel chairman to discuss the import of this document.

We are attempting to enlist Fred Inbau of Northwestern University Law School as a panel member. William H. Franey of the International Association of Chiefs of Police is expected to represent that organization. The Office of Law Enforcement Assistance of the Justice Department is expected to participate. We expect that an outstanding law professor from a university in this area will participate.

This occasion presents a fine opportunity to obtain regional support for a measure which is urgently needed. We cordially invite your personal participation. If your busy schedule precludes your attendance, we request that one of the sponsors of the bill, or a qualified employee of the Committee on the Judiciary attend.

Sincerely yours,

OLIVER KELLY,
Chief of Police.
By JOHN L. REDDEN,
Deputy Chief of Police.

POLICE DEPARTMENT,
Newark, N.J., March 6, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I am in receipt of a Memorandum from Mr. Quinn Tamm, Executive Director of the IACP regarding the proposed hearings of your Subcommittee scheduled for March 7th, 8th, and 9th, 1967. Atfer a careful review of Senate Bill 675, I am pleased to advise you that I support its enactment by Congress. This Bill if enacted as presently drafted, should make the McNabb-Mallory Rule more flexible.

There are certainly many learned men outside the law enforcement profession who subscribe to your recent comments before the U.S. Senate that:

"The U.S. Supreme Court—five members—a one man majority—are committed to the illogical pursuit of tenuous technicalities which it recklessly invokes to nullify the convictions of and to set free confirmed criminal to prey again on a victimized society."

Among them, Professor Fred E. Inbau, Northwestern University School of Law recently said:

"The Court's one man majority was going to continue to 'Play God' and 'Play God' it did in its June 1966 decision in *Miranda vs Arizona* (384 U.S. 436)."

How unfortunate that the architects of the National Crime Commission in its report "The Challenge of Crime in a Free Society" did not see fit to explore areas which were not considered explicitly in the report itself. These relate to the difficult and perplexing problems arising from certain of the constitutional limitations upon our system of criminal justice. This in the face of the fact that in some of the recent notorious decisions, the subjects were released to be again arrested for the commission of a second crime. As Chief Thomas Cahill of San Francisco, a member of the Commission, said on a recent television program,:

"I think that in some cases we have forgotten the victim of crime and the victim is also a member of society."

Most recently in New York, State Supreme Court Justice Michael Kern, in freeing one, Jose Suarez, a confessed murderer of six people, his wife and his five small children, said: "even an animal such as this one—and I think it would be insulting the animal kingdom—must be clothed with all these safeguards. This is a very sad thing. It is repulsive; it makes any human being's blood run cold and his stomach turn to let a thing like this out on the streets."

According to the World Journal Tribune of February 21st, 1967, Brooklyn District Attorney Aaron Koota said that ten (10) criminals have been freed as a result of the Miranda decision. He also said that 130 out of 316 suspects questioned refused to make any statements as a result of the Miranda ruling and were released.

Unfortunately, I am unable at this time to provide you with specific examples of cases affected by these recent decisions of the U.S. Supreme Court in this jurisdiction.

I would suggest that following officials from this area as most qualified to provide valuable testimony during your hearings:

1. New Jersey Attorney General Arthur J. Sills
   State House
   Trenton, New Jersey
2. Essex County Prosecutor Brendan T. Byrne
   Essex County Court House
   Newark, New Jersey.

Please be assured that you have my continued support in your efforts to combat crime and improve law enforcement in this Country.

Very truly yours,

OLIVER KELLY,
Chief of Police.

DEPARTMENT OF POLICE,
Topeka, Kans., March 21, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: In reading over the President's *Challenge of Crime in a Free Society* I find some recommendations that are rather disturbing.

Number one is the disarming of the Police officers in traffic control, also the initiation of community service officers who cannot qualify for strict Police qualifications, the use of federal funds, the suggestion of a national pension system, the deletion of civil service work, employment of non-police personnel without Police training, the encouragement of lateral movement of Police personnel, a nationwide retirement system being devised that permits the transferring of retirement credits.

Acting Attorney General Ramsey Clark has notified the House Rules Committee that the Federal Government feels it has complete power to order the reassignment of teachers, professors, or members of the staff of any educational institutions receiving Federal assistance if there is any reason to believe that "racial allocation of faculty" denies to students "equally of educational opportunity."

I think it would be advisable if you would investigate this matter, for I, for one, feel that once law enforcement begins to accept Federal subsidies, then the local government and the people have lost control. The same people who were involved in the writing and recommendations of this crime report were also strong for the Civilian Review Boards. The Police won this battle, let us not lose it by seeking these funds. If necessary, a campaign on the local levels should be made to inform the citizens. The best way to support your Police Department is to do it through local funds, because they are going to pay for these programs by paying to the Federal Government who will, in turn, disburse these funds back to local governments, except this time you play ball in their ball park and their type of ball game.

I would appreciate hearing from you regarding my comments and particularly if you are able to evaluate the statement by Ramsey Clark pertaining to the educational field.

This Department is ordering twenty-five copies of the report by the President's Commission on law enforcement and administration of justice.

Yours very truly,

DANA L. HUMMER,
Chief of Police.

DEPARTMENT OF POLICE,
Topeka, Kans., March 3, 1967.

Senator JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This Department is in receipt of a letter from Quinn Tamm, Executive Director, International Association of Chiefs of Police, Inc., requesting information be forwarded to your office relative to the views of Police Chiefs throughout the country on the controversial Miranda case.

It is my opinion that the recent Supreme Court rulings have had an overly sharp, adverse effect in our efforts to clear felony cases, charge subjects implicated in such cases and to convict them in our courts after they have been charged.

We have noted a marked decline in the area of interrogation of suspects of felony cases. Many, many cases are lost because the investigating officers are unable to come up with the very necessary reasonable grounds required to arrest the suspect, and as a result all interrogation of the suspect must be done in surroundings that are adverse and often impossible for the investigating officers. Interrogation in the past, handled in a civil and humane manner, was responsible for the clearance of at least seventy-five per cent of our felony cases. At the present time, operating strictly under the new rulings, interrogation has been responsible for probably twenty-five per cent of our clearances and this is only with the grace of the courts in accepting our statements. We find more and more subjects refusing to talk, even to the extent of refusing to give their names to our investigators,

As a result of this needless and extreme granting of so-called "rights" to the individual, which in our case is mainly the criminal, our investigators are forced to rely on physical evidence, witnesses, and circumstantial evidence to make a chargeable case. This is often impossible as such evidence and witnesses are more often than not, not present.

While our County Attorney has been very good in the issuance of complaints, he too is bound by present rulings as to when and where complaints can be issued.

In our preliminary court we find we are getting repeated dismissals of cases upon grounds that would indicate decisions far beyond the mandate of our Supreme Court and its new rulings.

Not only does this Department feel that this is true as all four of our District Court judges have stated that such rulings are not reasonable and are not included in any manner in the meaning or text of the new rulings by our U.S. Supreme Court.

We find that in all of our courts the case is now tried on technicalities of the violation of the subject's rights rather than the evidence submitted in the case.

There is no question that the rulings have curtailed the efforts of all police officers in their efforts against crime to a very great degree. This is basically because of fear for themselves for false arrest, lack of a clear set of rules of operation by any court or judge. This is the result of a complex new set of rules by our Supreme Court that even the higher judges in our country cannot agree on as to their true intent or meaning.

The only suggestion I can make in regard to this confused situation is that the public, our Police Departments, courts, etc., protest to the U.S. Congress until this body takes action to limit our Supreme Court to the reasonable rulings in individual cases rather than the creating of new laws without the authority by our same constitution to do so.

Law enforcement people throughout the country will be watching very closely the appointment of a new Supreme Court justice. I, personally, feel that the President's greatest liability in his quest for re-election will be his appointment of Justice Fortas, which has swung the balance of power to the liberal majority. If the President picks another Liberal, who in his thinking is as far afield in his quest for individual rights, then we are certainly not going to have a free society.

Yours very truly,

DANA L. HUMMER,
Chief of Police.

TORRANCE, CALIF., *March 4, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

SIR: I welome this opportunity to express our views and experiences in dealing with the various Supreme Court decisions and their effects on the apprehension, prosecution, and conviction of criminals. To say that these decisions have not greatly affected the efforts of law enforcement officers in the battle against the rising crime rate would be to indulge in a costly form of vanity. These de-

cisions, particularly the Miranda, have caused a great deal of confusion not only among law enforcement officers but among the Judiciary, each Judge in many cases having his own interpretation of its meaning and intent.

We have, as have other law enforcement agencies, experienced instances where self-confessed persons have gone free due to an interpretation as to when suspicion had focused on those persons. In the field of narcotic enforcement this has been particularly evident with such problems as Search and Seizure, Probable Cause, and Divulging the Identity of Informants.

The following are cases in point that exemplify some of the problems we are experiencing:

Suspects

Bazer, Billy Ray (Case number D.R. 2215–67) Douglas, Donald Jack.

Charge

Grand Theft Auto.

Date of arrest

Feb. 67.

Facts

Officers, while on routine patrol, received radio dispatch that a certain vehicle located at a service station was possibly stolen and being stripped. Officers responded to the call, at which time Billy Ray Bazer was contacted. At this point, officers made inquiries into the allegations. The defendant at this time told officers that he had removed certain parts from a vehicle which he described as a 1949 Oldsmobile. The defendant then made statements involving Donald Jack Douglas' knowledge of the vehicle in question. When both defendants were confronted with each others stories, both admitted knowledge of the vehicle in question and of having parts of that vehicle in their possession, but they denied that that vehicle was stolen. An arrest was not effected at this point due to the officers not having information that the vehicle in question was in fact stolen. The officers then left the location and returned a short while later, at which time Billy Ray Bazer stated that the vehicle was stolen and gave the location of the vehicle. The vehicle was then located a short time later, and the victim verified its being stolen. Officers then effected the arrest of both defendants and advised them of their rights as prescribed by Miranda.

Case Disposition

(Preliminary Trial.) Case dismissed. Court ruled that both defendants should have been advised of their rights upon the original conversation with officers.

Suspects

Rivera, Rudy Ralph (Case number D.R. 11696–66), Chavez, Jesus Perol (Case number D.R. 11921–66).

Charge

Illegal use of Heroin (11721 H&S).

Dates of arrest

4 Aug. 66, 8 Aug. 66, respectively.

Facts

Both defendants were arrested for Traffic Warrants. Both defendants were advised of their rights as per Miranda upon arrest for above warrants. Subsequent to the arrests, physical evidence of the illegal use of heroin was observed by Narcotic Officers. The additional narcotic violation was added to both defendants' bookings. In both cases admissions were obtained subsequent to the defendants being advised of their rights, establishing their usage and the venue of the crime.

Case Disposition

Case dismissed. Court ruled that arresting officers did not use proper terminology during that portion regarding the defendants' right to have an attorney present during any questioning. According to the Court the officer erred when he stated that, "You have the right to the services of an attorney during all stages of the proceedings against you." Court ruled that the officer should have said, "You have the right to the services of an attorney *prior* to any questioning."

I hope this information will be of assistance in your efforts to clarify many of these problems; and if this agency can be of any further assistance, do not hesitate to call upon us.

Respectfully,

WALTER R. KOENIG,
Chief of Police.

FLORIDA SHERIFFS BUREAU,
Tallahassee, March 6, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have been advised by the International Association of Chiefs of Police of the forthcoming U.S. Senate Subcommittee hearings regarding recent U.S. Supreme Court decisions which are adversely affecting the ability of local law enforcement agencies.

I appreciate your great interest in law enforcement problems and applaud your courage in standing up to the "illogical pursuit of tenuous technicalities" imposed upon local law enforcement by the Supreme Court.

While time has not permitted me to submit a detailed recommendation regarding changes in criminal laws and procedures, I urge you to include in your proposals a law permitting the controlled use of wire tapping by legitimate law enforcement agencies and a stiff penalty for unauthorized use of wiretapping.

As research is completed, I will submit more detailed recommendations to your committee regarding other phases of law enforcement.

Again, thank you for your interest in our problems.

Sincerely yours,

E. ED YARBROUGH, *Director.*

CROWN POINT, IND., *March 7, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: The Lake *County*, Indiana Law Enforcement Council, composed of all Chiefs of Police, the County Prosecutor, and the Sheriff, has been heartened by your recent speech before the Senate of the United States.

It is felt that the recent Supreme Court decisions in many cases, have rendered the police ineffective in dealing with problems confronting them daily.

It is quite obvious that many local crimes such as aggravated assaults, vehicle taking, purse snatching, strong arm robbery, rapes and burglaries, will go unsolved unless the suspected perpetators can be questioned concerning these matters.

It is further believed that a cruel hoax is being played upon the local police of the nation, by permitting many youths to engage and continue to engage in criminal activities until "court room" evidence can be gathered for successful prosecution.

We appeal to you, Senator, to continue your efforts in this direction, and bring to an end the chaotic and demoralizing conditions, which exist in every police station of the nation.

Very truly yours,

LAKE COUNTY LAW ENFORCEMENT COUNCIL,
MILLIARD T. MATTHEWS, *Secretary.*

CARMEL POLICE DEPARTMENT,
Carmel-by-the-Sea, Calif.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Law and Procedures,
Washington, D.C.

HON. JOHN L. MCCLELLAN: Referring to the recent memorandum from the International Association of Chiefs of Police, Inc., concerning your remarks before the Senate and the scheduled hearings before the Subcommittee on Criminal Laws and Procedures.

You have my whole-hearted support. It is gratifying to know that positive action is being taken at the Legislative level on behalf of Law Enforcement.

It behooves Law Enforcement to improve and refine their investigative ability. Law enforcement should not try to hide behind permissive legislation. But, if the present dangerous trend of Supreme Court decisions is not stopped, and if possible, reversed, Law Enforcement will be dealt a crippling blow from which it may never recover.

Again, May I express my whole-hearted support.

Yours very truly,

CLYDE P. KLAUMANN,
Chief of Police.

TOWN OF TAZEWELL,
Tazewell, Va., February 23, 1967.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.,
Washington, D.C.

HON. JOHN L. MCCLELLAN: In regards to the recent Supreme Court decision in the *Miranda* case:

I'm very much impressed with your decision of bringing up this hearing by U.S. Senate Subcommittee on Criminal Laws and Procedure, March 7, 8 and 9, regarding U.S. Supreme Court decisions affecting local law enforcement. I think this is the best news I've heard since this decision of the *Miranda* case was handed down.

This decision has handcuffed Police Officers throughout the U.S., in fulfilling their obligations to the citizens in protecting their property, rights and person against lawlessness which has become the number one topic in society today.

May the Lord smile on you as I am. May you have the best of luck in your decision.

Sincerely yours,

R. G. HAGY,
Chief of Police.

CITY OF LONG BEACH,
DEPARTMENT OF POLICE,
Long Beach, Calif., March 3, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In reply to your letter of February 21st I am happy to enclose a statement in support of bills S. 674 and S. 675 which you sponsored. By nature I am not a verbose individual, but on subjects about which I harbor strong feelings it is difficult to contain myself, although I did try to keep the statement within reasonable bounds.

It was most pleasant hearing from you, Sir. Writing to you has been my first experience of this nature, and while I am not a resident of your state, nor a member of your political party, I have long been one of your admirers and felt impelled to contact you. This has helped convince me that people should take a more direct interest in their elected representatives in the halls of government at all levels, other than faithfully exercising my franchise at the polls.

I am taking the liberty of enclosing two clippings from the Los Angeles Times, one by an editorial page writer and the other a news item regarding some pending legislation on a state level at Sacramento, which you may find interesting. While not in agreement with all the opinions expressed in the editorial article, I do heartily concur with those of new Los Angeles Police Chief Thomas Reddin on the role of the police, and those propounded by Dean Lohman of the School of Criminology, University of California, Berkeley. As to the news item about seeking state funds to increase police pay—this may be construed as very liberal and idealistic by many, but in my opinion is a far-reaching proposal with merit. While my career as a law enforcement officer may be over before these proposals are enacted into law, the need here and now. Law enforcement is striving for professional status and how better can educated and dedicated men and women be recruited into our ranks by upgrading of salaries and raising of standards?

With best wishes for continued success and well-being, I am

Sincerely yours,

J. M. BLACK,
Captain, Detective Division.

CITY OF LONG BEACH,
DEPARTMENT OF POLICE,
Long Beach, Calif., March 3, 1967.

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

GENTLEMEN: Speaking as a long time law enforcement officer, I wish to state that I am heartily in favor of S. 674, a bill with respect to the admissibility in evidence of confessions in criminal cases; and of S. 675, a bill which would outlaw all wiretapping except in cases involving the national security and in investigations of organized crime by law enforcement officers, under proper court supervision. America needs legislation such as this, and more, in this era of space age crime, to remove some of the shackles binding law enforcement in the proper performance of its duties.

Crime is a national disgrace making deeper inroads each year, and costing many billions of dollars which could be better spent in other endeavors. Public apathy and indifference have long aided the cause of the criminal, and unless there comes an awakening to this problem, civilization as we know it will cease to be. Perhaps this is what our enemies from within and without are waiting for! I am truly thankful that we have men of character and high principles in our Senate who are willing to face this and other problems, by offering leadership on a national level which others may follow, in efforts to preserve our great American heritage.

My career in law enforcement spans a period of 28½ years on a police department which has grown to employ 780 personnel, in a city of 375,000, and the second largest city in the great megalopolis that makes up Los Angeles County, California. In progressing through the ranks via promotion examinations my experience has covered the many facets of a police officer's service, both in supervisory and administrative capacities, and for the past six years I have served as Captain of Detectives, with 78 personnel in my division.

With the foregoing in mind, I feel qualified to express my opinions on this pending legislation, and wish to commend Senator John L. McClellan for the firm stand he has taken in this regard. Obviously, much thought and consideration went into the preparation of bills S. 674 and S. 675, and merit no amending or changing on my part.

Yours very truly,

J. M. BLACK,
Captain, Detective Division.

POLICE DEPARTMENT,
Long Beach, Calif., January 30, 1967.

Senator JOHN L. MCCLELLAN,
United States Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: As a U. S. citizen and resident of the state of California I wish to commend you for the forthright stand you have chosen to take regarding the crime situation in this country of ours. It will take concerted effort on the part of national leaders such as yourself to awaken the American public from the apathy afflicting it, before it is too late.

For the past 28½ years I have been engaged in law enforcement work, and can readily see, as you do, the losing battle being fought by police and prosecutor alike. Granted that there have been abuses by law enforcement in the past and that some court decisions were necessary to correct them, but by the same token, a balance should be struck between the rights of society and those of the accused—something which is sadly lacking now. It seems as long as we have a 5–4 ultra liberal majority on the U.S. Supreme Court that the pendulum will continue to swing away from that necessary balance. I cannot find it within myself to believe that our founding fathers who wrote our Constitution would ever condone some of the interpretations put upon its passages.

When the makeup of the President's Commission on Crime was first released, I was disappointed to note that only *one* professional policeman, the chief of police of San Francisco, was a member. Now one wonders how much impact the Commission's findings will have on the crime scene as a whole, and what will be done to implement them.

With the strong voice you exert in the Senate and the Congress, Senator McClellan, I feel sure that definite progress will be made, and hope and pray that right thinking people in this country will rally 'round you and others like you

With best wishes for your good health and well being, I remain

Yours very truly,

JOHN M. BLACK,
Captain of Detectives.

POLICE DEPARTMENT,
Huntington, W. Va., March 2, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SIR: Law abiding citizens have every right to be concerned over the rapid rise in the crime rate. Each day there is an increase in the citizen's chance of becoming a victim of crime. Even if they are not involved they are exposed to the higher cost of crime, inadequate police protection, lessening of their personal liberties, and the ever present fear for their life and property.

The plight of the law enforcement officer whose duty it is to protect life and property is becoming more and more difficult. The law enforcement effectiveness is being curtailed by some recent U. S. Supreme Court rulings.

The citizens in many parts of the United States are now paying because of some of the recent Supreme Court rulings that seem to serve the purpose of throwing protection around the criminal. Those who think that the police officer can cope with crime under these conditions should try to question a criminal. The police depend a great deal on their ability to interview and interrogate. Approximately seventy per cent (70%) of the major crimes are solved by interviews and confessions.

Locally in the City of Huntington, West Virginia, our criminal judge will not allow a confession or statement entered as evidence in his court even if the officer has obtained a waiver.

The responsibility of a police officer is great. The police officer's daily task is not one of research, nor are his decisions made in the quiet of the Judge's Chambers with time to arrive at a decision with all the rules and guidelines to study. Instead, his decision is made hurriedly and most often amidst disorder and confusion. Not only must the officer protect the innocent, find the guilty, but he must also protect the public. Ours is a government of laws—not men. Woodrow Wilson once said. "The first duty of the law is to keep sound the society it serves."

The law enforcement officer today already has a greater responsibility than he can fully understand and is capable of discharging. We feel the Scales of Justice have been dipped too far in favor of the criminal. You are in the position of possibly bringing the scales more in balance and giving the officer an equal chance. You can be assured of our one hundred percent (100%) cooperation in this mutual effort.

Sincerely,

G. H. KLEINKNECHT,
Chief of Police.
By Sgt. SAM WATKINS,
Commander, Investigators Unit.

TIGARD, OREG., *March 3, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I would like to take this opportunity to express some of my views on the current recent actions of the U.S. Supreme Court. I feel as I believe do most police officers, that the Supreme Court is going far beyond the bounds within which it was intended to operate as established originally.

It has always been my understanding that there were 3 distinct divisions within our field, those being, legislative, judicial and enforcement. Under present conditions it certainly appears to me that the Supreme Court has gone far beyond the bounds of judicial restraint and that it's decisions in recent times have been and are being accepted as legislation.

There is certainly something wrong when a court, such as that, after considering all evidence and technicalities for several months, then renders a decision and usually by a majority of one, that completely reverses the findings of lower courts and refutes the intelligence and abilities of all police officers in the United States.

There is no question that the recent decisions handed down by the Supreme Court have made our work much more difficult. Confessions are almost a thing of the past on major crimes today. Too many admitted criminals are now being released back into the public even though there has been no questions of their guilt at any time during their trial or subsequent appeals. These persons are being released back into the public even though there has been no question of their guilt what to expect when he makes an arrest even though he may follow all the guide lines now established by the Supreme Court and safeguard as completely as possible all of the rights of the accused person. The Supreme Court may, while that person is waiting trial, render a new decision that makes that officer's actions at the time of arrest inadequate.

At a time when crime is increasing more rapidly than ever and at a time when we are trying to attract more police applicants with a college education, these decisions make our work just that much harder. No well educated man is going to enter into the police service bearing the handicaps of low pay, poor working conditions and in addition to that the extreme restrictions under which they are now expected to operate as established by the Supreme Court.

It is certainly my feeling that any legislation that would tend to narrow some of the operations of the U.S. Supreme Court or to strengthen in any way the position of the police officers in criminal matters would be invaluable.

I would like to enclose a copy of the forms we must use within my county in Oregon when we begin to question a suspect or a person arrested for any reason. I only ask if you believe that anyone in his right mind would agree to answer any questions after having had these forms read to him, after reading the forms himself and then after signing the forms in all of the different required places.

I certainly agree that there must be restrictions in the law to protect fully the rights of all persons, but I do believe that under present circumstances and within the near future it is going to be necessary to introduce legislation to protect more fully the rights of the victims of these criminals that are now being returned to society.

Very truly yours,

HUGH H. WILKINSON,
Chief of Police.

We are police officers. We wish to talk to you about a crime. *These are your constitutional rights.* Read them carefully. You will be asked if you understand them. You will be given a copy to keep.

1. You have the right to remain *silent.* You do not have to say anything, write any statement or answer any questions.
2. Anything you say and any statement you write can be *used against you in court* to prove that you have committed a crime. *This is true even if you are a minor.*
3. You have the right to a *lawyer.* If you don't have the money to hire one, the court will appoint one for you free of charge. You can see a lawyer, hired or appointed, before you make up your mind whether you want to talk to us. If you do choose to talk to us, the lawyer can be present with you.
4. Any conversation with us is under your control. If you choose to talk to us, you can answer some questions, not answer others, and end the conversation whenever you wish.

I have had the above read to me.

I have read the above and *understand* what my constitutional rights are. I have received a copy of this paper.

Mark or Signature_____
Date & Time_____
Witness _____
Witness _____
_____ has told me that he/she cannot read.

I certify that I have accurately read and explained the above to him/her prior to the affixation of his/her signature or mark.

_____
Witness _____
Date & Time_____

1. I know that I don't have to talk to the police and that if I do, whatever I say and whatever statement I write may be used against me to prove that I have committed a crime—but I want to talk to them anyway.

Signature _____
Date & Time _____
Witness _____
Witness _____

2. I do not want to see a lawyer before I talk to the police, nor do I want one present while I talk to them.

Signature _____
Date & Time _____
Witness _____
Witness _____

_____ has told me that he/she cannot read.

I certify that I have accurately read and explained the above to him/her prior to the affixation of his/her signature or mark.

_____
Witness _____
Date & Time _____

I am about to make a written statement or to have one written for me by a police officer at my direction. I have not been threatened or coerced in any way to make this statement. No one has indicated in any manner that I will get off or receive light treatment if I make this statement; nor has anyone told me that I will get special treatment of any kind for making this statement.

I have read the above and it is true:

I have had the above read to me and it is true:

Date & Time _____
Mark or Signature _____
Witness _____

The following is true to the best of my knowledge:

Mark or Signature _____
Date & Time _____
Witness _____
Witness _____

OCALA, FLA., *March 6, 1967.*

Re: Psychology.

Hon. JOHN. L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SIR: The hearings will be followed with much interest by the public. Your committees command much respect.

Time will not permit me to elaborate at length, so I will confine my remarks to the Miranda Decision, and in brief:

Miranda, in all of its aspects, if followed to the letter of intent, will have the effect of stripping the Police Service of its most effective tool. (Psychological Inquiry).

Interrogations are responsible for the successful conclusion of crime investigation. Contrary to what has been said, interrogation plays an important roll in every police operation.

In the Miranda Decision, it was pointed out that the illiterate and uneducated would be the most helped by the decision.

This is not quite the situation. Such persons, along with the first offender, are usually anxious to clear the conscience by revealing their guilt.

The profssional criminal is quick to exercise his right of silence, but was vulnerable to reasonable police inquiry.

I feel sure that our records will verify these statements, based on 30 years of experience, 14 years in the rank, 16 years as Chief of Police.

Respectfully,

K. C. ALVAREZ,
Chief of Police.

MARIPOSA, CALIF., *March 1, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: Mr. Quinn Tamm, Executive Director, IACP, has informed me that you are considering changes that will redirect the effects of the Miranda decision and others like it, to a more sane approach toward criminal justice throughout the United States, and presently seek whatever evidence or testimony that will assist your committee toward that end.

May I suggest that your committee initiate the ratification of an amendment to the U.S. Constitution that will include procedures along the lines of those parts of the California Constitution that read:

Art. I, Sec. 13, California Const.: "in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury" (Nov. 6, 1934).

Art. VI, Sec. 4½, California Const.: "No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any errors to any matter of pleading, or for any error as to any matter of procedure, unless after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice" (adopted November 3, 1914).

Note: Art. I, Sec. 13, as quoted above was decided violative of the Fifth Amendment by the U.S. Supreme Court in *Griffin* v. *California* as made applicable by the Fourteenth in *Malloy* v. *Hogan*, 378 U.S. 1 Pp. 610-615.

I suggest an amendment to the U.S. Constitution because the current line of decisions by the U.S. Supreme Court is contrary to what has long been thought to be an accurate interpretation of the Bill of Rights, namely that the Bill of Rights applied to the United States, and that the exercise of police power rested exclusively with the several States.

That thinking is found in the Federalist Papers. Obviously, Madison and Hamilton were familiar with the tradition that the English Parliament legislated and the English courts decided, it being unthinkable that the English courts would decide an Act of Parliament as unconstitutional, so "Congress shall make no law" as we find that quote in the Bill of Rights applied to the United States government.

Now, as matters stand, the Tenth Amendment is a dead thing, and if the present tendency of the U.S. Supreme Court continues, the several States will soon be mere administrative districts of the United States, contrary to the original concept of those who wrote the U.S. Constitution.

Since the U.S. Supreme Court regularly undertakes to decide Acts of Congress as unconstitutional, I hope for an amendment to the U.S. Constitution that will stay the hand of that court in matters of criminal law that are as just as our compatriots can make them, just to see how ingenious the U.S. Supreme Court can be in an effort to declare such an amendment unconstitutional.

May every success attend your efforts in this matter.

Cordially,

ARTHUR C. HOHMANN,
Deputy Chief of Police,
Los Angeles Police Department (Retired).

CITY OF SAN BUENAVENTURA,
Ventura, Calif., March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SIR: I am writing in support of your efforts to broaden the admissibility of evidence in court cases where confessions are considered. Recognizing that you have limited time to read communications such as this, I will briefly state the following:

(1) I recognize the need to have courts conduct an intensive search for truth in considering the merit of evidence to be allowed in a particular court case. However, the trial of a given matter and the attendant search for truth should not be so technical that obviously valuable evidence is excluded from consideration by those seeking the truth in a disputed case.

(2) The attached newspaper clipping is typical evidence of the damage that is being done by an over-technical approach to the law at the expense of the search for truth.

I wholeheartedly endorse your efforts to increase the protection afforded citizens by updating our laws.

Sincerely yours,

DAVID PATRICK GEARY,
Chief of Police.

OKLAHOMA CITY POLICE DEPARTMENT,
Oklahoma City, Okla., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SENATOR MCCLELLAN: I join with, I am certain, the overwhelming majority of law enforcement officers in wishing success for your efforts to improve the condition under which officers must operate. While there is an abundance of groups and individuals arguing the cause of the criminal, there is a dearth of such advocates on the side of law and order.

For too many years, the psyche of social welfare has been allowed to supplant social responsibility and one of the results is reflected in a growth of lawlessness that threatens the roots of this nation in a way exceeding the wildest dreams of the international communist conspiracy. The most recent example of this philosophy was evidenced in the Miranda decision, but despite the notoriety of Miranda, it would be inaccurate to blame much of what is now history on that or indeed, any single ruling of the Court.

Too often, in fact *ordinarily*, the concern of society has been with protecting the rights of accused, including analyzing his subconscious, without regard for the rights of society or the victim of crime. If, as some say, the criminal is the produce of his environment, then what of the other and much larger public that is of this same environment but respects the law? Responsibility, or the absence thereof, is the difference between orderly and lawless society.

A second element appears in the recent decision of the Supreme Court: that is the obvious and announced intent to "control" the police. Repeated reference is made to the Wickersham Crime Report of the early 1930s as though law enforcement had not had enough sense to change one whit in over thirty years.

The Court has confused the undestandable desire of the framers of this Constitution to escape oppression at the hands of a foreign king with the right of a housewife to escape assault in the parking lot of a supermarket.

Consider the "police" that were known to colonial times and imagine their effectiveness in any matter of more consequence that discovering a fire. The power was then and is now in the military establishment. The police are neither capable nor desirous of overthrowing the government. They are capable of enforcing the criminal laws but are not allowed to do so. The early distrust of the Crown has been transferred to the police operating in a field foreign to that which gave rise to the historical distrust. To this mania to control the police has been added the psyche of social welfare so that now a man is not even responsible for what he says, much less what he does, and especially so if he says he did it and can show that he is of humble origin or is a member of a minority.

The "blameless" philosophy is exemplified in the bit of doggerel by the unknown author who paraphrased the story of Tom the Piper's Son to show the current thinking of those who say the criminal is the misunderstood product of physiological trauma, as follows:

"The pig has hissed, but Tom was kissed
And sent to see a psychiatrist."

This sounds extreme and even silly, but really is this not the case when automobile owners are told that *they* are to blame for car thefts by virtue of leaving their vehicles unattended? Such thinking zeros in with deadly accuracy

on the entire system of property rights as known in this nation. It is but a matter of degree to shift the blame for bank robbery to those wicked bankers who have all that money lying around . . . and besides, it's all insured so nobody really gets hurt!

The insurance is a story by itself. It has advanced to such a degree that it would come as no surprise if a professional thief's policy were placed on the market with low monthly premium, providing a policy to cushion the impact of arrest with its attendant inconvenience and expenses. (Ultimately, I suppose the "Company" would provide a substitute to serve the "insured's" time if all legal appeals failed.)

This department has noticed, as I am sure have others, a growing trend by victims of crime, especially national chain stores, to provide only sketchy details of crimes which appear to have their base in some sort of company policy related to the concept that whether solved or unsolved, the loss is insured and if solved, there could be repercussions in the form of law suit, producing of records, witness time away from the job, intimidation of witnesses, and other related phenomena. If the police feel that they are in some way being "used" it is because they know that the insurance companies uniformly require that crime be reported before a settlement can be made. We receive daily numerous reports of crimes that were discovered days and sometimes weeks earlier. The delay is explained by the victim when he reports that his company required that the incident be reported to the police. The age of insurance and irresponsibility seems to be upon and a part of us. There is hope though that a distinction can be made that will distinguish between asocial acts and anti-social acts.

Whether a man pay his bills, support his children, work for a living or not do these things should have no bearing on his personal responsibility if he decides to steal, rob, rape or murder. There is a difference between flunking school and stealing cars. There is a difference between assembly and petition and looting and burning. Illiteracy should not be confused with burglary. Surely, the United States of America and the several states have the ability and the sovereign right to make such distinctions that will prevent establishment, on an all-encompassing front, of a police state but will assure responsibility for those acts which have, since recorded time, been crimes. It is perfectly reasonable to set all sorts of technical rules around technical crimes. It is an absurdity to so surround crimes at common-law.

Sincerely yours,

HILTON GEER,
Chief of Police.

DIVISION OF POLICE,
Xenia, Ohio, March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

HONORABLE SIR: Thank you for your request asking for my views and suggestions regarding the decisions of the Supreme Court. Although many of the decisions of the Supreme Court have affected the Police Service, I doubt whether all of them collectively have caused an impact such as the Miranda decision.

It seems to me that the Supreme Court has attempted to right the wrongs of a few policemen by penalizing all of us. There is no denying that many citizens were denied their constitutional rights before we started to train our men; there is no denying that many policemen guarded the citizen's constitutional rights and obtained convictions through the practice of proper investigation techniques, thus giving society proper protection and service—these officers have been slapped down for doing a good job for the actions of a few.

It seems inconceivable that we, as police officers, are not allowed to question a suspect without the suspect's counsel present. Are we allowed to be present when the suspect confers with his attorney?

I do not advocate an unreasonable period of time for questioning, however, it seems that we should be allowed a sufficient period of time to question a suspect in proper surroundings, without interference from outside sources. Proper questioning will many times eliminate suspicions from a subject completely. Proper questioning will many times solve a case in a very short time. Thus, with proper questioning, under proper conditions, without interference or outside influences, we would be able to serve the citizens of our City in the manner they demand.

How are crimes to be solved when the required evidence is non existent?

We are not asking for complete freedom in our investigations; we are asking for realistic procedures that we can follow with the knowledge that our properly conducted investigations will be accepted and not thrown out of court by a technicality.

Yours very truly,

HAROLD W. MILLER,
Chief of Police.

DEPARTMENT OF POLICE,
San Clemente, Calif., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have been informed of your introduction of Senate Bill 674 seeking to amend Title 18 of the United States Code.

May I join the thousands of other law enforcement officers in this country in giving you every possible support in this endeavor. We feel strongly that Supreme Court decisions in the area of Escobedo, Miranda, and other unnecessarily restrict the best efforts of law enforcement nationwide.

For your information, I am also writing to the Senate representatives from from California.

Sincerely yours,

CLIFFORD G. MURRAY,
Chief of Police.

DEPARTMENT OF POLICE,
Antioch, Calif., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SIR: May I take this brief moment to express my appreciation to you and your committee for the sincere efforts and expenditures of so much time and energy in behalf of the community welfare and promotion of better law enforcement for this nation. I would heartily encourage you not to become dispaired in the face of so many vociferous defenders of criminal liberties. As usual, those who are in favor of and desire quiet justice do not often speak loudly until pushed over the brink of disaster.

Now we are being faced with imminent disaster unless the courts recognize the predominant desire of a human being to issue confession to clear his own mind. I believe the original intention of the courts were to insure justice to all parties and to seek the truth. Unless the truth in total evaluation and merit is accepted and acknowledged by the courts, our form of freedom for the pursuit of happiness for the law abiding citizen will perish.

Yours very truly,

E. A. CARLSON,
Chief of Police.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DIVISION OF STATE POLICE,
North Scituate, R.I., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have just received a communique from Mr. Quinn Tamm, Executive Director of the IACP, regarding your Senate Subcommittee on Criminal Laws and Procedures, which is scheduled to begin hearings on March 7, 8, and 9, 1967, concerning U.S. Supreme Court decisions affecting local law enforcement.

It is indeed gratifying to know that such an outstanding and respected legislature as yourself, is interested in the law enforcement officer's plight to rectify the recent Court decisions.

I want to compliment you and the members of your committee on this undertaking, and you may be assured that I stand willing to do whatever I can to assist you in this endeavor.

I have instructed the members of my staff to conduct a survey of all of our recent cases which have been affected by these decisions, and the report is to be forwarded to you prior to March 3, 1967.

As Chairman of the New England State Police Administrators, I am also bringing this correspondence to each Administrator's attention so that we may, as a body, go on record as supporting your committee.

Assuring you of my desire to cooperate at all times in matters of mutual interest, I am

Respectfully yours,

WALTER E. STONE,
Colonel, Superintendent.

CITY OF HERMISTON,
Hermiston, Oreg., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SIR: As a Chief of Police I can attest to the effect on law enforcement of the late U.S. Supreme Court in general, and the Miranda Decision in particular.

I would certainly support any review of these late findings of the U.S. Supreme Court.

The releasing of confirmed criminals is much more of a threat than any crimes which these individuals could commit. It has already done serious damage to any deterrent effect the punishment of criminals might have had.

I will not join with those who are blindly criticizing the U.S. Supreme Court. I have too much respect for our judicial system. Neither do I share the panic shown by some over the direct effect these rulings have had on integration and other standard police procedures and techniques.

The thing that frightens me is, I feel that the U.S. Supreme Court has more support from the American citizen than anyone dares admit. I welcome and support any and every objective inquiry, study or appraisal of these rulings in question. I feel strongly that such inquiries, studies or appraisals should be as public as possible.

We are faced with much more than the reckoning with the illogical pursuit of a five member—one man majority court. We must contend with the illogical pursuit of many American citizens who can see the need for good effective law enforcement only when they themselves are the victims of some criminal act.

I am certain that adjustments at the U.S. Supreme Court level will help with immediate problems of law enforcement as it relates to daily public protection. However, I am just as certain that in the long run, without a basic change in trust of the average American citizen toward local law enforcement, adjustments on the Supreme Court level will serve only to pacify the situation.

I see more future with the programs aimed at directly upgrading local law enforcement. You can not demand respect by a court ruling, you must gain it. Hopefully, these programs will assist local law enforcement to a new level. A level of respect and trust by the American citizen. Until such time that a policeman is looked upon in the same light as a doctor, a lawyer or a teacher, I am afraid that our present day situation will continue.

Respectfully,

JAMES POLLARD,
Chief of Police.

DEPARTMENT OF POLICE,
Beverly Hills, Calif., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
Washington, D.C.

DEAR SENATOR: Wish to commend you for your efforts in trying to restore common-sense and reason in Court actions regarding criminals. It is, indeed, disturbing for Law Enforcement Officers to see guilty persons released on minor technicalities.

Despite the criticism of Law Enforcement Officers, they are doing their best under extreme handicaps, and criminal statistics show that crime is increasing much faster than the population and in the average metropolitan cities, per-

sons do not attempt to walk on the street at night time. No one seems to be concerned about the rights of law abiding citizens and some reasonable laws will have to be made to allow Police Officers to interrogate suspects and a reasonable time limit placed on keeping suspects in custody.

When a person wilfully violates the laws of the nation or the states, he certainly is not entitled to a protective cloth during this period of time. I am certain that our founding fathers never intended it that way. They are entitled to the due process of law and in impartial trial but the constitution was never intended to be used by unscrupulous lawyers to inject suspicion or accusations in order to cover up the guilt of the defendant.

Wishing you success in your program, I remain

Sincerely,

CHIEF C. H. ANDERSON,
Past President, California Police Chiefs' Association.

AUSTIN, TEX., *March* 3, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on
Criminal Laws and Procedures,
Washington, D. C.

DEAR SENATOR MCCLELLAN: The following information is respectfully submitted in response to your request that the members of the International Association of Chiefs of Police state their views concerning the effect of recent Supreme Court rulings such as Miranda v. Arizona on their efforts to effectively enforce the criminal statutes in their respective communities.

Your introduction of S.674 to amend Title 18, USC with respect to the admissibility in evidence of confessions strikes at the very heart of the major problem of all law enforcement agencies in protecting the life and property of their citizens.

May I direct your attention to my letter to you of December 17, 1965 which was in response to your inquiry of December 3, 1965 concerning the bill that you had pending in the Senate at that time, S.2578, Standardizing the Admissibility of Voluntary Confessions? At that time I mentioned that our Texas Legislature, just six months prior to that date had enacted a new Code of Criminal Procedure. This new Code, under Article 15.17, established the requirement that before any arrested person could be questioned by an officer he must be taken "immediately" before a magistrate who would warn him of his rights to an attorney and, in fact, if he had no attorney one would be appointed for him without charge.

An amendment to this statute is now pending in the current session of our Legislature which will emphasize even further the advisability of such person having an attorney appointed for him before he discloses information of any kind to a police officer. As a matter of fact, we are today experiencing difficulties with court appointed attorneys who endeavor to refuse to even allow their clients to be properly identified and booked before obtaining their release on bond.

Such statutes and amendments are sponsored by members of our legislature who specialized in the practice of criminal law. Many of these parties have openly admitted that they are anticipating future rulings of the Supreme Court and purposely intend that our State statutes in these matters shall extend beyond the requirements now contained in the Federal Rules of Criminal Procedure.

I am sure that you are already well aware that, in the State of Texas only the written confessions of a defendant are admissible in evidence against him. No oral statements are admissible unless made in the presence of a magistrate and are properly recorded and witnessed.

The instances where criminals are now walking the streets as free men after having committed the crime of murder without witnesses exist in virtually every section of the Nation. In all of these cases the only available evidence against them would be their confession if it would be admissible under our existing rules of evidence.

Crimes of this nature are relatively insignificant, however, when we consider the restrictive effect of these rules of evidence on various other types of crime which effect a much larger segment of our citizenry. I refer to the crimes of theft and burglary.

It has always been one of the most basic principles of police procedure to endeavor to clear up as many of these crimes as possible by interrogation of the

arrested person and, particularly, to recover the stolen property and return it to its rightful owners. Further, this practice has had a salutary effect on the potential rehabilitation of the criminal by enabling him to confess all of his crimes and plead guilty to only one of the many offenses he has committed.

Under our present system, however, only a very strong-willed person can withstand the repeated warnings and urgings of a magistrate to not disclose any information to the arresting officer until an attorney has been appointed to represent him. It goes without saying, of course, that no attorney worth his salt will permit his client to make any admissions whatever to a police officer.

Further, it is a well accepted fact throughout our Nation that all of our law enforcement agencies are woefully undermanned. In the past when it has been possible to obtain clearance of a large number of offenses of this type the amount of time spent on continuing investigations of the unsolved cases has been materially reduced. Today, this is no longer the case.

May I cite, for your consideration, the following factual comparison offenses of this type taken from the records my department, both prior and subsequent to the Escobedo and Miranda rulings:

	Offenses	Offenses cleared	Percentage	Property losses	Property recovered	Percentage
Larceny, all grades:						
1963	4,653	1,061	22.8	$102,084	$23,461	23.0
1964	5,453	1,110	20.4	112,060	27,479	24.5
1965	5,830	1,121	19.2	119,529	20,985	17.6
1966	6,640	1,085	16.3	176,323	30,210	17.1
Burglaries:						
1963	1,519	482	31.7	51,730	12,745	24.6
1964	1,904	503	26.4	79,868	17,227	21.5
1965	1,860	370	19.8	97,971	15,644	15.9
1966	2,564	403	15.7	119,247	15,784	13.2

I think these figures tell the story much more effectively than I could state it in words. The number of offenses and property losses have constantly increased, since the advent of the Supreme Court Rulings and the restrictive measures passed by our Texas Legislature, based upon those rulings. In contrast, the percentage of cases solved and property recovered has consistently declined.

Our professional criminals are well aware of these court rulings and laws which pertain to their alleged rights and govern the manner in which their cases must be handled by the arresting officers. In fact, it is common practice to have these persons, following their arrest, quote the law and remind the officer of his limitations when he attempts to interrogate them and clear up the offenses which they have committed.

As contrasted to these adult, professional criminals there is however, another group which is a matter of grave concern to me, my associates in the law enforcement profession and the adult law-abiding citizens of our community.

This concerns the youthful offenders who have, thus far, been guilty of only petty thefts of automobile hub-caps, parts and occasionally automobiles which have been taken merely for a "joy-ride".

In the past when these youngsters were apprehended it was not usually too difficult to nip a budding career of crime in the bud through a quick moving investigation by the officers assigned to our Juvenile Bureau. Immediately following their arrest these boys could be readily interviewed at which time they would admit their guilt, identify other youths who were also involved and, finally, assist in the recovery of the stolen property.

In such instances, these boys were placed under closer supervision by their parents and made aware of the seriousness of their acts through our local courts and juvenile correctional facilities.

Today, however, after having been admonished by the magistrate concerning their rights and the offer of a court appointed attorney it is relatively rare that these procedures are possible. Their attorney will almost invariably instruct them to furnish no information whatsoever to the officers. As a consequence, any punitive action against them for their offenses is seldom possible.

Their associates in these offenses, being unidentified, are then enabled to continue their criminal activities until they gradually become involved in crimes of a more serious nature. By that time the possibilities of rehabilitation are rela-

tively remote and, in the meantime, the crime problem in the community continues to increase in volume and magnitude.

In referring to the rulings of the Supreme Court in recent years I have been concerned with the fact that in virtually every decision which has, in effect, interpreted the Constitutional rights of the criminal the decision has been by a five to four majority. In virtually all of such rulings the court has completely reversed its position of long standing on such matters.

I am totally unable to reconcile this situation wherein one member of the court is able, in effect, to amend our Constitution by his interpretation on these questions whereas the Constitution itself can be amended only through ratification by three-fourths of the States in the Union.

I sincerely hope that these observations may be of some value to you in your splendid effort to aid the law-abiding citizens of our Nation through your support of their duly constituted law enforcement agencies. You may be assured that I shall deem it a privilege to provide any assistance possible to assist you in obtaining passage of this vitally important legislation.

Respectfully

R. A. MILES,
Chief of Police.

PROVIDENCE POLICE DEPARTMENT,
Providence, R.I., March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedure, Washington, D.C.

DEAR SENATOR MCCLELLAN: In complying with the request of the I.A.C.P. in its recent memorandum concerning the forthcoming hearings before your committee regarding the adverse effect U.S. Supreme Court decisions are having on efficient law enforcement, I consider it high privilege to offer you my views on this subject which are in support of S. 674, the bill by which you seek to amend the law with respect to the admissibility in evidence of confessions.

As you well know, the members of any profession or occupation responsible for the discharge of specific duties are very often biased in their point of view on matters which have a direct effect on their profession. I think that all of us in the police profession will have to admit that within certain extended limits there exists a conservative viewpoint which is somewhat characteristic of policemen and which we feel we must have in order to carry out our responsibilities.

Basically it is the duty of every law enforcement officer to administer the enforcement of law and to protect the public from law violators. Therefore, in a strict sense only those factors which either add or detract from this objective, directly or indirectly, are of legitimate concern to police officers. It is with this presupposition that I agree with the I.A.C.P. which feels that policemen ought to have the chance to express their views concerning this vital matter.

I am in complete favor with the provision of S. 674. I think that everyone needs to show more concern about the rising crime rate and the importance of the role of the police in maintaining social order in this country. Unfortunately, not all citizens realize the threats that can accrue to the safety of their person and property if police authority continues to be cut back by judicial or legislative incursion of the police function.

Many police officers feel that they have been shorn of some of their essential authority by the impact of the *Miranda* decision. Policemen believe they face an enigma: What can be done about the public clamor for more effective police protection in the light of this decision of the Supreme Court, and at the same time observe the procedural safeguards favoring the accused? One federal judge unerringly pinpointed the present dilemma of the police when se said, "Pressures of society and of public opinion in one breadth demand that crime be promptly solved, and in the next seem to condemn any interrogation of suspects by the police."

In effect, to date, the majority opinions of the Supreme Court have placed emphatic weight upon the political ideals which hold in esteem human rights and human dignity. Please understand that, in my opinion, no policeman anywhere questions this ideology for these conceptualisms are held sacred by every good American. The problem today is their application to the work-a-day world of law enforcement.

It seems to me that what is needed now from the judiciary or legislature are rules of law making more clear the extensions and limitations of human freedom as they relate to the society of law enforcement. Such clarification is not only important for the police function, but also that of criminal courts. All levels of courts are faced with the problem of interpreting the "exclusionary rule" implication in relationship to extensions of the "right to counsel" represented in the *Escobedo* and *Miranda* decisions. Court justices and policemen are having to make hairline decisions in the absence of firm guidelines in the new rules as they exist now.

In their zeal to protect a defendant's constitutional guarantees in accordance with their measure of these rules, justices, particularly in the lowest municipal courts, are handing down decisions that are virtually crippling the traditional investigative procedures of the police. I'm sure you are familiar with some of these decisions in important cases throughout the country, and I shall not burden you with more of the same. However, I would like to single out two local cases of minor nature as examples of what is happening in the police field, and how frustrating it is for dedicated police officers to do their job.

Case History No. 1

A traffic officer of this department was dispatched to the scene of an accident at an intersection controlled by a traffic signal light. Arriving at the scene, the officers was met by the two motorists involved. One of the motorists immediately said to the policemen, "This fellow went through a red light and ran into me." Turning to the second motorist, the officer said simply "Is that so?", whereupon this motorist admitted that he had failed to stop at the red light.

When the case was presented in our municipal court the judge immediately dismissed the charge against the offending motorist on the grounds that the policeman failed to notify the defendant of his rights before he asked his question "Is that so?"

Incident No. 2

An off-duty officer of this department was operating his own private car along a local freeway during a heavy traffic period when he witnessed a car ahead of him side-swipe another vehicle and then continue on without stopping. This officer, together with the operator of the car that was struck, both obtained the registration number of the offending car but were unable to identify the operator who sped off. The registered owner of the car was subsequently notified by the police to have the person operating that car report to our traffic division. A short time later, the registered owner appeared at the police station with his attorney. He stated his name and address and then refused to give any other information or answer any questions.

Obviously, under these circumstances no action could be taken leading to the prosecution of the person responsible for this violation of the law.

I am enclosing a copy of a recent newspaper story which is self-explanatory and emphasizes the concern of other public officials in this community.

Very truly yours,

HOWARD A. FRANKLIN,
Colonel,
Chief of Police.

[From the Providence Journal, Feb. 24, 1967]

RULINGS ALARM CHAFEE, GOLDSTEIN

CRIME RULINGS ALARM CHAFEE, SAFETY CHIEF

The results of some cases decided on the basis of recent U.S. Supreme Court decisions were viewed with dismay yesterday by Governor Chafee and attacked vigorously by Harry Goldstein, Providence police commissioner.

Governor Chafee, during his press conference, said he shares what he called the public's "incredulousness" about recent acquittals of defendants whose confessions were disallowed on grounds they were obtained in violation of constitutional rights.

He was directing his comments specifically at a Rhode Island case involving an escapee from the Adult Correctional Institutions, and another in New York, where a man accused of stabbing his wife and five children to death was freed.

In both cases the defendants' confessions were thrown out. The judges ruled they had not been properly informed of their right to counsel.

"We are making this all-out attempt to stop crime and some of these decisions seem incredible," the governor said. Mr. Chafee, an attorney, said he is not challenging the judge's verdicts, if they are "based on the proper Supreme Court holding."

"But something is out of whack," he said.

Commissioner Goldstein debated the issue with Aram A. Arabian, a former public defender, before the Pawtucket Rotary Club.

Warning of "serious social consequences" unless the trend is reversed, Mr. Goldstein said thousands of cases in the lower courts have been thrown out because the court changed the rules.

The people "are not going to sit back and be inundated by escalating crime," he said.

"The court doesn't worry, but I have to worry about the impact on the community, and so do you," the top Providence law enforcement official said. The luncheon meeting was held in St. Paul's Parish house.

Mr. Arabian countered with the contention the court has only told police, "Do it the right way."

He said the court did not change the rules. It just defined the basic rights that have been in the Constitution since it was written, he said.

He predicted that the day will come when no confessions will be admissable under any circumstances. He said new scientific ways of presecuting crime will make confessions unnecessary.

Mr. Goldstein disagreed on both points.

"Those who talk of solving crimes scientifically haven't been inside a police station, and that includes most judges," he said.

Disputing the statement that the court had not changed the rules, he said, "These are rights created by the court and nothing else." He said the Miranda decision should not have been retroactive.

Mr. Goldstein said it is becoming almost impossible to convict narcotics and gambling offenders. He said they "come down the corridor of the police station laughing" and making such remarks as, "Just keep your mouth shut and we'll be all right."

Referring to the New York man mentioned by Governor Chafee, Mr. Goldstein said, "As a result of a subsequent change in the rules a man who committed six murders was allowed to walk out free." He said there was no Supreme Court ruling at the time of the murders.

Mr. Goldstein said the man's lawyer attempted to reassure the people of New York by saying, "Don't worry. He's going back to Puerto Rico."

The real concern in the controversy should be the impact of crime upon the victims, Mr. Goldstein said.

Mr. Arabian had compared the role of the U.S. Supreme Court with that of an umpire at a baseball game.

"Without the umpire, it would be riot and chaos," he said. "It would be the same with our government."

Another former public defender, Leo Patrick McGowan, who was also at the meeting, said a defendant is outnumbered five to one by police who are "jabbing" him in the ribs at the police station. "It is the defendant's word against five policemen," he said later.

"I have found most policemen more reliable than many of the people you have defended," Commissioner Goldstein replied.

MEMORANDUM

FEBRUARY 28, 1967.

To: Peter J. Gannon, Chief, Bureau of Navigation.
From: William H. Fennecken, D/Chief, Marine Patrol.
Subject: Memorandum 2/21/67.

It is common knowledge today that a police officer's lot is not a happy one. Pressures from all sides, particularly in the field of civil rights and recent Supreme Court decisions has lowered the police image to below that of the local garbage collector. With the bombardment of his image, his morale has also tumbled. The average Cop today is a disgruntled individual, who is doing only

what is necessary in the performance of his duties; to have a spark and be energetic is to look for trouble and further criticism.

The picture was not always thus. When I first entered the police field thirteen years ago, it was on the way to becoming an honorable profession. I can recall how proud I was when I first donned the uniform. Walking my post as the local symbol of justice, I felt more like a knight in shining armor, ready to protect the proverbial damsel in distress. No apprehension entered my mind. All peoples from all walks of life were treated with equal candor.

As a police officer, I soon learned that in Rome you do as the Romans do. As I gained experience I learned to size people up. Basic philosophy began to take hold. I found that all people desire to be treated as individuals, to be accepted for their own sake regardless of their position in life. Everyone wants to be understood and in their own way to be important. The wise guy had his underlying motive, the recidivist his.

Today the task of getting to the underlying motive has all but vanished. The police officer's approach to people has, by mandate, radically changed. The violator of public trust seeks no help because he expects none from the man in blue. The once human bond, the old avenue to justice is as cold as a weather front from Canada.

Recent Supreme Court decisions have heaped coals upon the relationship between the law enforcement officer and the accused. The policeman, must of necessity, change his entire outlook bringing into enforcement a different approach. An approach that is cold and calculating. For an officer with years of experience, this becomes a bitter pill to swallow and is not easily comprehended.

Most police officers today are disillusioned men, fighting frustration at every turn. Nothing to an officer can be more heartbreaking than to see weeks of work for naught, because of some court technicality. When the criminal is turned loose to ply again on the public, the officers wonders why he ever pinned a badge on in the first place.

Something must be done in the immediate future to restore the policeman to the symbol of old; the pillar of the community; respected as the protector of every citizen's rights, and a very present help in time of trouble.

WILLIAM H. FENNECKEN.

MEMORANDUM

FEBRUARY 28, 1967.

To: Peter J. Gannon, Chief, Bureau of Navigation.
From: Alvin M. Walsh, D/Chief, Marine Patrol, Dist. II.
Subject: Bureau Chief's memo of February 27, 1967, Re International Association of Chiefs of Police.

The undersigned officer feels very strongly about the recent Supreme Court decisions. However, in way of an opinion: Both the recent Escobedo and Miranda decisions were decided by the Supreme Court on 5–4 votes. In each case the minority justices accused the majority of writing laws, a function of our legislators as defined in the Constitution of the United States. It appears Chief Justice Warren is attempting to re-write all criminal laws.

Apparently the Supreme Court, in considering the rights of the accused, have forgotten the rights of the victims. A case in point: Recently, in New York City, a factory worker who had admitted killing his wife and five small children was released from prison. His confession, the only evidence against him, was set aside "because he had not been informed of his rights" as outlined in the historic Supreme Court Decision under Miranda.

When this individual was released, Brooklyn District Attorney Aaron A. Koota made a comment with which I agree as, I am sure will most law enforcement officers. He said: "The United States Supreme Court has weighed the scales of justice heavily in favor of the criminal suspect. I am not a prophet, but the handwriting on the wall indicates a trend on the part of the court to outlaw all confessions made to police.

If and when that melancholy day comes, the death knell of effective criminal law enforcement will have been sounded."

Miranda has cut at the very foundations of law enforcement and of the legal system—by weakening the right of the police to search for the truth by oral questioning of a suspect before trial.

In Escobedo and Miranda the decisions state that a suspect can waive his rights to remain silent or waive his right to counsel. The waiver concept is and will continue to come under close scrutiny by lawyers and I doubt that

law enforcement has heard the last of the criticism when an officer advises, in court, that the defendant waived his right to remain silent.

Further, some of the New Jersey Magistrates have added Miranda to both Motor Vehicle and Juvenile cases.

Last summer, Sgt. Newman at a juvenile court hearing was asked; even though he had previously stated questioning was conducted in the presence of the juveniles parents, whether the boys (aged 14 and 15; charged with Larceny), were apprized of their constitutional rights before they were questioned.

This officer would strongly recommend that our unit, the Marine Police, go on record as endorsing the stand of Senator McClellan and of the Sub Committee on Criminal Laws and Procedures and urge the passage of his legislation with respect to the admissibility in evidence of confessions.

Respectfully,

ALVIN M. WALSH,
D/Chief, Marine Patrol, Dist. II.

MEMORANDUM

FEBRUARY 28, 1967.

To: Mr. Peter J. Gannon, Chief, Bureau of Naviagtion.
From: Steven Zwarych, Jr., Dep. Chief, Marine Patrol.
Subject: Memorandum—I.A.C.P., Bureau Chief's Memo of 2/27/67.

With reference to the above subject, the following comments are submitted for your use in complying with the I.A.C.P. Memorandum.

At the present time, neither the Mapp's nor the Miranda decisions have affected the enforcement procedures of our Marine Patrol Organization.

To the writers knowledge, our authority to stop and board a vessel underway as outlined under 12:6-6, has never been challenged by any court of law. Should a vessel be docked or moored and the necessity to board arise, a proper search warrant would be obtained by one of our senior men after first clearing such action with the District Headquarters.

The Miranda decision would have no bearing on our normal accident investigation procedures with the recent decision of the New Jersey Superior Court in the case of "State v. Zucconi" bearing this out, stating that this Supreme Court decision, "did not apply because defendant was not under arrest, in custody, or otherwise deprived of his freedom when he made the admission."

By Departmental Policy all officers of the New Jersey Marine Patrol are restricted to the enforcement of our Boating Laws and Regulations with instructions that if any other violations or crimes are detected, they be turned over to the appropriate municipal, county or State authorities.

Should this policy change whereby their enforcement responsibilities would be expanded then potentially the Mapps and Miranda decisions would directly hinder their capabilities as far as the investigation of larcenies, breaking and entries and death caused by boat.

Occasionally when an out of state boater or disorderly person is placed under arrest for transportation to a local court or police headquarters for the purpose of posting bond, the Miranda decision would affect questioning of the defendant until he was apprised of his rights; however, this should not pose any problem as a Deputy Attorney General could be obtained for any later court proceedings if the defendant is represented by counsel.

Respectfully submitted.

STEVEN ZWARYCH, JR.,
Dep. Chief, Marine Patrol.

Attachment:
Excerpt from Bulletin Letter 131, p. 2.

RECENT OPINION

(NOTE: The following opinion, which will shortly appear in the advance sheets, is presently available, without cost, by writing to the Clerk of the Supreme Court, State House Annex, Trenton.)

State v. *Zucconi*,—*N.J. Super.*—, (App. Div., A-786-65, decided January 13, 1967.)

Defendant was convicted in the municipal court and in the county court after a trial de novo of careless driving (*R.S.* 39:4-97). Twelve days following the

accident which led to the charge, the defendant was interviewed at the hospital by a State Trooper who was investigating the accident. The defendant stated he was driving the car and later in his home repeated his statement to the Trooper and signed a typed statement in the presence of members of his family. At the trial defendant testified another person, who died as a result of the accident, drove the car. Defendant's statement was admitted in evidence and he alleges this was error because he had no counsel when he made the admission; that he was not told that he had a right to counsel or offered one; and that he was not warned that what he said might be offered in evidence against him. The Appellate Division affirmed the conviction and held that *Miranda* v. *Arizona*, 384 *U.S.* 436, did not apply since the defendant was tried before the *Miranda* decision *and in any event it did not apply because defendant was not under arrest, in custody, or otherwise deprived of his freedom when he made the admission.* The court also held that *Escobedo* v. *Illinois*, 378 *U.S.* 478, did not apply because defendant was not in custody and did not ask for counsel.

The State additionally argued that, in any event, *Miranda* and *Escobedo* did not apply to motor vehicle violations. The Appellate Division held that in a prosecution for a *motor vehicle violation resulting in a fine Miranda does not apply.*

It is conceivable that a boating violation would be likened to a MV violation.

Very sincerely yours,

FEBRUARY 9, 1967.

EDWARD MCCONNELL,
Administrative Director of the Courts.

CITY OF CONCORD
OFFICE OF CHIEF OF POLICE,
March 1, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: I am in receipt of a memorandum from Mr. Quinn Tamm which announces the hearings which are to be held by your committee on March 7, 8, 9, 1967, regarding the United States Supreme Court Decisions Affecting Local Law Enforcement. I am pleased that your Honorable Committee is looking into this most serious matter for, in my opinion, law enforcement must get some relief if it is to be effective.

The present requirements which are imposed upon law enforcement by the Miranda Decision have created an impossible situation for law enforcement. The admonition which we must give to suspects in criminal matters is, in effect, a plea to the individual that he do nothing that would help the police in their investigation of the incident. If the suspect says, "I don't want to talk about it now", all questioning must immediately cease and I submit that this restriction goes too far to the detriment of society. This aspect of the Miranda Decision is crippling law enforcement.

We had an excellent example of the crippling effects of this rule only last week. This case involves a 19-year old California Youth Authority parolee who was accused of the statutory rape of a 14-year old girl. The girl alleges that this young man had relations with her on two separate occasions. There are no witnesses and there is no evidence. The suspect has stated that he does not wish to discuss the case with us and our officers are powerless to resolve the matter. Our officers feel that they could get enough information out of this individual to make a case if they could spend a short time discussing it with him, however, under Miranda, anything he might say to them would be inadmissible in a court of law.

I am not suggesting that the police be permitted to resort to the old third degree methods of yesterday, however, if we are to be able to do our jobs, we must be given the right to interrogate suspects concerning their involvement. Having informed a man that he has a right to remain silent and that anything he says may be used against him in a court of law, the police must be given the right to interrogate him whether he wants to talk to them or not and we must have the right to introduce what he had to say if the case goes to trial. I submit that local judges are competent, educated and fair. Let them weigh the facts after listening to both sides. The majority opinion in the Miranda

Decision said that the police are suspect; I would hope that the judges in our lower courts are not. If they are, the real problem may lie with the Supreme Court?

Finally, the one man majority on the Supreme Court has developed a lot of "bad" law. It is bad in the sense that we cannot depend on it for it was decided on the basis of one vote. If only one justice out of the nine were to change his mind, the whole concept of criminal justice would change. It is my opinion that society would get a better break if a reversal in a criminal matter required a two-thirds majority of the Supreme Court. I wish you would give this suggestion some serious thought.

Please be assured of my support and cooperation in all matters of mutual interest.

Yours very truly,

JAMES L. CHAMBERS,
Chief of Police.

POLICE DEPARTMENT,
Portola, Calif., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I would like to take a few minutes of your time and discuss the problem of Supreme Court Decisions.

As a career police officer and a Chief of Police, I feel that the United States Supreme Court has committed a great injustice to law enforcement. It appears that their decisions with regard to Civil Liberties have gone beyond the scope of their limits. While we all believe in the civil rights and liberties of mankind we do not believe that the court should pick up and blow up every small technicality.

As a Police Administrator, I do not object to good clean decisions which would affect the whole of the American people, but I STRENUOUSLY object to the decisions which hamper law enforcement.

I have though about these decisions with an open mind, trying to put myself in the place of the Justices and I still come up with the same answers.

Apparently the only way that law enforcement can make their position clear is to unite through men such as you, who are willing to take a stand, and who are willing to help law enforcement be the power, to protect life and property that it should be.

You can count on me and this department to support your views.

Respectfully yours,

R. A. HARRIS,
Chief of Police.

WESTPORT, CONN.,
POLICE DEPARTMENT
March 2, 1697.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Fairfield County is a focal point for "House Breaks"; hundreds of homes have been broken into and thousands of dollars of belongings taken.

As Captain of Detectives and a veteran police officer, it is my opinion that certain decisions made by the Supreme Court have given the criminal an unwarranted "Supreme Court Robe of Protection."

Unless a perpetrator is apprehended in the commission of a crime it is almost impossible to convict him because of the Mapp and Miranda decisions. For example: an automobile is mobile; can be rented or have stolen marker plates; thus making it almost impossible to check it at a later date. A search warrant may be obtained hours later.

The Harlis Miller case was retried in the State of Connecticut because of the Mapp decision. The Grimes case (narcotics) requested two retrials because of the Miranda decision.

I have been a police officer since 1938; have attended many police schools, including the F.B.I. National Academy and the New York Police Academy;

and because of my experience and training, I know what a great help your bill can be to law enforcement and the honest public. I hope, therefore, that your amendment will be passed.

Sincerely,

LOUIS D. ROSENAU,
Captain of Police.

CITY OF DAYTON, OHIO,
DEPARTMENT OF PUBLIC SAFETY
March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: In reply to your Memorandum to the International Association of Chiefs of Police, Incorporated, the following information is submitted:

Miranda has produced two definite problems in law enforcement. In the first instance, the day of the suspect admitting his criminal action is almost gone. At the completion of the warning as prescribed by the Decision, the suspect, finding that an attorney will be furnished, immediately will request one. At this point all questioning must cease and we can only await the arrival of the attorney and the inevitable, "Don't tell the police anything." We all realize that there are cases where no physical evidence exists and the only solution is by an admission.

Our hands were tied recently in a Shooting to Kill case. The complainant was taken to the hospital and placed in intensive care. (No questioning possible.) The only witness was fleeing and not in custody. The suspect demanded an attorney and was advised by him to say nothing. The attorney also demanded that we file an affidavit on the man or release him immediately. How could we possiby do our job under these circumstances?

Since the advent of the Miranda Decision, our Detective Section has compiled records as relates to prisoners being processed. This record shows that of the 688 prisoners processed since Miranda up to and including February 1967, 477 signed a waiver and 170 refused. The detectives feel that the Miranda Decision definitely caused lack of prosecution in 128 cases.

Miranda has hurt in a second instance as to the clearing of complaints. Prior to this Decision, we could question a suspect as to related offenses, thus clearing more complaints. Today we are fortunate to clear one offense with the reflecting decrease in Part I crimes cleared.

We feel that the rights of the individual are important, however, the community also must be protected. At present 2% of the community are being protected at the expense of the other 98 percent.

Very truly yours,

L. H. CAYLOR,
Director of Police,

CITY OF LAKE OSWEGO,
POLICE DEPARTMENT,
Lake Oswego, Oreg., March 2, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: With reference to the Senate Subcommittee on Criminal Laws and Procedures set for March 7, 8, and 9, 1967, I would like to express my feelings in relation to the recent Supreme Court Decisions.

First, let me begin by saying I have been in law enforcement twenty one years. I was Chief of Detectives for fifteen years prior to becoming Chief of Police. I have been involved in making many arrests and conducting hundreds of interviews and interrogations.

I strongly believe that every person is entitled to his rights, *including* police officers. Recent rulings of the Supreme Court have gone overboard in protecting the rights of the criminal; however, they have failed to recognize the rights of the law enforcement officers who are endangering their lives to apprehend the vicious criminal. I, and I'm sure many, many other officers, have taken guns

and knives off criminals in dark alleys and, like all officers, made decisions in seconds where it takes the courts years to determine if these decisions were proper. It is quite easy for others to be a "Monday Morning Quarterback," but how many of our justices have availed themselves to actual police officer's duties. It is my understanding that only one of the justices has had the experience of trying a criminal case in our courts.

When our forefathers drew up our Constitution they did not have minority groups such as there are today. If these groups had existed we would have seen a much larger document then now exists. Amendments or additions to the Constitution should be left to the legislative body.

In my grade school days, I was taught there were three branches of government; executive, judicial and legislative. It is the thought of many that the Supreme Court has taken it upon themselves to be all three. The court does not decide cases on facts, but upon technicalities. They do not decide the case on what the law is, but what they think it should be. I have heard it voiced many times in police circles that the court has the knack of changing the rules after the game has been played.

We, as police officers, find it difficult trying to abide by the court's decisions. We can't act on what the law is today, but we must anticipate what it will be in the future. The Supreme Court is quick to tell us what we can't do, but I have yet to hear one decision telling us what we can do.

Recruiting for police departments is far more difficult today than ever before. The reason being that no person wants to be wrong in the public view, nor do they want to be liable in a civil suit. An officer remarked in a somewhat cynical statement, "If you haven't been arrested, you have no rights." Unfortunately, this situation now exists.

I am of the belief that a Supreme Court is very necessary. It appears to me that they should base their decisions on the law as it is written and the facts of each and every case. I do not feel that they should legislate and decide cases on technicalities.

Very truly yours,

LYLE C. PERKINS,
Chief of Police.

BREA, CALIF., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: I received information from the International Association of Chiefs of Police indicating that you would be interested in the views and suggestions of its members regarding the United States Supreme Court decisions and its effect on crime in the United States.

It has been reported that in ruling on the Miranda decision, Chief Justice Warren stated that "this procedure has been used by the Federal Bureau of Investigation for many years, and it has not hurt their operation." Chief Justice Warren apparently has failed to take into consideration the different types of police work being done by these bodies. In the main, the FBI as its name implies, investigates. With the exception of bank robberies and kidnapping, the FBI is seldom called upon to proceed to the scene of an emergency and to make split-second decisions. In local law enforcement, it is the exception rather than the rule that the police officer has the time to build up a case before taking action.

The FBI agents carry a case load from twenty to thirty cases per months per agent. It is not at all uncommon for a detective with a metropolitan police department to carry fifty, sixty, or more cases per month.

Miranda was just again convicted for kidnapping and rape on the same charge as before, without the use of the confession. Under the rationale of punishing law enforcement, the Supreme Court has it reality, failed in its obligation to protect the citizens of our great country. Nothing was accomplished by releasing Miranda. He has been found guilty by two injuries. Society's rights were not protected by the shallow thinking of the majority on the Supreme Court, and in my humble opinion, Miranda will be a better person by paying a penalty for the crime he has committed rather than have been allowed to go free.

Danny Escobieto in all probability fits into the same category as Miranda. When a criminal is allowed to roam the streets free after having committed an

act against society because of some legal technicality, then our country has failed. It may be that crime is bred in the slums, it may well be that crime is caused by unemployment, and by the many other social injustices that are so often cited. If this is true, and I am not completely convinced that it is, it would be many years before these conditions are corrected and the United States can be safe from the criminal. In the interim, society must be protected. Society has the right to be protected, and society should not be hampered by unwarranted restrictions placed upon the law enforcement officer.

It is my opinion that if the Chicago Police Department abused its authority in the Escobieto case then the Chicago Police Department, the involved detectives, and the Chief of Police should have brought out for public censor. But Escobieto should not have been freed on that technicality, or should a law enforcement officer in some other jurisdiction be hampered.

It would appear to me that the Supreme Court will not face up to reality either due to overpowering loyalty to the legal profession, shallow thinking, or a gutless approach to "reality." The true problems in the United States dealing with criminal justice is the use of the worn-out, out-moded, fallacious, Adversary System of criminal justice.

This system which is based on hypocrisy, professional theatrics, bribery, and so many other odious practices should be replaced by a system of jutice that is seeking the truth in an impartial, fact-finding atmosphere. Then justice will be served.

I do not consider myself an authority on the Adversary System, nor do I consider myself as a proponent of any system to replace it, however, in the sixteen plus years of my experience in law enforcement, I am convinced that this system is sadly lacking in the performance of its fundamental duty, and that "Lady Justice" sitting on her pedestal, drapped in flowing white robes, is being prostituted daily in every criminal court in the country by the use of this system.

Sincerely yours,

R. O. BAUGH,
Chief of Police.

DEPARTMENT OF POLICE,
Beverly Hills, Calif., February 28, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As a veteran Police Officer with 32years experience, I can attest to the fact that the recent decisions of the Supreme Court are resulting in the further handcuffing of the police officer and at the expense of the law abiding citizen.

The question of "Whose rights are being defended" is a logical question to ask in view of the Miranda decision of June 13, 1966, which virtually eliminates police station interrogation of suspects, and further hinders the police in their fight against crime. The dismay with which we in law enforcement regard this additional roadblock in our ability to perform our duty was admirably summed up by Justice White in his dissenting remarks "Nor can this decision do other than have a corrosive effect on the criminal law as an effective device to prevent crime. A major component in its effectiveness in this regard is its swift and sure enforcement. The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good common sense. If it were not, we should posthaste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct."

Further emphasis was added to this view by Justice Clark in his dissenting opinion: "The Court further holds that failure to follow the new procedures requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof. Such a strict constitutional specific inserted at the nerve center of crime detection may well kill the patient."

After reading the Court's opinion as delivered by Chief Justice Warren, it is difficult to avoid concluding that it is the police who are on trial in the prisoner's dock. Some solace can be derived from the fact that this view of the police was definitely not a unamimous one. In Justice Harlan's dissenting opinion he makes it clear that he does not at all subscribe to "the generally black picture of police conduct painted by the Court."

It is not within the purview of the police to question the legal soundness of the Court's decision, nor is this necessary. This was done with detailed thoroughness by the dissenting Justices.

It is within the purview of the Police, however, to pose the following highly pertinent questions, not to Justice Warren and his four cohorts, regrettably, but to the citizens whom they serve:

1. Why are we indicted for performing our duty to enforce the law?
2. Why are we, in effect, denied a vital tool of law enforcement—interrogation of suspects—when the crime rate is already increasing at five times the population increase?
3. With our departments already undermanned and underfinanced, how are we expected to cope with the increased demands for protection that can be expected to result from this Court decision?

Noting that "under this new version of the Fifth Amendment" many criminal defendants who might previously have been convicted may now either not be tried at all, or acquitted, Justice White stated: "I have no desire whatsoever to share responsibility for any such impact on the present criminal process."

We in law enforcement suggest to those of the Supreme Court whose concern appears to center on the rights of the probable lawbreaker that the time is long overdue for equal concern for society—and its protectors, the police.

I am enclosing a copy of an address given by Justice Walter J. Fourt of the California District Court of Appeals, concerning his opinion of the recent Supreme Court decisions.

Your subcommittee is to be commended for your interest in this manifold problem, and trust your studies will result in recommendations of a factual nature to the Congress of the United States. Law Enforcement and the public, which they serve, deserve no less.

Respectfully yours,

P. R. SMITH,
Service Division.

"TODAY'S COURTS SEARCHING FOR ERRORS, NOT TRUTHS"

(By Judge W. J. Fourt)

(The following address of Justice Walter J. Fourt of the California District Court of Appeals was made to the North Area Police Association. It contains a studied diagnosis of the current crime problems. It is a subject of concern for many police officers; and is considered by them worthy of wide public dissemination—The Editor.)

We are today, in my opinion, in a complete state of confusion as to what the law is with reference to investigating and prosecuting criminal cases.

Until the present class of appellate justices graduated and took over, there was, in the legal world, a doctrine or rule known as "stare decisis." Those words translated mean to adhere to precedent, and not to unsettle things which have been satisfactorily settled for many, many years. In other words, it is a rule of common sense that rules of conduct should be settled to the end that society, the people of the community, including police officers, would know what to do in the future in a given type of case.

No one argues that any rule which is absurd, ridiculous or unjust on its face ought to be continued in effect—yet, we should give due consideration to the judgments of those persons who have gone before us and successfully conducted the affairs of this country for 150 years. One of the reasons we have grown great, and have the country we have, is because of what those people of substance did and said.

SUPER LEGISLATURE

And in speaking of the founders, they did not provide any statement, inference, or otherwise, to the effect that an appellate court shall be a superlegislature and entitled to enact into law that which the people do not want, or to legislate judicially into the law that which the people, sooner or later will not accept.

As one Justice of the Supreme Court of the United States stated some years ago, with reference to this matter, "The viewpoint in question indicates an intolerance for what those who have composed this court in the past consci-

entiously and deliberately concluded, and involves an assumption that knowledge and wisdom resides in us which was denied to our predecessors."

Law to be obeyed or enforced must necessarily be known by all who have to do with it—the members of a community, the law enforcement agencies and the judges and others engaged in the administration of justice. Law to be known, must be fixed and substantially or reasonably constant.

In other words, the rule "stare decisis" gave balance, stability and symmetry to our law and to society. It took out the capricious element in the administering of justice. It kept the scales of justice even and steady and not liable to wavering with every new judge's opinion—that matter would be disposed of, not in accord with whim or caprice of any individual judge, but according to established, known laws and customs of the country. In other words, judges ought to expound the law as it is and not take upon themselves the responsibility of pronouncing new law.

We have witnessed, literally, in the last few years a veritable tearing up by the roots of the fundamentals, the old cornerstones of the administration of justice—and, strange as it may seem, in many if not in most, of the cases of recent date where this has been done, the courts have stated in part and given as one reason for their opinions, that the police must be taught a lesson.

All of this, in my opinion, has led to a breakdown in law and order—respect for the courts in many areas has diminished—vicious and violent criminals run rampant and many are turned loose to prey again on innocent victims.

PUBLIC AWARE

I am certain that the American people want a written constitution as we had for the first 150 years of this country's existence—they want no part of a constitution which is made up, altered, modified and changed from case to case, term to term, or year to year to suit the personal or ideological whims of an everchanging majority of any Supreme Court. I am confident that the thinking of the great majority of decent people in this country is that they do not want the constitution amended by judicial fiat from day to day and they are not favorably impressed with much of the judicial legislation.

In other words, it is my opinion that the power of the appellate court to interpret is not synonymous with the power to amend. The power to interpret the constitution is the power to ascertain its meaning. The power to amend the constitution is the power to change its meaning.

CIVIL DISOBEDIENCE

Defiance of the law receives encouragement from many publicly paid employees. Disrespect for law and order has for intents and purposes taken on an aura of respectability in many areas. Civil disobedience seemingly now travels under the guise of academic freedom in many of our public institutions. Many segments of our society are thoroughly imbued with the belief that it is wholly fitting and proper to violate any law with which it disagrees.

CITIZENS MUST CHOOSE

Citizens must ultimately choose between lawlessness and regulated order. I know that presently there is the widespread attitude, "Oh, well I don't want to get involved"—and, as a consequence, many crimes go unpunished—but that attitude will ultimately lead to destruction. Crimes are increasing at least five to six times faster than our population.

In fact, no one can legitimately argue that a trial in California is a genuine search for truth—the whole truth and nothing but the truth. Seemingly a trial becomes a game between the state on one hand and the defendant on the other.

The judge is for practical purposes an umpire, there to see to it that each side observes the rules of the game (the latter which are handed down to him from above day to day).

FOUNDING FATHERS

The founding fathers of the Constitution—George Washington, Benjamin Franklin, James Madison—and others were not visionaries toying with speculations and theories, but were practical men, dealing with the facts of political life.

They wanted a written Constitution—all to the end that there would be "equal justice under law," and not justice according to the personal notions of the temporary occupants of the appellate courts.

It would seem that the court puts a "police lineup" in the same category as a "third degree' which has long since, and properly so, been outlawed. I predict that in the distant future the court will declare "line-ups" out of bounds, and down the drain will go another very important investigative tool of law enforce-

POLICE LINE-UPS

If a simple police line-up is in the mind of a court comparable to and in the same category with the "third degree," I suggest that perhaps the day is not too far distant when someone may do more than hint that the taking of fingerprints is degrading and brings the suspect by his own act into disrepute and tends to convict him of a crime—and, therefore, the fingerprints should not be used against a suspect.

COURTS LOSE SIGHT

The courts however, I think unfortunately, seem to have lost sight of the fact that a criminal prosecution is brought for the purpose of convicting the guilty. Necessarily, that includes the protection of the innocent. But in no event should an appellate court procedure be turned into a search for error to the end that the obviously and many times self-confessed, guilty criminal be turned loose into society to murder or rob again.

I close with this observation—we cannot and will not have unbridled individual liberties and at the same time a safe and stable society. Individual liberties and rights cannot and do not exist in a vacuum. We have to have a decent and reasonably safe place in which to live and work—otherwise there is no place within which to exercise our individual rights such as the right of privacy.

POLICE HEADQUARTERS,
Springfield, Mo., March 2, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

SIR: The members of the Springfield Missouri Police Department would like to add their support in your efforts to amend Title 18, U.S. Code, with respect to the admissibility and evidence of confessions. We are finding it increasingly difficult to protect our citizens from the minority criminal violator due to recent Supreme Court decisions. We feel that it can only be through the efforts of individuals such as you that we will be able to satisfy the obligation placed upon us by our citizens.

It is an accepted fact in law enforcement that interrogation is our most valuable tool. Without interrogation and the subsequent confession we might obtain to collaborate circumstantial evidence, we can not maintain our efficiency.

We would like to recommend for your consideration Mr. Fred Inbau, Professor of Law, Northwestern University, as an individual who can give valuable testimony during the forthcoming hearings. He is recognized nationally as an authority on criminal interrogation and is well aware of our problems.

If our department can assist you in any way in your endeavor, please call on us.

Very truly yours,

SAM L. ROBARDS,
Chief of Police.

AVON POLICE DEPARTMENT,
Avon, Conn., March 2, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: In accordance with your request, as conveyed to me through the medium of the International Association of Chiefs of Police, I wish to also express my dismay at many of the recent close Supreme Court decisions which are so adversely affecting local law enforcement.

The Miranda decision, of course, is the most recent and also most restrictive and we find our efforts severely restricted by it.

Others restrictive in nature to a lesser degree are Escobedo V Illinois, Mapp V Ohio and numerous others. Perhaps the decisions in some of these were brought on by over zealousness on the part of particular police officers, however it does not appear reasonable that the entire law enforcement structure, particularly at such perilous times, should be shackled for the indiscretions of a small minority.

Your efforts on the behalf of Local Law Enforcement are greatly appreciated by this Department.

Very truly yours,

LESTER F. CLARK,
Chief of Police.

DEPARTMENT OF POLICE,
Seattle, Wash., February 27, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: The admissibility of evidence, particularly statements against interest, is of major concern to law enforcement administrators in the United States. The interpretations of law as enunciated by the United States Supreme Court in the rationale beginning with United States versus McNabb in 1943 and culminating in Arizona versus Miranda has had two impacts on municipal law enforcement. The first one is the obvious—that the restrictions upon interrogation deny the courts information about the crime from the person who knows most about it—the one who committed it. Secondly, the demonstrating at every stage of criminal investigation and criminal procedures that the directives of the Supreme Court were followed in every respect has added an additional time element to the preparation of criminal cases. This latter may not sound significant, but when from twenty minutes to an hour is added to the case preparation and court presentation for each offense resulting in a criminal trial and the number of offenses is multiplied by the thousands, it has the effect of actually reducing the size of the police department.

In this jurisdiction, we had an incident of first degree murder which was settled by an arrest, the taking of a confession in compliance with Escobeda, the recovery of the murder weapon, and the suspect held without bail for trial. This entire case was completed and ready for prosecution two months before the Miranda decision was announced. When it came up for trial, the trial judge dismissed the case because the police had not, two months prior to their being announced, followed the rules outlined in Miranda. The general public reacted very strongly to the release of this confessed murderer.

There was no suggestion that there had been any impropriety in any of the actions of the police or the prosecutor, but still the case was dismissed on a technical construction and an artificial date.

I strongly support realistic legislation which will protect the rights of the accused person and will also protect the public. In far too many crimes, the only method of determining the culprit and preparing a case which will result in successful prosecution depends upon the "interrogation" of the suspect does in my opinion include physical or mental abuse or mistreatment of any kind. I would doubt very much if any police department in 1967 would resort to such tactics under any circumstances.

Very truly yours,

F. C. RAMON,
Chief of Police.

DEPARTMENT OF POLICE,
Port Angeles, Wash., February 27, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: The recent decisions of the Supreme Court have done little to create respect for the Court and its opinions.

It is my belief that a police agency should be able to confine a felony suspect for a reasonable period of time. During this period, the officers should be able

to interrogate him without interference from attorneys or other sources. The questioning should be reasonable, with breaks or rest periods. I also feel a person so confined but not charged with a crime should be paid a fee for for his confinement by the State. This would tend to curtail unreasonable confinements.

I do not believe an officer should have to advise a person he does not have to say anything, but do believe he should be advised that anything he says may be used in a court of law. That a copy of his statements should be given to him or his attorney.

The crime should not be dismissed on errors of testimony or procedure. Every effort should be made to curtail crime and criminal activities.

Thanking you for your interest in problems of the law enforcement people.

Yours truly,

HARRY KOCHANEK,
Chief of Police.

POLICE DEPARTMENT,
Endicott, N.Y.

To: Senator John L. McClellan.
From: Delbert E. Pembridge, Chief of Police, Endicott, New York.
Subject: Hearings by United States Senate Subcommittee regarding United States Supreme Court Decisions.

Following receipt of the February 21st memo from Executive Director of the International Association of Chiefs of Police, Quinn Tamm, I would like to inform you of my very strong feeling concerning subject hearings:

My protest is that the Miranda decision of the United States Supreme Court has seriously affected the ability of law enforcement agencies to fulfill their obligation to serve in the protection of lives and property. In an effort to insure all persons of their rights, the courts have moved to the other extreme and handed down decisions rewarding to the criminal element at the increasing expense of the law abiding citizen.

A particular situation presently of primary concern here is that of investigations in relation to traffic accidents. Many lower court judges have misinterpreted the decision as to "in custody", and are applying it to all questioning and investigation *before* custody or arrest has taken place. An example of such later misinterpretation for instance would commence to arise at the scene of an accident to which an officer has been called.

During the course of his investigation, the officer having concluded that one of the operators of the vehicles involved is in violation of any of one or more vehicle and traffic laws or regulations (intoxication, ignoring a stop sign, etc.), advises the violator of his rights, as required by the Miranda decision. We are finding ourselves in the position of having cases later dismissed because the officer failed to give such advice prior to commencing his investigation. If persons involved are not required to answer questions pertaining to the incident, the conduct of any investigation is impossible. The protection of the individual wronged has in effect been sabotaged.

It would seem that President Johnson's War on Crime would accomplish more for the non-criminal were a more realistic appraisal of law enforcement be the subject of executive and legislative action. There were no trained police or organized crime when the fourth and fifth amendments concerning these problems were written.

I strongly urge that the Supreme Court of the United States take a more realistic 20th century look at these cases; and that the legislature make a complete reform in criminal law and procedure.

Respectfully submitted.

DELBERT E. PEMBRIDGE.

Dated: March 1, 1967.

CITY OF LEXINGTON, KY.,
February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: I have been informed by reliable sources that you are Chairman of the Senate Subcommittee on Criminal Laws and Procedures and that you have introduced legislation, S. 674, which is a bill to amend Title 18, U.S. Code, with respect to the admissibility in evidence of confessions.

As a police officer of thirty-five years continuous service and experience in one department and as Chief of that department for the past fourteen years, I have experienced practically every facet and problem that a municipal police officer will have to face.

Reference is made to recent Supreme Court decisions in the Miranda case and others, and most recently the case in New York where Jose Suarez murdered his wife and five children and after the heinous crime was perpetrated admitted to police officers that he had committed this horrible act. He was tried on February 21, 1967, and acquitted due to the fact that the only incriminating evidence against the subject was his statement that he had committed the crime, but there was no corroborative evidence of any kind and no witnesses, and, under the recent Supreme Court decisions, Judge Michael Kern, of the New York Supreme Court, had to turn him loose and, in so doing, remarked: "It makes one's blood run cold to realize such as this has come to pass." He also went on to say: "I am not a prophet, but the handwriting on the wall indicates a trend for the Supreme Court to outlaw all confessions made to police. If and when that melancholy day comes, the death knell to effective criminal law enforcement has been sounded."

However, in researching old English Common Law there was found a particular case in which a man thought he had killed another man in a fight at a fair. Leaving the injured man for dead, he went to the Sheriff and confessed that he had killed a man. The supposed victim, who had not been mortally wounded, regained consciousness, arose, joined a band of gypsies and was gone from this locality for quite a few years. In the meantime, the self-accused, supposed murderer was tried and hanged.

This was a classic object lesson on the necessity for res gestae and corpus delicti. In the case of Jose Suarez apparently, from newspaper reports, there existed five corpus delicti, but there was an absence of any res gestae or supporting evidence and most experienced investigators and police officers realize that the corroborative evidence is most essential and necessary in nearly all cases and the absence of same apparently influenced the courts to harken to the old Anglo Saxon concept in common law of reluctance to incriminate on inadequate evidence. However, in most cases that have occurred in this country since the recent revolutionary decisions for corroborative evidence, the indiscriminate relasing of felons on technicalities is extremely hazardous to organized society.

It has been my personal observation in recent months after these damaging decisions that the police throughout the nation are in a state of deep confusion, inasmuch as we full well realize that we were delegated and sworn in to protect society against the criminal rather than the criminal against society, which is the case at the present time it seems.

The general idea about police using great duress and brutality—sand bags and rubber hoses—ordinarily, in my experience, does not exist in law enforcement today. The law enforcement agencies fully realize that they must continue to improve their techniques and adopt effective and modern scientific aids in determining guilt in criminal cases. We should have legislation authorizing and allowing such aids as lie detectors, truth serum, blood tests and other scientific aids to assist in the proper investigation of criminal cases.

The problem facing society at the present time here in the City of Lexington, in the State of Kentucky and in the United States of America is not only that of legal technicalities, it is a problem of educating the people to realize that all criminals, from the "Mr. Bigs" of Cosa Nostra to the lowest petty pickpocket and sneak-thief, are predators on those of organized society who are producing wealth and things of value and making an honest living. We must raise bulwarks against the underworld for our personal and financial protection.

Our Honorable President, Lyndon B. Johnson, is justly and rightfully alarmed at the criminal situation in the United States at the present time. He has recommended the allocation of fifty million dollars for training police officers so that they can more adequately cope with crime, and he has allocated the use of better than three hundred million dollars to combat crime.

However, all of this will be for naught if proper steps are not taken first to overhaul the courts by appointing more judges to eliminate and dissipate the enormous backlog of untried cases. One very important weakness in our system is the inadequate penal facilities in which to quarantine away from society criminals who are serving sentences. Rehabilitation by proper techniques may be effected in some types of criminals and should be promoted, but, at the

present time, due to inadequate housing facilities in the penitentiaries and jails, the courts, in a way, have been forced to parole felons who should be removed from society for a time for proper rehabilitation and sometimes psychiatric treatment. As a result, sad to say, organized society is being beleaguered on all sides by the predatory criminals.

There is a current case in Detroit where a groceryman has been robbed and held up so often that he has decided to sell his two groceries and emigrate to Canada. This is no reflection on Detroit, but is symptomatic of the conditions that exist all over the United States at the present time.

I would like to bring another problem to your attention. It is the dilution of police strength in many areas where police are being allocated responsibilities that are not directly connected with crime control and the suppression of criminality. These must be kept to a very minimum.

In closing, I urge you to do everything in your power to make it possible for a police officer to legally interrogate, as we have in the past, a suspect who has, in most cases, a long criminal record, advising him of his constitutional rights and informing him that anything that he shall say may be used against him in a court of law, and let's give the criminal the right of free will. If he wishes to cooperate with the investigating police officers, let's not make it illegal for him to do so.

Sincerely,

E. C. HALE,
Chief of Police.

MINNEAPOLIS, MINN., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR: Reference being made to your position as Chairman of the Senate Subcommittee on Criminal Laws and Procedures.

I am sure you will agree one could write volumes on the subject—should suffice to say allowing the guilty to go free because of recent procedures prescribed by our Supreme Court is contrary to the peace-loving principles on which our forefathers founded this country of ours.

Changes in procedure are certainly in order for the protection of the innocent. You have my support in your endeavors to make it possible for peace officers to again be able to perform their duties in a reasonable and prudent manner, without fear of legal embarrassment.

Very truly yours,

W. J. BEAR,
Captain of Police.

CARLSTADT POLICE DEPARTMENT,
Carlstadt, N.J., March 2, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate,
New Senate Office Building, Washington, D.C.

DEAR SIR: It is most fortunate that the Senate Subcommittee on Criminal Law and Procedures has in my opinion a most able chairman, statesman and law maker as yourself to head this most important committee in this day and age when our most learned jurist have conflicting opinions as to the interpretation of the constitution effecting the administration of justice with the respect to the admissability in evidence of confessions.

It appears in my opinion as a law officer for the past twenty-six years that the Supreme Court has read into the constitution in their majority decisions, opinions that were never meant to be, more recently the Miranda opinion.

First let me say that I agree that as many safeguards should be afforded the accused after an arrest but be limited to the following—He/She has a right to remain Silent—Anything said can and will be used against him/her in a court of law—He/She is not only privileged to contact an attorney or if he/she is indegent and cannot afford an attorney one will be appointed by the court.

I have always believed and practiced that duress of any kind is never warranted under no conditions, but I also believe that a confession voluntarily made

without threats, force, coersion or promises of immunity should always be admissible even though it be made without an attorney being present. It is my opinion the admissibility of voluntariness rest with the court as it should be. The mere fact that an attorney was not present during the interrogation and all the guide line were met as to the suspect being warned of his right and the statement being a voluntary statement does not make confessed criminal innocent and made to be set free to prey on society.

It is my honest conviction that the rights of a suspect/defendant is protected by the police from self incrimination on arrest when he is advised of his rights, he again is advised of his rights by his attorney if engaged by the court or himself—his rights are protected in court against self incrimination in that he does not have to bear witness against himself in taking the stand and all other rights under law but nowhere do I read in the constitution that an attorney must be present during an interrogation between police & suspect. To bring any lawyer in the interrogation is a real peril to the solution of the crime, because under our adversary system, he deems that his sole duty is to protect his client, guilty or innocent and in such a capacity, he owes no duty whatever to help society 338 US at 59.

It has got to be remembered that in many cases the only weapon law enforcement has is a voluntary statement and admission from which other physical evidence is developed. Through skillful interrogation many cases are solved. It is a law enforcement officers duty to develop himself in all phases of law enforcement, skillful interrogation is one of them to serve his community better. If in the opinion of the court that council has to be present it appears instead there seems to be a factual presumption that all confessions are a product of coercion through interrogation and there is no rational basis for that presentation. Since the state is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation during questioning. The true function of any court is to find out where the truth lies. The most basic function of any government is to provide for the security of the individual and of his property.

The courts interpretation of a voluntary statement is one that is made without threats, force, coersion or promises of immunity, here again it contradicts its interpretation and says that in the event one would come into a police station and confess to a crime he had committed without any interruption from the desk officer, this would be a voluntary statement—then where does the obligation on the part of a police officer and his duty to do so to advise the individual of his *rights*—it appears there are no guidelines whatsoever for the police to follow and it appears that the court is so far out in their interpretations of the Fifth Amendment that it will never get back until definite guidelines are established can properly operate within the law whereby those guilty of violating the law will be prosecuted and not released on an interpretation of the Fifth Amendment where there is no basis for such a conclusion, for if this is to continue then all confessions and statements no longer be part and a most important tool will be taken from law enforcement hands. I may add that the British Courts have found a middle way; they have given police a set of "Judges Rules" which are few and understandable—They must warn the suspect only of his right to remain silent; and that he may consult with a lawyer—but the lawyer is not allowed to be present during questioning.

Sincerely,

Chief FRED D. GARCELINE.

OFFICE OF THE PROSECUTOR,
COUNTY OF MORRIS,
Morristown, N.J. March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: As a member of the International Association of Chiefs of Police, I strongly urge the passage of Senate Bill No. 674 ammending Title 18 of the United States Code with respect to the admissibility of confessions. It has been my experience since the pronouncement in the *Miranda* case by the United States Supreme Court, the work of this office has met with considerable difficulty in the investigation endeavors of the personnel. Although we have never relied solely on a confession for the purpose of prosecution, the information obtained from a confession has very often been the foundation of

criminal prosecution. The status of the law presently has I believe increased the difficulties in solving criminal cases and bringing the accused before the court. It is my suggestion that Legislation be passed to allow voluntary confessions to be admitted in evidence, not withstanding the fact that the defendant was not apprised of his constitutional rights. In the majority of cases, once an accused is informed of the fact that he is entitled to an attorney before arraignment, no more information of any kind has been forthcoming.

I believe what the *Miranda* decision has done is to place the Supreme Court in a position of telling the police how to conduct a criminal investigation. This I believe is usurpation of the United States Constitution of the powers of Executive by the Judiciary which is prohibited by the United States Constitution.

It has become evident that it would be impractical for the Court which as no practical experience in police matters to direct the law enforcement agencies in criminal procedure.

Very truly yours,

EDWARD F. BURKE,
Chief of County Detectives.

MERIDIAN, MISS., *February 24, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D. C.

DEAR SENATOR: I am in receipt of a memorandum dated February 21st, 1967 from the International Association of Chiefs of Police of which I am a member and it is my understanding in this letter that you have introduced Bill #S.674 which is to amend Title 18, U.S. Code with respect to the admissibility in evidence of confessions.

Senator, as a career man in law enforcement and Chief of Police for the past thirty-four years, I am whole heartedly in favor of your bill to try to give the police officers part of the rights back that rightfully belong to them. We are operating under conditions now where the criminal is the most respected person and the law enforcement officer is the out-cast. Unless the law enforcement men of this country get some relief from some of the Supreme Court decision rendered, then I feel that in a matter of a few years true law enforcement will become a thing of the past and the criminal element will take charge. I am sure you aware of what this will mean to society and our way of life.

I would like to relate a case we recently had in our County: There was a sailor at the McCain Air Force Base who beat his two year old son to death and threw his body into a nearby lake. The Navy personnel handled this case. He was indicted at the last term of the Grand Jury and the District Attorney, Mr. George Warner felt under the "Miranda" decision that he had no alternative but to noll-process this case and send it to file.

This case was an unusual one and when this happened the public became highly indignant. Nevertheless, the man was set free.

It is time for true Americans who love their country more than anything else stand up and be counted and you can put me down as one of these. It is my prayer and my earnest hope that you will meet with unanimous approval and favorable consideration in the passage of your bill which will enable us to start back on the long road of forcing the criminals of our country to respect and fear the laws of the land.

Sincerely, your friend,

C. L. GUNN,
Chief of Police.

POLICE DEPARTMENT,
INTERNATIONAL FALLS, MINN., *February 27, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: It is with deep interest and satisfaction to myself in learning of your concern over the present status of law enforcement as a result of recent U.S. Supreme Court Rulings (such as Miranda 6-13-66).

I know this feeling is shared by all conscientious law enforcement people nation wide. The effects of these rulings are only starting to be noticed in all branches of enforcement. As time goes on, I am certain, that the results will become disastrous to society. It bothers me to hear the high courts say that the

police must be punished, as it is not us that are suffering. We all know Society is paying the price in the end.

Interrogation of suspects always has been and always will be most vital in criminal investigations. The existing restrictions on interrogation have an emasculating effect on investigation and law enforcement in general.

Therefore, be assured that we appreciate no end, your efforts in this direction and are with you all the way.

Very truly yours,

RICHARD A. ELLISON,
Chief of Police.

THE DALLES, OREG., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: A letter from the International Association of Chiefs of Police was sent to all members of that organization concerning the hearing scheduled March 7, 8 & 9, 1967, regarding U.S. Supreme Court decisions affecting local law enforcement. It suggested all members write expressing their views regarding such decisions as the Miranda case and name any specific cases or other pertinent testimony that would assist your hearings.

I have been a Police Officer in this city of approximately 12,000 for seventeen years. I became Chief of Police shortly after attending the FBI Academy in 1958. We are not a large city but have a reputation in the State of Oregon as being one of the worst delinquency-wise. We had two murders the latter part of 1966 and were successful in getting convictions only because our District Attorney is insistent that all cases be handled with the proper preliminary warnings and chances to call an attorney.

The letter mentioned in the first paragraph asked for persons who could give pertinent and valuable testimony for your hearings. I sincerely hope your committee can contact Lt. Myron Warren of the Portland, Oregon Police Bureau. He is an officer of many, many years experience known to most of the law enforcement agencies on the West Coast and respected by all. He recently had an article in the Portland papers on the same things your committee is studying. I am positive this officer could assist you with his brilliant memory and experiences.

May I express my thanks for your stand on the matter that is probably one of the most important in our present day.

Very truly yours,

ROBERT W. BROWER,
Chief of Police.

POLICE CHIEFS ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA, INC.,
Philadelphia, Pa., March 1, 1967.

Senator JOHN L. MCCLELLAN,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR: We agree wholeheartedly with your efforts to enact legislation as proposed in your Senate Bill 674. The executive board of the Southeastern Pennsylvania Police Chiefs Association and the officers jointly agree, with our 600 members, that such legislation is greatly needed.

Very truly yours,

WILLIAM F. RIEMPP, Jr.,
Chief of Police Chiefs Association.

DRAPER POLICE DEPARTMENT,
Draper, N.C., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As one who has been in law enforcement work for seventeen years, I wish to protest the U.S. Supreme Decisions affecting local law enforcement.

The Miranda decision has practically paralyzed the Police Departments efforts to make an honest investigation and is an insult to American intelligence.

Anything that can be done to relieve this situation and allow the Police Departments to help make our Country a safer place for honest God-fearing citizens, will be appreciated.

Yours very truly,

WILLIE H. ADKINS,
Chief of Police.

MONMOUTH COUNTY POLICE CHIEFS ASSOCIATION INC., OF NEW JERSEY,
February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Our Association wishes to advise that we are entirely in accord with your expressions and actions relative to the hearings to be held by the United States Senate Subcommittee on Criminal Laws and Procedures, March 7, 8 and 9, 1967 regarding U.S. Supreme Court decisions affecting local law enforcement.

We forward this communication to you for use at said hearings as we would like our position noted on the record. We greatly respect all laws of our country but feel that recent U.S. Supreme Court decisions have adversely affected the ability of local law enforcement agencies to fulfill their responsibilities, to the greatest degree possible.

We respect and protect the rights of all citizens but do not feel that the public's welfare should be jeopardized by unreasonable legislation or judicial interpretation that unreasonably hampers law enforcement activities.

We feel that the degree of limitation as to the obtaining of confessions should be specifically delineated in legislation so that investigating procedures by law enforcement agencies would grant unto such agencies the ability to interrogate suspects in such latitude to protect everyone's interest and to still have justice preserved.

The broad spectrum of recent court decisions, including the Miranda case goes, we feel, beyond reasonable limitations and does in many instances create situations which are adverse to the public's best interests.

We trust that our experience and our views based thereon, will be of aid concerning this vital issue.

Respectfully yours,

CHIEF FRANCIS M. SCALLY,
President.

DEPARTMENT OF POLICE,
GRAND FORKS, N. DAK., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: We, in law enforcement, are sincerely interested in the recent Supreme Court decisions affecting law enforcement over the nation. Most people fail to realize that law enforcement is the first line of defense of our nation and unless we are able to do the task assigned, then, certainly we all must fail.

Today's youngsters are losing their respect for law enforcement and the courts because of the conditions imposed upon law enforcement and on the ability to handle juveniles with dispatch and clarity.

In the past few days we have arrested one-eighteen year old and two-sixteen year old boys involved in approximately fifteen burglaries. The eighteen year old was treated as an adult and placed in jail. The two-sixteen year olds had to be turned loose to go on their way and supposedly in charge of their parents. Equal treatment is not for all this day and age.

Changes must be made to *protect* the *citizen* for he is the *forgotten person* in the United States today.

Yours for equal law enforcement with justice,

S. D. KNUTSON, N.A.,
Chief of Police.

POLICE DEPARTMENT,
Rockford, Ill., March 1, 1967.

Hon. SENATOR JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedure, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: In reply to a request from Quinn Tamm, Executive Director of the International Association of Chiefs of Police Inc., I will cite a recent homicide case that occurred here in Rockford, Illinois. The investigation conducted by our department into this homicide was, I feel, greatly hampered by our inability to talk to and question the only known living witness to this crime. The following are the facts as we have found them to be.

On the afternoon of October 5th, 1966 our department received a telephone call in regards to a possible homicide at a local residence here in Rockford, and that the caller, himself, was also injured. An emergency first aid unit was dispatched to the scene and upon arrival they were met by the complainant, Mr. Charles Adams, who was apparently in a state of shock and incoherent. He had visible injuries to his neck, chest, hands and head, and there was some indication of blood around his mouth. The injuries were later determined to be severe second and third degree burns. In the bedroom the officers found Mrs. Virginia Adams, wife of Charles Adams, lying on a bed obviously dead. First aid was administered to Mr. Adams, pictures were taken of his injuries, and he was transferred by police ambulance to one of our local hospitals.

Detectives were immediately called to the scene, and under the supervision of a detective sergeant a thorough investigation was made. A close examination of Mrs. Adams revealed that she had suffered head injuries to the back of her skull. Autopsy later revealed that she died of a skull fracture. The bedroom in which Mrs. Adams was found revealed no signs of any struggle. An examination of the bathroom indicated a struggle had taken place there.

After a complete investigation and gathering of all evidence at the scene an attempt was made to question Mr. Adams at the hospital, as to the circumstances surrounding the death of his wife and his injuries. At this time the officers talked to Mr. Adams for a few brief minutes. He indicated that he was in the bathroom to take a shower and the next thing he remembered he woke up in the bathtub. Upon gaining his senses and going into the bedroom he found his wife lying on the bed.

This was the extent of the questioning of Mr. Adams as his lawyers arrived at the hospital and told his client not to answer any further questions. From that time until the present we have not been able to question Mr. Adams in regards to any of the circumstances. The investigation revealed there was no forced entry to the home, and the physical evidence that was gathered was submitted to the FBI laboratory in Washington for analysis. None of the physical evidence was of the nature to indicate who might have committed the crime.

The coroner conducted an investigation and held a coroner's inquest. Mr. Adams was subpoenaed, and other than giving his name and address, refused to answer any questions on the advice of his attorney.

At the onset of the investigation the States Attorney's office was contacted and an assistant was assigned to the case and was present at the scene of the investigation. After studying all the information and evidence gathered the States Attorney's office did not feel there was sufficient evidence at that time to o.k. the issuance of a warrant for any particular person. Several weeks later all of the information was presented to the Grand Jury for their consideration. They did not return an indictment against any person for this crime.

Since the original investigation began on October 5, 1966 we have been unable to gather sufficient evidence to charge any one with this crime. It is my personal belief that we have been greatly hampered in the investigation of this crime by the failure of the one living witness, and perhaps a victim himself, to answer any of our questions or to supply us with any information. His attorney in this case has repeatedly advised him not to answer any questions of the police, and has based this on the Miranda decision. He has said he was doing the only thing any good lawyer would do, tell his client not to say anything.

We do not know who committed this crime but we do know that in order to successfully solve a crime such as this the police must have the opportunity to question witnesses and suspects in a reasonable and prudent manner.

I submit this letter to you for what value it may be in the development of the necessary legislation to permit the reasonable questioning of witnesses and interrogation of suspects in regards to serious criminal activity.

I have not gone into the details of the investigation, and if you need any further information please contact myself. Please be assured of this department's cooperation at all times.

Very truly yours,

DELBERT E. PETERSON,
Chief of Police.

DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF POLICE,
Mount Vernorn, N.Y., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I wish to congratulate you for the fine speech that you delivered before the Senate recently. As a member of the IACP and as a professional police officer since 1932, I too have expressed dismay with regard to recent United States Supreme Court Decisions which are adversely affecting the ability of local police officers to fulfill their responsibilities in combatting the ever mounting acceleration of crime.

The Court seems to prey on the victims of crime instead of safeguarding society against the vicious confirmed criminals. The Court is not even certain of its own findings in giving 5 to 4 decisions and is committed to the illogical pursuit of tenuous technicalities which it recklessly invokes to nullify the convictions of confirmed criminals. These decisions affect every city, village and hamlet.

As Inspector of Police in Mount Vernon, New York Police Department in 1953, I investigated the apprehension and conviction for murder of one Chester Lee. Thirteen years later, in 1966, as a result of the Miranda decision, a retrial disputing the statement taken by a District Attorney, resulted in the release of the defendant. I enclose a newspaper article from the New York Daily News which illustrates the case in point.

I exhort your Senate Colleagues to vote favorably on your Bill S.674 to amend Title 18, U. S, Code, with respect to the admissibility in evidence of Confessions.

I also recommend the national legal use of wiretapping and eavesdropping to curb the accelerating rise of the sale of narcotics, the violation of gambling laws, the vicious felonies that terrorize our residents and homeowners and the destruction of crime syndicates.

It is time that the people support and the Legislators enact laws that favor police investigation and police action to deter the rise of crime.

Rest assured of our cooperation in all matters of mutual concern.

Very truly yours

GEORGE F. KUMMERLE.
Commissioner of Public Safety.

ST. CLOUD, MINN., *March 2, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Committee on Criminal Law and Procedure, Washington, D.C.

DEAR SENATOR MCCLELLAN: We have recently received a letter from the Executive Director of the Internation Association of Chiefs of Police, which indicates that your committee will hold hearings on proposed changes in the laws of admissibility of confessions in criminal procedures. In the letter, it was indicated that you requested correspondence from members of the IACP regarding Supreme Court decisions, with emphasis on the recent Miranda decision. I would presume that you have received replies from Police Administrators throughout the country, and that some of them will be heard before your committee. As a police officer I am vitally interested in the outcome of the hearings, and more important, the possibility of remedial legislation.

We in the police profession have been plagued in recent years with adverse decisions which have allowed criminals to go free, even though guilty, and in many cases being set free before any criminal prosecution is started, simply because of a narrow Supreme Court decision. I think it is important to point out that police officers generally agree that the rights of the accused are important, but they do not agree with the methods of the court in setting up guidelines in how these rights should be protected.

The reason for my writing to you is that I sincerely hope that not all of your witnesses are Police Chiefs or Police Commissioners of large cities. I would hope that you would talk to the Police Officer who is out doing the work. The detective or Police patrolman is much nearer the problem in many instances, than the Police administrator. The administrator will bring out statistics on the number of cases htat have been lost because of the court decision, but the Police officer will be able to testify to the actual dlifficulties involved in attempting to remain within the law in clearing a case.

St. Cloud is not a large city, population is about 40,000, but our problems in this area are the same as those in Chicago, New York City & Los Angeles. Our crime rate is probably not as high, but when we come in contact with a suspected criminal, our procedure is the same as that in any other part of the country. You have requested specific examples of cases involving the Miranda decision. In the past week our department recovered a stolen car under circumstances that if the Miranda decision had not been made, a charge of unauthorized use of a motor vehicle would certainly been made. Due to a recent snow our officers tracked an individual to his home. He was a known car thief, but was not contacted on the night in question. The following day he was picked up on a warrant on another charge and lodged in the County Jail. When one of our Detectives attempted to question him regarding the car theft he first advised him of his rights and the person in custody refused to talk to him. An auto theft may not seem too important in an isolated instance of this nature, but multiplied nationally it becomes a very grave problem.

A case I was involved in may, or may not be affected by the Miranda decision, even though the Miranda warning was given. I was assigned to investigate a possible violation of the National Firearms Act at a local manufacturing plant. The case involved the possession of a sawed-off shotgun by one of the employees. I entered the office of the personnel manager and he, his assistant and another man were present. The personnel manager was examining the gun in question and stated that the foreman had informed him that one of the employees had the gun in the plant. Since this was a violation of the company rules, the manager explained that he had gone to the work area in question and had confiscated the gun. I questioned him for several minutes and then turned to the third man in the room, presuming him to be the foreman and asked him about the situation. It turned out that this individual was the owner of the gun and he stated that it was his and that he had modified it himself. He stated that he had brought it to the plant with the intention of showing it to another employee with the possibility of selling it to him. It was at this point that I informed him of his rights based on the Miranda decision. There is the possibility that the Government may not prosecute this individual under the National Firearms Act, but merely content themselves with collecting the tax due on the weapon. However, if the Federal District Attorney should decide to prosecute on the charge, I suppose that the possibility exists that the admissibility of the man's statements might be successfully argued by a defense attorney. This of course involves a greate deal of speculation, and I am quite sure that you would be able to secure much better cases to illustate the effects of the Miranda decision, but I did want to point out that *all* Police officers are bound by the same rules.

In closing I would like to make one more plea to have at least some of the working force of Police departments testify before your committee. Only by talking to the men directly involved, and hearing from them the number of times that they have had to abandon a sure case merely because they have not been able to question a suspect, will your committee have an opportunity to assess the real impact of these decisions.

I would like to add that the Supreme Court has had one good effect on the Police Profession. Because of the increasing demands on law enforcement, it has become incumbent on police administrators to attempt to attract highly qualified people to the careers in the Police service. Our department has become aware of the need of careful selection of qualified persons for the department. We have had a difficult time in the last few years to fill vacancies, but our Chief would rather run a man or two short, rather than hire an unqualified person for the mere sake of being at full strength.

I would like to thank you for the interest you and your committee have shown in the problems of the Police Profession. I sincerely hope that some remedial legislation will be forthcoming as a result of recommendations of your committee.

Sincerely yours,

JAMES J. MOLINE,
Sergeant, St. Cloud Police Department.

BINGHAMTON, N.Y., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in response to the memorandum forwarded to members of the International Association of Chiefs of Police, Inc. by Mr. Quinn Tamm, Executive Director regarding Supreme Court decisions concerning the function.

I will restrict myself to one consideration only which to my knowledge I have never heard come under discussion. This is the necessity for police officers to give, what has come to be called "The Miranda Warning" to suspects.

Specifically, that this places an unfair burden on a policeman in that he is required to "educate" citizens as to their constitutions contents. Were the suspect an alien I could understand and appreciate this warning but I feel that all citizens should know the U.S. Constitution forward and backwards.

But, my main thought on this matter is that this requirement places another opportunity for corruption in an enforcement officer's hands in that he could effect the release of a defendant by failing or stating he failed to comply with this requirement.

If for no other reason I oppose this requirement.

Respectfully yours,

JOHN V. GILLEN,
Chief of Police.

DEPARTMENT OF POLICE,
Casper, Wyo., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I am in receipt of a letter from the International Association of Chiefs of Police in regard to your work on the Senate Subcommittee on Criminal Laws and Procedures.

I wish to commend you in your efforts to restore some logic in the handling of statements taken from defendants and evidence obtained during investigation through interrogation. A typical case of injustice through the recent supreme court decision was in the City of Douglas, Wyoming, in 1965.

On December 27, 1965, Lynette Powell, age 16, disappeared from a home where she was babysitting. The following morning her body was found in the river and she had been stabbed twice in the chest. A short time later Richard Rogers was arrested, advised of his rights, and confessed to the murder. He showed the law enforcement officers where he had hidden the knife he had used in the stabbing of the girl and told them where he had thrown the body in the river. This case was not taken to trial because the judge ruled under the supreme court decision that no evidence could be allowed through interrogation. Richard Rogers was turned loose and never tried for the crime.

I hope through your efforts that at least common sense can be used in the handling of prisoners, and again, I want to commend you for all the work you have done to help the law enforcement profession.

Respectfully,

PAUL V. DANIGAN,
Chief.

DEPARTMENT OF PUBLIC SAFETY,
Knoxville, Tenn., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As Chief of Police of Knoxville, Tennessee, I should like to express our sincere appreciation for your introduction of Senate Bill 678, and to assure you of our support of any legislation designed to free Law Enforcement from the shackles of recent Supreme Court decisions.

Every person with any knowledge of Law Enforcement realizes that interrogation is a necessary part of Police investigative procedure, and that, in many

cases, it is the only key to the solution of the crime. If we apprehend a known criminal in the vicinity of a burglary, with the loot therefrom in his possession, must we have his attorney present before we ask him how he came by that stolen property? If, because of the overwhelming circumstantial evidence against him, he confesses his guilt to the Officers bringing him to Police Headquarters, shall the court rule out his subsequent confession because his attorney was not present when he made his original admission of guilt?

We make no attempt to justify the isolated instances of abuse of Police powers in the past. In common with Law Enforcement Agencies everywhere, we guard zealously against even the appearance of such abuse. We have no "third degree"; officers interrogating suspects are very careful to offer neither threats nor promises. For many years, our State Courts have provided counsel if the defendant in a criminal trial is unable to afford an attorney.

With these policies, we are in whole-hearted agreement. However, to arrest a criminal under suspicious circumstances and to be unable to even question him regarding his guilt; or to be unable to use as evidence his voluntary statement regarding that guilt is an illogical overemphasis on the constantly-increasing rights of the criminal, while totally ignoring the declining rights of his victims—the right of society as a whole to protection under the law. It is emasculation of Law Enforcement, to the point where Police and the Courts are well-nigh impotent in the performance of our sacred trust as guardians of the public safety.

We offer you the whole-hearted cooperation of this Office and of this Department, in your commendable efforts to remedy this situation.

Sincerely yours,

H.C. HUSKISSON,
Chief of Police.

DEPARTMENT OF POLICE,
Menasha, Wis., March 1, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: As a representative of law enforcement, I strongly support a change in the law regarding the admissibility of confessions. The quagmire produced by recent court decisions is affecting police operations because of the lack of operational guidelines.

In many circumstances, a confession is readily available from a suspect when he is confronted with facts relating to the case. The restrictions set forth in the *Miranda* rulings and the various interpretations given in the news media confuse everyone involved.

I am certain that no one who lives in this country wants to lose any of his rights granted under the Constitution. By the same token, a truly professional enforcement officer does not want to violate those rights.

The rights of law enforcement should also be considered and liberalized, and such legislation is long overdue.

Very truly yours,

LESTER D. CLARK,
Chief.

DALLAS, TEX., *March 1, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.:

Dallas Crime Commission believes critical crime situation resulted from Supreme Court decision such as *Miranda*. Subcommittee hearings will be invaluable in assessing same. Recommend you call Orlando Wilson, criminologist and superintendent of police, Chicago, Ill., for testimony. Also suggest consideration requiring unanimous decision by Supreme Court in criminal cases or legislation to permit reversal of such decisions by Congress, voice of the people.

JOHN MCKEE,
President, Dallas Crime Commission.

LANE COUNTY SHERIFF'S OFFICE,
Eugene, Oreg., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I was requested by Quinn Tamm, executive Director, of the International Association of Chiefs of Police, Inc., of which I am a member, to contact you regarding the Senate Subcommittee on Criminal Laws and Procedures. I would like to express my opinion as follows:

The lack of statements from accused criminals has forced the police to pursue a more painstaking and expensive type of investigation than was formerly necessary prior to the Supreme Court Decisions which re-defined the rights of the accused.

Formerly the police interrogated a subject and in most cases there was no reluctance on the part of the suspect to give a statement. This eliminated the painstaking technical search of each and every crime scene for physical evidence necessary to connect the suspect with the crime.

This time consuming police work coupled with the expensive laboratory work necessary to process evidence obtained has posed the problem of obtaining more personnel, more laboratory space and equipment. Personnel, time, laboratory expense, all run into vast amount of money of which is absolutely uncalled for in this writer's opinion. The accused was never mistreated by any enlightened enforcement officer and in most cases was always willing to admit a crime in which he was involved. The scientific crime scene search and laboratory evaluation has merely replaced scientific interrogation with no advantage to the criminal, but adding a great burden on the taxpayer.

We in law enforcement certainly feel that the recent U.S. Supreme Court decisions are adversely affecting the ability of local law enforcement agencies to fulfill our responsibilities.

Very truly yours,

HARRY H. MARLOWE,
Sheriff, Director of Public Safety.

DEPARTMENT OF PUBLIC SAFETY,
Baton Rouge, La., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have just received a memorandum from Mr. Quinn Tamm, Executive Director, International Association of Chiefs of Police, Inc., regarding hearings by the U.S. Senate subcommittee on Criminal Laws and Procedures scheduled March 7, 8 and 9, 1967.

Law enforcement agencies join you and the other Senators and Representatives in your concern with regard to recent U.S. Supreme Court decisions which are adversely affecting the ability of those agencies to fulfill their responsibilities.

This will advise you that the under-signed strongly favors legislation such as S. 674, which I understand is a bill to amend Title 18, U.S. Code with respect to the admissibility in evidence of confessions. Such legislation, I believe will do much to relieve the almost impossible situation law enforcement agencies have been faced with since the Miranda decision.

With best wishes for success in this matter, I am

Yours very truly,

THOMAS D. BURBANK,
Director.

DEPARTMENT OF POLICE,
Manteca, Calif., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: I would like to add my support to your bill (S. 674). It is my opinion, related on my personal experience, that the Supreme Court has gone past a reasonable man's interpretation of the Constitution. I

think it is time the rights of the victims of crimes be considered and society's right to be protected against violence and crime be brought to the forefront.

Guilt or innocence no longer seems to be a factor in our courts. The contest now is to see if the defense can find any minute detail that may have been overlooked by the police to free a guilty person and return him to prey on society.

Very truly yours,

DAVID WALSH,
Chief of Police.

WAUSAU POLICE DEPARTMENT,
Wausau, Wis., February 27, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Law and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: I wish to take this opportunity to express my views and objections to the problems fostered on the police by the Supreme Court Decisions in the Escobeda and Miranda decisions.

We have experienced a great deal of difficulty in clearing cases involving criminals with previous records. These persons, when apprehended, are hiding behind their so called rights and refuse to answer questions, consequently only cases with physical evidence and witnesses are being cleared. We are not having any problems with the first offenders. These persons willingly waive their rights and confess to their crimes.

The retroactive order of the Miranda Decision suppressed evidence secured by a statement in a vicious sex murder case in Wausau in July 1966. The statement was suppressed in its entirety due to the ruling. Included in the statement was an account of happenings leading to the crime which were not witnessed by anyone except the victim and the murderer. As a result the Murderer pleaded insanity and was found insane which would not have been possible had the statement been allowed as evidence.

Other points that I wish to make and feel are important are: the many man hours needed to secure evidence enough for conviction of the criminal and the great lack of available laboratory facilities to examine the evidence secured.

Then also the image of Law Enforcement has been harmed. The feeling of the man on the street is that the police have "goofed" and had to be put in their place by the Court. There has been relatively no feeling exhibited for the victims of crime.

These are only a few of the views and as time goes by the real damage will be noted. As a policeman for the past thirty years I wish God's speed in correcting a bad situation.

Sincerely,

EVERETT GLEASON,
Chief of Police.

POLICE DEPARTMENT,
Albuquerque, N. Mex., February 28, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: I am convinced that recent United States Supreme Court decisions have put a burden on police in the nation and have affected every law abiding citizen of this country.

These decisions, in effect, have not caused less respect for law and order by criminals and hoodlums because they have none to begin with. It has caused a lack of respect for the police, being unable to enforce the law, and a lessening of fear for the consequences, if caught.

The police can adjust to the interpretations of the Court but the law abiding citizen will never be able to understand why we cannot protect his rights from the criminal and hoodlum.

It is my opinion that Mr. Average Citizen does not appreciate nor understand the release of admitted murderers, sex criminals, etc., merely because the accused had not conferred with an attorney before the admission.

Sincerely,

PAUL A. SHAVER,
Chief of Police.

POLICE DEPARTMENT,
Saddle River Borough, Bergen County, N.J., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: In accordance with your request to the members of the International Association of Chiefs of Police, I am enclosing a photocopy of the article in which I expressed my opinions to a reporter for the Ridgewood News Incorporated, Ridgeway, New Jersey.

I hope that as a result of your hearings that some changes will be made with respect to the admissibility of evidence of confessions.

Yours truly,

SHELDON T. MCWILLIAMS,
Chief of Police.

POLICEMAN'S LOT NOW UNHAPPIER

(By Suzanne Barrett, of Ridgewood News)

While emphasizing that he did not wish to take a negative approach to the recent Supreme Court ruling on the procedure for questioning upon accusation, arrest or taking into custody of persons suspected of crime or criminal activity, Police Chief Sheldon T. McWilliams of Saddle River made the following observations in an interview with this reporter: "With time an essential element in criminal investigation and the subsequent apprehension of the criminal the recent Supreme Court decisions tend to tie the hands of the police even when making an ordinary, on the spot, arrest where circumstantial evidence points to the guilt of the party involved and where, in the past a simple interrogation could produce, what was once considered by the righ courts, a bona fide confession or a release. Now we must advise the suspected law breaker of what the constitution says about his rights, delaying in some cases and preventing in others a confession of wrong doing. This hampers the work of the police which is, mainly, the protection of law-abiding citizens and their property.

"What is not publicized is that the people who perform police interrogation are trained for this specialized work. There are hundreds of volumes written by eminent professors on the subject of criminology and the psychology of verbal methods of obtaining information. Given too much time, even the nonprofessional criminal can manufacture a story, convince his attorney of its truth and end up by going away free. Where I once could pick up a suspect and casually question him, perhaps leading him into telling me what I want to know, now I must begin by advising him he is under suspicion, putting him immediately on the defensive and I must further inform him of his right to remain silent and his right to an attorney—which, incidently, if he cannot afford I will provide him—caution him against saying anything that can be used against him . . . then, if he waives these precious rights, I must attempt to get information from this man. This procedure can introvert even the innocent man with nothing to fear.

"There was a situation here where a man thought to have stolen a sum of money from his employer, was interrogated by that employer and restitution made, after the man admitted the theft, by withholding the amount from the man's pay check. The man was fired, of course, and the employer now satisfied . . . refused to prosecute the individual. He felt that if the police had been called into this matter chances were that the man might have gotten off without restitution being made. A subsequent check by the police revealed that the subject had a long record of crimes. The function of the police is to apprehend and prosecute criminals. When private citizens feel they have to handle matters themselves in order for justice to be done, something is not quite right with the system.

"It would be interesting to observe what kind of on the spot, split second and without deliberation decisions members of the United States Supreme Court and other learned legal counselors would make when confronted with many of the situations that the police officer encounters during the course of his duty. The Supreme Court has ruled that the police officer must not err in his procedure of arrest because if he does, not only will his case against the guilty

person be dismissed but the officer can be held for liable infringement of this person's constitutional rights. The dismissal would not be based upon whether the person is guilty or not, but rather upon the procedure used to ascertain his guilt. Isn't this rather ridiculous when you realize that the great learned men of the Supreme Court take hours and even days to render a decision on a course of action?

"People have always had the rights that are now spelled out, but why delay the work of the police or render it impossible by rolling stones into the already difficult road-way of investigations?

"It seems to be a situation where behavior on the part of a minority and the ensuing arousal of public opinion has brought about a decision detrimental to the majority of law enforcement agencies. We will have to adjust it, but it will in time prove itself to be wrong. Dust off the red carpet for the criminal, educate the young to their rights, never mind the responsibilities, and watch the crime rate, already on the increase rise."

POLICE DEPARTMENT,
River Edge, N.J., 07661, February 28, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: In compliance with your request that members of the International Association of Chiefs of Police write to you expressing their views and offering suggestions regarding the Supreme Court decisions, I am writing to you to give you an example of one instance in which the efforts of this department were thwarted in the prosecution of complaints of larceny against two adults and one juvenile. The matter was dismissed upon the mere allegation that the defendants had not been advised of their rights.

I realize that the instance I cite is indeed minor compared to the many perpetrators of heinous crimes who have gone scot-free because of the effect of recent Supreme Court decisions. Not only have these culprits gone unpunished for the crimes they have committed but also are free to prey upon society with what amounts to immunity from the law.

The last thing that those of us in law enforcement desire to do is to deprive any individual of his rights. It is part of our duty to protect the rights of the citizenry. It is also part of our duty to protect life, limb and property and to apprehend those people who have violated the laws of the land so that they may be brought to the bar of justice.

We do not want to judge the guilt or innocence of any defendant but we do want to have the tools with which to gather the true facts of a case and present the evidence found as the result of a good and honest investigation, made in good faith and taking every reasonable means to protect the rights of the accused. It cannot be expressed too emphatically that to lose the right to interrogate a suspect is tantamount to losing the ability to fight crime at all.

The seasoned criminal does not have any need for advice as to what his rights are, because he knows them better than anyone else. He is hoping for the police to make that one mistake which will enable him to claim a violation of his rights so that any physical evidence which may be used against him will be barred from being introduced into the proceedings. This is not an individual viewpoint it is an actual fact.

I cannot express too emphatically the disastrous effect that recent decisions have had upon the morale of the police. This effect is even being felt by the dedicated policeman who, in the past, has risen above the obstacle placed in his path in his fight against crime. How much longer can he be expected to dedicate himself to his job if he is thwarted and frustrated in his every effort?

We, in law enforcement, hope that men such as you will take up this fight and return to the police those tools which are necessary for them to do an honest job of protecting *all* of the Citizenry.

With thanks for anything you may be able to do in aiding the fight for law enforcement against crime, I am,

Respectfully yours,

EVERETT M. CRANDELL,
Chief of Police.

DEPARTMENT OF POLICE,
Southhampton, Buck County, Pa., February 27, 1967.

HON. JOHN L. MCCELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As Chief of Police, I find law enforcement headed for a "law-bound chopping block". I am in full accord with your statements regarding criminal laws and procedures.

I never did believe that anyone's constitutional right were ever violated through law enforcement officers. The only tool that any law enforcement agency, employs, is the tool of information, and to obtain information we must ask questions.

I can truthfully say that every man, under my command, is well experienced and informed. Any case that is investigated, is for a purpose. None of my officers have ever "picked" on any person in the community, or any transient that has had police contact.

This era reveals, that a person is not allowed, to unburden his troubles or cleanse his soul and conscience, without being accompanied by a lawyer. Is this the way of life? I think that a person is being deprived of his "Freedom of Speech", when he wants to confess, and the court rules out the confession, for the fact that he was without counsel.

Present day society is being victimized by tenious technicalities, such as law procedures, taking precidence over the crime involved.

Where do law enforcement agencies stand in this day and age? Why is the police and their departments on trial? The citizenry and the governments, Federal, State and Local, employ law men to do a job and then when they do, they are put on a witness stand and crucified. Is this the trend today? Once again Sir, I will support you, if needed.

I agree with you and all of your policies, take the shackle off the police and let them perform their duties, to reduce the country's criminal population.

You can count on me!

Respectfully,

CHARLES W. GRAY,
Chief of Police.

POLICE DEPARTMENT,
Sommerville, N.J., March 1, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have been informed that you, as Chairman of the Senate Subcommittee on Criminal Laws and Procedures, have scheduled hearings on March 7, 8 and 9, 1967, regarding the United States Supreme Court decisions which have so much affected local law enforcement.

The most recent decisions have placed a severe hardship on the local enforcement officer and his supporting taxpayers, as an example; this department was bothered by a rash of break, entry and larcenies in one section of our municipality where there are new homes being erected. At 3:00 AM one morning, one of our patrol cars found a man coming out of a woods in the midst of this housing development. This person is well known to the department because of his prior criminal record. When the officer stopped to question the man and informed him of his rights under the recent Supreme Court decision, the suspect stated that he did not wish to be questioned and our man could go no further because if he were detained and brought to headquarters, we would be violating his constitutional rights by questioning him in a "custodial atmosphere."

I am sure you are well aware of the recent bitter dismissal, in New York State, of murder convictions against a man who very frankly admitted killing six people. It is horrible to think that this person is free to roam the streets and commit his atrocities again.

I don't believe any police department is seeking a completely free hand in the apprehension of criminals or would deny anyone the due process of law, but we do very strongly feel that the Supreme Court has overstepped its bounds, especially in the Miranda et al. case.

I realize you are fighting a tremendous uphill battle in attempting to lessen the burden placed on police officials, and I wish you the very best in your endeavors.

Very truly yours,

DIX R. M. FETZER,
Chief.

WAUWATOSA, WIS., *February 28, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MCCLELLAN: Members of the International Association of Chiefs of Police have been asked to express to your distinguished subcommittee their views and suggestions regarding recent U.S. Supreme Court decisions affecting local law enforcement. Unfortunately, up to this time, almost all of the comments presented by law enforcement people have been in the nature of opinion and rhetoric. Facts and well-documented conclusions are very scarce.

There are, I think, three reasons for this state of affairs:

First, the full impact of the recent decisions is just now being felt at the level of police, prosecuting attorneys and lower courts, as the man in the street becomes aware of the new interpretations of constitutional rights.

Second, police departments generally have not kept records in such a way that specific data are available on the results of interrogation as an investigative tool.

Third, the recent decisions on police interrogation have raised secondary questions which are still unanswered by the Courts. Among these questions are—

(1) Does the Miranda doctrine apply to juveniles who, by statute in some states, are not subject to criminal process?

(2) Do the Escobedo and Miranda doctrines apply to traffic offenses?

(3) Do these doctrines cover cases charged in Muncipal Justice Courts, where proceedings are, in some jurisdictions, considered civil rather than criminal, even though "criminal" type misdemeanors are processed in these courts?

Based on our own experience, I will venture a few empirical observations of the way the new doctrines are affecting police operations. Like some other departments we have begun to gather data on the use of standard "Miranda Warnings" on the investigative process. The value of such data will, of course, be severely restricted by the fact that we had no data before Miranda against which a comparison can be made.

1. The Miranda and Escobedo rulings are severely curtailing interrogation of arrested persons about crimes *other than* the ones for which they have been arrested. This effect is most felt in connection with burglary. Until recently the arrest of a gang of burglars in the act would often result in the clearance of many other burglaries—sometimes 30 or 40. Attorneys now rarely allow their clients to admit other crimes. The clearance of a series of thefts, even without prosecution on most of them, together with the return to the victim of at least a part of the loot, is a vital part of the law enforcement process.

2. The restrictions on search and seizure have proved to be more of a handicap to police work than the pre-trial interrogation doctrines. District attorneys seem to have developed a tendency to refuse warrants where the search appears to them in any way questionable. The machinery of criminal justice is simply not geared to the prompt issuance of the search warrants which the Federal Courts keep telling us to use more extensively. Moreover, until some more realistic interpretation of the terms *probable cause* and *reasonable search* is forthcoming, or until specific legislation is enacted, giving the police officer at least the search powers of a game warden, much of the "scientific evidence" which the higher courts encourage can not be discovered at all.

3. Law enforcement at the municipal level is, to say the least, in a state of flux. The differences of interpretation of various constitutional guarantees manifested by the split decisions of the Federal Courts on many cases seem also to confuse the prosecuting attorneys and some lower court judges. On the same set of facts in a given case one magistrate may refuse a warrant while the next one will issue it.

No doubt your committee will hear testimony to the effect that "the federal agencies have always followed the Mapp, Mallory, Escobedo and Miranda doctrines and they have had a high percentage of convictions". This statement while generally true is also irrelevant to the work of local police. The federal enforcement agencies work in comparatively restricted classes of offenses, very few of which present an active, *immediate* threat to life and public order. For many of the crimes within its jurisdiction, each agency is armed with a powerful weapon—compulsory disclosure. Business accounts, tax records, bank assets,

drug inventories, etc., are made available for lengthy and thorough pre-arrest investigation. The local police begin most of their cases with information obtained "on the street" often in a fluid and rapidly-developing situation. The evidence, especially if on a person or in a motor vehicle, is available usually for only a fleeting moment. For these reasons we need specific legislation giving us reasonable as well as realistic powers if we are to continue to fulfill the expectations of the citizens. Suggestions for such legislation can be found in the American Law Institute's model code of pre-arrangement procedure, the so-called stop-and-frisk laws of some states and the search and seizure powers given to conservation officers in some states.

Sincerely yours,

JOHN P. HOWARD,
Chief of Police.

DEPARTMENT OF POLICE,
Newport, Vt., Feb. 25, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Along with other Chiefs of Police in America I am most grateful to you for introducing Bill S. 674 which if passed could assist us in this our Hour of real Bewilderment. It's getting so now that in minor Traffic Violations We must explain their rights before We interview the Operator. The Prosecutors in our Country are in many instances scared to bring into Court even minor Cases.

Thank you so very much for your assistance.

Acknowledgement of this is not necessary.

Most Sincerely

Chief JAMES F. MULCAHY.

DEPARTMENT OF POLICE,
Virginia Beach, Va., Feb. 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: It is indeed gratifying to learn that you have introduced legislation with respect to the admissibility in evidence of confessions.

At no time in our history has the need been greater than it now is for an awakening to the fact that the "Pendulum" has swung too far in favor of the criminal, and too far from the rights of society.

Of the multitude of cases handled today by Law Enforcement Officers, a great many depend entirely upon the obtaining of confessions in order that proper convictions may result.

I am quite sure you will receive specific examples from various parts of our country from well known and recognized Law Enforcement Officials with examples of the effect of the "Miranda" decision on law enforcement.

Your interest and efforts for Law Enforcement and Society, I am sure, will be greatly appreciated and welcomed by all of our good law abiding citizens.

Very truly yours,

JAMES E. MOORE,
Chief of Police.

POLICE DEPARTMENT,
Summit, N.J., Feb. 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: The Summit Police Department appreciates your concern for the effects of the Miranda decision.

As a result of this decision we are having increasing difficulty, and we feel that there is a need for Congress to examine and modify the laws of arrest and search and seizure so that public interests may better be served by the Police.

Yours very truly,

JOHN B. SAYRE,
Chief of Police.

DEPARTMENT OF STATE POLICE,
Richmond, Va., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: If law and order are to prevail in the United States of America, something must be done to stem the phenomenal increase in criminal offenses.

In the five year period 1960–1965, crime in America increased 48%.

This Nation cannot long survive this trend. We can no longer effectively come to grips with criminals. We have become the laughing stock of all nations.

Remedial measures of a drastic nature are imperative or some future historian will write of the rapid rise and fall of the United States of America.

Mr. Quinn Tamm, Executive Director of the International Association of Chiefs of Police, 1319 Eighteenth Street, N.W., Washington, D.C. 20036, should be the spokesman for all police departments in America.

Sincerely,

C. W. WOODSON, Jr.,
Superintendent.

OFFICE OF POLICE DEPARTMENT,
Conway, S.C., February 25, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR CONGRESSMAN MCCLELLAN: I appreciate your interest in law enforcement and I know you will do everything possible to assist law enforcement officers in apprehending criminals and bringing them to justice. The recent decision handed down by the Supreme Court in the Miranda case has certainly interfered in investigating work as far as the admissibility in evidence of confessions is concerned, certainly needs to be amended. I wholeheartedly indorse any bill that you introduce to amend Title 18, U.S. Code with respect to Miranda.

With kindest personal regards, I am

Sincerely yours,

H. T. BARKER,
Chief of Police.

POLICE DEPARTMENT,
Seekonk, Mass., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SIR: I, as President of the Southeastern Massachusetts Police Chiefs Association which comprises fifty-three cities and towns, am writing to you as the representative of this organization.

We are all very disturbed about the many recent one-man decisions made by the Supreme Court of this country.

There is no doubt in my mind that something should be done about this, and I as the representative of the association, am requesting that your committee record us as being very strongly opposed to some of the decisions.

We cannot see why if a man is suspected of having committed a crime and he is questioned and he admits he is the guilty one, that this confession cannot be used against him. I do not believe that there is a criminal in this country who doesn't know that he has the right to an attorney. They know this better than the police themselves.

As far as we are concerned, a confession is usually made as a result of guilt or remorse for his crime, and he freely gives out with his own words. We also know that hardened criminal wouldn't give anyone the right time of day, let alone give out with a confession. We also know that a hardened criminal will lie through his teeth to gain his freedom, but yet the police officer has to tell the truth and is made to look like he is the criminal on the witness stand in a court room.

We would like to see your committee go all the way to push legislature to admit confessions in evidence and not so many criminals go free, such as the one in New York the week of February 18th, wherein the subject had confessed to killing his wife and children and was allowed to go free because his confession was not allowed as evidence.

This, we all feel, is out and out foolishness and something should be done about it before this whole country of ours is turned over to the criminal.

Very truly yours,

ALFRED WEHR, *Chief.*

THE BOROUGH OF RAMSEY, POLICE DEPARTMENT,
County of Bergen, N.J., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U. S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: With regard to the rulings of the Supreme Court on statements and confessions, I feel that it should be the responsibility of the people of such an advanced country to know their constitutional rights.

There are not too many people in the United States who do not have the opportunity to obtain an education. Even a person who has had only a grade school education should know what his rights are. I know that I learned mine when I was in the fourth or fifth grade.

If something is not done our country will be in great trouble as it will be overrun by thieves and cutthroats and it will not be possible for decent people to walk the streets without fear.

Let us place this responsibility just where it should be, upon the people, not upon the law enforcement officer.

Yours very truly,

NORMAN R. STEGEN,
Chief of Police.

MARYLAND POLICE TRAINING COMMISSION,
Pikesville, Md., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

SIR: The International Association of Chiefs of Police has called to my attention the hearing scheduled before your Committee on March 7, 8 and 9, 1967, relative to S. 674 intended to amend Title 18, U.S. Code with respect to the admissibility in evidence of confessions.

Without commenting in any way as to the correctness of recent Supreme Court decisions dealing with the conduct of law enforcement in the course of criminal investigation, I cannot help but express my sympathy with any legislation having as its object the lessening of such restrictions placed upon law enforcement. I am completely mindful of the necessity for zealously protecting the rights of individuals, which rights have been granted to them by the Constitution of the United States. I cannot help but wonder, however, at the necessity of some decisions, particularly where there has been a close division in opinion on the part of Justices when such decisions obviously favor the rights of an individual over the seemingly more important rights of society, particularly with respect to the protection of society against the actions of criminal and subversive elements.

Accordingly I should like to commend your Subcommittee for its concern in this respect and its efforts within the framework of the Constitution to make easier the role of law enforcement in the protection of society.

Sincerely yours,

ROBERT L. VAN WAGONER,
Executive Secretary.

DEPARTMENT OF POLICE,
East Cleveland, Ohio, February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I join with you in expressing dismay at the recent Supreme Court decisions which are adversely affecting the ability of law

enforcement agencies to fulfill their responsibilities. In our own Department (sixty-six men) we have had several cases wherein we were forced to release a guilty person because of the fact that he refused to sign the so called "Miranda Waiver". Cases such as these do much to undermine the morale of members of the Police Department.

I am hopeful that you and your committee will be able to bring about procedures which will nullify or at least modify many of the recent Supreme Court decisions—decisions which I feel are one sided in favor of the individual with little or no thought being given to the victim of the offense.

Sincerely,

PATRICK J. O'MALLEY,
Chief of Police.

POLICE DEPARTMENT,
Town of Groveland, Mass., February 25, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: With respect to recent United States Supreme Court Decisions which are adversely affecting the ability of local law enforcement agencies to fulfill their responsibilities, it is my judgment that in this total protection and insurance of a defendant's "rights" as required by these decisions, we are forgetting and neglecting the rights of an innocent victim, and his constitutional rights also as a citizen.

Our forefathers conscientiously arrived at a Constitution under which all were guaranteed certain rights—the transgressed as well as the transgressor. Why then, should the Supreme Court now rule that only a defendant has these inalienable rights?

Very truly yours,

JAMES J. SHANAHAN, *Chief of Police.*

OIL CITY, PA., *February 24, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As the Chief of Police of a small department, I have found that the Miranda decision has hampered our investigations seriously.

For example: Recently we had several house burglaries resulting in a loss of approximately 2,000 dollars. A scientific investigation was conducted. The intruder wore gloves during the commission of the crime. We did preserve fibers from the tools used at the crime site. We have known burglars in our community. However, as a result of the Supreme Court decisions, they are aware of their rights and needless to say, we achieve nothing by interrogating them on suspicion.

We have never in the past beat a confession out of a suspect, nor did we use other cohersive means in obtaining a confession. We merely interviewed a suspect and used our training and education as police officers in obtaining a confession.

I suggest that we return to the interviewing stage and the accustory stage in interrogations. Also, we are aware of what we can not do, perhaps a uniform code should be rendered as to the rights of a police officer, in his dealings with the criminal element.

My sincere appreciation to you, and the other Senators and representatives for your interest in this grave matter, so crucial to the preservation of peace and property in our great Country.

Yours very truly,

E. J. KONETSKY,
Chief of Police.

POLICE DEPARTMENT,
Chicopee, Mass., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SIR: It certainly is a pleasure to learn that the forgotten policeman has finally found a Champion of the "Boys in Blue". With the stand you took

in a recent speech before the Senate, against some of the U.S. Supreme Court decisions which handcuff Police in doing their duty and freeing confirmed criminals, I certainly believe you are the Champion the Police have long waited for.

I whole-heartedly endorse your legislative bill S. 674 which is a bill to amend Title 18, U.S. Code, with respect to the admissibility in evidence of confessions.

Since the Ohio vs. Mapp, Escobedo vs. Illinois and Arizona vs. Miranda decisions, this Department has lost some of its cases in Court due to these decisions.

I don't know how the Legislative Branch of our government can reverse these decisions, but if there is a way, I am sure you will do your best in trying to do so.

This Department wishes you success in your endeavor to make this a better place to live in by taking measures to fight this great crime problem confronting this nation.

Very truly yours,

HENRY A. KULIG, *Chief of Police.*

BELMONT POLICE DEPARTMENT,
Belmont, N.H., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR SENATOR MCCLELLAN: Just a brief note to let you know that, as a representative of Law Enforcement, I appreciate and support your efforts in the form of S. 674, the bill to amend Title 18, U.S. Code, regarding admissibility of confessions and hope that it will receive an "ought to pass" recommendation, and that our Congressmen from New Hampshire will support it on the floor.

Since the *Miranda* v. *Arizona* Supreme Court decision, in our small town of 2,500 population, we are hamstrung in our efforts to enforce the law by an inability to interrogate suspects. They say that we should overcome this through better training and more technological advances. However, even a 7-year-old child who watches T.V. knows better than to leave his fingerprints at the scene of a crime and many crimes of stealth are committed in such a way that the only person who can shed true light on what has happened is the perpetrator himself. Many times in the past, we would solve crimes by interrogating suspects who would lie to us: then checking out their alibi and when it did not check, confronting them with the discrepancies whereupon they would confess. This was accomplished without threats, brutality or coercion, merely through patient investigation, yet now the Supreme Court would deny to us this valuable tool.

In our small town in 1964, 80% of our burglaries were solved through investigation, only 20% where the burglars were caught at the scene of the crime. In 1966 the only burglaries we solved were cases where the criminal was caught "flagrante delicto." Other departments in our area report similar statistics.

Another problem that has arisen since *Miranda* v. *Arizona*, and one which I have yet to see much comment upon, but which I feel is important, is that prior to Miranda, you would often apprehend a person for one crime, and after talking to you, he would admit to a whole series of prior crimes. Although many times you would not charge him with all the prior crimes it did clear many unsolved cases off the books and lead to recovery of many stolen items. Now, the criminal only confesses to the crime he was caught red-handed at, and the prior offenses committed by the same person remain unsolved.

Also, we can learn much about the habits and methods of criminals by questioning them about the crimes they have committed, and thus better prepare our police departments in terms of methods and deployment of forces to cope with future crimes. Many times in high crime areas we find that a certain crime tends to be committed in a particular way, and can therefore alert our men as to what to watch for. Now, since Miranda, the criminal does not give us any of these details, and we are thus deprived of a valuable tool with which we could prevent further crimes of the same type.

I hope that you are successful in your effects to help us, because if you do not succeed, there are only two courses of action open to the American public: One is to allow crime to run so rampant as to finally lead to the return of vigilantes and lynch mobs, which should never be necessary in a civilized society.

The other is to break the back of the American taxpayer by stationing a policeman on every streetcorner in the hope of preventing a larger share of crimes.

With best regards,

EARL M. SWEENEY,
Chief of Police.

CITY OF ST. LOUIS PARK,
February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SIR: I became involved in a burglary case at 2:00 a.m. one morning by accident. While returning home, I heard on squad police radio officers of my Department searching for 3 burglary suspects. In assisting them I happened to turn onto the road being used by the suspects in their getaway. Being the first officer, I built my necessary probable cause for arrest and then proceeded to advise the three suspects of their rights as required by the *Miranda* decision. Because of the excitement of the chase, the lateness of the hour, the rustiness of my apprehension procedure, etc., I failed to say the words "and to have your lawyer with you while you are being questioned." The result of the case was that the County Attorney ruled improper *Miranda* warning had been given, and the three suspects were released.

I realized this is a small case, but I believe it points out the problem in practical application of the court ruling. I further believe the requirements created by the recent rulings have caused officers to fall back from the aggressive approach to suspects needed in apprehending violators and solving crime.

Statistics on cases lost, or crime unsolved, will be difficult to obtain. We cannot know how many cases are never brought to the prosecutor due to inability to question a suspect when no other evidence is available. The results of recent court rulings to the field of law enforcement will be varied. It may be some time before we see some of the dangerous changes in our society's behavior as to right or wrong, good or evil.

I definitely believe the rulings have curtailed good law enforcement and will have a decided effect on the future crime pattern of this country.

Sincerely yours,

CLYDE A. SORENSEN, *Chief of Police.*

CITY OF CEDAR RAPIDS, IOWA,
COMMISSION FORM OF GOVERNMENT,
February 27, 1967.

Hon. JOHN. L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, DC.

DEAR SENATOR MCCLELLAN: I have been informed that you, as Chairman of the Senate Subcommittee on Criminal Laws and Procedures, have scheduled hearings for March 7, 8, and 9, 1967, regarding U.S. Supreme Court decisions affecting local law enforcement, and that you have introduced legislation to amend Title 18 U.S. Code with respect to the admissibility in evidence of confessions.

At a time when police everywhere are seeing self-confessed criminals set free because of technicalities invoked by the supreme court, it is, indeed, heartening to know that some of our legislators are taking steps in the opposite direction.

In a series of rulings during the past nine years, the Supreme Court has handed down increasingly unreasonable decrees on police procedure. The trend has been toward strengthening the rights of the accused, and limiting the powers of law enforcement. As pointed out in the recently released report of the National Crime Commission, both the right of police officers to question suspects and the use of voluntary confessions have been severely jeopardized.

If legislative action is necessary to halt the invasion of the Supreme Court into what has previously been a legislative and executive function—that of policing the police—by all means let us get on with it. Let us get back into the world of reality, where the rights of the individual are protected, but without disregarding entirely the rights of society. Action must be taken so that five men are not permitted to rewrite the Constitution.

Many criminal cases, without interrogation, without a confession, would never be solved. These are the cases where no evidence is available, and there are many such. More and better training, and more education for police are fine ideals, but they will not provide evidence where there is none. Interrogation and voluntary confessions must continue to play a large part in the solving of crimes.

In this small city, seven criminal cases have been lost because of the retroactive clause in the Miranda decision alone.

I am sure you have the moral support of every conscientious police officer in the country—if I could assist in some more concrete way, I would indeed be honored.

Very truly yours,

GEORGE J. MATIAS,
Chief of Police.

POLICE DEPARTMENT,
Bristol, Va., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: I commend you for efforts to restore the confession as a tool of law enforcement and of justice.

In my opinion it is a most dependable form of evidence, frequently better than an eye witness (were one present), and subject to the least possible contribution to miscarriage of justice. Its possibilities are greatest in the earliest hours following an offense or arrest and provision for reasonable opportunity for officers to elicit a free and voluntary confession without restraint of an attorney would serve justice and could in no way convict an innocent person.

I have been an officer for thirty years, believe the current court rulings will contribute to a greatly increased crime rate despite expanded enforcement activities with greatly increased operating costs.

I regret I am unable to support my opinion with any specific examples. We have had a few subjects decline to talk without an attorney (which of course ended the matter), but they could have done that before Miranda, and in any event might not have confessed. Yet, the trend seems to be toward getting the use of the "free attorney" at the interrogation stage.

Respectfully yours,

JOHN W. STOVER,
Chief of Police.

HENRY W. RODNEY,
New York, N.Y., February 27,1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Offie Building, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: After almost 40 years in law enforcement, both state and federal governments, as well as in private industry, during which years I have written hundreds of reports and letters on official matters, I now cannot find sufficient words to express my disappointment, perplexity and indignation with the manner in which our United States Supreme Court is rendering decisions involving criminal law.

How can we expect to have law, order and decency in our society, when vicious criminals, murderers, robbers, rapists, etc., are set free by the top legal brains in our nation, just because they were not given what is tantamount to a suite at the Waldorf; a steak dinner; a kiss on the cheek, and of course, "You don't have to say anything; you don't have to admit anything, because it may get you into trouble, and we could thus stop your nefarious activities".

What is happening to our wonderful country as we once knew it, when we permit vicious dogs to roam and kill at will, knowing they will be protected by the top court just because they were't told of their "rights"? Aren't law-abiding persons entitled to their rights?

How can we expect our law enforcement agencies to do an effective job when they know what the result will be if they fail to inform the criminal of his "right" when, in fact, he morally is not entitled to them after the commission of a crime. When the Bill of Rights and other protecting laws were first set up, were they really meant to protect the criminal? Weren't they, in fact, meant to protect the God-fearing people who uphold the law?

What has become of our great Supreme Court which was revered and respected throughout our country? Have some of its members become senile, and no longer possess the ability to reason? Are they in conspiracy with lawlessness? Are they seeking revenge against society for some unknown reason? Are some of them waiting until a heinous crime is committed on members of their own families before they have a change of mind and reasoning?

I speak not only for myself, but for the innumerable honest, hard working, dedicated, law enforcement officers, who daily risk their lives so that yours and mine, yes, and the lives of the high court can be safe.

I wish to impress upon you, if the present trend continues, we will become slaves of the criminal masters, who will have complete immunity within the sanctum of the highest court in the land.

May I respectfully suggest that you do everything in your power to "operate" on the crowns of those "good justices" and, during the surgery, have those crowns injected with "hormones" known as "Common-Sense-Justice-for-All", the kind of justice that would protect the good people from the bad and eradicate the incomprehensible and dangerous decisions now being rendered by the Supreme Court.

Every law-abiding person is with you 100% in your efforts to enact legislation to protect the honest people of our country—and *not* the criminals—and give our police the *tools* with which they can do their jobs properly! Knock out the absurd rulings, "No love—No case", as dreamed up by the Supreme Court.

Some of my remarks may seem somewhat harsh, but I still feel that the decent man is being let down while the criminal is being protected far beyond reason.

Best wishes for the success of your endeavors and I hope for the pleasure of hearing from you.

Very respectfully yours,

HENRY W. RODNEY.

THE VILLAGE OF OAK PARK, ILL.,
February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Career law enforcement officers are very much aware that guidelines must be established for the protection of individual rights. With this there can be no quarrel. We are further aware that there must be a continuous effort on a daily basis to improve police procedures. However, the guidelines for the protection of individual rights must be realistic if we are to protect innocent citizens.

The law clearly states that it must be presumed that every person should be aware of his legal rights, that ignorance of the law is no excuse. On the other hand, recent decisions of the Supreme Court (the Miranda decision for example) directs that each one must be warned and made aware of his rights. Recent decisions of the Supreme Court have made an almost intolerable situation for police officers when, before questioning a subject, he must advise him that he has a right to remain silent, that if he does not remain silent anything that he may say or write can and will be used as evidence against him in court, that he has the right to consult a lawyer before he is even questioned, that he has a right to have a lawyer present while he is questioned, and further that if he does not have any money he has a right to counsel with an attorney who will be furnished to him and appointed to represent him before any questioning by any police officer.

We understand that for the protection of the ignorant and the poor it is necessary that there be some counseling. However, it is not the ignorant and the poor who are taking advantage of these most unrealistic Supreme Court decisions. Those who are taking advantage are the hardened criminals who prey upon the innocent.

Law enforcement's difficulties have become very burdensome with these decisions and will continue to be so and we are extremely worried about the future of crime which is now gaining momentum at an all too rapid pace.

I would respectfully request that your committee seek the testimony of Virgil Peterson, the executive director of the Chicago Crime Commission, whom I feel

is extremely competent and has considerable knowledge of criminal activity and the courts in the Chicagoland area.

Yours very truly,

F. P. NESTER,
Chief of Police.

CITY OF WINCHESTER, VIRGINIA,
POLICE DEPARTMENT,
February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: In reference to your Memorandum of February 21, 1967: On the early morning of May 26, 1966 a fire occurred at the Schewel Furniture Co., 23 W. Cork St., this city. Subsequent investigation revealed that a white, male 27 had apparently been the first one to notice the fire. Accordingly in the routine investigation that followed we asked the subject to come to Police Headquarters so that we could talk to him. He voluntarily came to Police Headquarters on May 31, 1966 and our subsequent conversation with him led to his giving us a confession admitting that he was implicated in the fire at Schewels and also to one at the Brumback Co. on 2-24-66.

Prior to his making any statement and prior to his being questioned he was advised that he was not under arrest, that we were making no threats or promises against him, that he had the right to remain silent, that he had a right to an attorney and could use the phone to call a lawyer or his family and that any statement he did make could be used in any court of law. After he made the confession to the two offenses he sat in the police department lobby, still not under arrest or restraint, for several hours while we located the Commonwealths Attorney. Later the same day warrants were issued and he was arrested and charged with one count of Arson.

On subsequent occassions when he was questioned he was advised each time of his rights and he eventually confessed to 9 arson offenses spanning a period of several years. Total damages probably ran around $200,000.00. He re-enacted the offenses for us and was totally open about his involvement.

Between the time of his confessions and the time he was brought to trial on the 4 offenses for which he was subsequently indicted, the Miranda-vs-Arizona decision had been handed down. Consequently even though this man was advised of all rights required at the time of the confessions and the added fact that he was not even under arrest when the first 2 offenses were admitted, the retro-active aspects of the Miranda decision resulted in our statements being thrown out of court and the subsequent loss of all cases.

Arson is a very difficult case to prove as most of the evidence burns up. There fore in many instances about the only thing you have of substance is a confession and with that thrown out you simply do not have a case.

Since the Miranda-vs-Arizona and the Escobedo-vs-Illinois decisions there are many instances where we simply do not talk to suspects for fear of possible repercussions in the eventual court trial.

We have now made up our own forms which we use in taking statements and also our release forms which we use in giving lie detector examinations and I am enclosing a copy herewith. These forms were made up by Police Department personnel and are used without exception in giving lie detector examinations or taking statements.

Recent Court Decisions have made it imperative that Police Officers be well trained, dedicated men and in view of the generally low salary scales paid by Police Agencies it is becoming more and more difficult to find acceptable applicants. It is now almost a case of trying to get the best of the job applicants while paying salaries that rank among the lowest when compared with representative industrial and other employers in the area.

Your efforts and those of your fellow Senators in endeavoring to improve the laws and working conditions which Police must use are indeed appreciated.

Respectfully,

MAJ. F. M. FUNK,
Chief of Police.

FEBRUARY 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SIR: The Police Chiefs Association of Bergen County, N.J., is an organization of seventy (70) Police Chiefs of seventy (70) municipalities, covering an area of 236 square miles with a population of over 886,000 people.

We wholeheartedly support your campaign in which illogical, shortsighted decisions reflect an unjustified and unprecedented concern for the law breaker.

These decisions and rulings has handcuffed law enforcement agencies by requiring impossible procedures which will insure the release of the guilty to the detriment of the law abiding people.

Since 1789 when the U.S. Constitution was adopted the Police and Courts have had a common objective: To develop and maintain a system of criminal justice which is fair, impartial and effective. We all agree that this is an exceedingly difficult and complex task.

Each and everyone of us support, without reservations, President Johnson's proposed Safe Streets and Crime Control Act, which he outlined in his State of the Union message.

We Chiefs are of the belief that law enforcement agencies will be able to slow down our rising rate of crime if confessions shall be admitted as evidence when it is shown that the confession was given voluntarily, without any threats, promises or coercion of any kind.

Again, may we focus our thoughts on this matter to you and the other Senators and Representatives and stress our readiness to assist in any way possible to bring a change to the recent court decisions on confessions, interrogation, search and seizure, and various rights of the accused.

Sincerely,

ROBERT B. LOVEMAN,
Secretary, Bergen County Police Chiefs Association.

DEPARTMENT OF POLICE,
Frederick, Md., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3421 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you for interest in the protection of society and the individual's rights. The Miranda Decision of the Supreme Court has, in a great measure, resulted in hampering the Police with interviews necessary to complete their investigatoins. The interviews are only for the purpose of the meticulous ascertainment of the truth and in some instances it proves a suspect innocent. There is nothing more important in a criminal investigation than the interview because it puts together physical evidence, technical evidence, information from citizens and the true presentation to the Judiciary upon their examinations through testimony.

Experience has proven that we have had unworthy situations because of the lack of training and integrity. The Supreme Court Decisions have been reviewed and I agree with them with the exception of the Miranda Decision because this draws the line too tightly. We must look forward in our zeal to protect the individual's freedom and not so much the person who has committed an offense. Therefore, it is my sincere suggestion that some change might be made that would give the right to the truly conscientious Police Officer to question a suspect or search him for the protection of society; and to enable the Police Officer to carry out his sworn obligation, new legislation is needed. Moreover, I suggest the following:

a. "Enact provisions with respect to law enforcement officers to stop persons for brief questioning including specifications of the circumstances and limitations under which stops are permissable."

b. "Interrogator should be given some latitude when questioning a suspect that would enable him to connect all evidence in the interview to prove or disprove the act or commission of a crime but informing the suspect of his rights and that anything that he would state will be used against him in a Court of Law."

We must have strong Police Administrators and not just men who desire to become popular, because so much depends upon his integrity and devotion to the laws of the Nation. There is no substitute for this type of man because it is the American society that he and his subordinates must serve. The Police Officer is the first line of defense in a free society and the guardian of the individual's rights and privileges. Therefore, he must be fully cognizant of his responsibilities for justice and equality under the law.

With kind regards.

Sincerely yours,

CHARLES V. MAIN,
Chief of Police.

CITY OF SPARTANBURG, S.C., POLICE DEPARTMENT,
February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Criminal Law and Procedures,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: It was indeed gratifying to me to learn of your scheduled hearings on March 7, 8, and 9, 1967, with reference to the recent United States Supreme Court decisions affecting Local Law Enforcement.

Being a police official supervising some 75 police officers in a medium size southern community, I can say without any reservations or qualifications whatsoever, these recent decisions have adversely affected the responsibilities of my officers in fulfilling their obligation to the law-abiding taxpayers of this city. A check of our police files reflects a reduction in "cases cleared" since the officers are required, under the recent decisions, to advise any suspect of his so-called Constitutional Rights before interrogation. On many occasions a police officer must make a decision in a matter of seconds for the safety of the public; therefore, he does not have the time to weigh the circumstances as to whether he is going to violate a person's constitutional right or not. I personally think these decisions have put a "cloak of fear" in all law enforcement officers, not physically, but a fear of making an honest mistake when making arrests in an effort to not violate any Federal Statute.

We, as police officers as a whole, would be the last ones to deliberately violate the rights and freedoms of any American which is granted to him by the Constitution of the United States.

Your efforts, along with the other Senators and Representatives, in attempting to amend Title 18 of the U.S. Code is greatly appreciated by me and this department.

Yours very truly,

W. T. IVEY,
Director, Spartanburg Law Enforcement.

POLICE DEPARTMENT,
Elk Grove Village, Ill., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Your positive action in introducing Senate Bill 674, to amend Title 18, U.S. Code, with respect to the admissibility in evidence of confessions, is hailed by all law enforcement administrators as a possible roadblock—or at least a turning point—in stopping the downhill run of the "one-man majority", in the United States Supreme Court, to absolve criminals of their antisocial deeds, to disregard the civil rights of victims of criminal offenses, to pronounce retroactive rules in the fancied game between law enforcement and the criminal element—all under the guise of the administration of justice.

Certainly no progressive police administrator endorses either physical, verbal, or implied duress or abuse in obtaining confessions; but, to be bound by the four rules of counsel which must precede any criminal interrogation places the police investigator in the untenable position of building a fence around a prime suspect which neither the police officer nor the prosecuting attorney will be able to penetrate—unless the suspect is in less control of his mental faculties at the time of the interview than at the time of his crime.

The "one-man majority" of the United States Supreme Court has succeeded in confusing not only the police officer who is first at the scene of a heinous crime

and his fellow officers who are charged with the detection and apprehension of the perpetrator; but the system has, also, so confused the lower courts and their respective prosecutor staffs that the present fiasco on display in the State of Illinois (The Speck Trial) will cost the taxpayers and estimated $100,000.00—plus the unmeasured grief for the families most dramatically involved—and no person has dared ask the suspect whether he committeed the crime.

In the name of Justice and Mercy, may your proposed legislation succeed.

Very truly yours,

HARRY P JENKINS,
Chief of Police.

DEPARTMENT OF POLICE,
TOWN OF CICERO,
Cicero, Ill., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: May, I take this opportunity to express my feeling regarding S. 674, with respect to the admissibility in evidence of confessions.

I am dismayed by recent U.S. Supreme Court decisions which are adversely affecting the ability of law enforcement agencies to fulfill their responsibilities to the citizens of their communities. My feelings are the same as, so many other law enforcement men, who feel the criminal has been given all rights, advantages and freedom to prey again on a victimized society.

As a member of the International Association of Chiefs of Police and many other Police Associations, I find from attending these meetings and conferences, that the police officer has lost his effectiveness in dealing with the criminal and has been hampered in their interrogations with fear of having the case thrown out of Court due to some legal technicality.

Being the next door neighbor to the City of Chicago, may I suggest that Superintendent O. W. Wilson, head of the Chicago Police Department, who could make suggestions and provide valuable and pertinent testimony regarding the above mentioned legislation.

May the good Lord bless you with the strength to continue in your fight for all concerned, I wish to remain

Very truly yours,

JOSEPH BARLOGA,
Superintendent of Police.

POLICE DEPARTMENT,
St. Petersburg, Fla., February 27, 1967.

Re Legislation Needed to Protect Society from Criminal Activity. Passage of Bill S. 674.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: We, in law enforcement, feel that the time has come when must speak out on the subject of too much protection for the "rights of the criminal" and not enough for society.

It has gotten to the point where court trials have receded to where the only questions that are argued are the ones on admissibility of evidence. The actual fact of guilty or innocence does not enter the case. The police officers testifying often suffer more harrassment than the person being tried.

Actually, the most serious affect on law enforcement (which in reality represents the 90% of the people who do not commit crimes) is not in the court room but in the field. There is no known substitute for interrogation of suspects and witnesses. Often persons thought to be witnesses turn out to be suspects and sometimes give information that could have been used to convict them had they been formally warned beforehand.

Every law enforcement officers that I know urges you to push for the passage of Bill S. 674 to amend Title 18, U.S. Code.

If we can be of assistance in any way at any time, please do not hesitate to call on us.

Very truly yours,

HAROLD C. SMITH,
Chief of Police.

CITY OF GRANDVIEW HEIGHTS,
Columbus, Ohio, February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures U.S. Senate, 3421 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: With respect to your proposed legislation, S. 674, I would like to offer the support of our small municipal police agency. We are a suburban community of approximately 10,000 population, located in the metropolitan area of Columbus, Ohio.

The resultant theory to the recent Escobedo, Miranda, Mapp, and other Supreme Court decisions, that police investigations must rest basically upon scientific evidence is, in my opinion, a gross injustice to the law abiding American citizen. It is unreasonable to believe that the majority of enforcement agencies can equip, train, or hire personnel so as to conduct criminal investigations with the same professional approach as that of the Federal Agencies or the large metropolitan departments.

We, of course, cannot permit police misconduct, third degree tactics, nor the abridgment of our civil liberties, however, I sincerely believe that the rights of the innocent must take precedent to those of the criminal.

I, therefore, urge and support your committee's efforts to correct, through legislation; the adverse affects imposed upon local law enforcement by the United States Supreme Court.

Very truly yours,

D. L. MILLER,
Chief, Division of Police.

STATE OF NEBRASKA,
Lincoln, Nebr., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures U.S. Senate, 3421 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: It is a privilege on my part to send to you my opinion as to how the Miranda Opinion has affected our department in the performance of our duties.

We as a police organization are attempting, as far as time and finances will permit, to better educate our officers in the field of policing. We send our officers to special schools to further develop their ability in the technical fields of our work, and one of these fields is the procedure of interrogation in which they stress that privacy in interrogation is essential. Also, stressed in the interrogation instructions is the preservation of rights of those being questioned. It seems that we are defeating our purpose when we spend time and money for instructions in this field and then our Supreme Court rules that this is trickery. We, as law enforcement officers, feel that we have an obligation to the public to develop all means possible without jeopardizing anyone's rights to properly investigate every crime committed.

To better substantiate my opinion, may I relate a few actual experiences that will reflect how we are handicapped.

For many years members of the Nebraska Safety Patrol have given verbal warnings similar to those given by the Federal Bureau of Investigation Agents, to persons under arrest, prior to interrogation. This was not a necessity under the laws of our state but was done in an effort to insure that an individual was apprised of certain of his rights. Contrary to the apparent opinion of the majority of the United States Supreme Court, there is probably no person more concerned for the rights of individuals than the police officer engaged in actual law enforcement. This concern is not only for the rights of the perpetrators of crimes but also for the rights of the victims and potential victims of criminals.

The restrictions placed on law enforcement by the decisions of the U.S. Supreme Court, while not impossible to work with, have severely hampered us in effectively doing the job which is expected of law enforcement officers.

In a recent case, a man was suspected of murdering his wife. She was killed by a single bullet wound in her head. The victim was found lying across a bed with a rifle lying across her body. Two pathologists who examined photographs of the scene advised that from their experience it was impossible that the weapon could be found in this position under the circumstances depicted by the photos.

The husband was cooperative and readily admitted animosity toward his wife, however, he claimed he was in the other room when his wife shot herself.

He waived his rights and agreed to take a polygraph examination. When the polygraph examination disclosed he was lying and the examiner accused him of killing his wife, he terminated the interview and walked out of the interrogation room. There were no witnesses to the shooting, no fingerprints on the gun or any other physical evidence to establish a case strong enough for conviction. The husband is not only walking the streets a free man but was also appointed administrator of the victim's estate.

Professional criminals have long been aware of and have exercised their constitutional rights. Long before "Mapp" and "Escobedo", the police officer has been confronted by the burglar who says, "My name is so and so. I live at such and such a place and my lawyer is so and so." Usually this person has been arrested inside a building which he was burglarizing or has been caught with loot which can be identified. Here there is physical evidence which can be presented to and evaluated by a jury and the need for statements is not so demanding.

Far different is the case in which a masked person enters a store and robs the proprietor of his money. Here, the only possible way to solve the case is to catch the robber in the act. It is not possible to identify the robber or the money.

Both the burglar and the robber will eventually be caught if they continue to operate. In the past when one of these individuals was apprehended and he knew the case against him was sufficient for conviction, he was often willing to give statements concerning other crimes in which he was involved. Often officers from several jurisdictions questioned the subject who was "talking" in order to attempt to clear cases other than the immediate one. Rarely were additional charges filed. In cases where additional charges were filed, the courts had the prerogative to let the sentences run concurrently.

Now the police are even restricted from clearing those cases which they know they will be unable to prosecute. They are told that if they have sufficient evidence for conviction they should not try to get statements. Often, continued interrogation will clear a number of cases and bring out the identity of other criminals who have been accomplices of the person being questioned. In the past we have been able to arrest these persons and, in most cases, to obtain confessions and convictions even in the absence of physical evidence.

Now, to continue an interrogation past the immediate case even after a person has knowingly waived certain of his rights may, because of the time involved, create doubts in the mind of the court as to the voluntariness of the waiver of rights should the party attempt to repute the officer's word.

In the "Miranda Decision" numerous referrals by the court to interrogation texts clearly indicates a lack of knowledge of actual practices. Texts are available on "sure fire" methods of accomplishing nearly everything whether it be selling insurance, succeeding in life on winning an election. Are we to conclude that the salesman who uses psychology in some form to complete a sale should be castigated as using unfair tactics?

Certainly some restrictions should be placed on police interrogations to insure against any form of brutality but it is a recognized fact there is a desire to confess in many cases.

In one of our cases a person suspected of a homicide agreed to four separate polygraph examinations. He finally confessed after eight hours of interrogation. He had conferred with his attorney before the interrogation started and knew his rights. He stayed because he actually wanted to tell someone about what he had done. He needed help to bring out the truth.

Some interrogators do have certain powers of personality which enable them to obtain information and to get next to an individual more readily than do others. These powers might be compared with those of the man who sold the icebox to the Eskimo. These men who have an understanding of human nature are valuable to the police profession and certainly do not deserve the villainous connotations placed on their integrity as was done in the "Miranda Decision".

The presence of an attorney during an interrogation sets up an impossible situation. In one of our cases a man was questioned about a homicide in the presence of his attorney. On several occasions during the interview the subject indicated he wanted to confess but each time the attorney would enter into the conversation. After about an hour the interview was discontinued.

The investigation was continued and when it was apparent that the suspect and his wife were the only ones who could have killed the victim, a warrant was issued for both of them. When the questioning of the man was resumed without his attorney being present he confessed in less than six minutes.

This case was reversed by the State Supreme Court and eventually dismissed.

At the present time we have a vicious murder under investigation and have a good suspect. The suspect is incarcerated in another state for a similar case in which the victim survived in spite of multiple fractures of the skull. There is a possibility that an expert interrogator could successfully obtain a confession to this crime but it is felt the subject would not be agreeable to this.

The possibility of false confessions brought out by sophisticated methods of interrogation was mentioned in the "Miranda Decision". There is always this possibility. These suspects are also likely to be the ones who are most willing to waive their rights. Police are aware of the fact that there are persons who will confess to anything, with or without pressure. This is one of the values of a good interrogation; only the actual perpetrator will have knowledge of the minute details of the crime.

We have been fortunate in Nebraska in that our Attorney General and several of our County Attorneys were able to foresee the trends of the decisions of the U.S. Supreme Court and immediately instituted a program to acquaint Nebraska law enforcement officers with these decisions.

We have placed a great deal more emphasis on these subjects in our in-service training and have provided our men with opportunities to attend various schools on Search and Seizure and Interrogation.

Since December 15, 1964, we have published a Memorandum to All Interested Law Enforcement Officers in our weekly Law Enforcement Bulletin. These Memoranda are furnished by Attorney General Clarence Meyer and have been widely acclaimed in law enforcement circles.

I mentioned before that these decisions are not impossible to work with. They even are of value to the police profession in that they have brought to public attention some of the situations with which the police must deal. They have also resulted in an increased emphasis on training and recruiting. When an officer is required to make split-second decision, often a lack of physical evidence. The victim may be the only witness.

The viciousness of the crime may cause a police officer to become over zealous because the police are the only branch of the judiciary to have actual contact with the victim at the time of the crime.

A police officer may sometimes be placed in the paradoxical position of solving a crime and thus losing a case or following the rules and letting the case go unsolved.

In the past, an officer knew that if he used good judgement in the handling of an arrest he could expect fair treatment from the courts. Today there is doubt in the officer's mind. The courts have accused him of violating the very thing he stands for. They have established decisions without providing a clear rule of procedure. We are forced to make tape recordings or to get signed statements of the waiving of rights and are restricted from even talking to a prisoner who had indicated he may want a lawyer.

No group has greater respect for the rights of man than the police. They deplore brutality and the bullying of prisoners but the officer feels an obligation to do the job for which he was hired, to protect the law abiding citizen from those who know no law.

We spend millions of dollars to catch criminals, more million to try to convict them and more millions to incarcerate and rehabilitate them. Nothin is spent on the victims, they have only the police to console them.

Respectfully yours,

DAN J. CASEY,

Colonel, Superintendent, General Chairman, Division of State and Provincial Police, International Association, Chiefs of Police.

OFFICE OF THE DEPARTMENT OF POLICE,
Saugus, Mass., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: It is gratifying to know that someone knows about the problems of Law Enforcement Agencies and is doing something about it. You are to be congratulated for your stand in reference to the recent U.S. Supreme Court one-man majority decisions.

Much has been said about these decisions and how they hamper the normal process of reasonable criminal investigations, and whatever I may say would be superfluous.

I do find from my own personal experience, as a law enforcement officer, that many cases have been lost in court as the result of these decisions and that some cases did not even reach the court because the police were unable to interrogate the suspect.

Time will not permit me to give you the facts on every case but here are a few examples.

(1) A short while ago we had an epidemic of school, church and hospital fires. We apprehended the culprit responsible for the school and church fires because he did not invoke his constitutional rights. The person responsible for the hospital fires refused to say anything and although our investigation disclosed that he was responsible for the fires, the evidence was not sufficient to prosecute. Needless to say he committed similar crimes with the same results.

(2) Two burglaries occurred one night in Saugus. A few days later culprits were arrested in another jurisdiction for crimes committed there. At the time of the arrest property were seized including property that had been stolen in two Saugus burglaries. The subject refused to speak invoking their constitutional rights. When brought before the court the judge sustained a motion to suppress all evidence for the illegal search and seizure and the case was dismissed. Is it any wonder that the crime rate is increasing enormously year after year in every city and town of our country? With the ridiculous decisions of individual rights for the criminals, the crime rate is going to increase rather than diminish.

I believe that greater latitude should be given to Law Enforcement Officers in the field of Arrest, Search & Seizure and interrogation in order to combat crime.

Thank you for your cooperation and with deep personal regards I am.

Very truly yours,

FRED FORNI,
Chief, Saugus Police Department.

DEPARTMENT OF POLICE,
Mequon, Wis., February 23, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee, Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: My purpose in corresponding with you is to commend you for your concern relative to recent U.S. Supreme Court decisions that have literally handcuffed professional and dedicated law enforcement personnel. Recent decisions involving Miranda and Escobedo have certainly tipped the scales of justice directly in favor of the criminal element.

Another impending decision, namely U.S. versus Lewis could effectively decision law enforcement out of existence, should the U.S. Supreme Court reverse the lower court decisions.

Although our agency has complied with the requirements of the Fifth Amendment for many years, we have found that this is not sufficient for it is incumbent upon the prosecution to prove not only that the suspect was properly advised of his rights, but further that he thoroughly understood them. You might be interested in knowing that our agency lost a court decision in Circuit Court that involved the arrest and subsequent prosecution of an intoxicated driver of a motor vehicle involved in a fatal auto accident wherein an innocent person was killed. The court held that although the arresting officers had twice advised the suspect of his Constitutional Rights, it felt that because the subject was so intoxicated, he was unable to properly understand them. The burden placed upon law enforcement today is truly difficult to contend with.

It is my opinion that the U.S. Supreme Court has read this "advising" requirement into the Fifth Amendment, for exhaustive research on my part fails to delineate any directives requiring that police officers must so do.

Yours truly,

ROBERT L. MILKE,
Chief of Police.

CITY OF NORTH OLMSTEAD, POLICE DEPARTMENT,
North Olmstead, Ohio, February 24, 1967.

Re bill S. 674.
Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: It is very gratifying to see legislation being introduced on the above Bill.

If it takes a unanimous decision of the jury to find a defendant guilty of a felony; I feel that there should be a greater majority than five to four in handing down decisions which become the law of the land.

I had the occasion to attend a seminar in Ann Arbor, Michigan on August 1, 1966. There were mostly Defense Attorneys present and the common thought among them was that "they at least had the law enforcement officer where they wanted him." A few examples were mentioned concerning "police brutality," but none were recent occasions. They were all at least forty to fifty years ago.

I wholeheartedly agree with rights for the individual, but all I have been noticing in recent decisions is "rights for the criminal." When is the law abiding citizen going to have representation?

Any person who has any law enforcement experience knows that confession alone does not make a case. There should be some coordinating evidence to build a case. At the same time, one of the most important points of investigation is interrogation. Many times during an interrogation the smartest suspect may unconsciously drop a remark which presents a lead to the crime. Even this is ruled out now. For example; a woman's scream is heard from a house at 3:00 A.M. A male runs from behind the house. The law officer stops suspect and asks the following questions.

1. Who are you?
2. Where do you live?
3. Where have you been?
4. Where are you going?

If the officer did not advise the suspect of his rights before he asked questions three and four, the officer has violated the suspect's rights.

My honest feeling is that we are going overboard to protect the criminal in recent decisions and it is about time to protect the honest and law-abiding citizen. It is about time the cases were tried on the merits of the cases instead of technicalities.

As I said before, it is highly appreciated that a person of your status and importance has taken an interest in our problems. I sincerely hope you will receive the response and support for the Bill S. 674.

Sincerely yours,

HARRY W. HIRD,
Chief of Police.

POLICE DEPARTMENT,
Manchester, N.H., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: On behalf of the entire personnel of the Manchester Police Department we want to thank you for the work you are doing to increase the ability of local law enforcement agencies to fulfill our obligations to their commmunities.

The introduction of S. 674 which amends Title 18 of the U.S. Code with respect to the admissibility of confessions should be of invaluable assistance to all law enforcement agencies.

With every good wish for continued success, I remain

Sincerely,

FRANCIS P. MCGRANAGHAN,
Chief of Police.

LYNDHURST, N.J., *February 24, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman,, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: I have received a recent communication from Quinn Tamm, Executive Director of the International Association of Chiefs of Police, Inc.,

regarding your sentiments on the actions of the Supreme Court, mentioning particularly your concern with the effects of the Miranda decision.

I am in full accord your your endeavors in introducing legislation, S. 674, which is a bill to amend Title 18, U.S. Code, with respect to the admissibility in evidence of confessions.

Yours very truly,

HOWARD C. LIDDLE,
Chief, Lyndhurst Police Department.

CITY OF UNIVERSITY PARK,
Dallas, Tex., February 24, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: May I take this opportunity to express to you my personal appreciation and the appreciation of the various Texas Law Enforcement Groups with which I am affiliated. Our sincere thanks for your efforts in the control of the criminal element in our country today.

Recent Supreme Court decisions and certain provisions of the Revised Texas Code of Crminal Procedure has hand-cuffed and shackled law enforcement in the United States, has reduced effectiveness in crime control, reduced law enforcement personnel to a status of puppets and has wrapped the "Professional Criminal in Sheep's Clothing".

Miranda and Escobedo have been the most damaging decisions rendered to date to grant the hoodlum an additional license to ply his trade upon the law abiding citizens of our country. A great many law enforcement officers throughout this land are under the impression that our Supreme Court is making the law rather than interpreting and in doing so giving the murderer, the rapist, the robber, sex deviate and others of the criminal element encouragement to prey upon the men, women and children of our country without fear of punishment. If punishment should be meted out, our parole provisions are so lax that a murderer can be on the streets again in Texas in seven or eight years after being given a life sentence. In fact, Senator McClellan, the criminal process, not only in Texas, but throughout this nation is a complete farce.

Law enforcement officers have been robbed of their tools and initiative necessary to protect the people. The fact that law enforcement has been scuttled and stripped of authority by the decisions and provisions of the courts and legislatures does not mean for the police officers, a segment of the chain of law enforcement, to take the defeat like "A Lamb Being Led to the Slaughter".

Police officers and those in the entire criminal process must make their voices heard in the Legislative Halls of our country and defeat the program designed to cause our people to live in constant fear when at home, or on the streets. Under existing conditions the professional criminal and those who profit from his acts will thrive and flourish as crimes against the person and property continue un-abated.

During the 1965 Session of the Texas Legislature, a Revision of the Texas Code of Criminal Procedure was passed, signed by Governor Connally and became effective on January 1, 1966. This monstrosity was revised for the benefit of a few for personal gain and the State Bar of Texas did not recognize it when passed as being the revised version they had been asked to submit.

On March 7, 1967, a group of law enforcement or officers are to appear before a Senate Committee in Austin and plead for the revision of some of the provisions that were passed that restricted law enforcement in Texas as much almost as Miranda has done in the nation.

As an example under our new code, we must take the arrested party "Before the Magistrate Immediately". Under the Federal rule the arrested person must be taken before the commissioner, "With out unnecessary delay", this is quite a difference and we are asking the Legislature to grant us the Federal Rule.

Texas is the only state in the union that is not permitted to use an "oral" confession. Federal officers are allowed the use of oral confessions too but the new Texas Code does not permit it. We are asking for this rule to be provided by this session of the Legislature.

The majority of the provisions in the new Texas Code are good but just enough changed in order to hand-cuff the police and give the Texas Criminals and their cohorts an additional license to steal and plunder.

Prior to 1963, Law enforcement in Texas had not been active in so far as statutes and procedures were concerned as it was at this time that the Texas Code was beginning to be revised. Those who were assigned to the revisions, during the entire process, did not contact a police chief, police officer or a police association while in the process of revision.

Police officers throughout the nation have been beaten to their knees with the false charges of "Police Brutality" and our image is darker before the eyes of our citizens than at any time in history. The "Police Brutality" charge has been used so successfully by those who would like to see local departments dispersed and review boards installed and the entire process put under the jurisdiction of the Federal Government. Law enforcement is on the brink of disaster and if the present trend continues local communitites will organize vigilante groups for the protection of life and property as has already been done in some areas of the country.

In closing, may I pledge to you my complete individual cooperation and the cooperation of the various Law Enforcement Associations of which I am a member, a constant program of informing the citizens we serve of the needs of law enforcement for the protection of the people. Should we fail to advise the people of the needs of the Law Enforcement in the control of crime then in a sense we have neglected our sworn duty to the citizens we serve.

Sincerely yours,

FORREST E. KEENE,
Chief of Police.

CITY OF CUDAHY, WIS., POLICE DEPARTMENT,
February 25, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR: As Chief of Police in the City of Cudahy, I heartily endorse any legislation that will lift some of the burdensome restrictions brought about by the Miranda Decision.

The full impact of this decision cannot be adequately assessed by merely comparing the number of confessions obtained before and after the decision was rendered. A more realistic picture is presented when one considers the following:

Witnesses and other people with pertinent information are now reluctant to cooperate with investigators, especially after the required warnings are recited.

Physical evidence at crime scenes is overlooked, or its value to the prosecution deteriorates, because investigators are prohibited from making the necessary inquiries that would lay proper foundation for introduction in court.

Many prosecutors have become so sensitive to the rules set down by Miranda that they often talk the defendant out of cooperating by long, detailed and repetitious warnings with regard to the defendant's rights. There also seems to be a good deal of confusion among prosecutors and some members of the judiciary as to the application of these rules. It is now impossible to find two officers of the court who will give similar answers to questions on such matters as Tacit Admissions, Res Gestae Declarations, etc.

Probably the most damaging result of these decisions has been its effect on the public's attitude toward police. Many people feel that the laws and ordinances can be violated with impunity. Matters that were once treated as routine incidents now require extensive investigation and sometimes lengthy court proceedings.

This is having an adverse effect on the efficiency and morale of the police.

I honestly feel that unless some of the restrictions on questioning suspects prior to arrest are removed, crime figures will soar and conviction rates will drop.

Very truly yours,

ANTHONY M. WISE,
Chief of Police.

STREATOR, ILL., *February 24, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

YOUR HONOR: Law enforcement in our time is very difficult and trying operation. Breaking and entering, Larceny and Burglary is taken for granted by many persons to be their legal right.

In Chicago during their heavy snow. Breaking into business establishments, carrying and hauling away merchandise was a huge operation and when officers attempted to make arrest, resistance occurred and they were accused of brutality as they were when the so-called peaceful demonstrations were held.

After arrests were made, proof beyond doubt is demanded by attorneys for their clients.

Under present conditions a person is not safe in his own home. Forced entries are made, occupants are threatened, tortured, raped, tied up, valuables stolen and some are murdered and the offender is not easily apprehended. If and when apprehension is made. Proof must be established of guilt.

We know we must inform those who are placed under arrest as to what their Constitutional rights are.

Release on Bond, especially on offenses in Chapter 38 of the Criminal Code of the IRS, is a simple matter. Once out on bond, many commit other crimes and some fail to appear in court on date set for them.

Long delays in bringing cases to trial. Changes of location for trial to be held takes additional time. All such actions pile up a back log and bring on discouragement.

I do not believe that the Founding Fathers of our Constitution intended for the criminal to be protected as they are today. I believe that this protection be given to the Law Abiding Citizens.

In recent years, Attorneys for the Defense have used and are using every technicality to sway Jurors and the Judges to point out and define a Statute in a manner that their Client is innocent of the offsense committed.

Even Attorneys do not agree on definitions many times of the Statutes.

The Supreme Court Of The United States has laid down Rules that we as Officers must follow. We have been Handcuffed. Crime can be reduced. We as officers have the knowledge, ability and are willing to enforce the State laws and City Ordinances and assist each other of any department and the F.B.I. We are and there is no doubt every department has and is. The Handcuffs Must Be Removed from us.

The pendulum has swung too far in favor of the criminals. It must swing back to ours and swiftly. When it does, there will be a reduction.

Allocating of monies to fight crime is necessary. Just as necessary are Amendments or Enactments of laws which will permit officers to protect Law abiding citizens and our free way of life.

Respectfully yours

ANDREW KOLESAR,
Chief of Police.

POLICE DEPARTMENT,
Ringtown, Pa., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
United States Senate,
Washington, D.C.

DEAR SENATOR: The recent Supreme Court decisions favoring the criminals at the expense of our citizens is shameful. Chief Justice Warren has set law enforcement back a hundred years. His fifth deciding vote has made it well nigh impossible to punish the guilty criminal element. The innocent public, police who are ham-strung in trying to perform their duties, judges whose hands are tied in deciding a case, all these are practically at the mercy of any person who decides to commit a criminal act.

I never arrested, or tried to convice an innocent man. To-day I fear making an arrest because of the loopholes expressly put into the law by the courts to aid a criminal to avoid paying the penalty for his misdeeds.

I am so disgusted with what we have to contend with in law enforcement since the U. S. Supreme Court saw fit to so recklessly interpret the law to benefit lawbreakers, to misinterpret the will of our law makers, that I am resigning my position as chief of police, effective 31 December, 1967.

Sincerely yours,

J. J. KENNEDY, JR.,
Chief of Police.

DEPARTMENT OF POLICE,
Danbury, Conn., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, United States Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: First, let me tell you how happy I am that you are the Chairman of this very important Committee, also that you are such an outstanding member of the Democratic party.

It is with a deep feeling of respect and admiration for you that I ask that you do everything within your power to have S. 674, which will amend Title #18, U. S. Code, with respect to the admissibility in evidence of confessions.

All police departments are having a very difficult time in recruiting men to the departments and it is all due to the decisions which have been handed down by the Supreme Court.

With all due respect to this fine group of men, it is a general feeling that an age limit should be set for the members of this august body.

With every best wish and trust the Good Lord will bless you with continued health so that you can serve your country for some period of time.

Sincerely,

J. HOWARD MCGOLDRICK,
Chief of Police.

RALEIGH, N.C., *February 22, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I am sure that I only speak the sentiment of all law enforcement officers that we appreciate your and Senator Ervin's efforts to assist law enforcement officers to do their job. Recent Supreme Court decisions have handicapped us to some extent and the situation certainly needs clarifying. I believe that our people should have enough confidence in the great majority of their law enforcement agencies to trust them with the tools needed to do an acceptable job in protecting the lives, rights and property of those same people.

Best wishes to you and if either I or this department may serve you in any way, I assure you it shall be done to the best of our ability.

Sincerely,

TOM DAVIS, *Chief of Police.*

DEPARTMENT OF POLICE,
Kirkwood, Mo., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMANS I wish to thank you very much for introducing Senate Bill 674 which would amend Title 18 of the U.S. Code.

In the face of the many recent Supreme Court decisions that directly affect the ability of the police to serve the public, it occurs to me that we need new rules such as the one that you propose. I think too that it might be nice if it could be legislated into being that our courts recognize a certain amount of error or mis-judgment on the part of police when cases are presented for adjudication. In any event, the bill that you have proposed would certainly go a long way to assist us in law enforcement.

Thank you very much.

Yours truly,

MAX A. DURBIN, *Chief of Police.*

NEW BOSTON, OHIO, *February 23, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SIR: The Miranda decision is a great deterrent to effective law enforcement. I feel that the law-abiding citizens of our great country should be able

to expect and receive better protection from those who commit crimes than the Miranda decision permits.

Respectfully yours,

RUSSELL IMES, *Chief of Police.*

ORLANDO, FLA., *February 23, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

HONORABLE SIR: We have a very timely memorandum from our Executive Director, Mr. Quinn Tamm concerning the very immature decisions made by the Supreme Court, adversely affecting Law Enforcement. These, of course, being the Mapps, Mallory, Jencks, Miranda, Escobedo and the more recent extension of the Escobedo Decision.

As a member of the Law Enforcement profession, with almost forty years experience in this field. I am truly amazed by the decisions in the above cases, along with others that have handcuffed the Police throughout our nation.

We, here in our city, have an organization of five people who have been speaking to church groups and other organizations for the past year, trying to enlighten them with the bare facts and not nebulous intangibles. It is believed that we have made some progress in this direction and we will continue to make our presentations and appearances as long as we feel that the desired and ultimate goal can be reached.

It is absolutely nauseating to see the direct result of these decisions, public apathy; complacency; and failure of our parents to assume their God Given Responsibilities. We have too many houses and not enough homes in our nation today.

Then, of course, we shouldn't overlook these so-called do-gooders, who are slobbering over these "so-called unfortunate individuals" in a vain effort to find excuses for their senseless transgressions.

It is my firm belief that unless the decent law-abiding Americans, which compromise approximately ninety percent of our population, stand up and be counted as tried and true Americans, the other ten percent, which give us ninety percent of our trouble, will be dictating policies and procedures for our guidance in the future.

Maybe, Sir, my words may be a little strong, but they describe my convictions most thoroughly.

If there is anything we can do here to assist you in your wonderful undertakings, please advise.

Kindest personal regards and very best wishes.

Sincerely,

CARLISLE JOHNSTONE,
Chief of Police.

PHILLIPSBURG, N.J., *February 23, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: I welcome your concern of recent Supreme Court decisions. It is hard to conceive just how the Miranda Supreme Court decision has shackled the efficiency and performance of police work.

While pursuing our obligation to preserve life and property, we are in turn very concerned with the rights of every citizen, being ourselves citizens and a member of the same society.

Our concern over the known criminal element walking free in our cities and towns has caused great dismay to every policeman dedicated to his career and his obligations to the people he serves.

It is with great hope that you, Senator, will be one of the first pioneers to make this Miranda decision more flexible in the name of every American citizen who cries out for the pursuit of happiness and the absence of fear in walking the streets of our nation.

Sincerely yours,

JOHN W. BUDD, *Chief of Police.*

BUFFALO, N.Y., *April 20, 1967.*

Mr. WILLIAM A. PAISLEY,
Chief Counsel, U.S. Senate, Committee on the Judiciary, Subcommittee on Criminal Laws and Procedures, Washington, D.C.

DEAR MR. PAISLEY: In response to your recent inquiry, I would state that the Miranda and other recent Supreme Court decisions have had a decided adverse effect on law enforcement. We have encountered a decided lessening in the amounts of confessions we get in comparison with the pre-Miranda times. The criminal now realizes he may commit his crimes with almost certain impunity so long as he keeps his mouth shut and there are no witnesses. This feeling on the part of the criminal must certainly be responsible, to a great extent, for our alarming increase in crime.

I would certainly hope that all of the proposals contained in Bills S. 674, S. 1194 and S. 1333, as they concern confessions, may finally be adopted. However, I suspect this is wishful thinking. Something must surely be done soon to give some protection to our citizens rather than the criminals. Adoption of these bills would be a step in the right direction.

The other two Bills—S. 675 and S. 917, also contain much merit and are vitally needed by law enforcement. Some financial means must be supplied, most especially here in Buffalo, to help upgrade police salaries. Our local Patrolmen make $2,500 a year *less* than a New York State Trooper. Perhaps full utilization of the funds which could become available through adoption of S. 917 would help overcome this discouraging salary schedule in our City.

Sincerely yours,

RALPH V. DEGENHART,
Chief of Detectives.

COMMONWEALTH OF VIRGINIA,
CHESAPEAKE BAY BRIDGE AND TUNNEL DISTRICT,
Cape Charles, Va., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR: Needless to say, we in the Police profession are greatly concerned with the recent Supreme Court decision, commonly referred to as the Miranda decision.

I am of the opinion that if this decision remains as the guide line, and I say this reluctantly, that, in many instances, the victim is the only one who will be punished.

I have enclosed a newspaper clipping which is a classic example of the aforementioned.

Sincerely yours,

WILLIAM C. MEYER,
Chief of Police.

FORT LEE, N.J., *March 7, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I want to go on record against the deplorable conditions created by the Miranda decision and its adverse effect on responsible law enforcement.

The Miranda decision makes it extremely difficult to obtain convictions against known criminals. Law enforcement officers are reluctant to pursue the questioning of suspects with the uncertainty of their position which could lead to a possible false arrest charge being lodged against the arresting officer.

There is no question that the Miranda decision is responsible for criminals being returned to society to prey again on the community without fear of paying their rightful debt for their criminal acts.

New technological advances in communications are being used by the modern day criminal element. Adversely, the small local law enforcement bodies have not been able to keep pace with the new advances made in communications because of the cost to the community.

The old bug-a-boo about back room interrogation is a thing of the past. Today's law enforcement officer is a highly educated and skilled professional, who is not only interested in his profession but is usually an active member of his church and community, taking part in many civic activities.

Morale, which is the crux of good law enforcement efforts is dwindling as a direct result of the Miranda decision.

In conclusion, let us reverse the trend in law enforcement and get back on the right road with the reversal of the Miranda decision.

Sincerely yours,

THEODORE E. GRIECO,
Chief of Police.

DUPAGE COUNTY CHIEFS OF POLICE ASSOCIATION,
Woodridge, Ill., March 7, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Law and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: As legal counsel for the DuPage County Chiefs of Police Association, they have requested that I write to you expressing their views and suggestions regarding Supreme Court Decisions, specific examples of such decisions as Miranda.

I would say that the general feeling among there law enforcement people is that the Miranda decision and decisions of this nature have removed one of their most valuable tools in law enforcement investigation, and has substantially impaired their ability to be of service to the public at large. Also, the County of DuPage being a County represented by people of higher than average income, educational background, this overlaps also into the field of law enforcement, and the abuse of law enforcement officials as so eloquently recognized by the opinion in the Miranda decision is all but unknown in this jurisdiction. In the eighteen or more years of my own experience I only have on rare occasions witnessed or had reported incidents of questionable police behavior. As long as this constitutes no problem, the men in this jurisdiction feel a tremendous loss in effectiveness merely because possibly that in some jurisdiction there is a problem constituted and they failed to see why this cannot be handled on a case to case basis as to the individual rights rather than make a blanket preclusion of certain police procedures.

There have been certain cases wherein the Miranda decision confronts a problem. As a matter of fact my office is presently in collaboration with one of the local departments for investigating a possible homicide involving husband to wife. The Miranda decision is so very very explicit in police relying upon scientific evidence. In this instant case all of the scientific evidence, which type of evidence on careful review of all criminology would be glaring with its limitations, has been exhausted. After all Dick Tracy is the only one with a space coupe. The only hopeful solution to this possible homicide would be if the errant husband would acknowledge it. If all of the scientific evidence that we have would point toward this defendant, it still would not be sufficient as it is all corroborative to even commence a prosecution.

We have another case which we have just brought to a conclusion which uniquely brings forth a problem I am sure was farthest from the jurists' minds, and that is a case which was solved akin to the old time bounty theory. Factually it is this: two young men were very much suspected in a major crime in this County, the Chief of the local department investigating being very cognizant of the Miranda decision was fearful of approaching the young men, fully admonished their fathers that they were suspected and that if he gained more evidence would return. He was hopeful that the father could prevail upon these young men. Within a day a reward of substantial proportion was posted for information leading to the arrest and conviction of those responsible. Immediately this local Chief of Police was waited upon by two characters, each more evil probably than those involved, who immediate made statements interrogating these two lads, and thereby demanding their reward. Of course we commenced a prosecution. I give you this as a rather unique example of the pitfalls of this decision.

In discussing this generally with law enforcement officers many of them have various stories to relate wherein they have been advised by those subject to in-

terrogation as to what all these rights are and that they the subject of the inquiry are somewhat so called immune.

As to my own view, I note that the biggest problem has been that the law enforcement officer's confidence in his own status has been all but destroyed and this is a feeling that runs rampant among law enforcement officials that they are almost hesitant to talk to anyone. This carries over to a point where they are placed in an actual position of fear being afraid during the course of an investigation that they will in some way make a mistake and thereby endure grave embarrassment. This has a very bad effect upon their activities. The danger of this is something we cannot measure as it would be impossible to determine how many law enforcement officials are not making proper inquiry, due to this fear. This fear itself is a very natural thing with a conscientious officer trying to do his job and trying to do it right. He is in a position where he doesn't know what is right any more.

Very truly yours,

WILLIAM V. HOPF,
State's Attorney.

CITY OF FRESNO POLICE DEPARTMENT,
Fresno, Calif., March 1, 1697.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SIR: This correspondence is directed to you in response to your request, through the International Association of Chiefs of Police, for information relative to recent Supreme Court decisions affecting the admissibility of confessions into evidence in criminal matters.

It appears to be well established that the Escobedo and Miranda decisions have had a decidedly adverse effect upon law enforcement. Examining the fact that law enforcement officers are not thoroughly schooled in constitutional law, may shed some light on the situation. Contributing to the overall problem, however, is the difficulty with which lower courts apply the Escobedo and Miranda principles. In many instances they are arriving at decisions which are poles apart under very similar circumstances.

The number of convictions and guilty pleas has declined drastically since the pre-Escobedo days of 1963. This is in spite of the fact that felony arrests have increased 75% since 1963. The following table is included for reference.

City of Fresno, Calif.

	Felony arrests		Convictions or pleas	
	Number	Percent	Number	Percent
1963	1,475	----------	546	37
1964	1,635	----------	539	32
1965	1,539	----------	379	24
1966	2,042	+72	461	22

Figures such as those shown make a travesty of the efforts of dedicated law enforcement officers. In previous years and through 1963, there had been a gradual increase in the number of felony arrests and the percentage of those arrests which terminated in a conviction or plea of guilty. This trend, which I attributed to better police methods, was drastically reversed after Escobedo and the California decision in Dorado.

Fresno County Court records show that the fiscal year 1965–66 experienced a new high in the number of felony cases in which criminal informations were filed. In spite of this new high, the percentage of guilty pleas as compared to complaints filed, dropped to a new low. The percentage drop in guilty pleas amounts to 24% since the pre-Escobedo and pre-Miranda era. One of the most disturbing facts, however, is that for the first six months after the 1966 Miranda decision, dismissals before trial are already higher than for the entire preceeding year.

It may appear rather trite to reiterate that the Supreme Court has contributed immeasurably to the above facts, but I am compelled to do so. Advancements in training police personnel and the utilization of more science in crime detection methods are no doubt partial solutions to the mounting crime toll, but they certainly are not the complete answer. There are too many crimes in which no physical evidence of value may be found and well trained investigators are definitely thwarted when they must tell a suspect that he has a right to say nothing to them.

I hope that the above comments may be of value to you and wish you success in your attempt to remedy this situation. Certainly, as the dissenting opinion Miranda expressed, no other country in the world has ever had such restrictions nor are such restrictions founded on a constitutional basis.

In closing, I respectfully request a copy of your Bill S. 674 and, if possible, an abstract of the hearing to be held by your committee on March 7 through 9.

Sincerely,

H. R. MORTON,
Chief of Police.

DOWNEY, CALIF., *April 5, 1967.*

DEL CLAWSON,
Congressman,
Longworth House Office Building,
Washington, D.C.

DEAR DEL: I believe McClellan's Senate Bill 674 is needed. It does provide that voluntary confessions will be admissible. I feel the Supreme Court is fast pursuing a philosophy that no confession is admissible under the Constitution.

The bill provides that the issues of voluntariness will be decided by the court out of the presence of the jury and then if admitted, weighed by the jury.

It provides the guarantees to the individual as outlined in the Miranda decision.

Its outstanding points, I believe, are that it overcomes the Mallory decision which required almost immediate arraignment after arrest and in the "dicta of the reporting Judge" hinted that most likely any confession obtained after arrest and before arraignment was under duress or coerced conditions which would affect its admissibility.

Further, it protects the admissibility of the spontaneous confession or admission before or after arrest.

Very truly yours,

I. A. ROBINSON,
Chief of Police.

QUINCY, FLA., *April 13, 1967.*

HON. RICHARD RUSSELL,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR RUSSELL: At the request of the Quincy City Commission, I am enclosing a Resolution recently adopted, relative to the hamstringing of Law Enforcement Officers.

It is our sincere feeling that the rights of the law abiding citizen have been disregarded long enough.

Sincerely,

H. C. GREGORY, *City Manager.*

RESOLUTION 552: A RESOLUTION REQUESTING MEMBERS OF CONGRESS TO ENACT SUITABLE LEGISLATION RELIEVING LAW ENFORCEMENT OFFICERS FROM SOME OF THE REQUIREMENTS OF UNITED STATES SUPREME COURT DECISIONS

Whereas, in the opinion of this commission the United States Supreme Court by its *Escobedo, Miranda* and subsequent decisions has seriously hampered effective law enforcement by placing upon law enforcement agencies and officers serious handicaps to the quick and effective solution of crimes and the punishment of criminals thereby tempting and encouraging potential law violators to commit crimes with less fear of being convicted therefor, and

Whereas, the law abiding citizen and his right to be secure from the lawless and to have law violators punished should receive at least as much consideration, be accorded as much care and have as much protection, as the criminal and the rights of the criminal, and

Whereas, the present effect of such court decisions extending the rights of the criminal and simultaneously limiting the rights of the law abiding citizens to protect themselves from the murderer, robber, rapist and arsonist demand serious consideration by the legislative branch of the government, therefore,

Be it resolved by the city commission of the city of Quincy that the congressional delegation from the state of Florida, and all others interested in effective law enforcement, are urgently requested to use their full influence and power to the end that suitable laws be enacted, as promptly as possible, which will relieve law enforcement officers from the harsh impact of said Supreme Court decisions and place such officers where they can again be effective guardians of the peace and safety of the law abiding without being subservient and apologetic to the criminal and indecisive as to their position of respect in a civilized society.

Adopted in open session of the City Commission of the City of Quincy, Florida, on the 10th day of April A.D. 1967.

C. W. THOMAS Jr.,
Presiding Officer of the City Commission.

Attest:

JOE T. WORDBERRY,
Clerk of City of Quincy and Clerk of City Commission thereof.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DEPARTMENT OF SOCIAL WELFARE,
ADULT CORRECTIONAL INSTITUTIONS,
Howard, R.I., April 14, 1967.

Hon. JOHN L. MCCLELLAN,
Senator, Room 2204, New Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I am writing requesting your support of President Johnson's so-called "Safe Streets and Crime Control Act of 1967." As you know, the proposed legislation includes a most imaginative program which will provide federal grants of up to 90% to states, cities and regional areas to plan improvements in correctional systems and up to 60% to support approved programs in operation. There is also a provision for grants or contracts to support research and education projects that could be of immeasurable significance in corrections.

Rhode Island, under the Law Enforcement Assistance Act passed earlier under this administration, benefited both through the Regional State Police Training School, through the Washington Oaks Project about to be opened in Foster, Rhode Island for the care and treatment of the delinquent youth in its early stages and in other ways.

As a public servant for some twenty-six years here in Rhode Island, both as a Special Agent of the Federal Bureau of Investigation and as Director of the State's Correctional Services for eight years and as Warden of the Adult Correctional Institutions and Reformatory for Women, I have seen and do now observe the very great need for training and education for, and in the correctional field. At the present time, it is almost impossible to find trained personnel equipped and ready to enter the correctional field to assist in attacking the tremendous social phenomenon of crime and criminality here in the United States. As immediate Past President of the American Correctional Association, I have had opportunity to observe the picture throughout the United States and underscore again the necessity for providing funds for training at a federal level, for funds to develop professional programs of education for staff at a college and graduate level and a continuing, sorely needed program for research in this field.

I strongly urge your support and I am sending similar correspondence to the rest of our Rhode Island delegation of like suggestion and intent.

Sincerely yours,

HAROLD V. LANGLOIS, *Warden.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., March 14, 1967.

In re Judicial Reform Bills S. 674 to S. 678, inclusive.

Hon. JOHN L. MCCLELLAN,
Chairman, Criminal Law and Procedures Subcommittee, Senate Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: The American Farm Bureau Federation respectfully expresses its concern regarding the national crime problem. It will be appreciated if you will include this letter in support of the principles embodied in the above bills in the hearing record. We are sending copies of this letter to other members of the Senate Judiciary Committee.

S. 674, providing that a confession given voluntarily and without coercion shall be admissible, appears to us to be the most important of these bills. Society needs further protection from the adverse effects of recent Supreme Court rulings which have freed self-confessed criminals because of some technical inadequacy of the procedures used. The test of admissibility should be, as provided in S. 674, whether or not the confession was in fact, in the light of all circumstances, voluntary or not voluntary.

It is desirable that statutory standards be established relating to the circumstances in which wire communications may be intercepted, which would both clearly and positively prohibit such practice except for purposes of national security and in certain situations under judicial approval. We agree that wire tapping should not be prohibited in all cases. A complete prohibition would give the criminal engaged in narcotic smuggling, kidnapping, murder and other crimes against individuals and society an unwarranted shield if the police were denied the right to use means of acquiring evidence. It appears to us that S. 675 involves an appropriate balancing of the rights of all parties involved.

The need to provide additional penalties against those who obstruct justice in prescribed circumstances has been made abundantly clear to the public. Thus we support the principles of S. 676.

We favor the extension of authority to grant immunity as a means of requiring persons who claim the right against self-incrimination to respond to questions and aid the administration of justice, as provided in S. 677.

We believe more effective legislation, such as S. 678, must be enacted to deal with the multi-state and interstate criminal organizations. We understand that some questions of constitutionality may be involved in this type of legislation. We hope these legal questions can be resolved and that a bill meeting constitutional tests can be reported.

Finally, we want to express our appreciation for your leadership in this area. We consider it one of the important problems requiring Congressional attention. We hope that legislation can be expeditiously reported and enacted.

Sincerely yours,

CHARLES B. SHUMAN, *President.*

WASHINGTON, D.C., *April 1, 1967.*

Senator JOHN L. MCCLELLAN,
Room 3241, New Senate Offie Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: News reports indicate that you are taking an interest in crime legislation. It is my humble opinion that no legislation will mitigate the crime wave as long as many members of the judiciary daily violate their oaths to uphold the law and act like mouthpieces for the criminals. In this connection I am a firm believer in the full implementation of the constitutional rights of the accused. However, the debates on this point have persistently perpetuated the fallacy that the outrageous partiality of the judiciary toward all criminals, is the result of their concern for constitutional rights. Only a cursory review of recent events will show that even where habitual felons are convicted in full compliance with all the Supreme Court rulings, certain Appeals Court judges refuse to let the convictions stand. Their opinions frankly state that our laws are too barbaric and that they are guided by their own superior personal code of ethics. It is not necessary to waste money on another billion dollar crime commission investigation to confirm this. It is sufficient to note that, although the death penalty for murder and rape are still in force in the District,

and there have been many hundreds of such crimes committee in recent years, there has not been a single execution for at least five years.

Certain dogmas advanced by proponents of the "modern scientific" crime prevention measures are so idiotic that they are not really believed by their supporters. The same Mr. Katzenbach who, as Attorney General, crusaded for stamping out the murder of "Civil Rights" workers by advocating swift, severe retribution against the lawbreakers, flatly states (as head of the Crime Commission) that punishment does not deter crime.

Another fallacy is that all crime is the result of poverty, frustration, slums, ignorance, deprivation and injustice to the criminal. They say that the obvious remedy is to bribe, cajole, reward and appease the criminals until they become rehabilitated. Like most fanatics, the extremist devotees of this cult are completely immune to common sense or experimental evidence. The rapid deterioration of fine residential neighborhoods and clean comfortable public housing projects under the assault of the "underprivileged" relief chiselers, is convincing evidence that the slums do not create the criminals but that criminals create slums. In pursuit of this fallacy, the Government has sponsored a protection racket for the "underprivileged", granting huge subsidies to career "unwed mothers" and hereditary bums.

After more than six years of extreme capitulation to the anti-social elements we have expanding slums, an exploding crime rate, and impoverished local governments. Instead of abolishing poverty this program threatens to spread poverty to the middle class by virtue of a combination of confiscatory taxation and accelerating inflation. The taxpayers are not nearly as safe now as they were during the depression of the 1930 decade when there was real poverty and discrimination was astronomical compared to now. Still the insatiable demand goes on for proving to the criminals that crime pays and for the human sacrifice of hundreds of law-abiding taxpayers to the false idol "Rehabilitation".

Still another fallacy is that employment and education can be handed out, like relief checks, to resisting beatnicks, and that the expenditure of astronomical amounts of money can achieve this objective. When a teen-ager sees the Government pay his ignorant, lazy, unemployed "unwed mother" as much as his highly educated hard-working teacher, what incentive can he have to study? When felons, enjoying lifelong immunity from the law (while they are being rehabilitated) get much more money and prestige than the policeman, what faith can he have in pompous pronouncements about the indispensability of education and hard work for success?

One of the most destructive fallacies, is the dogma that vicious habitual teen-age criminals, who have repeatedly committed major crimes such as rape, robbery and even murder, must not be punished or sent to jail, lest they be contaminated by the adult criminals. They are placed on probation or in youth "correctional" institutions where they can teach their tricks to aspiring youngsters and where they serve as shining examples of the impotence of the law enforcement agencies.

I hope that my point of view will be of some value to you in this matter. Many of my friends and associates feel the same way as I do but have no vehicle for expressing their opinion. I do not believe that the only alternative to a police state is a state of anarchy.

Sincerely yours,

DAVID GINSBERG.

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
April 4, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
Senate Judiciary Committee.

DEAR JOHN: I am enclosing for your consideration a copy of a letter from Mr. Morris Stagner, District Attorney, Ninth Judicial District, Clovis, New Mexico, in support of your bill S. 674.

I have informed District Attorney Stagner that I am forwarding this letter to you for your information and for possible inclusion in the record of testimony when hearings are held on this measure.

With warm personal regards, I remain,

Sincerely,

JOSEPH M. MONTOYA,
U.S. Senator.

STATE OF NEW MEXICO,
OFFICE OF THE DISTRICT ATTORNEY,
NINTH JUDICIAL DISTRICT,
Portales, N. Mex., March 22, 1967.

Re Senate bill 674.

Hon. JOSEPH M. MONTOYA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONTOYA: I am writing you to enlist your support for the above mentioned bill. Recent decisions of the United States Supreme Court have created tremendous problems in connection with law enforcement. The recent Miranda decision has made it almost impossible to question persons suspected of committing crimes. In this district we have a confessed killer walking the streets for a technical reason that he was not advised that if he could not afford a lawyer the State would provide him one free of charge. This killer confessed one week prior to the Miranda decision being handed down, however, he was not tried until after that date. This past term of Court we had a confession by a burglar, which we could not use. Fortunately we had sufficient other evidence to convict him. I think you can look across the United States and observe many instances where confessed criminals are going free. The confession is an essential to good law enforcement. If you have not read the Miranda decision, I would urge you to do so, including the dissenting opinions.

I have questions concerning the constitutionality of Senate Bill 674, however, I believe most strongly that the people of this country need to speak out and what could be more effective than a bill by the United States Senate.

I believe that I can speak as President of the New Mexico District Attorneys Association in urging your support of this bill. Our Association has discussed this problem, and we are in agreement that the rights of the victims of crime must be taken into consideration. Recently I attended a meeting of the National District Attorneys Association in Los Angeles. I can assure you that the problem is a national problem. This bill goes to the heart of law enforcement across the country. I am sure that you realize that effective law enforcement is an essential part of this nation's security.

Yours very truly,

MORRIS STAGNER,
District Attorney.

EAST NORWICH, N.Y., *April 7, 1967.*

Senator JOHN MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Recent news articles dealing with crime tell again and again how known criminals and suspects are being released from custody or prison.

The Supreme Court ruling which brought much of this about is probably one of the major factors in the rising crime rate. It is a most serious problem and one which concerns every citizen. It seems that the court in its desire to assure the criminal of his rights has at the same time completely neglected the rights of the public in general and the victims in particular. Surely there must be a way out of this situation in which we find ourselves.

Crime is increasing too fast.

Something must be done and soon.

I would like to wish you success in your search for the solution.

Sincerely yours,

WILLIAM J. O'LEARY.

BOULDER, COLO., *April 5, 1967.*

Senator JOHN L. MCCLELLAN,
Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedures, the U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: I should like to congratulate your committee and encourage it to do whatever is necessary and possible to counteract the Supreme Court's leniency towards criminals. If their rulings of last year do not constitute leniency, then let them more clearly define their meaning and clarify this turbulent and confused issue.

It seems to me that crime could be lessened by more conscientious application of our existing laws, rather than the expenditure of millions of dollars. The war on poverty is spending enough. And what about the crime that goes on in the non-poor segments of society? There is plenty of it, and money can't help it.

As a middle-aged, middle-income housewife and mother I am appalled and outraged at the way crime is being allowed to flourish in this country.

Yours truly,

ELIZABETH D. FRITZ
(Mrs. Leonard S.)

[Telegram]

FORT STOCKTON, TEX., *March 8, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senator, U.S. Senate Building, Washington, D.C.

DEAR SIR: It is gratifying to know you are initiating a step to re-evaluate the *Miranda* Decision.

This is directed to you in your capacity as chairman of the Judiciary Sub-committee.

My concern is by virtue to being a Justice of the Peace, parent, citizen, and lawyer.

As a J.P. in this west Texas community of 10,000, with a crossroads of 9 arterial highways, I meet head on constantly with the damaging affectations of the *Miranda* case. Law enforcement in the grade of felony has run up against a blank wall. No longer can a mere suspect be questioned. If some change is not made soon enforcement will be at a standstill.

As a father and citizen, I recognize that the criminal suspect has a greater protection than my children. No longer does the mad dog get shot—but the pets are to be locked up while the former roams the streets with slobbering impunity.

It is agreed that Hon. Ramsey Clark is correct in his statement that criminal matters are a local problem. Why spend $50 million to assist local branches and study parole problems, when matters as they now exist. There is ample protection. It being the procedural guidelines that will choke law enforcement into oblivion.

As a lawyer I disagree with the majority holding. I represented a defendant by court appointment in 1954. He was electrocuted for the crime of murdering a young mother. He very willingly made the confession. No coercion, no promises—he wanted to make a statement. On the basis of same he was convicted. If same facts presented today it would be difficult to even obtain an indictment. You are to be commended in your approach.

Sincerely,

GEORGE W. WILLEY.

DECKER, GOLDEN AND REIFMAN,
ATTORNEYS AND COUNSELLORS,
Chicago, March 22, 1967.

Senator JOHN L. MCCLELLAN,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have recently read with interest about the hearings before your judiciary sub-committee relative to the growing problem of crime in our nation.

It seems as though we have more hearings and more investigating committees and spend more money and get less done all of the time in this area. The problem is pretty simple if we have the courage and intelligence to face it, and that is that we have completely failed to take proper action to keep off the streets, those people within our society who have clearly demonstrated to one and all that they are possessed of dangerous tendencies which make them a menace to the overwhelming majority of decent citizens.

It is true that we could use more policemen and better crime detecting methods, but these improvements alone will not solve the problem because our law enforcement agencies are today arresting thousands of dangerous criminals and bringing them before our courts, only to find these criminals turned back into the streets with complete disregard for the welfare of the rest of us.

The breakdown in our battle against crime has come from our courts, and parole boards which have been infiltrated by persons who are either incompetent, corrupt or lacking in ability to understand that the major function of imprisonment for the criminal is not to punish him, is not to rehabilitate him, but to protect society from him.

In our Chicago area we have seen three particularly horrible crimes within the last year, the murder of eight student nurses, the stabbing of the young airline stewardess in the Chicago Loop, and the gangland execution of two innocent teen age boys in Rockford, Illinois. In each case when the alleged criminal was caught, it was with little surprise that we found out that he had been involved with or convicted of previous crimes.

No greater evidence of our archaic system of criminal procedure can be produced than the absurdity of the Richard Speck trial now taking place in Peoria, Illinois, where after four weeks they have not as yet even selected a jury. Giving a man a fair trial is one thing, but this is ridiculous.

Another example, of course, is the famous case of Jack Ruby, the man who killed Mr. Oswald in full television view of fifty million people; there was no question of his innocence or guilt and yet three years after the commission of the crime, our archaic laws and procedures were such that there had not as yet been a final disposition of the case.

I hope that something beneficial can come out of your hearings and that we can begin to get action and pass new laws if necessary, realistically facing the problem of crime as it exists today.

Enclosed please find copies of two newspaper articles which graphically illustrate some of the points which I have made in this matter.

Very truly yours,

ROBERT S. DECKER.

ROCKVILLE CHAMBER OF COMMERCE,
Rockville, Md., March 22, 1967

Hon. J. L. MCCLELLAN.
Committee on Appropriations,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: 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.*

HOLYOKE, MASS., *March 14, 1967.*

Honorable JOHN L. MCCLELLAN,
Chairman, Senate Judiciary Subcommittee,
Senate Office Building,
Washington, D.C.

DEAR MR. SENATOR: I was very pleased to read that your sub-committee is reviewing crime in the United States and that you are concerned about recent Supreme Court decisions pertaining to individual rights.

As far back as 1961, decisions handed down by the U.S. Supreme Court have had serious effects on law enforcement—and have resulted in significant changes in procedures pertaining to arrests. I have particular reference to the U.S. Supreme Court's decision on June 13, 1966 regarding the so-called self-incrimination opinion rendered by this judicial body on a vote of 5–4. This is the now famous Miranda vs Arizona case.

It appears law enforcement today is placed in the position of maintaining the delicate balance, between the rights of the individual, and the rights of society, in an era in which our citizens are becoming less and less accountable for their acts. I think the Honorable Senator Alan Bible made a very strong statement when he said, "It seems to me that we have become so obsessed with uncovering new rights and safeguards for the criminal, that we have unbalanced the scale of justice."

For your information I have enclosed two articles which I believe you will find interesting. They have reference to a development which occurred in Holyoke, February 27th, 1967 and an incident in Boston, July 1965.

The Holyoke case and the Boston crime are similar, and both resulted in almost identical findings. Please note, that in the local situation here in Holyoke, it required the services of a large moving van to move the quantity of stolen goods found by the police, after the suspects led the law enforecement officers to the articles, and admitted the crimes.

On the basis of a 5–4 Supreme Court decision the occupant of an apartment in Boston containing the largest stock of marijuana ever seized in Massachusetts, was set free, because a police warrant wasn't explicit enough. One wonders what the outcome of these two cases would have been, if one of the nine U.S. Supreme Court justices had voted otherwise than the way they did, on June 13, 1966.

It is not the intent of my letter to criticize the decisions of the U.S. Supreme Court—but the purpose of this correspondence is to support the review by the federal government of crime in our free society. I believe this review is necessary, and I trust that our Congressional representatives will come forth with constructive recommendations that will give the criminal justice system of this nation, the proper directive to do the job it is charged with doing.

You and your committee are to be commended for your interest in this particular matter.

Very truly yours,

DANIEL F. DIBBLE, *Mayor.*

YONKERS, N.Y., *March 8, 1967.*

Senator JOHN L. MCCLELLAN,
Senate Criminal Laws Subcommittee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I agree entirely with your reported statement that recent Supreme Court decisions "have unduly restricted legitimate law enforcement practices."

The first casualty of these decisions has been objective truth: the unquestionably guilty have gone free in almost every case.

The Court itself has defensively stated recently, "This Court has never been disposed to vacate convictions without adequate justification . . ." Black v. United States, 17 L ed. 26, 29. This "adequate justification" has, unfortunately, not included the truth of the over-all proof of guilt among the pertinent considerations.

If it is properly the primary consideration, as I feel it should be, the Court has invariably done precisely what it denies. Whenever any evidence whatsoever, whether confessions or illegally obtained evidence, is suppressed, the trier of the facts loses the benefit of it in determining the truth or falsity of the charge. It cannot be otherwise since it is evidence only because it is relevant to such determination.

The motivation of the Supreme Court decisions is equally clear: that our police forces cannot be deterred from using improper means to obtain evidence except at this dreadful cost to society of turning the unquestionably guilty loose upon it. "The criminal is to go free because the constable has blundered.", as stated by Judge Cardozo for a unanimous court in People v. Defore, 242 N.Y. 13, 21, rejecting such a result.

This proposition that we cannot otherwise control our police, once it is clearly stated, must be shocking to any decent citizen, firstly, because it is not true, and, secondly, because it is an admission that no viable society should, or can afford to, make.

Indeed, even if it were true that society cannot otherwise control its law enforcement ministers, a legitimate inquiry would nevertheless remain as to whether the Supreme Court cure were not worse than the disease.

There may also be in the background of recent Supreme Court decisions a sporting element which is too shallow to rise to the dignity of motivation. The poor lonely criminal confronted with the power and majesty of the state can hardly be considered a David going forth against Goliath when the state's object is to ascertain the truth.

A conclusion opposite to that of the Supreme Court as to the proper balance between protection for the individual and protection for society has been reached by judges of legal learning, judgment and ethical perception equal to that of any now on the bench as to illegally obtained evidence. People v. Defore, supra; People v. Adams, 176 N.Y. 351; Commonwealth v. Tibbetts, 157 Mass. 519. As to confessions, the requirements of the Miranda decision were rejected, expressly and by implication, by every court in the land before June 13, 1966, including the Supreme Court.

To reject, or actively inhibit, all confessions, regardless of their truthfulness, and all corroborative evidence secured as the result thereof, simply because our forefathers excluded confessions extorted by torture as too likely to be false is a peculiar twist of logic.

On the ethical plane, I am not shocked by the proposition that citizens owe the state the truth even if it may result in punishment to them. Our major religons all call for confession, restitution and penitence as the road to salvation and none preaches the salvation of not getting caught. If we substitute rehabilitation for salvation, the statement is still true.

It is unfortunate that the newly discovered requirements of Miranda have been laid down as the minimum constitutional imperatives. I fear this may narrow your Subcommittee's remedial scope to nothing. However, it will still be useful to remind the public that a course opposite to that of the Supreme Court has a rational, edhical and judicial basis warranting consideration still and offers a respectable alternative.

With a vacancy on the Supreme Court, perhaps the Senate should abandon the fiction that the Court discovers this kind of law within the four corners of the constitution, where no one ever saw it before. I am concerned with the abandonment of judicial self-restraint by the Court's majority and its proliferation of constitutional imperatives, which put our society in a strait jacket in dealing with its problems. I am appalled by the great gulf which separates the majority from the minority, which I am coming to see as a gulf between superficial verbal logic on the majority side and sound judgment on the other. The senate will be well advised to assure itself as to the sound judgment of any designee to the Supreme Court, and should refuse its consent to the appointment of anyone who tends to consider policemen more dangerous to society than criminals, or that police misdeeds may be best corrected by turning criminals loose, or that a confession raises a presumption of innocence.

Please make whatever use you deem helpful of this statement. With best wishes for your efforts to find correctives, I am

Sincerely yours,

JOSEPH A. SINOPOLI.

ALEXANDRIA CHAMBER OF COMMERCE, INC.,
Alexandria, Va., March 7, 1967.

HON. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR MCCLELLAN: We at the Alexandria Chamber of Commerce have initiated a Crime Committee for the purpose of studying the growing crime problem as it affects our area. We held a meeting this morning with the

Chief of Police of Alexandria and have scheduled meetings on succeeding Tuesdays with people of the legal profession, the judicial, the public schools, and the ministerial representatives. We have also participated in a panel sponsored by American Legion Post 24 on last Sunday, March 5th.

In addition, we have written to the President, our Congressmen and Senatorial representatives, and the Governor, stressing our concern about this growing problem. We have asked civic clubs and citizens associations as well as other members to also contact the President and their representatives.

While we feel that there are certain social ills that contribute to crime and delinquency and that it will take time to change and correct these ills, we feel that the pendulum of concern for the rights of individuals, even the many times criminal, has swung too far, and that the multitude of law abiding citizens are having their rights, life and property placed in jeopardy. We are alarmed at the easy freedom gained by criminals because of some minor technicality. We feel that police officials across our Nation, and especially in the Nation's Capital, must have the support of government and civic leaders.

It is our desire to give you all support possible in bringing to reality your statement which was carried on television on March 6th, that there must be immediate action to improve this intolerable situation. Any guidance which you can furnish us in moving forward with your declaration will be most appreciated.

Sincerely yours,

ROBERT W. ROTROFF, *President.*

NATIONAL ASSOCIATION OF CREDIT MANAGEMENT,
FRAUD PREVENTION DEPARTMENT,
New York, N.Y., February 28, 1697.

HON. JOHN L. MCCLELLAN,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR MR. MCCLELLAN: The enclosed release was mailed out today to the Chairman of our National and local legislative committees and to the executive vice presidents and managers of our 117 local offices.

There are close to 36,000 members in our Association and I am sure that almost all of them back your bills which were designed to fight crime. I hope that members of your Committee receive many letters of support for this legislation which is so badly needed.

Sincerely,

ELMER T. SIVERTSEN.

NATIONAL ASSOCIATION OF CREDIT MANAGEMENT,
New York, N.Y., February 28, 1967.

TO ALL LEGISLATIVE CHAIRMEN, EXECUTIVE VICE PRESIDENTS & MANAGERS:

CALL FOR ACTION

Because of the rising crime rate in the U.S. there is a great need for legislation which will assist the authorities in their investigation and prosecution of persons engaged in all types of criminal activity. We are particularly concerned with the rise in commercial crimes, which are very difficult to prosecute.

President Johnson has been quoted as being opposed to all wiretapping except in the National interest. To prohibit wiretapping by authorized law enforcement officers in cases involving criminal activities not related to government security, under the guise of protecting the right of privacy of the individual, would be a serious blow to all law enforcement agencies.

Senator McClellan has introduced several bills which are designed to safeguard the rights of honest citizens and at the same time materially assist duly authorized law enforcement officers in investigating and prosecuting the criminal elements in our society.

We urge the support of each of the following bills by all of the members of NACM. Please write to members of the Senate Judiciary Committee and urge other members to do the same in support of these bills.

All of the following bills were introduced by John L. McClellan (D.) Arkansas on January 25, 1967, and are now before the Senate Judiciary Committee.

S. 674—Under this bill a confession would be admissible in evidence in any criminal prosecution brought by the United States or by the District of Columbia if the trial judge determined that it was given voluntarily.

S. 675—This bill would prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses. The bill would permit wiretapping by law enforcement officers only after application had been made to, and permission granted by, a Federal or State court judge of competent jursdiction. Information obtained by authorized wiretapping could be disclosed in testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any State, or in any Federal or State grand jury proceeding. The contents of an intercepted wire communication could not be received in evidence or disclosed in any criminal proceeding in a Federal court unless each defendant, not less than ten days before the trial, had been furnished with a copy of the court order authorizing the wiretapping. The ten-day period could be waived by the judge if he found it was impossible to furnish the defendant with the information ten days before the trial and that the defendant would not be prejudiced by the delay in receiving such information.

This act would not limit the constitutional power of the President to obtain information by such means as he deemed necessary to protect the Nation against hostile acts of foreign powers or to protect essential military information against foreign intelligence activities.

S. 676—Under this bill, anyone who attempted by means of bribery, misrepresentation, intimidation, or force or threats to obstruct the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator, or injured any person or his property for giving such information, would be fined not more than $5,000, or imprisoned not more than five years, or both.

S. 677—This bill would permit the compelling of testimony with respect to certain crimes and the granting of immunity in connection therewith. The witness would not be exempt from prosecution for perjury or contempt.

S. 678—This bill would outlaw the Mafia and other organized crime syndicates. Anyone who became or remained a member of the Mafia, or any other organization using interstate commerce facilities in the commission of acts which are in violation of the criminal laws of the United States, or any State, relating to gambling, extortion, blackmail, narcotics, prostitution, or labor racketeering, would be guilty of a felony and upon conviction would be imprisoned for not less than five years nor more than twenty years and could be fined not more than $20,000.

Please write to members of the Senate Judiciary Committee urging passage of the foregoing bills and ask other members to do the same. A list of Committee Members is attached.

Sincerely,

ELMER T. SIVERTSEN,
Legislative Director.

CLATSOP COMMUNITY COLLEGE,
Astoria, Oreg., March 2, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SIR: I am writing in reference to the Senate Subcommittee hearings to be held in the near future in regard S 674 introduced by you to amend Title 18, U.S. Code.

As a former state policeman and municipal police officer for 18 years and now actively engaged as an instructor of Police Science at college level, I only can hope and pray that your bill will meet with success.

The average police officer is only trying to do his job and fulfill his oath of office to the best of his ability. However, since some of the recent Supreme Court decisions, the enforcement of the law has become a farce. When a criminal will give a statement admitting guilt, given of his own free will and signed by him stating that no threats or favors were given, or coercion was used and it cannot be admitted into evidence, something is radically wrong with our court system. The victim of crime, the police officer, the prosecutor and the law-abiding citizens of our country no longer have any rights to, or can they expect to be pro-

tected from, the criminal, if the police are to be dictated to and told how to do their job by a group of men who are so blind to the facts of life that their decisions border on the ridiculous. Instead of giving protection under the law to the majority of the people who just happen to be law-abiding, they are giving moral and legal support to the criminal. If changes are not made soon, I have fear for the security of our government.

Having arrested hundreds of law violators myself and observed the questioning of numerous criminals, I can truthfully say I have never observed any coercion, beatings, etc., to extract a confession. I would not dispute this could not occasionally occur, but I do not believe it is as prevalent as some of our courts believe or as some of our anti-police newspapers would have us believe.

There have been recent articles in Time Magazine and the Readers Digest that call attention to these recent miscarriages of justice that may be of value to your committee.

If I may be of any assistance to you in this worthwhile endeavor, please advise.

Sincerely yours,

JAMES D. MULLINS,
Coordinator, Police Science Program.

BAMBERGER'S, A DIVISION OF R. H. MACY & CO., INC.,
Morristown, N.J., March 3, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have read with interest your remarks on the floor of the Senate with regard to recent United States Supreme Court decisions such as Miranda v. Arizona, 384 U.S. 436, 34 LW 4521, and your proposed legislation, S. 674, to amend Title 18, U.S. Code. As a retail security executive and a member of the International Association of Chiefs of Police, I am in complete agreement with your remarks and support your bill.

You may be interested to know that a recent Superior Court decision in New York City (N.Y. SupCt NYCty; People v. Frank, 12/7/66) the court ruled that the New York "shoplifting statute," General Business Law Section 218, could not be interpreted as placing any duty upon the owner or owner's agent to warn a suspect of his rights. The court further ruled that Miranda deals with certain newly pronounced principles of law the burden of which only ". . . law enforcement officials must bear, often under trying circumstances." No decision of which the court was aware extended the Miranda rule to non-law enforcement officers.

In view of the above decision, we as retail security executives and officers seem to enjoy a priviliged position with regard to the Miranda rule. It is incongruous to me that a private department, operating for the primary purpose of safeguarding private property and corporate profit, has greater latitude than public law enforcement agencies charged with the safety of the entire nation. We know full well how the Miranda rule, if applicable, could hamper us in our profession. We also know that it is currently impeding justice in countless police investigations throughout the United States.

Respectfully,

ANTHONY N. POTTER, Jr.

P.S.—I would also like to call your kind attention to the Local Law Enforcement Officers Educational and Equipment Act sponsored by Senator Joseph D. Tydings. I have written to Senator Tydings expressing my support for his legislation, and I urge you to support it also.

COLLEGE OF SAN MATEO,
San Mateo, Calif., February 28, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

SIR: I am distressed over the present trend of various United States Supreme Court decisions. The problem has grown to such proportions that attempting to understand, let alone try and explain same to a group of students, is extremely difficult.

The indication is that the Court is more concerned with the "rights" of the criminal and certain technicalities than they are of the welfare of the law abiding citizen. There is strong feeling among most of our decent people that they are being made pawns of the minority criminal element in our society.

I sincerely trust you and the United States Congress will see fit to enact legislation which will halt unrealistic and damaging conduct on the part of the Court.

Sincerely,

ROBERT E. LANSING,
Instructor-Coordinator, Police Science.

MARCH 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: For several years I have hoped and wished I had the time and means to conduct a crusade against crime and punishment this city has never seen. We have been the victims of 3 burglaries within 2 years. In addition to property loss we have had to incur the expense of building a wall to keep the *enemy* out; obtain a dog and doghouse to alert us of enemy activities; purchase an electric timer to deceive the *enemy* into thinking we were home on nights we had to go out, etc.

I would not be writing you if the material loss were my only concern. I am concerned with our new way of life—the current, real situation that exists.

I am in *constant* fear of an "*enemy*" attack of our home and family. Every strange sound and movement has to be checked for fear the "enemy" is here again. A wrong telephone call at night makes us suspicious; a knock on the front door day or night, puts us on the defensive.

We can never leave the house with a single window open. Our home must always be sealed tight. Even at night, we can only afford to leave one window open. (We would prefer breathing and dying from carbon monoxide poisoning than by the hands of an "enemy" burglar . . . and so we all sleep in one bedroom although we have 3 bedrooms.)

Yes, *this* is Hawaii and America!

As far as I'm concerned, a real *war* exists here. And it pains me to think of the billions we are spending over an ideological situation in Viet Nam . . . it pains me even more to hear and read about the idiocy being handed down by the Warren court and all of the other assembly-line courts.

This I sincerely believe, *is the* American tragedy. Unless we can restore the spirit of the law and replace the letter with the original intent of the law, we are going to destroy America as sure as the internal forces within caused the downfall of the great Greek and Roman empires.

The expression, "We are so close to the forest we can't see the trees", holds true here. Criminals and even murderers are freed because of some *legal* technicality. It's about time the courts employed some *courage* and began to make decisions that are acceptable and meaningful—in short, to dwell on the real business the real issue on hand.

Unfortunately, the issues are clouded by shyster attorneys and conceited, self-glorious attorneys whose first business appears to be *himself*, his wit, his pompous show of being *literate*. As one cure to this, I suggest lawyers take the lie-detector test before being able to pass the bar examination.

In my desperation I have wished homes of attorneys and judges would be burgled; this would be a sure way of curing the current "illness" in our courts!

The responsible authorities here dismiss the situation as part of the times, a way of life—a disgusting complacency as far as I'm concerned. Further, I have been told that the crime rate is even greater in Washington, D.C. and that any large city has to rather expect this.

I refuse to accept this. Before America can be kept free, our homes and lives must be made safe from the "*enemy*" within. Toward this end, I sincerely believe you have made the first meaningful move in the right direction and will go down in history as having made the most dynamic contribution toward justice to mankind; and the greatest, courageous human being of this century—if not the American who saved America.

I admire your courage and am grateful for the first ray of hope you have brought into our lives. For some time now, I have been thinking of leaving

Hawaii and America for a safer, saner place to bring up our child. Perhaps there's a chance now to be reasonably safe in America . . . with your continued efforts.

I regret I do not have the privilege of voting for you as I am a resident and voter of Hawaii; but I join, I'm sure, the millions of Americans who are extremely greateful and proud of having you represent the United States Congress!

Most sincerely,

(Mrs.) KEE SOON WONG,
Honolulu, Hawaii.

CITIZENS ADVISORY COMMITTEE FOR COMMUNITY IMPROVEMENT
OF JEFFERSON COUNTY, INC.,
March 6, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Without the action of the Citizens Advisory Committee endorsing the writing of this letter, I feel nontheless, that it is in accordance with the general feelings of the membership thereof, thus, you must interpret the expressions which follow to be those attributable to me alone.

While I am not acquainted with the contents of Senate Bill 674, knowing that it is intended to minimize the horrendous effects which have resulted from the Mapp, Mallory, Escobedo, and Miranda decisions is enough for me to urge that said Senate Bill be reported out of Committee and passed by both Houses and the Congress. What was a bad condition, as far as victims in "cleared" police cases is concerned, has now been made intolerable by the aforesaid Supreme Court Rulings. A recent study, headed by me on behalf of the Citizens Advisory Committee, concerning police protection in Louisville and Jefferson County reveals that cases resulting in actual imprisonment (either in jail or penitentiary) were infinitesimal in comparison to the crimes committed. I am convinced that great improvements must be made in the police forces of this nation. However, unless the courts are forced to recognize the rights of "non criminals" and are forced to not sacrifice "non criminal" victims upon the libertine altar of a judicial deity which requires the freeing of undeniably guilty persons merely to chastise the police, such police improvements will not occur. While the following matters do not fall within the purview of the legislation under consideration, I believe that they may spark interest for future action.

First, in 1964 17% of the violent crimes, 50% of all burglaries and 33% of all auto thefts in the nation were committed by persons 18 years of age or younger. Our local statistics in certain respects were even worse. As a nation, we must realize and act upon the realization that a quarter of a century of juvenile correction under state "Youth Authority Acts" have served only to shelter youg criminals from the retribution for their crimes. We must contradict the ever growing mouthings of public figures who give justification for crime because of poverty conditions. For every person born in poverty who goes astray tens of thousands do not. Conversely, we are well acquainted with the criminal tendencies which frequently appear amid an affluent society, and here too, countless thousands of others do not. Therefore, we should consider laws that will place responsibility and accountability on our young people at an earlier age.

Second, we must overrule the tendency of some Federal Courts and State basis for deciding criminal cases in which a plea of insanity is used as a defense. As you doubtlessly know, acquittals by reason of insanity increased in the District of Columbia from 1% to 25% in the six years after the Durham Rule was adopted by Judge Bazelon.

I hope you will invite former New York City Police Commissioner Michael J. Murphy, Professor Fred E. Inbau of Northwestern University, California Chief Justice Roger Traynor, and I.A.C.P. Executive Director Quinn Tamm to testify regarding the impending legislation before your committee for consideration.

Should you like a copy of the study regarding police protection in this community (earlier referred to herein) I shall be happy to make a copy available to you. This study is significant from the standpoint that one can readily see how badly we are losing the war against crime in a fine community such as this, and in an area in which the police services are really devoted to the protection of the public.

The attached leaflet contains evidence of my credentials regarding the opinions expressed above.

With every good wish to you for your continued success, I am,

Sincerely yours,

CHARLES CARLTON OLDHAM,
Chairman, Louisville, Ky.

PHILADELPHIA, PA., *March 1, 1967.*

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, United States Senate, 3241, New Senate Office Building, Washington, D.C.

DEAR SENATOR: Please be assured that I am in favor of amending Title 18, U.S. Code, with respect to the admissibility in evidence of confessions.

As a former law-enforcement officer and presently employed as a security supervisor for a large chain store I am certainly in the position of knowing how important it is to amend Title 18.

Your efforts will be greatly appreciated by all law-enforcement personnel. I thank you. Best of luck.

Sincerely,

NORMAN L. TYREE,

STATE TAX COMMISSION OF MISSOURI,
Jefferson City, Mo., April 5, 1967.

Senator JOHN L. MCCLELLAN,
Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: I was pleased to read an article in the "Memphis Press-Scimitar" headlined "McClellan Looks at Crime". Your thinking concerning crime in our Country, I can positively assure you, reflects the thinking of thousands and thousands of Americans. Furthermore, I have followed your career, Senator, for many years as I am a resident of the Bootheel in Missouri which hangs down into your great State.

This article of March 25, 1967, is proof you are a United States Senator and have grown in stature as the years have rolled on and that you are not primarily concerned with the interests of your own State. I don't believe there is any doubt in any citizen's mind, if he thinks at all, that crime in America today is definitely a malignant cancer and on the upgrade continually and aided and abated by such decisions as rendered by our Supreme Court, that wire tapping could not be used. You so aptly stated that a criminal suspect today is practically assigned a nursemaid the minute he is apprehended.

Women are unsafe in almost any city in the United States at night and definitely take their lives in their own hands should they enter any public park in the evening. The hardened criminal is in full possession of all the weaknesses of our laws (and the evidence is more and more convincing that the criminal is not forced to confession through the medium of police brutality), and last, but not least, is not even permitted to confess to his crime. It is bordering on the ridiculous.

It is needless for me to go on and on, for I am sure you are in possession of far more facts than I am, but I did want you to know that it is refreshing to know someone in the Senate of this great Country of ours is interested in the enforcement of law and the protection of "old John Doe" from crooks.

I do hope you will continue to aggressively push for remedial legislation and more strict law enforcement.

Very sincerely yours,

J. RALPH HUTCHISON.

SMITH KLINE & FRENCH LABORATORIES,
Philadelphia, Pa., February 27, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, United States Senate, 3241 New Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCCLELLAN: In March, your Senate Subcommittee on Criminal Laws and Procedures will have a unique opportunity to aid the law enforcement officers of this nation. The dedicated men and women of our police

forces have been rapidly demoralized and disarmed by the Supreme Court decisions of recent years.

For the past five years, I have been the Manager of Law Enforcement Liaison for Smith Kline and French Laboratories of Philadelphia. During this time, I have directed the extensive education and services programs my company has made available to law enforcement agencies to assist them in the control of non-narcotic drug abuse. My work has brought me in constant contact with the police at every level of enforcement and in most of the states in this country. This contact and my six years previous experience as a Texas Highway Patrolman have given me the insight and opportunity to observe the progressive confusion and loss of confidence within the ranks of our police forces.

The dedication and performance of the police, in the face of manpower shortages, public resentment, civil rights conflicts, and the Supreme Court decisions, reflects tremendous credit to these men and women. Our courts have placed shackle after shackle on our police and still the police continue to try to protect the seemingly unconcerned public.

There is no doubt in my mind that you and your subcommittee have the opportunity to "champion" the long neglected cause of law enforcement in your coming hearings. The history of our nation will have a place for the man or men who alter our nation's present course towards increasing lawlessness and the accompanying disrespect for law and order. There will be many who will place all the blame for our present course on broken homes, socio-economic problems, civil rights, fear of "the bomb", or other problems we face in the 20th Century. Each of these factors have a causitive relationship to the problem, but I feel at the heart of the matter lies the decreasing fear of apprehension for crime and the increasing difficulty of the police to remove and rehabilitate the criminal once he has been caught.

The all important deterrent factor of law enforcement is being lost and if action is not taken soon, history will record our age as the time when man's boldest experience in democracy was destroyed by mob rule and "the right of might". If this should happen, it will be ironic that we allowed it to happen in the pursuit of "individual rights", the very cause for which "democracy" and "law and order" were designed to protect.

I would like to thank you for this opportunity to state my personal impressions to you and offer you my wholehearted support for the important task you now face. I am sure the March hearing will add one of the finest pages to your long and distinguished career.

Sincerely,

DONALD K. FLETCHER,
Manager, Distribution Protection.

SPARTANBURG, S.C., *March 1, 1967.*

HON. JOHN L. MCCLELLAN,
Chairman, Criminal Law and Procedures,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I have seen a copy of the letter written to you by Director W. T. Ivey, of the City of Spartanburg law Enforcement Department, and I wish to echo his sentiments fully.

It has been our observation that recent Supreme Court decisions have tied the hands of Law Enforcement Officials, and in many instances, have made officers afraid to actually move in and investigate cases as rapidly as they would otherwise.

Being a lawyer, as well as Mayor of a medium size City, I can fully appreciate the problems that the Law Enforcement Officials are having to go through throughout the United States. The public does not understand and cannot understand how confessed criminals of heinous crimes are permitted to go free on a mere technicality of their having confessed to a crime without having been advised of their rights before confessing. As a matter of fact, one of our local newspaper columnist wrote an article some time ago explaining that the best way to be cleared of a crime was to commit the crime and confess to the police before the police has a chance to investigate it.

I believe in good law enforcement and I do not believe in persecution, but unless the Congress of the United States passes some laws to protect the law

enforcement officers, I fear that we will have anarchy in some places. Already, we have had too much encouragement from high places, in addition to the United States Supreme Court decisions, that have encouraged lawlessness throughout our land. We have been fortunate here, in Spartanburg, for having good law enforcement. However, unless the trend is reversed, I fear what my six children will have to put up with in the future.

Knowing your reputation for fairness, I respectfully request that your committee come to the rescue of the law abiding citizens of the United States.

Sincerely,

ROBERT L. STODDARD.

PORT JEFFERSON STATION,
New York, March 1, 1967.

Subject: Hearings by U.S. Senate Subcommittee on Criminal Laws and Procedures, March 7, 8 and 9, 1967, Regarding U.S. Supreme Court Decision Affecting Law Enforcement.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, United States Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SIR: It was with deep regret and sorrow to read an article on Page 2 of the New York Daily News which headlined the following on February 21, 1967: "Confessed Killer of 6 Freed on Court Edict"

This referred to Jose Suarez who had confessed to the slaying of his wife and five small children. This was the last straw and I felt that I should write to you regarding my feelings as well as those of my fellow neighbors and co-workers. The Honorable Justice Michael Kern was credited with the following statement:

"Even an animal such as this one (Suarez) and I think it would be insulting to the animal kingdom—must be clothed with all these safeguards. This is a very sad thing. It is repulsive. It makes any human being's blood run cold and his stomach turn to let a thing like this out on the streets."

In view of this case and others in the past, a number of us are deeply concerned as to what action must be taken to eliminate the technicalities recklessly invoked to nullify convictions and set free confirmed criminals to prey again on our victimized society.

We all know of your outstanding record as a fact finder and champion of Law Enforcement and we fervently pray and hope that your committee will come up with a possible solution to this very grave and disturbing situation.

I would like to advise you that I am a member of the following organizations which are involved in Law Enforcement:

1. International Association of Chiefs of Police, Inc.
2. National Law Enforcement Association, Inc.
3. N. Y. State Division International Association for Identification.
4. National Sheriff's Association, Special Deputy Sheriff of Suffolk County, New York.
5. American Society for Industrial Security.

We all feel sorry for the many road-blocks our Law Enforcement agencies are confronted with and we wish you success in your very important assignment.

Respectfully yours,

J. J. JACOPPI,

BROOKLYN, N.Y., *February 24, 1967.*

JUDICIARY COMMITTEE,
U.S. Senate, Washington, D.C.

GENTLEMEN: As a practicing attorney for more than 30 years, I have tried to reason out, as many attorneys have, some the recent decisions of our Supreme Court, particularly those affecting law enforcement. I believe the law enforcement agencies throughout the country are in great discord with these decisions of the court.

The enclosed article, taken from the "World Journal Tribune" of January 31, 1967, will give you some idea of the effect the rulings of the Supreme Court have had on the judicial process, on the American public and, in some cases, the families of persons who have been murdered.

It is my opinion that a great deal of this result comes from the fact that men who have been elevated to our Supreme Court bench actually lack judicial experience. In practically every walk of life, persons advanced to higher position are advanced on a gradual basis and only after service in a lower rank, which will season and qualify them. This is true, for example, in the Police and Fire Departments; in business corporations; in the Clergy and even in social organizations, such as the Masons or the Knights of Columbus. The reason for this is obvious. Experience in the lower echelon develops a more complete and broader base for service higher up.

Any district attorney who had dealt with criminals knows the practical problems involved and he also knows that theory, as intriguing as it may be, will not work. Some brilliant students of the law, such as professors, are so impractical that they could not find their way to the courthouse, but they could write a beautiful thesis on a given point, which when applied to an actual set of facts would not work at all.

Since those selected for appointment to the highest court in the United States are subject to approval by the Senate, I believe that the Senate should pass a set of rules requiring that such persons must have a minimum judicial experience or maximum judicial experience before they can be appointed to the Supreme Court. This is one way I feel we can do something to change the type of decisions we have been getting and which have really alarmed law enforcement agencies and the people in general. There seems to be no valid reason why the nominations for this extremely important position should not be limited to those with judicial experience.

As a lawyer, I am not prone to criticize the judiciary, but, on the other hand, I do feel that something must be done so that those who make the decisions will be more experienced in practical matters and I believe the Senate of the United States is in a position to do something about this.

Sincerely and respectfully yours,

PHILIP V. MANNING.

SEABOARD AIR LINE RAILROAD COMPANY,
PROPERTY PROTECTION DEPARTMENT,
Richmond, Va., February 23, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
3241 New Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I was very pleased to learn that some of our Senators and Representatives are concerned about the U.S. Supreme Court through technicalities freeing many hardened criminals and the effect of the Miranda Decision upon Law Enforcement.

Our railroad operates in six Southeastern States and in the performance of our duties we work very closely with City, County, State and Federal Law Enforcement Officers. The Miranda Decision as well as others handed down by the Supreme Court have definitely had adverse affect on all law enforcement officers in fulfilling their responsibility. Through our association with local police executives we also know these decisions have made it extremely difficult for them to recruit competent personnel to fill the ever increasing number of vacancies. A large percentage of these vacancies are brought about by people leaving the profession as they feel they have been shackled by the various Court decisions in the last few years, which makes it almost impossible for them to effectively enforce the laws.

Our law enforcement officers today generally are well trained and qualified and no amount of money made available by Congress for training purposes as recommended by the President's Crime Commission in my opinion can or will correct the dilemma which now faces the law enforcement officer. I agree with the overwhelming majority opinion of police executives throughout the United States that the salvation of the law enforcement officer today will not come from Supreme Court decisions, but necessarily through Congressional action.

I personally appreciate your interest in the welfare of the law enforcement officer and you and your colleagues are to be commended for the stand taken in this matter.

Very truly yours,

C. L. EACHO,
Director of Property Protection.

Subject: Need for wire-tapping and admissibility of confessions.

92 EAST END AVENUE, NEW YORK, *February 21, 1967.*

HON. JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: *Wire-tapping:* I've just written the President telling him that I'm alarmed at the prospect of a complete ban on wire-tapping except in cases involving national security. I am a liberal, but I've never quite been able to "dig" the anti-wire-tapping mystique. *I'd a lot rather have my phone tapped by police trying to get information on a racketeer than be victimized by a narcotics addict who might never have become addicted if the police had been in a better position to control organized crime.* To call for a ban on wire-tapping because it's susceptible of abuse seems to me like calling for the abolition of the police just because dictatorial regimes make use of police forces to further anti-democratic ends. Even if the criterion is to be "national security", doesn't that concept include the security of the nation against subversion by organized crime as well as by agents of foreign Powers?

I would, on the other hand, be strongly in favor of banning the use of any kind of bugging devices by entites other than the public authorities.

Confessions: The currently fashionable anti-confession mystique is another tenet of the liberals that I can't go along with. Of course the use of force to extract confessions should be banned, because it might lead to conviction of the wrong person. But the idea seems to be growing that there is something basically wrong about using confessions at all.

I cannot see why the use of confessions to determine guilt should be more objectionable than the use of testimnoy by people who claim to be witnesses. Personally, if I were on a jury trying a criminal case I'd be a lot more likely to believe what a suspect said about himself than what some other person said about him. There can be any number of reasons for fallibility on the part of witnesses—inaccurate observation and memory, secret malice, or just the desire to feel important. I'd rather be in danger of incriminating myself than of being incriminated by any Tom, Dick or Harry.

Sincerely yours,

EITHNE GOLDEN.

February 23, 1967.

HON. JOHN L. MCCLELLAN,
Chairman, Senate Subcommittee on Criminal Laws and Procedures, U.S. Senate, 3241 New Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Mr. Quinn Tamm of the International Association of Chiefs of Police has called to my attention that the U.S. Senate Subcommittee on Criminal Laws and Procedures is conducting a hearing on March 7–9, 1967, regarding the recent decisions affecting law enforcement by the United States Supreme Court.

While I am Secretary-Treasurer of the Insurance Institute for Highway Safety, located here in Washington, I am not writing to you in this capacity and the opinions expressed herein are strictly my own and not those of the Insurance Institute for Highway Safety.

As to my qualifications to speak on this topic, please be informed that I have spent many years as a law enforcement officer and as a police executive. In addition, I am a Life-member of the International Association of Chiefs of Police. In the many years that have passed since I was an active law enforcement officer, I have continued my interest in this field.

Let me say at the onset, I do not believe that it would have been possible for me, as a police executive, to have adjusted to conditions that presently handicap law enforcement. I am sure that I would have been driven to some other pursuit in which my activities would be less restricted.

As a citizen of the Washington D.C. area, I am alarmed at the crime conditions to be found in this city and area. Despite denials by some high-ranking government officials, I am convinced that the recent opinions by the United States Supreme Court, particularly the one in the Miranda case, has law enforcement working at a disadvantage. I am sure that if something is not done, and done quickly, crime conditions in the United States will become a national scandal. It is intolerable today, I hate to think what it will become if it gets worse.

In many ways, the law of the gun that existed in some parts of our West during the middle years of the last century exists today. I was impressed by a news item that appeared in the *Washington Post* today in which a judge informed a holdup man that he "should have been killed."

While I have nothing to contribute to the hearings that you are conducting on March 7–9, I want to urge you and your fellow committee members to look at this situation with practical eyes—if possible, through the eyes of a conscientious dedicated law enforcement officer. Please ask yourselves "How could I function as a policeman under the Miranda decision and other similar decisions?"

I have seen the results of crime, violent crimes, and I urge you and your committee members in behalf of humanity to take some position and corrective action.

Sincerely,

RICHARD O. BENNETT.

CALIFORNIA STATE COLLEGE AT LONG BEACH,
March 14, 1967.

Subject: Safe Streets and Crime Control Act of 1967.

Hon. GEORGE MURPHY,
Senator, United States Senate, Washington, D.C.

DEAR SENATOR MURPHY: This legislation has been introduced in both the Senate, and the House. In principle I am in favor of this Act, but have some points I would like you to consider.

1. Title one provides 90% allowable for planning grants. Nowhere in this title, or in title four, is it specific about implementation of the plans. There should be built in a section which encourages implementation as a result of study and planning.

2. Title two is general in nature as it should be to provide the latitude needed in developing policy or administration for the act. It would appear from the wording of this title that it is talking of major subsidy.

For this reason, two items should be worked into it. First, the idea of a time limit should be advanced. It is true this could be a policy, but the act would be more meaningful if the time were spelled out in the act. Each segment of any proposal could be funded for a specific period of time.

Second, there is a need to provide more than encouragement (Section 204b) on S.M.S. areas or regionalization. Priority could be given proposals which have this built in.

3. Title three provides for funding "private organizations" (Section 302) and "private or non-profit organizations" (Section 303). This funding may be at 100% for research. There is need to exempt this section from the 15% allocation requirement as set forth in Section 410.

4. Title four provides for the administration of the act. In Section 405 it discusses dissemination of information. Specific funds should be allocated for such purposes.

5. Section 410 gives an allocation to states which is improperly stated. It's all right to limit money, but not in this manner. The money should be allocated as follows:

a. Subsidy programs such as Title II should be allocated on a combination of need and merit.

b. Planning grants Title I and Research grants Title III, should be left open to action by the Advisory Panel to the Attorney General.

To allocate the funds on a straight percentage basis in all categories will not advance law enforcement or criminal justice as necessary. There should be no limitation on the planning and research opportunities for progressive agencies and institutions of higher education.

6. Section 411 (a), there should be a semi-annual requirement for reporting made mandatory.

7. Section 411 (c), this raises the same problem as Section 410. There should be no limit to any area on demonstration, planning or research.

8. There is a need to develop boundaries for the allocation of funds in the total Criminal Justice System. If the system were divided into three categories, law enforcement, corrections and courts, it would be well to spell out limits on funds. 50–75% of total allocations each FY to law enforcements; 25–15% to corrections, 25–15% to courts.

I hope this information proves helpful in your consideration of this vital piece of legislation.

Sincerely yours,

C. ROBERT GUTHRIE,
Chairman, Department of Criminology.

RESOLUTION

At the regular meeting of the Mecosta County Board of Supervisors held at Big Rapids, Michigan, on May 8, 1967, the following Resolution was unanimously adopted.

Whereas, this Board is aware of the fact that the Citizens of this County are greatly concerned about the increase in crime.

Whereas, it is the opinion of this Board that local law enforcement is hindered, restricted and frustrated by U.S. Court decisions and lack of proper legislation restricting U.S. Court authority in the area of crime which is historically a concern and proper function of local government: Now, therefore, be it

Resolved, That our U.S. Supreme Court and Congress be urged to take prompt action to restore to the law abiding citizen, his inherent right to be free from molestation by the criminal element and to be safe in his home and on the streets of his community; be it further

Resolved, That the Governor and our State Legislators recognize that the rights of decent citizens should receive priority over the unrestrained activities of criminals; be it further

Resolved, That this resolution be forwarded to the Chief Justice of the U.S. Supreme Court, our two U.S. Senators, our Congressman, the Governor of Michigan, our State Legislators, the Michigan Municipal League, the State Association of Supervisors, the National Association of Counties and our adjoining Counties and Cities.

NORMAN MASON,
Clerk, Mecosta County Board of Supervisors.

STATE OF WEST VIRGINIA ECONOMIC OPPORTUNITY AGENCY,
Charleston, May 9, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Judiciary Committee, Subcommittee on Criminal Laws and Procedures, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: As a member of the Governor's Committee on Crime, Delinquency and Corrections in the State of West Virginia, I wish to lend my support to the highly worthwhile and significant legislation which you are sponsoring, the Safe Streets and Crime Control Act of 1967. The studies made by the staff of our Committee indicate a tremendous need for the innovative and realistic approaches to the problems of crime, which this bill would make possible.

The need for improved systems of criminal justice, including judicial and correctional reform and new approaches to the problem of delinquency, are truly a national problem, which our citizens are confronted with both here and when they migrate to urban industrial areas.

I am hopeful that a strong bill will be passed, and feel certain that any support which our Committee can lend will be promptly forthcoming.

Sincerely,

JOHN FRISK, *Deputy Director.*

STATE OF NEW YORK DEPARTMENT OF CORRECTION,
DIVISION OF PROBATION,
Albany, N.Y., May 22, 1967.

Re Senate bill S. 917.
Hon. JOHN L. MCCLELLAN,
Chairman, Senate Judiciary Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: The New York State Probation Commission at its regular meeting on April 13, 1967, considered and unanimously approved the provisions of the above bill, the "Safe Streets and Crime Control Act of 1967."

The Commission believes that this bill represents extremely important legislation in the history of the fight against crime in this country and endorses without reservation its provisions and objectives.

Very truly yours,

WILLIAM T. SMITH,
Director of Probation.

POLITICAL STUDY CLUB, WASHINGTON, D.C., MAY 27, 1967

RESOLUTION—RE CRIME IN WASHINGTON AREA

Whereas:—Crime in the District of Columbia and the Washington Area is increasing at an alarming rate, not only by organized groups, but among teenagers and those who used to be called "children" and

Whereas:—Peaceful citizens can no longer go about their business, nor even walk the city streets, by day or night, without being molested and subjected to hideous assaults, even murder and rape; banks and business places are being robbed daily; taxi and bus drivers are attacked and robbed, for no apparent reason, except to satisfy the sadistic desires of the perpetrators; homes and apartments are burglarized at any hour of day or night.

To make a gangland out of a decent respectable city or town seems to be the ultimate aim of these offenders; and

Whereas:—There are several Bills now pending in Congress relating to Criminal Procedures, which are intended to modify or clarify certain rulings by the Supreme Court (4 to 5 Decision) which make it very easy for the criminal to escape punishment while the victims suffer or die.

Therefore:—The Executive Board of the Political Study Club of the District of Columbia in meeting assembled April 3, 1967, and read to the full membership April 15, 1967, does endorse these Bills introduced by Senator McClellan (D.) Ark., Senator Ervin (D.) N.C., and Representative Broyhill (R.) Va., i.e., S. 1194, S. 917, S. 674, and S. 678 by Senator McClellan and Associates and Senator Ervin and Associates. Also H.R. 320 by Representative Broyhill. Also Senate Joint Resolution #22 by Senator Ervin.

We further request that copies of this Resolution be sent to Senator McClellan, Senator Ervin and Representative Broyhill (with thanks); to the House and Senate Subcommittees on Criminal Law and Procedures and the House and Senate Subcommittees on Judiciary. Also a copy to President Johnson for his perusal.

Signed:

ETHEL PYNE,
Chairman of Resolutions.
LUCILLE G. MOORMAN,
Chairman of Crime and Law Enforcement.
FLORENCE CRAVER,
Member of Committee.
MRS. RUTH S. MEYER,
President.

Signed:

PETWORTH CITIZENS' ASSOCIATION, INC., WASHINGTON, D.C., MAY 26, 1967

RESOLUTION—RE CRIME IN THE WASHINGTON AREA

Whereas:—Organized Crime is rampant in the District of Columbia and Washington Area; citizens who are trying to earn an honest living are being submitted to vicious assaults, robbery and many are murdered, even when small sums are involved; banks and restaurants, stores and other businesses, homes and apartments are burglarized; children and teenagers are becoming well skilled in the intricacies of all types of thievery and mugging; molestations and rape is increasing, and

Whereas:—Vandalism, demonstration marches; riots, incited by communistic leaders, make up the larger per cent of the daily news media—T.V., Radio, Newspapers, Magazines, Leaflets, and even so-called Sermons, and

Whereas:—Many of the perpetrators are freed by the Courts and allowed to build up a longer police record; and

Whereas:—Police are unjustly accused of "Police Brutality" in trying, with much difficulty, to do their duty as officers of the law, and

Whereas:—There are several Crime Bills now pending in Congress which would modify or clarify certain Judiciary Rulings of the Supreme Court in a 4–5 decision regarding Voluntary Confessions—notably the Escobedo, Miranda and Mallory cases.

Therefore:—The Petworth Citizens' Association, Inc., as of April 18, 1967, does endorse the following Bills: i.e. S. 1194, S. 674, S. 917, S. 678, all introduced by Senator McClellan (D.) Ark. and Associates, and Senator Ervin (D.) N.C. and Associates. Also H.R. 320 by Representative Broyhill (R.) Va., and Senate Joint Resolution #22 introduced by Senator Ervin.

Copies of this Resolution to be sent to Senator McClellan, Senator Ervin, and Representative Broyhill (with thanks); to the Senate and House Subcommittees on Criminal Laws and Procedures; to the Senate and House Judiciary Subcommittees; to the Federation of Citizens' Associations of D.C. and to the President of the United States.

Sincerely yours,

M. H. McFARLAND,
President.
FLORENCE CRAVER,
Secretary.

THE NATIONAL GUARD ASSOCIATION OF WISCONSIN

RESOLUTION

Whereas, the great majority of the citizens of the United States are patriotic and law abiding men and women who love our country, and

Whereas, there appears to be a growing number in our society of those who have a total disregard for law and order, and

Whereas, the general public seems to be indifferent to this problem, even though they themselves are law abiding, and

Whereas, the lawless minority is able frequently to force its will upon the majority, in utter disregard of every democratic process, and

Whereas, many experienced police officers are leaving their jobs in frustration and disgust as a result of the lack of public support for their efforts, and

Whereas, these alarming trends must be reversed, while we have the opportunity and the resources to do so; be it therefore

Resolved, That the Wisconsin National Guard Association pledge its members to the active support of law and order, the promotion of respect for law enforcement officers and agencies, and the affirmation of common decency, and; be it further

Resolved, That the members of the Association encourage other civic, fraternal and service organizations with which they are affiliated to join in an all-out effort to accomplish this truly worthwhile activity, and; be it further

Resolved, That copies of this resolution be furnished the Governor and the Attorney General of Wisconsin, Judges of Wisconsin's State and County Courts, and the Chiefs of Police of the cities of Wisconsin; be it further

Resolved, That this resolution be submitted by the Secretary of the Wisconsin National Guard Association at the next annual conference of the National Guard Association of the United States for consideration for adoption by that body.

Signed. THOMAS F. BAILEY,
Colonel, Wisconsin ANG,
President, Wisconsin NGA.

HAWAII PROBATION, PAROLE, AND CORRECTIONS ASSOCIATION,
Honolulu, Hawaii, May 4, 1967.

HON. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: The proposed bill "Safe Streets and Crime Control Act of 1967" is a much needed bill in the State of Hawaii and the entire nation. There is great need for assistance by state and local agencies in the field

of corrections. Enactment of this bill will offer the greatly needed assistance to those programs involved in law enforcement, courts, and correctional programs.

As an organization whose program is committed to improving standards and helping those in the correctional field and related agencies, we feel the proposed bill is very vital to the upgrading of professional services and truly reducing delinquency and crime.

The great improvement in child welfare conditions, for example, has been due to Federal Legislation. We in corrections are very excited and hopeful for the future of our Society in view of the broadly visioned approaches possible under the proposed Act.

We wish to urge your support of this bill.

Very truly yours,

WAYNE Y. KANAGAWA, *President.*

RESOLUTION ADOPTED BY INTERNATIONAL NARCOTIC ENFORCEMENT OFFICERS ASSOCIATION AT THE BOARD OF DIRECTORS MEETING, WASHINGTON, D.C., MAY 24, 1967

Noting, after a lengthy discussion, the many problems attendant to the enforcement of the narcotic laws; and

Noting, that it has become increasingly difficult to combat organized crime, especially as related to obtaining criminal intelligence information and evidence of narcotic trafficking; and

Noting further, the recent proposals and court decisions which have had the result of restricting the use of electronic devices to assist enforcement officers in obtaining or corroborating evidence of criminal activity; and

Noting further, that the Honorable Senator John L. McClellan on January 25, 1967 introduced in the Senate of the United States S. 675, a bill "To prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and for other purposes";

Now, therefore, be it resolved, that the International Narcotic Enforcement Officers Association, Inc. extends its support to the purposes and procedures of S. 675 proposed by Senator McClellan; and

Be it further resolved, that the Association believes the proposed legislation to be essential to the effective enforcement of narcotic laws and the nation-wide battle against organized crime, and therefore strongly recommends the enactment of S. 675; and

Be it further resolved, that copies of this resolution be forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States, Senator McClellan and other members of Congress, the Secretary of the Treasury, and the Commissioner of Narcotics.

JOHN J. BELLIZZI,
Executive Secretary, International Narcotic Enforcement Officers Association, 855 Central Avenue, Albany, N.Y.

Senator MCCLELLAN. The committee will stand adjourned until further notice.

(Whereupon, at 3:15 p.m., the committee was adjourned, to reconvene subject to the call of the Chair.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

TUESDAY, MAY 9, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 3302, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan, Hart, Hruska, and Scott.

Also present: William A. Paisley, chief counsel; Joe D. Bell, assistant counsel; W. Arnold Smith, assistant counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

Today we will resume hearings on S. 674, S. 675, S. 798, S. 917, S. 1194, and S. 1333.

As I announced at the beginning of this series of hearings, these are the six bills to which we will particularly direct the testimony.

However, the bill in which the administration is most interested, S. 917, the Safe Streets and Crime Control Act of 1967, is the measure that we are giving priority to in these hearings, trying to move along and conclude testimony on first. While doing so, we are not barring any witness who may come here to testify, or who may be testifying, from making any comment he desires to on the other pending measures.

At the last hearing I had asked a series of questions on S. 917, the safe streets bill, but before concluding my interrogation of the Attorney General, who was testifying, I yielded to other members of the subcommittee so that they, too, might participate in the hearing that day—since we realized we would not be able to conclude I wanted them to have an opportunity for questioning.

So today I will resume about where I left off with the questions I had prepared, that I wanted to get in the record. I will try to conclude my interrogation in a little while, and then yield to my colleagues. However, I believe Senator Hart has indicated to me he has to go to another hearing. And if so, Senator, I will be very glad to yield to you for some questions at this time.

Mr. Attorney General, we appreciate your cooperation and your presence here this morning.

Mr. CLARK. It is a pleasure, Mr. Chairman, thank you.

Senator HART. Mr. Chairman, you are very kind. I did tell the chairman that I had an obligation to get up to a merchant marine executive hearing. He expressed amazement that anyone from Mich-

igan was interested in the merchant marine. And I told him those people in Arkansas didn't understand where the fourth seacoast lay.

Senator McCLELLAN. I can tell you where the fifth one will be—Little Rock, Ark.—when we get the Arkansas River navigable.

Senator HART. Mr. Chairman—I have no questions. I was not able to be present the day the Attorney General began his testimony, nor have I had an opportunity to read the transcript, which I shall do—and in the event I have to leave before you conclude today, I shall read today's.

I have indicated in earlier hearings that I believe that S. 917 represents very good sense. Clearly, any legislation that is introduced can be improved, and it may well be that during the testimony suggestions for improvement will be made which can be adopted. But I think the chairman in introducing S. 917, and providing time for this committee early in the session to work on it, has indicated a pretty good guarantee that we will deliver on it. I think the Nation will be the better for it.

Senator McCLELLAN. Thank you very much, Senator.

I think the Attorney General will be back with us later at which time you will have another opportunity to question him about this and other bills.

I don't have the dates, Mr. Attorney General, but letters have gone to you requesting your views on two other bills, S. 674, which we term the confession bill, and S. 675, the wiretapping bill. Letters went to you some time ago.

I don't believe you have responded to them up to this time.

STATEMENT OF HON. RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

Mr. CLARK. We have not responded formally to those letters at this time, Mr. Chairman. I can testify on them now. We are in the course of preparation of a written response.

Senator McCLELLAN. Very well. We will proceed with the safe streets and crime control bill this morning. I will announce, as I have indicated to you, that I have a luncheon engagement that will compel me to conclude this session about 12:10 or 12:15 at the latest. I don't think it would be very productive to try to hold hearings this afternoon, with the situation as it is in the Senate. It would be a waste of your time to ask you to come back. We will just have to defer our questioning until another time.

I will now resume where I left off in my questioning, when I yielded to other members of the committee at your last appearance.

Mr. Attorney General, can you give us in simple language just how the requirement of S. 202(a) and (c) will operate? Again, Mr. Attorney General—I will say for the record—I want to make as thorough a record on this bill as we can in committee, make a history of this legislation, so we have some assurance of how it is going to operate.

Mr. CLARK. Yes, Mr. Chairman.

I would like to expand my answer to include section 202(d) which deals with——

Senator McCLELLAN. I had 202 (a), (b) and (c)—I had all three of them.

Mr. CLARK. Yes. But we need (d) in there, too, because it includes an integral part, the basic expenditure.

Senator MCCLELLAN. Well, I was going to ask that, I believe, in the next question.

The next question would be—section 202 of the bill restricts expenditures of grant money for salaries to one-third.

Mr. CLARK. That is correct.

Senator MCCLELLAN. Wait. I failed to read the next question.

The next question added to that, after (a), (b) and (c), was—May these requirements under section 202(d) be completely and entirely waived by the Attorney General?

Now, that does cover all of them.

Mr. CLARK. OK. Section 202(a) contemplates what we have generally called action grants, or program grants. These are grants for operating expenses of criminal justice agencies. They could be made beginning on January 1, 1968. It provides that the Federal Government can make up to a 60-percent matching grant of the improvement expenditure of applicants. It also provides that no grants for facilities—that is construction and physical improvements—shall be made under section 202. Such grants are covered by section 203.

Senator MCCLELLAN. I had in mind to ask you if there was not conflict between these two sections with reference to improvements. As I understand it now, it is a 60-percent grant that cannot be used for improvements.

Mr. CLARK. That is right.

Senator MCCLELLAN. Later you do take care of construction grants with a lesser percentage?

Mr. CLARK. That is right. In section 203.

Senator MCCLELLAN. Fifty percent, is it?

Mr. CLARK. That is correct.

Senator MCCLELLAN. All right. I understand.

Mr. CLARK. The 202(a) also provides that not more than one-third of the Federal funds granted under this section shall be used for compensation for personnel for salaries. It has two exceptions in it. They relate to expenditures for training and expenditures for the performance of innovative functions by police and other criminal justice officials.

Senator MCCLELLAN. Now, first would you tell me what you mean by improvement expenditures, in line 19? Improvement—you think ordinarily of improvements as expenditures for the construction of facilities.

Mr. CLARK. Well, improvement here is a word of art. It just means "better," really, and it relates back to the word "improvement" in section 201, which generally states the purposes of the grants under title 2.

Senator MCCLELLAN. But it is very clear that "improvement" here does not relate to physical structures.

Mr. CLARK. That is correct.

Senator MCCLELLAN. And street lighting, or facilities like that.

Mr. CLARK. That is correct. Well—street lighting is different, I think.

Senator MCCLELLAN. Well, I just used it as a crude illustration. But certainly it does not apply to buildings.

Mr. CLARK. It does not apply to any building or other physical facilities.

Senator HRUSKA. Would the chairman yield at that point. I direct your attention to line 4 on that same page, where the words "operations and facilities" are used.

Didn't we cover that the other day when we inquired as to what facilities meant?

Mr. CLARK. I think we went from (a) through (g) of 0–1. If you would care to go back over it.

Senator HRUSKA. Normally, when we think of facilities, we mean buildings. Does it mean something else in this case?

Mr. CLARK. No. I think facilities there would include physical improvements, it would include buildings, it would include improvements in addition to the buildings, remodeling of buildings.

The exception stated in 202(a) relates only to section 202. Section 203(a) specifically contemplates physical improvements.

Senator HRUSKA. Thank you, Mr. Chairman.

Mr. CLARK. To go on now—the word "improvement" also relates to the definition, you might say, of improvement expenditures which is contained in section 202(b), and the system of the grant is this. First the improvement expenditure would be determined. That is the amount by which the operating budget proposed in an application by a law enforcement or criminal justice agency, exceeds the qualifying expenditure. The qualifying expenditure is defined in 202(c) and that is roughly 5 percent the first year above your base expenditure, 10 percent the second year above your base expenditure, 15 percent—an increment of 5 percent for each year.

Your base expenditure is defined in section 202(d) and it is your operating expenditure for your last fiscal year ending before January 1, 1968. So it it would generally be the present fiscal year for a law enforcement agency—their operating expenses during that year would be the base.

Your qualifying expenditures would have to meet this requirement of a 5-percent increase over your base expenditure. Your improvement expenditure, which is that part eligible for a Federal grant, is the difference between your proposed operating budget under the application and your qualifying expenditure.

Now, if you would like me to run that by in numbers, I can do that.

Senator MCCLELLAN. All right—in a moment.

While it comes to mind, let me ask you this: There has to be an area of 50,000 inhabitants in which there is an entity of government, like a city, or a county, in order to be eligible for any assistance under this act. That is correct, is it not?

Mr. CLARK. That is correct—both as to title 1 and as to title 2. That requirement is not applicable to title 3.

I think——

Senator MCCLELLAN. I am talking about being eligible to get the assistance we are here talking about.

Mr. CLARK. In title 2, that is correct.

Senator MCCLELLAN. The population of the area to be covered by the grant would have to be at least 50,000. The entity could be either a municipality, or a combination of municipalities, or a county, or a county and municipality; is that right?

Mr. CLARK. It has to be either a State or a unit of local government or a combination of States and/or units of local government that have a plan that is applicable to a population of not less than 50,000 persons.

Senator MCCLELLAN. I am concerned whether we are getting this thing so complicated that in areas where perhaps they need the assistance most, they will not be able to qualify, and not become eligible.

You would require a 5-percent increase in their expenditure each year—it graduates on up to 125 percent, I believe, or 130 percent—for 6 years. What I am trying to ascertain is, suppose a county makes a plan, it has 50,000 population, but the county itself only has, outside of the municipality, probably 10,000, 15,000 or 20,000. The municipality has the largest percent of the population. The county can make a plan, because it has 50,000 people. But suppose the municipality does not go along, and it says "We are not interested," and for some reason they fail to take advantage of the program. Although the county has 50,000, it can present a plan, because it is eligible from the standpoint of numbers. But when it comes to increasing the 5 percent, how is it going to work when the county can increase the county tax by 5 percent, but cannot increase the tax in the city. The city balks—it does not do it.

How are we going to get that 5-percent increase?

The county can increase it so far as its taxes are concerned. But the municipality, if it is included in the plan, will be getting the benefit, and yet it will be paying no additional taxes.

Or vice versa.

Take the city that undertakes to do it, but it has to include the suburbs and the whole county in a plan to meet the population requirement. But then the county says, "No, we are not going to contribute anything to it, the policemen handle that down in the city, you get the money somewhere."

Are we going to have problems like that?

Mr. CLARK. Well, I don't think so.

If it is a joint plan, as we would hope it would be in all cases of smaller jurisdictions—because this is so vital to effective criminal justice action—then there would have to be an overall increase of 5 percent.

Senator MCCLELLAN. That is what gives me some concern. Before you can get up a plan, the city cannot get up a plan by itself, the county cannot by itself, if it takes the municipalities within the county to make the 50,000. They have to agree and come in with a plan—so it is more than a county—it is a county and a city, or a county and a number of towns.

What I am thinking in terms of, Mr. Attorney General, is this. For them to get the benefit of these grants they are going to have to meet substantially the same standards as a larger city or metropolitan area would have to meet. In some instances they are not going to be able to do it. They are going to be left out. They will have no opportunity actually to participate. That gives me some concern.

I am not saying they should not participate and do those things to become eligible—I am not saying they should not do that. But I am looking at this from what I think is a more realistic point of view as to what is going to happen.

Mr. CLARK. I am not sure that the small cities and small towns and small counties populationwise would have a greater difficulty increasing 5 percent than the big ones. It might be just the other way around.

But it would seem to me that if a town by itself of more than 50,000 has to increase by 5 percent, that you would want to apply the same standard to a town of less than 50,000 that is combined with another jurisdiction, to qualify under the 50,000 limitation. The same would be true of the counties.

Senator MCCLELLAN. Let me ask you this. Just as a matter of thinking out loud—and I have not come to any final decision about it. Would it not be better to encourage, if we could, statewide plans, and get the State in on this. We could then have some assurance that the revenue is going to be provided, and the State would have the ability, revenuewise, to raise revenues to meet its obligations. Otherwise you can start one of these plans—it could even happen to a statewide plan—they could get ambitious and start one, and, in the middle of it, after 2 years, they cannot raise their next 5 percent to bring it up to 15 percent, and the whole thing flops. Then what happens?

Mr. CLARK. Well, I think in answer to your question that the bill specifically encourages statewide plans. It does not make them a prerequisite, and I do not believe it realistically could. I think if it did, it would involve a long delay and perhaps some ultimate inability in some jurisdictions to get together between State and local law enforcement.

I think the State—it is particularly important as to your smaller counties and towns, because they in and of themselves are too small to provide all of the support for law enforcement that is needed, to provide all of the opportunity for training, for education, for interchange of personnel, to provide latest techniques—so I think in your smaller jurisdictions, the States play an important role. I think that is one of the benefits of the 50,000-population limitation. It provides a greater incentive for the States to show leadership as to those jurisdictions.

A jurisdiction of less than 50,000—a jurisdiction of 50,000 is not likely to have, by national average standards, a hundred policemen. And with such a small police force, it is very difficult to provide adequate training and adequate support. The State can make a big difference here.

On the other hand, as to your major cities, your big cities, generally throughout the United States the State has not played a role financially or by guidance or other support in local law enforcement. The cities have historically had the leadership and the responsibility for local law enforcement, and the State has not played a role. So it would be very difficult for—particularly in your big States, with these major metropolitan areas, for the State to come in the first time with comprehensive planning for law enforcement agencies that have been in the business for more than a century.

Senator MCCLELLAN. Can a State, municipality, or other entity, submit a plan that is confined solely to training policemen? Would that be eligible for approval under this law?

Suppose they say:

We want to take advantage of this, we want to get the benefit of trained policemen, and we want to go into it solely for that purpose. We do not know

whether we could raise the money for all of these other purposes or not, but this we give priority to and we want to do that.

They came in with a plan and say:

We want you to give us a grant under this law to help us get trained policemen.

Now, would a plan that excluded the other features that are authorized under this bill—would a plan like that be eligible for approval?

Mr. CLARK. The plan itself would have to continue the items stated in section 204(a)(2), (a) through (b). It is on page 7—204(a)(2), and then (a) through (g). This does not mean, however, that they could not limit it—their request for Federal assistance to law enforcement training. Their plan would have to show through all of the seven elements.

Senator MCCLELLAN. They would have to show they did not need the other things?

Mr. CLARK. It would have to show at least that this was a great priority and a great need.

Now, I think particularly in States, that such a request for training of local law enforcement in rural areas and things might be of great value. As you know, we place great stress on the need for training and the need for standards of law enforcement. Those are really essential, along with compensation, to improve the quality of law enforcement.

But for a municipality particularly, to come in with nothing but training, would not necessarily, but probably, be disappointing, at least—because we would hope they would seek more than that.

Senator MCCLELLAN. I feel that some of them will say "Well, we want to do this and that, but the rest of it we do not want to do, we do not feel we can afford to do all of these things, so we want to get a grant, and give priority to this future or to this aspect of the assistance that is available to us under this law." Now, they may include training of policemen, they may include buying some equipment. In other words, a plan that only covers a part, whether a major part or even a minor part, of the assistance that is going to be available—would that plan be eligible for approval?

Mr. CLARK. Yes, it would be.

Senator MCCLELLAN. It would be.

Then I ask you this question:

If they have a plan that, say, is only for the training of policemen, which is eligible, and is approved, then in order to continue that plan in operation, would they have to increase their revenues, their expenditures for law enforcement the next year by 5 percent, or would that be adjusted on a ratio basis of what they are spending for policemen and what they are spending for all other purposes?

Say they were spending 50 percent for police service, and the other 50 percent for other aspects of it?

Mr. CLARK. Assuming that their request for training was a 1-year request—in other words, it wasn't anything that was spread over more than 1 year—then to be eligible the next year under the bill as it is drawn, they would have to show an additional improvement expenditure of 5 percent.

Senator MCCLELLAN. So if they start out this year and say "Well, we now have a hundred policemen, with your grant we can afford to train 12 additional policemen, or 15, as the case may be."

They come to the second year, and they would like to train another 10 or 15 policemen.

Now, in order to be able to train that other 10 or 15, they not only have to contribute their share, but to get the grant that is available they also have to increase their expenditures for criminal law enforcement and so forth by 5 percent, is that true?

Mr. CLARK. That is correct. Their operating expenditure—it would have to go up 5 percent. Otherwise they could actually decrease their commitment to law enforcement by cutting down on the total number of policemen, by cutting down on their salaries, by shifting any number of expenditures that police departments regularly make, and simply increasing this one item of training.

Senator MCCLELLAN. Now, the point I am making is this—say they spend half a million dollars, I don't know what would be a proper figure—that is for 100 hundred policemen. I expect they would spend $1 million.

Then the next year, to send the other 10 they wanted to train, they would have to increase that expenditure by $25,000—their operating expenditure. Is that correct?

Mr. CLARK. Their base was $500,000, and 5 percent of that would be $25,000. And then they would be eligible for Federal funds only for up to 60 percent of their increased expenditure over $525,000.

Senator MCCLELLAN. Well, they would only be eligible for 60 percent of the cost—60 percent of the $25,000?

Mr. CLARK. No, sir. The Federal participation would begin only over and above the 5-percent increase. And that is based upon this fact—that law enforcement on the average across the country today is increasing its expenditures about 5 precent, perhaps a little better. We are doing that right now without any Federal assistance. The idea of this bill is not merely to subsidize on-going expenditures. It is to bring a new and substantially increased commitment to the public safety through improvement of your criminal justice agency.

Senator MCCLELLAN. I am sure that is true. And I am not quarreling with the objectives of the bill at all. My question is—have we got it so complicated that it is going to be cumbersome to administer, or impractical in the results we will get? Those are things we have to think about.

We are dealing here with something very, very important. This is important legislation. I am not trying to wreck it. I am trying to get it analyzed on the record so we can study it with a view of making improvements if necessary. To pass this and then find in the administration or operation of it we don't get the results that we hoped for would be disillusioning to the whole outlook for better law enforcement in this country.

I am not criticizing the bill. I am trying to do our best to get out legislation here that will give us the results we hope for and the best results.

So I hope you do not take this as being too critical. I am trying to get a record here that we can study.

Mr. CLARK. Not at all. We want to explore all of its features with you, and seek their improvement.

Senator MCCLELLAN. Maybe we will raise some question here that will cause you to want to reexamine certain provisions.

Section 202 of the bill restricts expenditures of grant money for salaries to one-third. I believe you have stated that 85 to 95 percent of law enforcement budgets are for personnel. Is that correct?

Mr. CLARK. That is right. We figure it averages about 90 percent.

Senator MCCLELLAN. Would you think that this restriction, then, to a third, is a bit rigid and unrealistic?

Mr. CLARK. It was our judgment, after careful study, that this was a wise limitation, and it is based on a number of considerations.

One, we really need improvement, and mere salary supplementation, particularly if it is not of a very substantial dimension, will not necessarily bring that. We need to know that all of our law enforcement agencies, and we have tens of thousands, are looking across the board to improve their performance.

We need to know that they will not take the easy route with Federal money and just dump it in salaries, even though salaries are terribly important.

Now, we recognize the limitation of one-third is only on the Federal part—it is not on the State or local part.

We recognize they have to put up an additional 5 percent above their 100 percent before they get any Federal money, and that only 60 percent, or only up to 60 percent of the amount above that 5 percent will be Federal.

So actually the limitation on the total is fairly limited.

We think it will bring resources to bear in other areas, and that the spread will improve the quality of law enforcement more than we would improve it if we permitted the entire expenditure for salaries.

Senator MCCLELLAN. If they want to buy equipment, like patrol cars—using that as an illustration—if that is a part of their plan, to build up their equipment, what would be the Government's contribution, the grant percentage for that?

Mr. CLARK. It could be up to 60 percent.

Senator MCCLELLAN. That would be 60 percent?

Mr. CLARK. Yes.

Senator MCCLELLAN. What is this third for salaries?

Mr. CLARK. The third is that portion of the total Federal grant that can go to salaries. Assume that the total Federal grant to a particular jurisdiction is $75,000. Only one-third of that could be for salaries—with these two exceptions, training and innovative functions. That means that the $25,000 would be matched against whatever would be 40 percent to $25,000. That could be up to 60 percent of the total improvement that they were seeking in their compensation over and above the 5 percent.

Senator MCCLELLAN. It gets a little complicated, doesn't it?

Mr. CLARK. Well, I think—as Federal programs go—even though dealing with it may be complex—I think it is fairly simple.

Senator MCCLELLAN. Maybe as they go it is simple. It does get a little complicated it seems. I do not mean this critically. I mean we need to all study it together, and see how we can simplify it, and improve it. I don't want you to think I am being critical, other than to try to analyze it, and see if improvement can be made of it.

Very well.

The next question:

Section 203(a) limits grants for the construction of physical facilities, "fulfilling a significant innovation function." What does that mean—"fulfilling a significant innovation function?"

Mr. CLARK. "Innovative function," the last two words of that phrase, are defined in title 5, section 501(h) on page 16. That means a new or improved purpose within this particular jurisdiction.

It was not contemplated by this act that we would go in at this time to a broad Federal grant program for general buildings and facilities for criminal justice. It was not contemplated that we would build a courthouse in every county of the country, or that we would build police stations or precinct stations in every city of the country.

It was contemplated that most of these funds would go for improvement of personnel, practices, techniques, research and development, training, that sort of thing.

When we come to physical facilities, it is the judgment of the administration that the grants should be limited to those which perform a really significant and innovative function—that we should not get into a massive grant program for physical facilities in the criminal justice field, at least at this time.

Senator MCCLELLAN. "Innovative function" means something new, something different, does it not?

Mr. CLARK. That is right. In that jurisdiction.

Senator MCCLELLAN. Give us some illustration of what it means—concrete illustration of what would be an innovative function.

Mr. CLARK. Well, in police work it could be a new type of precinct station that would give you two seemingly inconsistent things at the same time, both of which we need. It would give you an opportunity to consolidate your police management into a headquarters, so you would not have precinct captains spread around. At the same time it would give you local visibility and contact with the people and identification with the people. That could be an innovative facility in a particular jurisdiction.

It could mean a new type—in corrections, it could mean a new type of community service place. It could be the remodeling, for instance, of the floor of a particular floor of a YMCA building—that some of the probation officers of Shreveport, La., have suggested we do—so you can test a work release program in a community where people would be working. It would be the sort of thing that the California Youth Authority has developed in some areas. In courts, it could be a new type of suburb courthouse as we see in California and places like that, out in outlying areas, away from downtown. But it would have to be significant, it would have to be innovative.

Senator MCCLELLAN. Would you call the repairing or replacing the floor in a YMCA building a significant innovation?

Mr. CLARK. It would be a remodeling for a given purpose. It would have custodial features, and it would be designed to permit guards and caseworker personnel to know where the people are and what they are doing.

Senator MCCLELLAN. It seems rather weak, Mr. Attorney General.

I can appreciate that a significant innovative function might be the building of, say, a midway house between jail and release. That might, in my judgment, be an innovative function—when they serve a third

of their sentence in jail, or two-thirds, and you want to see if you can rehabilitate them, or try to give them some instruction, and a little inspiration, encouragement to do good and not to return to crime—you build a place where, after they serve part of their sentence in jail, you can take them and try to rehabilitate them.

Now, that might be a significant innovation. But I cannot see that repairing a YMCA, building a new floor in it, is anything like a significant innovation.

Mr. CLARK. Well, I think we are talking about the same things.

I would not assume that every halfway house had to be an isolated free-standing building. It could serve, perhaps, more effectively or efficiently, as was suggested—I use this as an illustration—if it were a wing of an existing apartment house, or something like that. If we can provide the security and other appointments that you need in a halfway house sort of installation. But many of our community service facilities, which are really the future of corrections, are not free-standing, isolated buildings—they are integrated into other buildings, but they have to have particular appointments. They are different than the remainder of the building.

Senator MCCLELLAN. Well, let's see if we can think of another one.

Would street lighting, say—if a town says "We need to light up our streets—dark alleys are conducive to crime—we have a plan here to light up our streets, and we need funds for that."

Would that come within this significant innovative function?

Mr. CLARK. That could possibly be within the description of physical facilities. It could not be, I think, a general street lighting plan, for a number of reasons. I don't think it would be sufficiently innovative. It could run into millions of dollars.

It would have to have a particular concept. It would have to be designed to show a particular potential for crime control.

Senator MCCLELLAN. It would seem to me it would be just as new and innovative as the repairing of a YMCA building.

Mr. CLARK. We have had street lights for years in most of our cities, but I have not seen a YMCA with a halfway house built into it.

Senator HRUSKA. Most YMCA's have floors, don't they? What is innovative about putting one kind of floor rather than another kind? Will it serve a new purpose, which is your definition of innovation? Placing lights where the have never been before, I would think, would follow the definition of innovative function which says it is a function which will serve a new purpose. Well, that is a new purpose. There are not any lights there now. You are going to put lights in alleys for the first time.

Wouldn't that be new in your judgment?

Mr. CLARK. Suppose it is an annex to a city that has not been in there before. I do not think it would be the contemplation of this bill that we would put street lights throughout the newly annexed part of the city simply because there have not been street lights there before. I think it would have to be significant in terms of law enforcement. I think it would have to be innovative in terms of technique. As I said earlier, I think some lighting facilities could meet this qualification. But I do not think this would be used as a general plan for street lighting throughout the United States.

Senator HRUSKA. That certainly is relative to law enforcement, because we find vast industrial plants sometimes dispensing with guards around their plants, and in lieu thereof they just have bright lights. Now, that is a factor in law enforcement—no question about it.

I don't want to press the point. But—Mr. Chairman, I should think this would illustrate that for any application that would be made, whether it is lighting or a floor or a new chimney that will draw a little better—it is a new purpose, and whatever it is, it lies within the complete discretion of whoever administers this law to say "Yes, it is innovative, or no, it is not." And I think under this description here, no one can deny that ths discretion has been abused too much.

Senator MCCLELLAN. Let us look at it one step further.

Suppose a municipality has never had them, and says—we want to put in some police callboxes. Would that be a significant innovative function that would come under this?

Mr. CLARK. If the city had had police callboxes before, it would not be innovative under the definition. If it had not, and the plan were significant, would afford some real advantage to law enforcement, and were innovative, it could come within this.

Senator MCCLELLAN. Very well. Under section 203(b), an applicant shall be eligible for grant only if he would be eligible for one under section 202. Do you regard the provisions of section 203(b) too restrictive?

Mr. CLARK. No. We believe that it is desirable to provide for facility grants only where the same increased commitment by the jurisdiction to law enforcement has been made that we would require under section 202 for action programs.

Senator MCCLELLAN. Section 204(a) provides that the Attorney General may make grants under title II only if the applicant has on file with the Attorney General a current law enforcement and criminal justice plan conforming to the purpose and requirements of the act. Mr. Attorney General, who is to determine if the plan so conforms?

Mr. CLARK. Well, initially, the determination would be by the Director of the Office, and ultimately, when necessary, by the Attorney General.

Senator MCCLELLAN. Is there any appeal from the discretion exercised by the Attorney General?

Mr. CLARK. There is no appeal provided.

Senator MCCLELLAN. Should there be some board to appeal to, or some higher authority? I am not sure—I just asked. Have you thought of it?

Mr. CLARK. It has been given some consideration. This is a suggestion made by some of the Members in the House. An appeal under Federal grant programs has not been generally authorized. It could involve a great many problems—delay, confusion, and uncertainty. I doubt that it would really afford any meaningful difference or rights to people. I think the programs would be applied fairly and uniformly. I think as a practical matter they would have to be. And I think appeals would tend to frustrate——

Senator MCCLELLAN. There are those who are concerned about what is termed a centralization of power here in Washington, and those who have been disillusioned or disappointed in the administration of some

other programs. They raise objection to what they conceive to be a centralization of power, and thus allowing the Central Government to get a grip or control on law enforcement throughout the country. And they raise objection to this. They have apprehensions about it. And I am trying to see if there is any way to alleviate this apprehension, to modify the bill some way so that there would not be reposed in one head of an agency of Government the sole responsibility, authority, and power to say yes or no to a plan.

Mr. CLARK. Well, we would certainly want to consider it with you. My reaction is that it would make administration of the act exceedingly difficult, and it would involve such inordinate delays that it might really be quite debilitating.

Senator MCCLELLAN. In other words, it would further complicate an already complicated act.

Mr. CLARK. It would complicate an act that seems pretty streamlined to us considering all of the problems. You have to have confidence some place.

Senator MCCLELLAN. If all the power, the authority is reposed in one man or one source, of course it is streamlined, insofar as making a decision.

Mr. CLARK. Well, he has the framework of the law within which he is supposed to operate, and we have to assume that he will.

Senator MCCLELLAN. Do you think a population of 50,000 is the best standard that can be provided?

Mr. CLARK. Yes, sir, I do. I should say probably that it is my understanding that the House subcommittee, which will probably report the bill today, will also probably reduce the 50,000 to 25,000.

Senator MCCLELLAN. Would that permit, Mr. Attorney General, smaller communities to come in—such as a county with a county seat of 10,000 or 15,000 and the remaining of the 25,000 out in the suburbs, and so forth? Some of those would like to come in, maybe, and as it is now, they might not be able to. You would have to get two counties to join together, contiguous counties to come together. And again you would get the complication of trying to raise that 5 percent each year—who is going to have the responsibility for that. Of course, I do not want to go too low, but it does seem to me that maybe this 50,000 ought to be lowered.

Mr. CLARK. It is a matter of judgment. We have about 550 counties that would exceed the 50,000 population level. We have about 380 cities that would exceed that population level. They contain 80 percent of the people in the country. They contain probably 74 percent of the police. If we lower it, we will increase the problems of administration by increasing the numbers of applicants. We will also reduce the incentive for these smaller jurisdictions to do something that is very desirable, and that is plan together with other small jurisdictions to improve their performance. And that is the part of the reduction that concerned me most.

Senator MCCLELLAN. That is what I think may defeat a lot of the good that could come out of this. Getting them to join together. You get towns and counties that have their rivalries, and you have to make certain the expenditure in the joint plan for law enforcement is raised 5 percent each year and it can get complicated.

I am thinking out loud—and I might change my mind—but I believe I would rather see us get this minimum down to around 25,000 where most communities would have an opportunity to participate.

Mr. CLARK. Well, they all have the opportunity to participate under the bill as it is drawn. It is simply that they cannot participate by themselves.

Senator MCCLELLAN. Of course, I am talking about being able to act alone without having to get their neighbors to join.

Mr. CLARK. Well, they would have a number of alternatives. They would have—a small town would have the option of joining with its county, or with other small towns, or of joining in a general State plan. Any of these would have—just because they got together—benefits that would probably transcend the benefits of simply improving the small jurisdictions by itself.

We have 40,000 police jurisdictions in the United States today. I think there are so many that are so small that we really cannot expect either effectiveness or efficiency from them. There are thousands of those that are one-man law enforcement offices. And that really limits your potential.

Senator MCCLELLAN. Well, I believe we are going to have some pretty serious complications in trying to administer this. I am not too pessimistic, I don't want to be. But I think there are going to be some real problems trying to administer it unless we can simplify it a little bit in some areas.

Could you give us an example of what would be required in the plan under section 204(a) (2)? Are there any plans now on file in the Office of Law Enforcement Assistance which might be utilized in administering section 204(a)?

Mr. CLARK. In answer to your first—to your last part of your question first, I don't believe there are any comprehensive plans for a total law enforcement agency on file with the Law Enforcement Assistance Act office at this time.

Senator MCCLELLAN. Well, is there anything in that agency that can be dovetailed into this and made to fit, so we will not have lost whatever we have expended on it?

Mr. CLARK. Well, there certainly is.

First, title 3 would include all of the functions of the Office of Law Enforcement Assistance. They would merely be reorganized into this new office. That on-going operation would have all the benefit, of all the experience of LEA plus the product of its grants. Those grants also provide the base for our experience in administering a grant program, which is invaluable. And we would hope, certainly, that we could take the teachings of those grants and apply them both in the planning grants under title 1 and the action grants under title 2. So there is no loss in this. In fact, there is a tremendous gain. We are very fortunate to have had the experience of the Office of Law Enforcement Assistance as we go into this major program.

Senator MCCLELLAN. Does this act repeal the Law Enforcement Assistance Act?

Mr. CLARK. Yes, it does. Title 3 repeals and supersedes. But it really incorporates all——

Senator McCLELLAN. In other words, you have learned something from the administration of the Law Enforcement Assistance Act that you can make use of, beneficially, in the administration of this one?

Mr. CLARK. That is correct. But in addition, we include its specific features in here.

Senator McCLELLAN. All right.

Now—give us an example of what would be required in the plan under section 204(a)(2). Can you give us an example?

Mr. CLARK. Well, I think rather than an example, I would just say that it would be a comprehensive document that would include the seven items that are listed in—under (a) through (g). It would be a document that would set forth descriptions of general needs and problems of the jurisdiction, it would describe their existing systems, because you have to know what is being done now to see how what is proposed would relate to it. It would describe the available resources that the jurisdiction has and brings with it to its increased commitment to law enforcement. It would describe the purposes for which the Federal funds are sought, so that there would be specificity as to the very items that would be supported by Federal funds. It would describe systems and administrative machinery for implementing the plan, so we could see how they anticipated carrying out what it is they propose to do.

It would describe the direction and scope and types of improvements, so that—that would be made in the future, so that we could see it was not a concept that ended at a day certain at the end of a particular year, but went on, that it was a long-range, well-thought-out plan, and it would describe to the extent appropriate—we think this is awfully important—the relationship of that plan with other law enforcement plans by State and local government, because it is so important that these agencies have the most highly coordinated action.

Senator McCLELLAN. You have a staff of very competent people down there. Would you have them prepare and submit as an exhibit to your testimony a sample plan that you would anticipate would result from the enactment of this bill—the kind of plans you would anticipate receiving—just as a sample, so we may have it as an exhibit, and get a clear illustration of what you have in mind under the proposed act.

It would be very helpful to us if you could do that, Mr. Attorney General.

Mr. CLARK. Let us——

Senator McCLELLAN. At your convenience.

Mr. CLARK. Let us consider that. I think what we would need to do is really get some specific law enforcement department, some police department, or something, to prepare one, so we would have some specificity to it.

Senator McCLELLAN. Well, your people down there certainly have in mind what kind of a plan you visualize a department or municipality would submit. I would like to see an illustrative plan, taking in all features of this proposed law, if a municipality wanted to share in all of them. Give us a sample of what kind of a plan you would anticipate, maybe, from a city or unit that wanted to share in all of the grants and benefits that this law will provide.

If we can see that, I think we can have a pretty good idea of how it will work. And I would think that you folks who are studying this could have some idea and draft a sample of a plan or illustration of a plan that you think would merit approval.

Mr. CLARK. Let's see what we can get up for you.

Senator MCCLELLAN. We would appreciate it if you would just let us have it as an exhibit, at your convenience.

Section 204(b) provides that in implementing this section, the Attorney General should encourage certain enumerated activities by State and local governments. What activities do you have in mind to encourage, Mr. Attorney General?

Mr. CLARK. We would encourage the seven specific areas of activity that the Congress has—would instruct by enactment of this section, that we encourage, which are set forth on page 8, to top two lines of page 9. We would encourage—if you like me to either read or paraphrase them I can do it. But I think they speak for themselves.

Senator MCCLELLAN. That is what you mean—you encourage these seven items that are outlined here on page 8 of the bill?

Mr. CLARK. That is correct. Going over to the top of page 9.

Senator MCCLELLAN. I see.

Are grants to be made under this law to improve or to establish public defender systems?

Mr. CLARK. I think grants could be made under this law to either improve or establish public defender systems; yes.

Senator MCCLELLAN. Would you approve grants to provide for investigative and technical services for the defendants in criminal cases? I mean, could that be included in assisstance in a plan for a public defender system?

Mr. CLARK. If a State agency or local government came forward with a plan that embodied that, there is nothing to prohibit its consideration.

Senator MCCLELLAN. It would be eligible?

Mr. CLARK. It would be eligible.

Senator MCCLELLAN. How about to train defense counsel. If they came forth with a plan for that, to train a number of lawyers as public defenders, would that be eligible for a grant?

Mr. CLARK. If someone applied for it, it would not be prohibited under this bill. I might say——

Senator MCCLELLAN. Well, it would be eligible.

Mr. CLARK. It would be eligible. Under the law Enforcement Assistance Act, our grants to date have been for the training of prosecutors rather than defense attorneys.

Senator MCCLELLAN. That is not defense. I can appreciate you might want to train, just like you do policemen, better personnel, more competent personnel on the side of law enforcement. But we are now confronted, as you know, with Supreme Court decisions which make it necessary, as I interpret those decisions, for the State or the county or the municipality, to provide counsel for anyone at the time they are taken into custodial detention—if they ask for it. If they request it, under the court decisions as I interpret them, the State or the prosecuting authority, accusing authority, must provide that person in custodial detention with counsel.

Now, is it contemplated under this bill that in order to meet that requirement, we will make eligible for grants municipalities, States, or other entities that submit plans to train defense counsel and provide an investigative service for those accused of crime, and so forth.

Is that contemplated under this act? If not so contemplated, does the act authorize and permit it?

Mr. CLARK. The act does authorize and permit it. If a criminal justice agency involved in the court system came in and applied for funds for that purpose, it would be eligible for consideration.

Senator MCCLELLAN. Well, I am sure you are going to have a lot of agencies insisting that such plans be submitted, and the Government will now go into the business of providing defense counsel on the same scale it provides a prosecuting attorney, and also providing investigators for those accused of crime, for technical experts, and so forth—on an equal basis of what is provided to the prosecution.

Do you foresee that?

Mr. CLARK. I doubt that that would be a major item for application, Mr. Chairman.

Senator MCCLELLAN. Can't you foresee the pressure and demands for such plans since they will be eligible?

Mr. CLARK. I think the pressures and the priorities are the same, whether there is a Federal program or not.

Senator MCCLELLAN. You think what?

Mr. CLARK. I say I think the pressures and the priorities on jurisdictions are the same, whether there is a Federal program of assistance or not.

Senator MCCLELLAN. The pressure may be the same. But here they will have a source of getting results, a direct avenue to the authority to provide what they demand.

Mr. CLARK. If that is their item of highest priority, that would be something that——

Senator MCCLELLAN. Well, it would not have to be the highest priority.

Mr. CLARK. That would be their judgment if they put it in.

Senator MCCLELLAN. It would be one of their requests.

Mr. CLARK. They still have got to match up to—at least up to 40 percent, they still have to make their 5-percent increased investment.

Senator MCCLELLAN. I understand. I am just illustrating where we are in this law enforcement business. Now, we are reaching the point, moving swiftly in that direction, where the public, the taxpayers, have got to provide for the complete defense of anyone apprehended or accused of crime from the time he is taken into custodial detention, all the way through appeals to courts, to the top if he insists on doing it. We are moving in that direction. And I think this act is going to give impetus to it, and stimulate a greater demand and more pressures than we have ever known in this direction. I hope I am wrong about it. But I foresee that we are providing the means and the opportunity here for such a development.

Do you want to comment on that, and suggest how badly I am in error?

Mr. CLARK. I will just make two comments, Mr. Chairman. The same potential has existed under the Law Enforcement Assistance

Act. The applications that we have had in this area have been for training prosecutors rather than for training defense counsel.

Senator McClellan. That is what has happened in the past. In the past you did not have to provide them a lawyer the minute they were arrested, either. There are a lot of things in the past that do not hold valid today. And that is the point I am making.

Mr. Clark. That is this year and last year. It is not tomorrow, that is true. On the other hand, it may be that we have a great need in this area, and if we do, it is best that we prepare to meet it, I guess.

Senator McClellan. Well, let us talk about it, let us get it spread out here, and let everybody know what this is leading to and say so. That is all I am trying to do. Let us look this proposal right in the face, and evaluate it, and analyze it, and try to know where we are going from here.

Mr. Clark. That would certainly by a very tiny part of the total picture. The major purpose of this bill is to improve the quality of law enforcement.

Senator McClellan. I wish I could agree with you on that. But I do not have any assurance of that from present trends. I am afraid it is not going to be just a tiny part. I am afraid it is going to become—and I am sincere—a major part of it, and that very soon. I hope I am wrong. And I hope you are right.

But anyway, I just wanted to emphasize that point.

Mr. Attorney General, I have some five or six other questions that I wanted to ask. But I have used more than my share of the time. Again, I want to defer to my colleagues and give them an opportunity to ask you some questions before we have to recess at noon, and I am going to do that now. And I will probably, with your permission—submit these questions to you, and let you just answer them for the record. And then when you come back on these other bills, we can ask any questions for clarification of your statement if we think it necessary.

With that arrangement, I think I would like now to yield to my colleagues.

Senator Hart. Thank you very much, Mr. Chairman.

Mr. Attorney General, you discussed with our chairman the possible definition and illustration of this significant innovative function in terms of capital investment, physical facilities.

Under the Law Enforcement Assistance Act, was it permitted to ask for a physical facility? Have we had any experience under the Law Enforcement Act that would indicate what might be visualized here?

Mr. Clark. There is no prohibition under the act against funding for physical facilities. Offhand, I cannot think of one that was actually funded.

And perhaps that tells us something, too. After all, the moving party is the applicant. Presumably they know and have some sense of priority of what they need. As they have come forward, they have not asked for funds for capital improvement for construction.

Senator Hart. So this morning's testimony indicates that the Law Enforcement Assistance Act tells us at least two things in terms of what the communities across the country appear to be seeking within

the last 24 months. One—it is not physical plant, and two, it is not preparation of defense counsel.

Mr. CLARK. I think that is true in large measure.

As to the physical plant, the largest annual appropriation for law enforcement assistance for the whole Nation has been $7,250,000. You just cannot do much building with that.

But even so, I do not think that that will become a major part of this act. I would certainly hope not, because I think it is in people, in technique, in research and development that we will get the greatest return on these funds.

Senator HART. This certainly reflects the areas in which I believe the people in Michigan seek assistance—devices, as you say techniques, that will arm more effectively the police, research and development to generate that kind of weapon, in order that the police can be more effectively armed, and perhaps overriding all, the methods, a formula, a curriculum to make a policeman a more effective agent in the public employ.

Now, the second point that I should like to comment on—it really is not a question—the chairman developed with you the problem which this 50,000 breakoff figure may create. He indicated that perhaps dropping it to a 25,000 figure would avoid some of the problems, open wider the opportunities of participation across the country.

The concern he voiced I think all of us share, and certainly we appreciate the problem. But is it not conceivable that moving in that direction would defeat in part an ultimate goal here?

Is it not really one of our problems, reflecting our own history, that is having too many small units of law enforcement in this country? To the extent that by keeping the 50,000 or higher figure in the bill, we can develop a cooperative effort which may lead ultimately to what could be a very important contribution to law enforcement, as I understand it, and that is having more area and manpower under one jurisdiction.

Would we not be defeating that objective by reducing lower the 50,000 figure?

Mr. CLARK. I believe we would, and I think that is a very important consideration.

Senator HART. Thank you, Mr. Chairman.

Senator MCCLELLAN. Senator Scott?

Senator SCOTT. Mr. Attorney General, I just want to suggest to you the possibility of considering and perhaps submitting to us more clarifying wording than the phrase "significant innovation," chiefly because I think it may give us some difficulties on the floor. And if it is possible to clarify that, or to make it simpler of explanation by those who sponsor the bill, it might be useful to us.

Mr. CLARK. We will endeavor to do that, Senator Scott. I will call your attention again to the definition of innovative function in title 5, subsection (h). We can try to clarify that.

Senator SCOTT. It occurs to me also concerning Senator Hart's discussion of the 50,000 limitation, that possibly smaller units might be able to pool their efforts so as to qualify under a total of 50,000 units. In other words, several small communities might qualify. We would like to be sure that provisions in the final form of the bill permitted a

joining of smaller communities into a regional effort, since there is a tendency in this country toward regional groupings.

Mr. CLARK. That is an excellent point. It is one that the present bill contemplates. And it permits it in several ways.

First, the State itself can provide leadership in seeking funds for the smaller jurisdictions or those that are willing to participate within its boundaries.

Second, the smaller jurisdictions can themselves combine to exceed the 50,000 total, and there stand as an applicant together, where they could not individually, because each would be below 50,000 individually.

Third, different levels of jurisdiction, such as county and city can join together, where they can affect a total greater than 50,000. And fourth, a big jurisdiction, either by contract, which is a very valuable technique, or by simply coordination, can include—as a major city, could include small suburbs, in the vicinity, or outlying towns.

So there is the present potential for all of the smaller jurisdictions willing or able to join with other jurisdictions to exceed the total, to receive the benefits of the bill.

Senator SCOTT. That is very helpful.

I would also suggest for the record that you might want to consider under the research grant section—not for the legislation, but for clarification under it—the possibility of research grants to help the States to explore possible methods of judicial selection by nonpartisan commissions. It seems to me that might be a worthy effort.

We in the Commonwealth of Pennsylvania have had a lot of discussion lately on this subject. We have done nothing about it. But we are now considering changes in our State constitution. And I am hopeful that there we may be able to, by means of improving the selection of State judges. It occurs to me that some activity in the form of research might be useful, since I am sure from what I read this is also true in a number of other States. The Missouri plan, for example, is much discussed in bar association meetings, and there are other plans.

Mr. CLARK. Well, I think that again is an excellent point. I think it is something that we would hope the judiciaries of the several States would look to. We feel that they can take advantage of the present language under title 3. We have not had much grant experience in the judicial selection area, but in other State commission study areas, we have had quite a history under law enforcement assistance which provides the same base and opportunity that title 3 provides. Over 20 States have come in and received funds for State crime commissions of various types.

Senator SCOTT. Fine. Thank you, Mr. Chairman.

Senator MCCLELLAN. Senator Hart, any further questions?

Senator HART. Thank you, Mr. Chairman.

Senator MCCLELLAN. Mr. Attorney General, my appointment has arrived. The people are waiting in my office. Since I am going to have to leave in a few moments. I believe I will recess now. We will either submit these questions to you, or give them to you when you come back.

As soon as you can, supply us your answers to the letters regarding the other bills that I referred to this morning—let us have those—and then we will undertake to set a date convenient for you to testify on those measures.

(The reports on S. 674, S. 675 and S. 678 were subsequently received and are printed following the texts of the bills.)

Thank you very much for your appearance.

The committee will stand in recess subject to call.

(Whereupon, at 11:45 a.m., the committee was adjourned, to reconvene subject to the call of the Chair.)

(Subsequently, the following data was furnished by the Attorney General in reply to certain questions by the chairman.)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 20, 1967.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR: Enclosed please find my responses to the additional questions you have raised in your letter of May 19, 1967, regarding various aspects of the President's "Safe Streets and Crime Control Act of 1967."

I know that we share a common concern about the national problem of crime. As I indicated in my testimony, it is my belief that the Crime Control Act provides a most effective means of improving our ability to cope with crime where it should be treated—at the State and local levels.

In your letter, you express concern about the potential power and control the bill centralizes here in Washington over local law enforcement agencies. Our country has a deeply engrained tradition against a national police force, and I share your abhorrence of the possibility of the development of Federal control over local law enforcement. In my judgment, however, the proposed Bill presents no such threat.

Although the Bill itself gives a certain amount of administrative discretion to the Attorney General, such discretion is necessary to permit adaptation to the diversity of problems that will be encountered in its administration. Complete elimination of this discretion would introduce a degree of inflexibility into the program that might well make it unworkable.

The Bill itself (section 408) makes very clear that any exercise of control over local law enforcement would violate the statute. For any Attorney General to attempt to do so would involve an abuse of his authority under the statute. Moreover, as a practical matter, it would be impossible for the Attorney General to try to control the 40,000 different police jurisdictions that function in the United States. These jurisdictions have consistently maintained a strong tradition of autonomy and independence in local law enforcement.

The need for this program is clear and urgent, and I urge the Committee to give its prompt consideration to the bill.

If I can be of any further service to the Committee, please call upon me.

Sincerely,

RAMSEY, *Attorney General.*

ATTORNEY GENERAL CLARK'S RESPONSES TO SENATOR MCCLELLAN'S QUESTIONS—S. 917—SAFE STREETS

Title I. Planning grants

(1) *Is there contemplated any restriction on the amount of grant money under Title I that can be paid professional advisory firms for drafting and assisting the local agency in formulating plans to be submitted?*

No restriction is provided for by the language of the bill, and at present we do not contemplate regulations restricting the amount of grant money that can be used by an applicant to engage a professsional advisory firm to assist it in formulating plans. The matter is, however, being studied and the possibility of issuing guidelines in this area will be considered. The administrator of the program would, in any event, have to approve such an application under Title I for federal funds to be used for planning. If unreasonable amounts were to be expended to engage professional advisory firms, the application would, of course, not be approved.

Title II. Grants for law enforcement and criminal justice purposes

(1) *From the national standpoint, which of the purposes contained in Section 201 do you consider to be of greatest importance?*

That is a difficult question to answer since, in general, they are all important. In particular jurisdictions any one or more may be of unusual significance. If I have to single out the one that is most likely of greatest significance, I would select training and education.

(2) *Do you think it would simplify the bill to place Section 203(a)—the 50% construction grant provision—under Section 202(a)?*

We did consider putting 203(a) under 202(a) but found that both for ease of interpretation and clarity of meaning it was preferable to make 203(a) a separate section.

(3) *Would you suggest a more simplified formula for making grants under Section 202?*

It would be difficult to suggest a more simplified formula that would accomplish our objectives—viz. to ensure that an applying jurisdiction not only meets the national average 5% annual increase in its law enforcement budget but in fact exceeds it. The formula is designed to stimulate the expenditure of more State and local moneys for law enforcement purposes than would otherwise normally be spent. Federal money will be used to prime the pump—so to speak.

The formula uses a fixed base year—the 1967 fiscal year—from which to measure the average 5% increase in order to avoid the possibility that a jurisdiction will drop or fail to increase its budget one year in order to meet a 5% increase requirement for the next year. There is, however, an escape clause provided at the end of Section 202(d) in order to avoid any unfairness resulting from having a fixed base year.

(4) *Would it not lend clarity to the format of the bill to place the definitions of Section 202 under Title V?*

That could be done, of course. Nothing substantive turns on where the definitions are located. Because the definitions are so central to understanding the formula, however, we thought that it would be preferable to incorporate them directly into Section 202. In that way, the reader of the legislation will not have to repeatedly shift back and forth between Section 202 and the definitions.

(5) *Please explain the language "the proposed operating budget, or the amount by which the proposed operating budget per capita", Section 202(b) and "operating expenditures per capita", Section 202(d).*

An applicant is entitled to compute its grant eligibility using either its total budget or its budget per capita, whichever method permits the greated Federal assistance. Areas of large population growth will probably prefer to qualify under the total budget method, whereas areas experiencing a population decline will prefer the per capita method.

Assume for example, that in 1967 an area of 240,000 persons has operating expenses of $240,000 for law enforcement and criminal justice. It proposes that the same amount be spent in 1969 at a time when its population has declined to 200,000 persons. By the total budget method, the area's qualifying expenditure would be $264,000 (110 per cent of $240,000). The area thus fails to qualify for Federal assistance if its eligibility is calculated by this method. Its budget per capita, however, is $1/person in 1967. Its qualifying budget for 1969 is $1.10/person. Since its proposed budget in 1969 is $1.20/person, the area's improvement expenditure is $.10/ person, and the Federal Government is authorized to pay up to $.06/person of this amount, or $12,000 ($.06 × 200,000).

(6) *Does not the phrase "Each such plan shall (1) unless it is not practicable to do so", Section 204(a), give the Attorney General complete discretion to waive the requirements of 204(a)(1) A and B?*

It does give him discretion, but, as phrased, I would not expect that discretion to be exercised too freely or frequently. What we have in mind here is a situation where a local government, for example, barely misses the 50,000 population minimum and despite a good faith effort is unable to join with another local jurisdiction or come in under a state plan to meet the minimum. I can conceive in such a case of invoking the introductory language of 204(a) to waive the population requirement.

(7) *Your attention is called to the absence of requests under LEA for funds for construction and physical facilities. In response to questioning in the Subcommittee hearings of May 9, 1967, you testified that there is no prohibition under LEA against funding for physical facilities (page 969). From this statement you drew an inference that the applicants did not consider such needs as primary in their priorities.*

On page 7 of the LEAA Guide, Part I. A. 9., it is stated: "Type of support available: In general, most expenses involved in the conduct of grant

projects will be suported with the exception of outlays for construction of facilities or purchase of capital equipment. (Emphasis added).

To ask the question again, what might be visualized under Section 203(a)?

While the text of the Law Enforcement Assistance Act contains no express prohibition on support for construction of physical facilities, the Department found it necessary to preclude investment in this type of aid because of the limited funds available under the Act for the LEAA program.

The Department has from time to time received inquiries about availability of support for construction under LEAA. S. 917 was drafted to explicitly include application of action grant funds for construction of physical facilities that are significantly innovative [Section 203(a)]. With respect to what might be visualized under Section 203(a), the total response in terms of fund allocations will depend on what priorities for construction efforts are established by states and localities in development of the comprehensive plans which are a prerequisite for Title II support. A construction priority, established in a soundly-conceived and adequately justified total plan would, of course, be honored in Title II grant requests. The types of "significant innovative functions" for which construction aid would be authorized would include such items as new police training centers, new community-based correctional treatment facilities, and modern police laboratory facilities. We do not contemplate that general office construction for police departments, courts, etc., would be included in this concept. Also, it should be noted that construction funds would be available only to the extent of the jurisdiction's general eligibility for criminal justice action grants under the formulas of Section 202 of S. 917.

Title III. Research, demonstration, and special projects grants

(1) *Can you give examples of a grant which would be made under Section 302?*

There are, of course, many examples of grants that might be made under Section 302. The significant criterion is whether the research, demonstration or special project will be "of regional or national importance or will make a significant contribution to the improvement of law enforcement nad criminal justice." A certain amount of flexibility necessarily must be built into the application of that criterion. The first application for a new and unusual project might meet this criterion. Once the worth of the project had been demonstrated, however, it might be more appropriately funded under Title II.

Possible examples of grants under Section 302 might include funds for—

(1) a project for laboratory simulation of various police command and control systems for the purpose of determining the most useful type of system.

(2) the development of automatic patrol car locators involving new technical approaches.

(3) a demonstration project involving computer simulation of court processing of cases for developing new methods of relieving court congestion.

(2) *What type of "private organization" do you visualize would be applying for a grant?*

Under Section 302, private profit making or non-profit making organizations may qualify for a grant. Conceivably the Attorney General might contract with a police equipment manufacturer to assist in the development of an unusually innovative piece of police equipment. A non-profit research corporation might apply for a research grant to develop the application of techniques of economic analysis to police problems. California has, for example, engaged corporate members of the aerospace industry to assist in developing new communications systems.

(3) *Can you give examples of a grant under Section 303?*

Grants under Section 303 might be made, for example, to a university to establish an interstate criminal justice training academy or to a non-profit contractor, such as are frequently employed by the Department of Defense, to develop a regional Research in Criminal Justice Institute to service police and other agencies.

(4) *Is there any provision in this bill to authorize the Attorney General to pay tuition for or fellowship grants to law enforcement personnel while engaged in college, university or special programs of criminal justice training?*

(a) *If not, do you consider that this provision would strengthen the bill?*

This type of aid is possible in two ways. First, states may make provision for tuition or fellowship aid in their comprehensive plans under Title I and allocate Title II action grant funds for this purpose. Also, the Department considers that grants to institutions of higher education under Title III to offer scholarship and fellowship assistance to law enforcement and criminal justice students can be supported as "special projects" under Section 302 which "will make a significant contribution to the improvement of law enforcement and criminal justice." Under LEAA, for example, the Department has established a national graduate fellowship program for police personnel involving grants to three universities and much the same provisions and levels of aid established for comparable fellowship grants awarded to universities under the National Aeronautics and Space Administration and National Defense Education Act fellowship programs. The Department has expressed this position in its advisory opinions on proposed legislation now pending with the Congress which would specifically establish scholarship and fellowship aid programs for law enforcement and criminal justice personnel.

(5) *Assuming Congress appropriates the $50 million requested under the bill, how much of this do you visualize will be expended for Title I, planning grants, and Title III, expenditures for carrying on programs piloted by the Law Enforcement Assistance Act?*

(a) *What percentage of the appropriations used for Title III grants will go to continuing existing LEA programs and what percentage of the Title III funds will be used for entirely new research, etc., programs?*

If Congress appropriates the $50 million requested for fiscal 1968 under S. 917, the Department contemplates that approximately $25 million will be awarded for planning grants under Title I and $15 million for research, demonstration, and special projects under Title III. The remainder will be allocated to the first action grants under Title II (possibly ready during the latter half of fiscal 1968) and costs of program administration. Among the Title III awards, it is further estimated that most funds will be applied to new research, demonstration, and special programs. That is, possibly between 20–30% of the expenditures will be used for the continuation of existing LEAA programs and the remaining 70–80% will be for new research and programs.

(6) *As of April 1, 1967, your office was unable to assess the programs launched under LEA (page 32 of LEA Report, April 1, 1967). How long do you think it will take to get any reliable assessment of LEA projects?*

Assessment of projects funded under LEAA is receiving the first order of priority. Most of the LEAA projects supported during the first year of operations were launched in the final quarter of fiscal 1966. Since most of the grants run for at least a year (with the exception of several short-term studies funded in the first year of LEAA activity and to be included in the output of the President's Crime Commission), few grantees will be submitting final reports until fiscal 1968. The Department of Justice plans to allocate substantial staff resources and time to the important matter of project evaluation, and it may be possible to offer reliable assessments of groups of LEAA projects by the end of calendar 1967 or the beginning of calendar 1968. The degree of assessment and evaluation will, of course, depend on the type of project and the objectives to be measured. For example, LEAA-supported training in the development of improved police competence will require follow-up over a period of years for completely reliable evaluation. It should also be noted that LEAA 1-year grants for action and training projects are considered close to the minimal duration required for an effective and measurable demonstration and thus, in many cases, may not be susceptible to immediate evaluation.

(7) *What real benefits have the taxpayers derived from LEA expenditures?*

The Department believes that the LEAA program, one of the smallest in government in relation to the important and major segment of state-local activity which it serves, has produced impact and benefits far beyond the limited resources available for the program:

(a) First, LEAA has supported a variety of projects which will aid and advance law enforcement capabilities and have already had substantial effect. In varying degree, these will set standards, provide models, produce knowledge, and establish facilities (information systems, training centers, etc.) badly needed for a more effective response to the crime problems. Thus, to cite a few examples:

(i) New state-wide police training and standards systems are being developed or existing ones expanded with LEAA help in 25% of the states;

(ii) Individual training demonstrations (regional or state-wide) have been supported in 50% of the states;

(iii) New state-wide correctional training systems are being developed and will soon receive support in a similar number of states;

(iv) A major expansion of the nation's management and executive training courses and facilities for police and correctional personnel has taken place by virtue of the LEAA program focus in this area (12 state or regional grants);

(v) New state planning committees have been established and helped to undertake comprehensive and coordinated criminal justice planning in 25% of the states;

(vi) New efforts in police-community relations programs (training and operations) have received support in 30 major city police departments;

(vii) Institutions in 15 states which one year ago had no college or university offering any opportunity for degree study in law enforcement for officers on the job or high school graduates interested in law enforcement careers have received LEAA funds to establish such programs;

(viii) The nation's first graduate fellowship program in police administration has been established by LEAA in the three leading universities currently offering such training;

(ix) The development of modern computer-assisted information systems for law enforcement has been fostered at the national level (single largest LEAA aid commitment has been for development and pilot operation of the FBI-coordinated National Crime Information Center) and on the state and local levels (7 state and metropolitan area information system development projects);

(x) Landmark study efforts supported by LEAA have provided essential data to the field for improved programming in such important areas as the general contribution of science and technology to law enforcement capabilities, the current status and operations of the nation's state and local correctional systems, consolidation, pooling of modern police services to increase efficiency, etc.

This diverse complex of LEAA-stimulated effort spanning all phases of the criminal justice process has been accomplished with much smaller resources than are available to many more narrowly focused programs dealing with other problems of state and local government.

(*b*) The LEAA program has served as an ideal laboratory and preparation for the kind of grant-in-aid partnership contemplated by the proposed Safe Streets and Crime Control Act of 1967. It has given the Department broad experience and perspectives in the methods and techniques of federal assistance, the problems and dilemmas of grant program administration, and the type of "client" it serves in dealing with state and local law enforcement. This experience has been invaluable and will be an important aid in sound structuring of larger programs.

(*c*) Finally, LEAA has, during its short period of operation, been a significant force in preparing law enforcement to examine its problems and move vigorously toward their resolution. The requirements for "new approaches," "innovative projects," "carefully defined plans," and high standards in projects submitted for assistance have required work and imaginative thought but have also been accepted and vigorously addressed by law enforcement agencies. Law enforcement today is progressive, aware of its responsibilities and actively seeking new solutions, new competence, and progress. This climate is an indispensable condition to the progress envisioned by S. 917 and LEAA has helped to foster it.

Title IV. Administration

(1) *What problems do you anticipate in staffing and organizing and making effective and efficient use of the $50 million requested for fiscal year ending June 30, 1968? To what extent have preparations been made to administer and implement the Act, and what plans do you have to continue such preparations?*

(a) *What qualifications and background experience would you expect the Director to possess?*

The two major problems confronting the Department in making efficient use of the funds requested for first year activities under S. 917 will be (a) the securing of adequate time for developing plans, rules, procedures, and administrative structure to provide States and localities with clear guidelines, prompt administration, and a soundly conceived and practical set of program priorities and regulations and (b) the acquisition of enough staff and properly qualified staff to organize and handle the first year workload in a manner meeting the highest standards of prudent administration of federal funds. In this last respect, the program under S. 917 will necessitate a substantial increase in staff now assigned to grant activity under the Law Enforcement Assistance Act. The Department is fully aware of the staffing problems confronting large new federal programs. The process of identifying and bringing in qualified staff will probably continue through and require the full fiscal year (1968) for completion.

In preparation for the program contemplated by S. 917, the Department has established several task forces to address major concerns in administration, organization, and rule-making for the program. An organizational structure is being finalized, initial staffing projections are being reviewed, and the beginning efforts for establishment of guidelines and definition of requisites for the various types of grants have been undertaken. During the summer, Departmental resources will be augmented by a team of knowledgeable professionals in the various fields concerned with criminal justice (police, courts, corrections, etc.) who will join the task force efforts as temporary supplemental staff in preparing for the new program. The Department has commenced regular meetings with representatives of major public interest groups concerned with the legislation (National League of Cities, Conference of Mayors, Council of State Governments, National Association of Counties, Conference of State Governors, City Managers Association, International Association of Chiefs of Police, American Correctional Association) to assure them a direct advisory voice in the structuring of the program and review of developing rules and regulations.

We would expect the Director of the Office of Law Enforcement and Criminal Justice Assistance to have some knowledge and experience in the criminal justice area, or at least a major phase of it, but, more important, would look for administrative ability, program directions skills, and decisional and judgment capacities of the outstanding degree required for successful leadership of a complex and major intergovernmental program such as envisioned by S. 917.

(2) *Section 407 provides that funds may be withheld from grantees when there is a substantial failure to comply with the Act and the regulations after reasonable notice and hearing. Should there be a provision in this Act for an appeal from or review of the Attorney General's decision withholding such funds?*

The House Judiciary Committee has amended the bill to provide for judicial review of decisions withholding funds under Section 407. We do not object to such an amendment.

(3) *How was the percentage of 15% in Section 410 arrived at? Should this percentage be made more flexible? Should Title III be exempted from the 15% requirement because some institution might be operating in a State serving a multiplicity of States in a given region?*

Section 410 is designed to insure that all of the funds available under the Act are not spent in just a few states. It should be read together with Section 411(c) which supplements it by directing the Attorney General to promulgate regulations to "establish criteria to achieve a distribution among States of assistance under this Act."

The 15% figure is an outside maximum; the criteria to be formulated under Section 412 will provide for flexibility within that maximum. The 15% figure itself is the same figure provided under Section 114 and 209 of the Model Cities Act. The Act establishing the Neighborhood Youth Corps provides that no more than 12½% of the funds appropriated may be used in any one State.

We would not object to exempting grants made under Title III from the 15% requirement insofar as the grant relates to an institution serving more than one State or involves research or studies not directly related to a specific State.

(4) *Should not the Congress have the authority to review the regulations under Section 411 promulgated by the Attorney General for implementing the bill in order to assure the Congress that such regulations are not being*

used as a means of forcing State and local enforcement agencies to conform to unreasonable standards?

Congress, of course, has the power to review regulations under this Act, as well as any other, to determine whether the regulations are consistent with the legislation under which the regulations are promulgated. No special provision is required in the statute. In any case where Congress deems such regulations inconsistent with the legislation in question it can specifically amend the legislation to clarify the matter or to eliminate the offending regulation. I would be opposed to inserting any special provisions in this legislation giving Congress any special powers to review regulations.

(5) *Should not some of the responsibility for administering the procedures and evaluating the priorities to be followed in approving grants under the Act vest in the Congress?*

Under the traditional division of responsibility between the legislature and the executive, responsibility for administering procedures including the evaluation of priorities in connection with a grant program is vested in the Executive under the general oversight of Congress. Of course, the legislation itself sets major priorities. I would expect Congress in exercise of its oversight function to keep in touch with the administration of this program in the same way that it oversees other Federal grant programs.

(6) *Under Section 402, how many technical or advisory committees do you think will be necessary to administer the programs under this bill?*

We contemplate that several advisory or technical committees will be required to assist with administration of the programs under S. 917. While our planning has not progressed to final conclusions, we would see as desirable the establishment of general advisory groups for the planning and action grant programs (Titles I and II) and for the research and demonstration effort (Title III), plus technical panels (e.g., police, courts, corrections, science and technology) to review specific Title III projects and, possibly, some review panels for Title I plans and Title II action grants. With regard particularly to review of Title I and II applications, the Department has not had sufficient opportunity for study of such questions as the desirability of advisory review of all applications (or applications from larger jurisdictions) and the appropriate role, representation and make-up of advisory committees to offer firm plans at this time.

(7) *What do you have in mind when you suggest the possibility of such technical or advisory committees? What kind of committees would these be, if named?*

The answer to question (6) addresses this question as well.

Title V. Definitions

(1) *Section 501(a)—how much do you contemplate using "in defense of criminal cases?"*

The purpose for which Federal funds will be used will be determined in the first instances by the applicants—viz. State and local governments. As I indicated in my testimony, I do not expect large amounts of money to be requested for this purpose. This is only one of a multiplicity of competing needs that the local governments will seek funds for and the likelihood is that it will tend to be very low on their scale of priorities. In any event, the amount of funds possibly involved will be small compared to funds likely to be sought for police equipment, police training, etc. On the other hand, the Bill does take a comprehensive approach to law enforcement and criminal justice problems, and an applicant could apply for money for such a purpose.

(2) *Since the purpose of the bill is to make streets safe, should not the emphasis be put on the prosecution of criminal cases rather than defense of criminal cases, probation, correction and parole?*

The major emphasis of the bill will clearly be directed toward substantial improvements in law enforcement. Aid to state and local governments for efficient and prompt prosecution of criminal cases will necessarily be a central aspect of the emphasis on law enforcement. At the same time, it is essential to recognize the need for a balanced program of assistance that will not arbitrarily exclude any other aspect of law enforcement and criminal justice. An approach that concentrates too heavily on only one of these aspects might easily miss the mark. If, for example, we concentrate exclusively on police improvements, we might place an unwieldy burden on our courts and correction systems. Conversely, if we could improve the rehabilitative aspects of our corrections system, we would go far toward relieving the problem of crime in our society.

General questions

(1) *Would you describe the special program under the Law Enforcement Assistance Act concerning "Governor's Planning Committee in Criminal Administration?" Please cover such points as—*

(*a*) *number of States having such committees;*

(*b*) *amount of LEA funds involved in each;*

(*c*) *does the Governor's Committee act as a central State clearing house, or final board for approval of plans relating to improvement measures for State and local law enforcement agencies; and*

(*d*) *in this special LEA program, does the Governor have any veto power?*

This is one of several LEAA special grant programs designed to stimulate wide-scale effort in certain key areas of law enforcement need. The LEAA program offers matching grants of up to $25,000 (50% federal contribution against 50% state contribution in funds, services, facilities, or other resources) to support the establishment or operation of State (Governor's) planning units charged with developing and coordinating comprehensive plans and programs of criminal justice improvement covering all aspects of crime control (police, courts, corrections, citizens' efforts, etc.).

The program was first announced in March, 1966 by letter to all state governors from the then Attorney General and an additional mission of the proposed committee at that time was the furnishing of data and assistance to the President's Commission study. To date—

(*a*) grants have been awarded to committees in 14 states and we have information that such units exist without federal support or are in organizational stages in 8 additional states;

(*b*) most LEAA grant awards have been at the maximum $25,000 per year level although a few were somewhat less because of matching requirement problems;

(*c*) although some of the projects contemplate a "clearing house" or coordination function for such committees, a few have reached this stage and, for those which have advised the Department concerning pending LEAA applications from their states (about 3 planning committees to date and here only with respect to selected applications) the review has been rendered and accepted as advisory only; and

(*d*) in no case has the governor exercised any formal veto power.

(2) *Since the Safe Streets and Crime Control Act would supersede the LEA, is it contemplated to continue to use these State Planning Committees under the approach of S. 917?*

The state planning committees can serve a very useful function under the Crime Control Act. They can help to formulate or review the plans prepared on the State level in connection with Section 204 of the Bill. They can serve as a clearinghouse of information, statewide, in connection with the development of plans on the local level. The exact function to be served by the planning committees in each state will vary depending on such factors as the size of the state, the speed with which the committee is activated, its makeup and the support given to it by the State Administration.

(*a*) *Would not the use of these established Committees be a feasible way to coordinate the plans for an entire State?*

Yes, these committees can be used to coordinate the plans for an entire state. In my judgment, the Federal legislation should not, however, impose too structured a coordination system on the states. The problems vary too much from state to state.

(3) *As S. 917 proposes yet another Federal assistance program predicated upon dissemination of Federal tax funds, would the purposes of the bill be better served by apportioning, on the basis of population, the suggested funds among the States, to be administered by the States themselves?*

No, I do not believe so. Once the tax funds come into Federal hands, Federal responsibility attaches to see that they are properly utilized. More importantly, there would be no particular advantages in having the funds administered by the states. The major responsibility for law enforcement in this country is handled at the local level. State governments in most states have little involvement in, control over, or responsibility for local law enforcement. Local jurisdiction would be opposed to the states attempting to assume control over their law enforcement operations and the possibility that the states would use control of the purse-strings for such a purpose is significantly greater than the possibility that the

Federal Government would do so. Thus the threat to local autonomy under such a proposal would be considerably more serious than the "threat" of Federal control under the bill.

(4) *Would you think that a bipartisan board or commission should be appointed to share the responsibility with the Attorney General of passing on the applications for funds under S. 917, or do you think the sole responsibility of making these decisions should rest solely in the Attorney General?*

It is not desirable to dilute the final responsibility for decision in connection with a grant program of this nature. It will be, however, useful to have expert advisory groups to provide advice in connection with the administration of the program, and Section 402 with this in mind authorizes the Attorney General to appoint "technical or other advisory committees to advise him in connection with the administration of this Act * * *." I have described how such committees may be used in question (6), Title IV, supra.

78-433—67——54

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

MONDAY, JULY 10, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 3302, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senator McClellan.

Also present: William A. Paisley, chief counsel; Joseph D. Bell, assistant counsel; W. Arnold Smith, assistant counsel; James C. Wood, assistant counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will proceed.

The Chair wishes to make a very brief opening statement.

Today we begin the fourth in a series of hearings by this subcommittee on various pending bills, which are in the nature of anticrime legislation.

Some 30 witnesses have already testified before this subcommittee at this session of the Congress on the crime menace that now threatens the security of this Nation. They have addressed themselves to several bills now pending before this subcommittee and which it is now considering. Another 18 witnesses are expected to testify during the hearings we have scheduled for this week.

Daily headlines in the press dramatically underscore the gravity of mounting crime and the urgent need to reinforce and accelerate our law-enforcement efforts. The FBI reports a 20 percent increase in the national crime rate for the first quarter of this year over the same period of last year. This is the sharpest increase that has been reported since 1958.

In the Nation's Capital the incidence of serious crime has risen over 40 percent within the past year. There are those who say—for reasons seemingly known only to them—that we do ourselves a great disservice with crime statistics. With all due deference, I respectfully submit that we do ourselves and the country a much greater disservice if we try to ignore these statistics and do nothing about the conditions they reflect. By way of parentheses, I wonder if we do ourselves a great disservice by the use of labor statistics, health statistics, and many others that we might mention.

Today in the midst of plenty, when the affluence of our people is unmatched anywhere and unparallel in world history—when Americans enjoy the highest economic standards ever achieved—lawlessness,

vandalism, and violence have reached proportions that imperil the security of society and endanger the safety of our citizens. In some cities 50 percent of the people are afraid to walk the streets at night and are apprehensive of danger when on the streets and even in their places of business and in their homes in daytime. And well they might be, for the brazen criminal no longer finds it convenient or necessary to wait for the darkness of night to commit his evil deeds. The prevailing conditions and existing climate permit the criminal to operate boldly, daringly, and too often successfully and with impunity against undermanned, poorly trained, and inadequately equipped police forces. And, if the police do apprehend a criminal, he is unwittingly but most advantageously favored and protected by unsound and misguided Supreme Court decisions.

Recent 5 to 4 split decisions of the Supreme Court are seriously hampering, and in many instances completely nullifying, effective police investigation, interrogation, and arrest procedures. These decisions that deny to the trial courts and juries the best evidence in criminal cases—voluntarily incriminating statements and confessions of the accused—impede the processes of justice and reduce the prospect of securing a conviction of the guilty. They positively increase and augment the chances for self-confessed murderers, robbers, and rapists to go free and unpunished for their heinous crimes. In its pellmell rush to find and articulate still more "new rights" in criminal cases, the Supreme Court, since our last hearing, has laid down a new rule affording suspects the right to counsel at a police lineup.

The police have an obligation to prevent crime—and to arrest the perpetrators of crime—and then they are told that before they interrogate a suspect they must warn him of a long list of "rights" and make sure that he has a lawyer even if one has to be provided at Government or State expense, before requiring him to answer any questions.

In another split decision rendered since this subcommittee last convened, the Supreme Court struck down the New York statute allowing law-enforcement officers to use, on a court-authorized and restricted basis, electronic eavesdropping to secure evidence of crime. This is another serious blow to law enforcement and especially does it make it more difficult to combat the forces of organized crime. Thus, this further shackling of legitimate and effective law enforcement adds an additional burden on the Congress to fashion legislative remedies to counteract the harmful and debilitating effect Supreme Court decisions are having on law enforcement, on the security of society, and on the safety of our citizens.

Obviously, in view of the spiraling crime wave that is sweeping the Nation and the split Supreme Court decisions that are dispensing unequal justice as between the criminal elements in our society and the law-abiding citizens of our country, the legislative task and challenge confronting the Congress is indeed tremendous. But, however formidable these obstacles may be, the Congress must aggressively and persistently endeavor to meet its responsibility.

We have so far made only slight progress, but we have made a start by reporting two bills, S. 676 and S. 677, which provide severe

penalties for the obstruction of justice, and for the granting of immunity for the purpose of compelling testimony, respectively. Both of these bills have passed the Senate. They are administration measures and I anticipate they will pass the House of Representatives and become law. If enacted they will do some good, but they are only a small beginning of what needs to be done.

I am hopeful that after this week's session, the subcommittee will be able to close the hearings, subject to the filing of statements, and move with reasonable expedition to the study and markup in executive session of several of the bills pending before it. This is our purpose and that is what we shall endeavor to do.

For the record, I should like to have printed at this point a list of the principal bills to which testimony will be directed during the course of the hearings this week.

(List of bills follow:)

The Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary will resume hearings on a number of proposals to combat crime on July 10, 1967, at 10 a.m., in room 3302, New Senate Office Building. The hearings will continue on July 11 and 12 with a number of public witnesses scheduled to be heard.

The testimony will be directed primarily to the following bills which are now before the Subcommittee:

S. 552, to amend title 18, U.S. Code, in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense. (Sen. Burdick)

S. 674, to amend title 18, U.S. Code, with respect to the admissibility in evidence of confessions. (Sen. McClellan)

S. 675, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and for other purposes. (Sen. McClellan)

S. 824, "Local Law Officers Education and Equipment Act"—to provide assistance for the improvement of State and local law enforcement agencies. (Sen. Tydings)

S. 917, "Safe Streets and Crime Control Act of 1967"—to assist State and local governments in reducing the incidence of crime, and for other purposes. (Sen. McClellan, by request)

S. 992, to establish a National Institute of Criminal Justice. (Sen. Edward Kennedy)

S. 1194, to define the jurisdiction of the Supreme Court and the inferior courts ordained and established by the Congress under article III of the Constitution in criminal prosecutions involving admissions or confessions of the accused. (Sen. Ervin)

S. 1333, relating to the admissibility in State courts of certain evidence. (Sen. Ribicoff)

Senator McCLELLAN. Mr. Paisley, do you have any statement?

Mr. PAISLEY. No, Senator.

Senator McCLELLAN. Very well. I note we have four witnesses scheduled for today. Senator Tydings was scheduled to be the first witness; however, he couldn't get here at this time, but will be here sometime before noon.

Our next witness on this list is the Honorable Oliver P. Schulingkamp, judge of the District Court of New Orleans. Judge, will you come around, please?

Judge SCHULINGKAMP. Yes, sir.

Senator McCLELLAN. We are very glad to welcome you, sir. Do you have a prepared statement?

STATEMENT OF JUDGE OLIVER P. SCHULINGKAMP, DISTRICT COURT, NEW ORLEANS, LA.

Judge SCHULINGKAMP. First, Senator, let me say that I appreciate the invitation. I do not have a prepared statement as such. However, I have a written opinion in a case which I had in my court involving a motion to suppress a narcotics case. I was obliged under the Supreme Court decisions to maintain the motion to suppress. But in doing so, I incorporated in this decision the elements of the statement that I would like to make.

Senator MCCLELLAN. Very well. Will you give us briefly your background before we proceed.

Judge SCHULINGKAMP. You mean my personal background, sir?

Senator MCCLELLAN. Yes.

Judge SCHULINGKAMP. I am a native of New Orleans, and I was educated at Louisana State University. I have been a judge of the criminal court in New Orleans for some 8 years.

Senator MCCLELLAN. That is not an appellate court?

Judge SCHULINGKAMP. No, sir, this is a court of original criminal jurisdiction.

Senator MCCLELLAN. Very well.

Judge SCHULINGKAMP. In this court we have eight judges, their jurisdiction is solely criminal.

Senator MCCLELLAN. That is in the city of New Orleans?

Judge SCHULINGKAMP. Yes, sir, that embraces Orleans Parish.

Senator MCCLELLAN. Orleans Parish?

Judge SCHULINGKAMP. That is correct.

Senator MCCLELLAN. You are one of the eight?

Judge SCHULINGKAMP. Yes, sir.

Senator MCCLELLAN. Very well. You may proceed in your own way to give us the benefit of your views.

Judge SCHULINGKAMP. I feel perhaps, Senator, a reading of this decision, this opinion, would represent the best way to present my statement on how I feel about the, particularly the, exclusionary rule as foisted on State courts by *Mapp* v. *Ohio*.

Senator MCCLELLAN. Very good.

Would you now give us a little of the background of the case, unless your opinion gives that.

Judge SCHULINGKAMP. Well, sir, it does, and I feel that that would be the most succinct way to proceed.

Senator MCCLELLAN. Very well.

Judge SCHULINGKAMP. The facts in the case show, a defendant, a white man——

Senator MCCLELLAN. Before you do that—how long did you practice law before you became a judge?

Judge SCHULINGKAMP. 14 years.

Senator MCCLELLAN. You were assistant U.S. attorney, I understand, too, for a period of time?

Judge SCHULINGKAMP. Yes, sir; I was assistant U.S. attorney. I was appointed by Judge J. Skelly Wright, who was at that time the U.S. attorney in New Orleans. I was also an assistant district attorney in Orleans Parish. So most of my experience has been in criminal law.

Senator MCCLELLAN. I see. All right, you may proceed.

Judge SCHULINGKAMP. All right, sir.

The facts in this case, briefly, show, that the defendant, Roger Jordan Phillips, a white man, was arrested by officers of the New Orleans Police Department, on South Rampart Street, a predominantly colored neighborhood, at a late hour at night; that he told the officers he was a stranger in town, being from out of the State; that he was looking for a place to purchase cigarettes and that he had just passed a bar where the lights were burning and which establishment was open for business; that he was not employed and gave the officers at first an incorrect address; that he did not know the name of the hotel where he was staying and that he was with a companion and that they had guns or a gun at the hotel room. The police further testified that this subject generally fit a description of a subject wanted for armed robbery and that he was shabbily dressed and in need of a shave. On the totality of these circumstances the officers properly arrested him for vagrancy, and incidental to this lawful arrest conducted a search of his person which search yielded contraband barbiturates.

(Judge Schulingkamp reads from opinion:)

The officers then conveyed the defendant to the First District Police Station and booked him. Some thirty minutes or so later, without first having obtained a search warrant, they conveyed him to the Oubre Hotel and searched his room and therein they found an appreciable quantity of marijuana.

Despite this Court's strong private opinions as to what the law should be under facts presented by this motion, it cannot subscribe to the State's view that the search of the defendant's room was "incidental" to the arrest and therefore legal. This Court holds that the search was unreasonable in the "legal" sense according to standards set forth by the United States Supreme Court.

It is academically painful to render a decision such as the one handed down this date. There is something repugnant to the sense of justice and logically incongruous in ruling in favor of a defendant when the facts reveal unquestionably he was in possession of a sizable quantity of marijuana and even further, when the defendant himself took the witness stand and judicially admitted such illegal possession. This Court is aware of the line of jurisprudence which holds that a search bad *ab initio* is not made valid by what it uncovers. However, one need not expend much effort to visualize the adverse effect which a ruling such as this has on the morale of law enforcement officers, assiduously engaged on a daily basis (and often at considerable personal danger) in apprehending and bringing to justice those who repeatedly display their utter disregard for law and order. These officers, realistically speaking, are not attorneys and therefore do not appreciate the niceties of the law and the reasoning of Courts higher than this one, which holds that suppressing the evidence is perhaps the only practical legal sanction to be applied against the police to coerce them to seek and obtain a search warrant. What they [these officers] do understand, only too plainly, is that in this and many other cases, the Courts have hampered their techniques, thrown out their cases and rendered nugatory their work product. Some Courts have even chastised them and criticized police officers. Some officers are bewildered as to what they can or cannot legally do. That they are frustrated and rendered less efficient in their tasks is recognized and has been expressed by many others.

Judge SCHULINGKAMP. Particularly by Mr. Frederic Sondern in an article "Take the Handcuffs Off Our Police" in the Reader's Digest September 1964 at page 64.

For example:

The Combined Council of Law Enforcement Officials of the State of New York has stated: "The time has come to restore to the police their proper authority to effectively carry out their sworn duties. In these times of mounting danger from the criminal element, it is the height of foolishness to handcuff law enforcement at the expense of the public safety."

Senator McCLELLAN. I assume you subscribe to that?

Judge SCHULINGKAMP. Wholeheartedly, Senator. [Reading:]

Indeed, it taxes the imagination to conceive of a contemporaneous conscientious police officer, facing the menacing muzzle of a gun, being much impressed by William Pitt's dramatic and almost poetic declaration [in the House of Parliament when he said]: "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; the roof may shake; the winds may blow through it; the storm may enter; the rain may enter—but the King of England cannot enter, all his force dares not cross the threshold of the ruined tenement."

So much for William Pitt.

Then I say:

There is an inviting ring of the psychology of the underdog in this quotation. It is consonant with the philosophy of the Founding Fathers whereby the sovereign's power is curtailed—the same philosophy which is reflected by and embodied within the Fourth Amendment. Broadly and basically, it is good and is sanctioned and embraced by the common man, including the policeman.

Indeed the power of the sovereign should be curbed when such results in the public good; but equally, the power of the sovereign should by no means be curtailed when it results in the defeat of the prime purpose of all Government: the protection of the citizens under the rule of law. It represents a hollow mockery—

In my opinion—

a mockery of government, to stifle the accepted objectives of law enforcement in the pursuit of an ideal. In a democracy, government must be functional and practical, flexible and not static in furtherance of the utilitarian approach of the Founding Fathers: the greatest good for the greatest number.

We know that historically the setting was vastly different several hundred years ago; that kings and despots ruled the unlearned masses by "divine mandate", that freedom and liberty as we know it today was never experienced by the herd; that while the same human freedom and individual liberty are just as precious today, the development of representative democracy, with its system of checks and balances, in addition to mass communications and education as well as technological advance, offer today undreamed of protection against tyranny in a setting of changing times. . . .

The police officer knows ironically that these same advances have provided the criminal with a formidable wherewithal to further his nefarious aims. [Continuing to read:]

Realistically speaking, our modern policeman faces a world much different than that confronting the ancient agents of the Crown.

He—

The policeman—

senses the vast chasm existing between the ideal and the real. It is axiomatic that all government is a compromise between individual freedom and liberty and the curtailment of that liberty for the common good. A classic example of this is the statement of Justice Oliver Wendell Holmes that "Freedom of Speech guaranteed in the First Amendment does not permit one to shout 'fire' in a crowded theatre."

Footnote #1. Article 1, Sec. 1—La. Constitution (Bill of Rights) "All government, of right, originates with the people, is founded on their will alone, and is instituted solely for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace and promote the interest and happiness of the people."

Senator, in this statement "preserve peace" this is in line with your statement before to which I listened attentively, that the function of

government must take cognizance of the rights of the vast majority of good people, the law-abiding citizens, the children and innocents, and it seems to me that recent decisions of the Supreme Court lost sight of the balance of interest in the community.

Senator McClellan. As I understand you, on the basis of Supreme Court decisions, you had to suppress this proceeding, did you not?

Judge Schulingkamp. Most reluctantly.

Senator McClellan. What did you do, sustain the motion to suppress the charge?

Judge Schulingkamp. That is correct.

Senator McClellan. You did that out of a sense of compulsion by reason of the Supreme Court decision?

Judge Schulingkamp. When I took my oath of office I swore to uphold the constitution and laws of this country.

Senator McClellan. Do you think justice was administered by the action you were required to take?

Judge Schulingkamp. No, sir, that is what troubled me in body and soul, and I say body literally because it almost made me physically sick to my stomach because there was within me a storm, a tempest, between what I knew to be right and what I had to do under my obligation and oath of office.

Senator McClellan. If I understood you correctly you said the defendant admitted his guilt.

Judge Schulingkamp. That is correct, sir.

Senator McClellan. He admitted that he possessed the contraband drug, marijuana?

Judge Schulingkamp. That is correct.

Senator McClellan. He admitted that under oath?

Judge Schulingkamp. Under oath.

Senator McClellan. And yet under the Supreme Court decision you were compelled, you felt constrained, to suppress the charges against him?

Judge Schulingkamp. That is correct, sir.

Senator McClellan. Is that justice?

Judge Schulingkamp. Senator, that is not justice.

Senator McClellan. I referred in my opening statement to unequal justice. How does that justice compare as between the rights of that individual and the protection that Government is obligated to give to its citizens?

Judge Schulingkamp. Well, there is such a disparity between that that it makes one wonder where it will end, and it completely overlooks the rights of the people, the good people, the law-abiding people, the children and the innocents, those people who depend upon the protection of the Government.

Senator McClellan. Very well.

We have before us a bill, an administration bill, entitled "Safe Streets and Crime Control Act of 1967." It does not in any way deal with a case such as that you have disscussed here this morning. There is nothing in this bill that would undertake to remedy or to offset these Court decisions that compelled you to release this self-confessed guilty person back on society to pursue his nefarious aims, as you pointed out a moment ago. I am wondering if we are going to actually improve the

processes of justice and eliminate these, what I term, abuses of justice or the administration of unequal justice, as I referred to them a few moments ago, by simply passing a law that will permit the training of policemen, the buying of equipment, doing research and trying to improve public relations. Those are some of the things the administration's bill would do—appropriate money for those purposes, make grants-in-aid to local jurisdictions, for those purposes. I wonder if it goes far enough, if it in any way reached this crucial problem in law enforcement today where the guilty, the known guilty, go free. Have you studied the bill?

Judge SCHULINGKAMP. I have perused it. I have not studied it in detail. But in answer to your question, I would say regrettably that while it may help some I don't think it is a direct approach to the heart of the problem. I think the swift and sure punishment of a defendant, and this realization on the part of the defendants generally, goes at the core of the matter.

Senator, I see defendants walk out of my courtroom such as this young man who incidentally——

Senator MCCLELLAN. I might ask you, this is not the only instance, is it?

Judge SCHULINGKAMP. Oh, no, sir.

Senator MCCLELLAN. We have emphasized this case. At this point I wish you would tell us how frequently comparable situations occur where you are compelled to free admitted criminals back on society without conviction and punishment?

Judge SCHULINGKAMP. Well, New Orleans is a city of some 650,000 or 700,000 souls. There are eight criminal judges and in answer to your question directly, I would say that motions to suppress are sustained almost on a daily basis. There are eight judges, and I feel that I speak for my brothers on the criminal court when I say that almost on a daily basis comparable cases occur, and there were cases which went before the rendition of this judgment in *Roger Jordan Phillips* where I said nothing, resting on my judicial dignity as the canons of ethics demand, but, Senator, I had just reached the bubbling over point with this case, and I felt obliged and obligated to put down in writing over my signature and in a public record in a case in the criminal district court my thoughts which were rather strong in being repulsed by having under my oath to do what was repugnant to my innate sense of justice.

Senator MCCLELLAN. The repetition of having to do that on the basis of observing the procedures and edicts established by the Supreme Court became so revolting to you, as I take it, you finally had to express your own views?

Judge SCHULINGKAMP. Yes, sir.

With your permission, I would like to read just two more paragraphs of this opinion. I appreciate that the time of the committee is limited. I don't want to monopolize it, and that is the reason I am speaking rather rapidly:

> The ideal would have absolutely no government intervention in the privacy or the lives of its citizens' unrestrained liberty. The practical, however, demands a very considerable sacrifice of individual freedom, for without regulation there would be no government. It is the essence of government that there be individual relinquishment of freedom for the good of all. This principle is operative every

time a motorist stops for a signal light. This principle is operative every time a good, decent, young American bleeds and dies in the rice paddies of Vietnam. This does not happen to the convicted criminal enjoying the protection of his Government because his Government generally will not accept him in the military if he has a felony conviction.

Now, the next sentence, Senator, is the core of my thoughts on the subject:

It strikes this court, as being basically fair that if the protection of all demands the very lives of its law-abiding citizens in the bloom of youth, it is not an unwarranted exaction that the protection of all demand that the criminal relinquish a bit of his privacy during a search, especially when that search produces unmistakable proof of guilt.

One of the arguments of the adherents of the exclusionary rule goes like this: That if the police are not restrained by the demand that they get search warrants, that we will soon have in this country what was comparable to the infamous Gestapo of the Third Reich in Germany. My answer to that is that that is simple hogwash. That this did not occur prior, particularly in Louisiana, where I am qualified to speak, prior to the case of *Mapp* v. *Ohio* enunciated by the Supreme Court in 1961.

Senator McCLELLAN. In other words, we have had essentially long experience and it never occurred?

Judge SCHULINGKAMP. Absolutely.

Senator McCLELLAN. And if it didn't occur during that period of time why would it occur now?

Judge SCHULINGKAMP. That is correct. And furthermore that argument completely overlooks the inherent integrity and worth of the vast majority of police officers on police forces throughout this country.

Senator McCLELLAN. Don't you think in effect it is an indictment of the whole police establishment in this country?

Judge SCHULINGKAMP. It certainly is inferentially if not directly.

Senator McCLELLAN. It reflects upon the integrity of the police system and the personnel of it in our Nation today, does it not?

Judge SCHULINGKAMP. Yes, sir.

Senator McCLELLAN. I can't see it any other way. We see the Supreme Court strain every point, use every philosophy and every imagination to the extreme of turning a confessed criminal loose on society; and then some policeman is made to appear the culprit because he had not been adequately trained and educated in the law to be able to guess—and no one could possibly foresee—what the Supreme Court was going to do in its next opinion. The reflection is cast on the entire law enforcement system as having Gestapo characteristics. I certainly cannot agree with such a comparison. I think we owe a great deal of gratitude to our policemen in our country because certainly conditions today make their job more dangerous and hazardous than ever before. These dedicated men should have our trust, confidence, and support in performing their duties, often without proper equipment and facilities, and nearly always without adequate compensation.

Like you, sir, I feel a kind of revulsion about the trends of our time with respect to law enforcement in our country. I can't refrain from occasionally expressing this revulsion.

Judge SCHULINGKAMP. I can tell you, too, that there are many citizens, substantial people in the community, who are equally repulsed

and who have been articulate in expressing themselves. I think that for a time now there has been an undercurrent, but the situation has gotten so grave and acute that many citizens have taken the opportunity of expressing themselves. I have with me in my file here letters from substantial citizens, businessmen in the city of New Orleans who are overjoyed at the stand that I took. I am not saying that as any personal reflection on me, but there was a newspaper account in the New Orleans Times-Picayune when I made a public speech at the Young Men's Business Club and the response which I got in forms of letters was absolutely significant in my mind, indicating that there is now a great feeling among the good people of this country that the situation has gone far enough, and I refer specifically to the decisions of the U.S. Supreme Court.

These people, the general laymen, are not legal technicians, as the police officers are not legal technicians. Many of the police officers are men with limited educations, but even despite that New Orleans and other cities, and I understand Washington, D.C., have had experience in the difficulty in obtaining police officers to serve on the force, because of the harassment which they have endured as a result of the new changing times in criminal law.

Senator McClellan. As I recall, the District of Columbia now is 11 percent understaffed, with a shortage of 300 policemen, that is in round numbers. My understanding too is that they are trying to recruit policemen from other sections of the country. What is the incentive to a man today to be a policeman?

Judge Schulingkamp. Senator, I was about to come to that point. It is my observation in the city of New Orleans within my jurisdiction that there is a great deprivation of incentive on the part of the policemen by what has ensued as a result of decisions such as *Mapp* v. *Ohio*.

I have had police officers in the New Orleans Police Department come to my home making application for a search warrant during extra business hours, late at night, for example, and they have told me in essence that they resent their work product being rendered useless, cases thrown out of court, by the courts, when they have done their utmost to seek and apprehend criminals and to bring them to prosecution, and these men are not, as I said, legal technicians, and they don't quite understand the revolution which is going on about them, and despite these setbacks and despite the fact they have been given slaps in the face, so to speak, by courts, they have nonetheless pursued their duties, but there are beginning to appear defections among the ranks of the police officers. They say, in essence, "Why should I stick my neck out? I have a wife and three children. Why should I be exposed to the criminal when I meet him in court and the judge throws out his case."

Senator McClellan. That is what I say. If he does accept the position, or if he has been in the service a long time, he will be repeatedly confronted with a complete nullification of his efforts, efforts that he makes at a personal risk to his life. What incentive is there to him to perform his duty? I mean courageously and effectively and aggressively, what incentive develops? He may wear the uniform. The fact that there is a policeman standing on the corner doesn't necessarily

give assurance of security or safety unless that policeman is willing and has some incentive to perform his duty. If he reaches the point where he feels "Well, I have on a uniform and I am getting my salary, but I am going to take just as little risk as I have to," that is not good law enforcement in my judgment and it will never achieve effective law enforcement. It is a deterioration of law enforcement.

I believe from letters I have received and from people I talk to, that we are moving very much in that direction. That is the way it seems to me and I think something must be done.

Have you given any consideration to this confessions bill, S. 674, regarding the *Miranda* decision, the bill that would permit voluntary confessions to be submitted to the trial court and a jury?

Judge SCHULINGKAMP. Yes, sir, I have read the bill, and I would like to see that bill or a similar bill passed.

Senator MCCLELLAN. We have another bill here by Senator Ervin, a member of this committee, to limit the appellate jurisdiction of the Supreme Court in those cases. I think that is a rather drastic remedy. We also have, by Senator Ervin, and I am cosponsor of the bill and resolution, a concurrent resolution that would submit a constitutional amendment in this same area. Of course, the constitutional amendment process is long, tedious and uncertain; and the other, the limiting of the Supreme Court's jurisdiction, is a rather harsh remedy.

I had hoped, and I still hope, that we can work out in this committee a bill that will be held constitutional by the Supreme Court. Some member of the Court may have to change his mind a bit, and upon reflection there is plenty of room for a change of mind, in my judgment.

The Court has not hesitated to overrule decisions, 5, 10 or even 100 years old. I don't see why they could not overrule one that is 2 or 3 years old. I hope they do. Otherwise this country is moving toward chaos because of the trend we are experiencing with respect to law enforcement. I am not sure, but I am hopeful, that we can come out of committee with a bill that will permit the reasonable questioning and detention of suspects; that will permit the trial judge to determine any question of voluntariness of a confession, taking into consideration all of the circumstances surrounding the confession, and, if voluntarily given, submitting it to the jury for such weight as they deem it requires. I firmly believe the trial judge, and the trial jury, observing a witness, hearing his voice in response to questioning, can determine more correctly whether or not a confession is voluntary than can nine men on the Supreme Court who never see, hear, or observe the demeanor of a witness. Until we return to the procedure that was followed for a century, to permit the trial judge to hear and weigh and submit to the jury the question of voluntariness, we will continue to hamper our law enforcement officials and there will continue to be unequal justice favoring the criminal.

Judge SCHULINGKAMP. I couldn't agree more, Senator.

Senator MCCLELLAN. I just hope that more judges, more trial judges, will follow your lead, your example, and speak out in dissent. We hear a lot today about the right to dissent. It is time for the judges, the trial judges of this country, the law enforcement officers throughout the land and the good citizens everywhere to express their dissent at the

trends that are occurring in court decisions today that are aiding the criminal.

When I say the Supreme Court, I am speaking of the five members who have so held. I certainly commend the four who have dissented, and if four can dissent in language as strong as some of them have used in these cases, I think there is enough freedom left in this country for trial judges to dissent and write opinions as you have written in this case, for the record. And let the press publicize it, and give encouragement and hope to law enforcement and law-abiding citizens of this country that there will be a change, that we will get back on the track and that there will no longer be a mockery of justice on some pretext of alleged rights that contravene the protection of society.

Judge SCHULINGKAMP. I will be finished soon, but I would like to say, sir, that in my humble judgment there is another aspect to the exclusionary rule which results in a great deal of harm, and this is less tangible than the mere fact that the defendant walks out of the court. This takes on kind of an intangible aspect and it results in the loss of respect for the judiciary, which, in a free society, is a matter of concern, in my judgment, and I refer to the fact that, as I mentioned before, there is a good knowledge of the fundamentals of criminal law on the part of most of the underworld, and when they walk out of court as a result of having to maintain a motion to suppress the evidence, for example, they walk out not with respect for the law, which has freed them, but they are laughing up their sleeves, in the vernacular, and they walk out with contempt because they have been freed by the processes of the law, and furthermore, the dockets of trail judges, I should imagine, throughout this country, certainly in the city of New Orleans, are clogged and crowded with the increasing crime, and the rulings on motions to suppress involve legal hypertechnicalities, legal hairsplitting, and the loss of certainty, the desired certainty, in the law. Police officers are confused as to what they may do and may not do. They are hampered in their duties, and I might say, Senator, many judges are confused, and in these cases there are factual situations which differ.

The Supreme Court of the United States has recognized and has said that there is no yardstick. So much of the time and professional ability and energy of judges throughout this country is taken up with motions to suppress and matters, litigated matters, with reference to legal problems created by such decisions as *Mapp* v. *Ohio*, when the good Lord knows there is enough business to occupy them otherwise. This is the intangible aspect of the thing.

Now, in closing, I should like to say I do appreciate the opportunity of having come here and your attention in listening to me and I trust I have not taken too much time.

Senator MCCLELLAN. You have not. I want you to take just a little more time. Let me ask you another question. In your long experience with criminal prosecution, do you feel that the use of voluntary confessions as evidence of guilt are a useful and an essential tool in law enforcement?

Judge SCHULINGKAMP. Most assuredly, Senator, because if for no other reason that in some crimes there is little evidence other than a voluntary confession. And this certainly is, in my judgment, a legiti-

mate evidentiary aspect of the case, provided, of course, that it is voluntary.

Now, the proponents of the exclusionary rule argue there is much police abuse and brutality and so on, and I feel that this has been much exaggerated. Of course, there are some rotten apples in any barrel. For example, in the case of *Mapp* v. *Ohio*, the search extended to the bosom of the female defendant, and any decent man would know on the surface that this is wrong. But this does not mean that the vast majority of police officers do those things.

Senator McCLELLAN. I am sure that there have been third-degree methods used, not once, but many times.

Judge SCHULINGKAMP. It sure has.

Senator McCLELLAN. In the history of our country, not just in one city, but in a number of cities. But the fact that such methods may have been used, and justice has miscarried, not only in trial courts but I think also in the Supreme Court at some time, doesn't mean we ought to abolish the Supreme Court. We ought not to abolish a trial court just because they make an error. Sometimes an error is made there in turning a guilty person loose, and there is no further remedy on the part of the State or the public for protection, is there?

Judge SCHULINGKAMP. No, sir.

Senator McCLELLAN. Sometimes a jury may make a mistake or a trial court make a mistake and acquit one who is charged with a crime and who is guilty. So we have mistakes; but, as pointed out a while ago, we cannot reach perfection.

Two juries may hear the same evidence; one might acquit, and the other might convict on the same evidence. You may have a hung jury or even a third jury. The jury system is not perfect, but it is the best so far as we know and I would like to keep it. I hate to see it eroded to where it is no longer effective and where the hope or prospect of justice is obstructed or made more difficult by technicalities that are invoked contrary to that which is reasonable and which attempt to refute the realities of the circumstances that prevailed at the time of the crime.

I appreciate very much your appearance, and I am hopeful the Congress can remedy these conditions by legislation. I feel we must try. If ultimately the Supreme Court throws out all we do and says it is unconstitutional, and conditions grow worse and we finally reach a state of chaos in this country, much of the onus then would be on the Supreme Court, if we have done our best.

Judge SCHULINGKAMP. Senator, you mentioned before that the Congress was making some effort through legislation and also contemplating a constitutional revision. Now, I am not a constitutional lawyer——

Senator McCLELLAN. I said we have one proposal here for a constitutional amendment; we have four proposals dealing with this confessions issue.

Judge SCHULINGKAMP. Yes.

Senator McCLELLAN. One is a constitutional amendment which I said would be a long and tedious process. Another is the bill I referred to by Senator Ervin to restrict the jurisdiction of the Supreme Court in this area, and the third is a bill which I have introduced

to restore somewhat the procedure that has applied heretofore, and a bill on this subject by Senator Ribicoff. The other alternative is to do nothing, and, of course, I don't feel we should do nothing. We must do something.

I think you agree with that. The fact that we are confronted with the possibility that the Supreme Court would hold any of these actions unconstitutional, particularly the confessions bill which I introduced, are equations to which we can't know the answer, but I think it is imperative that the Congress, considering the conditions that prevail in this country, undertake by legislation to do something about the rising crime rate.

Judge SCHULINGKAMP. I hope that is soon, sir.

Senator MCCLELLAN. I might ask, do you exclude voluntary confessions such as have been prohibited by the *Miranda* decision?

Judge SCHULINGKAMP. Yes, sir; I have had cases involving that point, yes; confessions which would otherwise be held admissible and voluntary.

Senator MCCLELLAN. Let me ask you, do you feel that a trial judge hearing the defendant in chambers and hearing everything that he presents is competent to determine generally whether a confession is voluntary?

Judge SCHULINGKAMP. Within human limitations, I would say, yes.

Senator MCCLELLAN. Well, we have still got human limitations when we get to the Supreme Court, haven't we?

Judge SCHULINGKAMP. Yes, that is correct.

Senator MCCLELLAN. Of course, again we are not perfect, but I think the trial judge can come nearer to determining whether a confession is voluntary than can the Supreme Court that never sees or hears the witness, and I would hope we can restore the admissibility of voluntary confessions as evidence in criminal cases.

I thank you very much. I do appreciate your coming in.

Judge SCHULINGKAMP. Thank you.

(The following letter with enclosures was subsequently received for inclusion in the record:)

CRIMINAL DISTRICT COURT,
PARISH OF ORLEANS, SECTION F,
New Orleans, La., July 18, 1967.

Hon. JOHN L. MCCLELLAN,
U.S. Senator, Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: Enclosed please find photo-copies of several letters addressed to me relative to the subject matter about which I testified.

May I respectfully request that they be made a part of the record because they are representative of the great groundswell of public opinion among responsible Americans which is building against the philosophy of over-emphasis of individual rights made manifest in certain Supreme Court decisions.

I am enclosing a photo-copy of a judicial opinion of the Supreme Court of the State of Florida which I think contains remarkable language concerning the United States Supreme Court. I intended to make mention of this in my testimony but did not wish to over stay my welcome.

I would appreciate if your office would send me several copies of the testimony taken on July 10th.

In closing, let me thank you and Mr. Paisley for the courtesy extended to me. I and countless others wish you the utmost success in your noble endeavor.

Sincerely,

OLIVER P. SCHULINGKAMP,
Criminal District Judge.

This court is aware of just how far the United States Supreme Court has gone to throw the cloak of protection around one accused of committing a crime, but we do not think that even such court has or will attempt to fix the required time limit necessary for a competent attorney to ascertain from an accused whether he is guilty of the charge or not. It can be readily seen that if the accused contends his innocence that it will take the attorney longer to prepare his defense, but, if the accused readily admits the facts as charged to be true, certainly it does not require any specific time for a lawyer to advise such accused of his rights and to make recommendations as to his plea.

[1–3] In the instant case, the trial court found that the defendant was represented by competent counsel, who as an officer of the court is presumed to fulfill his ethical obligation as such, and therefore, the defendant's contention that he was not represented by counsel is a mere conclusion of the pleader and not only is not supported by any factual allegations, but the record discloses the same to be an untrue statement of fact and therefore without merit. Dancy v. State, Fla.App., 175 So.2d 208.

The order appealed is affirmed.

WIGGINTON, Acting C. J., and STURGIS, J., concur.

SANDERS, MILLER, DOWNING, RUBIN & KEAN,
Baton Rouge, La., September 28, 1966.

HON. OLIVER P. SCHULINGKAMP,
Judge, Criminal District Court, Section F
New Orleans, La.

DEAR JUDGE SCHULINGKAMP: I deeply appreciate your letter of September 26th, enclosing a copy of your judgment on motion to suppress in the case of State of Louisiana vs. Roger Jordan Phillips. Your protest and devastating critical analysis of the decisions which you were compelled to follow in freeing this obviously guilty man, just appear unanswerable to me.

I am assuming I have your permission to quote in whole or in part your decision whenever and wherever I think it might be effective in alerting the bar and the public and particularly my colleagues in the House of Delegates of the American Bar Association, on the absurd existence to which the pendulum of justice has been swung so out of balance favoring the accused to the sacrifice of the rights of the public.

Very sincerely yours,

BEN R. MILLER.

L. FRANK & CO., INC.,
New Orleans, La., December 7, 1966.

Judge OLIVER P. SCHULINGKAMP,
Section F, Criminal District Court,
New Orleans, La.

DEAR JUDGE SCHULINGKAMP: I read with great interest your note of even date, which expresses to me precisely what our position is in the United States today with respect to some of the decisions rendered within the last decade and a half by the Supreme Court of the United States.

I question without hestitation the wisdom of these men who rule as you so vividly point out, that the rights of the criminal minority must be protected at the expense of the law-abiding majority. The legal mesh in which you find your feet ensnared is to a large extent the result of decisions of this type which continue to plague our courts and our law enforcement personnel.

I am taking the liberty of forwarding your letter under separate head to several people who I feel sure will be interested in knowing that some members of the bench apparently share what I consider to be a very popular opinion.

Thanking you for your courteous attention to my complaint, and with kindest personal regards, I remain

Very truly yours,

CHAS. W. FRANK, Jr.

SCHAFF, CURRIER & MOULEDOUX,
New Orleans, La., July 6, 1967.

Hon. OLIVER P. SCHULINGKAMP,
Judge, Criminal District Court,
New Orleans, La.

DEAR OLIVER: I read with sincere interest where you have been invited to testify before a Senate Investigating Committee. The invitation extended to you by Senator McClellan was also of great interest and we wish you a very successful meeting with the sub-committee.

I am sure you are aware that your sentiments are the same as those of a great number of Americans and not only of Louisianans. We will hope and pray that your testimony and judicial opinion will fall upon receptive ears and that your contribution to the sub-committee will reflect a change in laws to come so that our citizens who wish to live in safety and be good citizens will be given the protection and guides so that they may rely upon the police and the courts of law for their security.

We hope that in the future you will continue to exhibit a judicious understanding of those decisions by the Supreme Court which we all feel are made against the majority of the people. We hope, too, that you will constructively criticize the Supreme Court when criticism is expected in a professional manner from an experienced jurist.

With best wishes, I remain,
Coordially yours,

VAL A. SCHAFF III.

STATEMENT OF HON. JOSEPH D. TYDINGS, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MCCLELLAN. Senator Tydings, will you come forward, please, sir, and take a seat.

Good morning, Senator Tydings.

Senator TYDINGS. Good morning, Mr. Chairman. I appreciate very much your giving me the opportunity to testify this morning regarding Senate bill 824 The Local Law Officers Education and Equipment Act.

Senator MCCLELLAN. Senate 824?

Senator TYDINGS. That's the bill that I introduced, Senator McClellan, on behalf of myself and Senators Brewster, Burdick, Fong, Inouye, Jackson, Kennedy of New York, Long of Missouri, Magnuson, McGee, Metcalf, Mondale, Montoya, Moss, Pell, Randolph Smathers, and Yarborough. It deals with an important but little discussed aspect of the law enforcement problem; that is, the provision of adequate education and educational opportunities for members of our State and local police forces across the United States.

Our policemen hold the most dangerous, delicate, and difficult jobs in America. A partial list of a policeman's skills must include marksmanship, solving family disputes, ambulance driving, guarding dignitaries, directing traffic, giving first aid, catching lawbreakers, testifying in court, controlling crowds, suppressing riots, finding pets, destroying dangerous animals, teaching safety, giving directions, locating stolen goods, subduing the insane, advising delinquents, and interrogating suspects. No task seems too difficult, too dangerous, or too discomforting to ask a policeman to do it.

Yet the average policeman, whom we expect to have the wisdom of Solomon, the patience of Job, as well as the strength of Samson, has at best a high school education.

In a nation which prides itself on having the world's best and most universally accessible school system, in which nearly 25 percent of its people finish college, we make the job of protecting society so unattractive that college graduates will not enter into it, and we pay so little for police work that those engaged in it can ill afford to pay their own way for further education. We must provide means for members of our police forces to further their education while members of the force, and incentives for college graduates to enter law enforcement work.

As Quinn Tamm, the distinguished president of the International Association of Chiefs of Police, has said:

> It is nonsense to state or to assume that the enforcement of the law is so simple that it can be done best by those unencumbered by a study of the liberal arts. The man who goes into our streets in hope of regulating, directing or controlling human behavior must be armed with more than a gun and the ability to perform mechanical movements in response to a situation. Such men as these engage in the difficult, complex, and important business of human behavior. Their intellectual armament—so long restricted to the minimum—must be no less than their physical prowess and protection.

The fact is that the general level of educational attainment among our police forces is too low. The President's Commission on Law Enforcement and the Administration of Justice reports that less than 10 percent of all police in this country have a college degree; less than one-third have taken any college course at all; and, in many departments, particulary in New England and Southern States, a majority of the officers have not even completed high school.

It is no reflection on a man that he has been financially unable to continue his education. It is a reflection on our society that we have not provided for our police the means which would be available to them in many jobs in private industry to continue their education.

To a large extent, the failure to provide financial incentives to police for continued education is traceable to the shortage of tax dollars at the local level which has also deprived police of adequate equipment and decent pay scales.

I do not condone the failure of any community to raise the revenues necessary to pay our policemen what they deserve. As I have frequently said, police pay scales in most communities are scandalously low. But while I believe the prevailing shamefully low police pay levels are one of the greatest handicaps we suffer in dealing with crime, I do not propose that the Federal Government subsidize local police salaries. To the extent the Federal Government paid part of a policeman's pay, he would be, to that extent, no longer an employee of his local police force. We should take no step which could lead to a national police force.

But I do propose that the Federal Government go to the aid of State and local law enforcement forces by helping them procure modern police equipment and by providing them with educational opportunities, so that the quality of local law enforcement can be improved, even as additional local revenues are freed to increase police pay.

This is why I introduced the Local Law Officers Education and Equipment Act—to provide our local police forces with the technology and education they need to combat crime in a modern society.

That bill provides four programs of Federal assistance for law officer education.

First, to provide cross-fertilization between police departments of the best law enforcement techniques, the bill provides for Federal assistance to State and local law enforcement agencies, to permit their officers, especially those engaged in supervisory, planning, or instructional positions, to visit other law enforcement agencies, both here and abroad, to study their techniques.

Second, the bill provides Federal assistance to State and local law enforcement agencies to permit their officers to pursue courses in police or correctional work or such other courses and subjects leading to degrees as they may choose. The bill contemplates provision of tuition and fees up to $300 a semester for this education.

Third, the bill provides full tuition and fee fellowships for law enforcement officers whose agencies wish to send them to an educational institution for specialized training directly related to their law enforcement work.

Fourth, to provide an additional source of qualified personnel for police work, the bill provides that college students who have received education loans under the National Defense Education Act be allowed to "work off" 50 percent of such loans by employment in a law enforcement agency for at least 2 years after graduation. This same loan forgiveness is already available under Federal law for college students who become teachers.

Senator McCLELLAN. May I interrupt to make one point?

Senator TYDINGS. Certainly.

Senator McCLELLAN. The theory, I think, is good.

In fact, I like, generally, the provisions of your bill, but I do have this one question. Do we not want our policemen to become more or less professional, rather than somebody on a job for 2 years only?

Senator TYDINGS. Absolutely, Mr. Chairman. It is my thought that we should try to encourage more education among career policemen.

Senator McCLELLAN. You think some of the graduates would stay with law enforcement as a career?

Senator TYDINGS. That is right. Of course, some of the college graduates would probably, as you indicated, leave, but hopefully most of them would stay.

Senator McCLELLAN. It's like West Point, they stay 4 years and then they are free to go if they do not want a military career.

Senator TYDINGS. That is right.

Senator McCLELLAN. That is the only question that occurred to me. A graduate might say, "Well, I will belong to the police force for 2 years, but I am not going to stay there, I will get by and do the best I can for 2 years and then go on." No one knows. Is there some way——

Senator TYDINGS. I would like——

Senator McCLELLAN. We want them to become policemen.

Senator TYDINGS. Well, the task force report on police which was recently published by the President's Commission on Law Enforcement and Administration of Justice endorses this tuition-forgiveness idea. They think it——

Senator McCLELLAN. The theory of it is good. I would not be very strong for it unless they propose to stay in the service. I would not want this program used merely as a way of getting an education and

training, but I would like it tied definitely to law enforcement careers.

Senator TYDINGS. Well, it could be 3 or 4 years rather than 2.

Senator MCCLELLAN. I do not know. This is something that raises a question in my mind. I think the idea is a very good one.

Senator TYDINGS. And then, too, I think you would have to see how it would work.

Senator MCCLELLAN. Go ahead.

Senator TYDINGS. These tuition aid and NDEA loan forgiveness programs in S. 824 have also been endorsed in the task force report on the police recently published by the President's Commission on Law Enforcement and the Administration of Justice. I take the recommendations of the task force report as further evidence of the urgent need to provide the necessary Federal assistance to upgrade the educational level of our police forces.

I am not an advocate of proliferating Federal grant programs. In fact, I am the author of one of the State-Federal tax-sharing programs before the Congress. But the problems of law enforcement and law officer education cannot wait for enactment of an effective tax-sharing plan. The need for action is urgent.

S. 824 also contains three other titles which I commend to the committee's attention. The first title suggests the creation of a National Commission on Law Enforcement Assistance, composed primarily of members from private life, to administer Federal law enforcement assistance to the States. The purpose of the Commission would be to insulate federally aided local law enforcement agencies from Federal interference.

Senator MCCLELLAN. Would you take that administration out from under the Attorney General as proposed by the administration bill?

Senator TYDINGS. That is what I had in mind, Mr. Chairman.

Senator MCCLELLAN. May I make this comment, with your permission. This provision gives me concern about the administration's bill. There is so much power to be reposed in the Attorney General and so few guidelines. It seemed that the money is pretty well turned over to him and he can approve any plan he wants to or not approve anything so long as it has one of these objectives.

Senator TYDINGS. Well, that was my reservation with the administration proposal also.

Senator MCCLELLAN. I appreciate your thoughts here about it. I think you have some very good ideas in your bill.

Senator TYDINGS. The second title, Mr. Chairman, provides a system of grants-in-aid comparable to that which the President subsequently recommended when he sent over his Safe Streets bill. So, I will not go into that because it is basically the same idea, special radio systems and things like that to aid local law enforcement departments.

The third title would create a Division of Law Enforcement Research and Development in the Department of Justice to survey the Federal Government's $15 billion a year research and development efforts, as well as those of private industry, to collect and disseminate information about innovations in the law enforcement. In connection with the Law Enforcement Assistance Act, which passed the Congress in the 89th session, some of us queried whether there should be a spe-

cial Assistant Attorney General specifically charged with the responsibility of trying to collect data on these new techniques, these new scientific advances, and relay them to local law enforcement officers. I do not think we have done enough in this area. I have specifically in mind the NIH with the tremendous amounts spent there, the tremendous funds spent on NASA and other Government research and development. It seems to me that some of the benefits of these great research and development programs might be used in the field of law enforcement. For instance, might we not develop some type of a weapon for a police officer as that, say in a burglary situation or an assault where he is fearful of his own safety, he would not have to kill a man, but could shoot some sort of a drug or something like that to knock an individual out.

There has been great progress in different types of riot control, using techniques which might save hundreds of lives and many, many thousands of dollars worth of property if these scientific developments and these techniques could be made available. We should have someone specifically charged with seeing that the byproduct of the different research and development programs we already have underway and already on the books, are disseminated where they might be used in law enforcement.

We all know, Mr. Chairman, that no single program can, in itself, stem the rising tide of crime in this country. In fact, much of the crime problem cannot be reached solely through criminal law.

But near the top of the list of Federal assistance to law enforcement should be the provision of adequate educational opportunities for our law officers. The President's Crime Commission has concluded that "the quality of police service will not significantly improve until higher educational requirements are established for its personnel." You cannot establish such requirements unless you provide apportunities to meet the requirements.

For 20 years the Congress has provided educational assistance through the GI bills to the soldiers who risk their lives to protect our society from foreign enemies. I urge you, Mr. Chairman, and your committee, to consider extending this same principle to the police, who daily risk their lives to protect us all from crime in our own country.

Senator McClellan. Senator, I have here some questions. I am not going to take time to ask these, but I would like for you to comment on some of them. May I submit them to you and let you submit your answers that deal with the two bills, yours and the administration bill, primarily. I think your comments would be helpful to us, and I would appreciate it if you would give us your answers.

(Subsequently the following memorandum was received:)

August 3, 1967.

Memorandum for Senator John L. McClellan, Chairman, Subcommittee on Criminal Laws and Procedures, Senate Committee on the Judiciary.

From: Senator Joseph D. Tydings.

When I appeared before the Subcommittee on Criminal Laws and Procedures on July 14, to testify in favor of S. 824, the Local Law Officers Education and Equipment Act, cosponsored by myself and seventeen other Senators, you asked me to respond in writing to a number of questions regarding that bill and S. 917, the President's "Safe Streets Act." Here are those questions and answers.

QUESTIONS ON S. 824

Question 1: Would you describe the main differences between S. 824 and S. 917?

Answer 1: (*a*) Education: The principal difference between S. 917 and S. 824 lies in the provision each makes for enhancing the educational levels of our law enforcement officers. Section 201(c) of S. 917 authorizes grants for "manpower, including the recruitment, education and training of all types of law enforcement and criminal justice personnel."

S. 824, on the other hand, concentrates on law officer education and provides four federally assisted programs to encourage it:

(1) *Titles IV and V, law enforcement officers travel grants.*—These two titles, the first dealing with foreign travel and the second with domestic, would provide 100 percent Federal assistance to pay travel and per diem expenses for state and local law enforcement officers to study the organization, methods, and equipment of other law enforcement agencies, both here and abroad, in order to secure a cross-fertilization within American police departments of the best domestic and foreign law enforcement theory and practice.

Personnel eligible for such assistance would include police and correctional officials, such as parole officers and prison officials.

(2) *Title VI, National Defense Education Act loan forgiveness.*—The encourage college graduates to enter law enforcement work, this title would provide that 50 percent of the amount of a National Defense Education Act loan made to a college student could be "worked off," if the student spent 2 years after graduation working for a public law enforcement or correctional agency.

(3) *Title VII, Educational Opportunity for Law Enforcement Personnel.*—To provide the incentive and the means for members of State and local law enforcement and correctional agencies to continue their education while members of such agencies, this title would provide educational assistance modeled on the educational benefits of the GI bill.

For local law enforcement and correctional personnel who wish to pursue a part-time course of studies, not directly related to police work, leading to a degree, the bill would provide the cost of tuition and fees. In return, the assisted person, who must have first been a member of a State or local law enforcement or correctional agency for at least 2 years, would have to agree to remain with that agency for at least 2 years following the last month in which such aid is given.

(4) *Title VIII, police study fellowships.*—The bill would provide full tuition and fee fellowships for law enforcement officers whose agency sent them to an educational institution for specialized training directly related to their police work.

(*b*) Administration: S. 917 would be administered by the Attorney General and the "Director of Law Enforcement and Criminal Justice Assistance," in the Department of Justice.

In contrast, S. 824 would be administered by a National Commission on Law Enforcement Assistance, to secure state and local police forces receiving aid under the bill from interference by or assimilation into the Federal Government as a result of such aid.

The Commission would have nine members, three appointed by the President from among the officers of the Federal Government (one of whom would be the Attorney General, who would also be Chairman of the Commission), and six appointed by the President from private life. Except for the Attorney General, whose membership on the Commission would be permanent, all members would serve staggered 3-year terms. No more than three of the members from private life selected by the President could be of the same political party.

Members of the Commission, except the Government members, would receive only per diem allowance for their activities and will not be Federal employees.

The Commission would be specifically charged not only with the administration of the act, but also with so administering it as not in any way to subvert or decrease the independence of local police departments from the federal government. Within this general restriction, the Commission would have broad discretion in apportioning the assistance for equipment provided by the will, although a prime consideration in such apportionments would be the crime rate in relation to the density of population in the area in question. For example, as be-

tween two applications of otherwise equal merit, a preference, would be assigned to the area with the greater crime rate per 1,000 people.

The Commission could draw on the Justice Department and, in cases of foreign travel grants, the State Department, for such staff work as would be necessary to execute its functions.

(*c*) Research and development: S. 917 would authorize the Attorney General to make federal grants for law enforcement research and development.

S. 824 would not authorize any research and development, but, through title III, would create a Division of Law Enforcement Research and Development within the Department of Justice to survey the $15 billion-a-year Federal research and development efforts, as well as those in private industry, to collect therefrom innovations applicable to law enforcement, and to disseminate information regarding those innovations to the nation's law enforcement agencies at every level of government. The Division would undertake no R. & D. of its own.

The Chiefs of the Law Enforcement Research and Development Division would be appointed by the Attorney General, who would report periodically to the National Commission on Law Enforcement and at least annually to the Congress regarding the Division's activities.

I believe the R. & D. sections of S. 917 and S. 824 to be complimentary, not duplicative or antagonistic. I believe a combination of both basic proposals would be a worthwhile addition to the crime bill reported.

(*d*) Equipment: Both S. 824 and S. 917 make provision for purchase of law enforcement equipment and facilities. On balance, I believe the provisions of S. 917 regarding equipment to be superior to those of S. 824.

Question 2: In what particular ways does S. 824 improve on the major objectives of S. 917?

Answer 2: S. 824 is far superior to S. 917 in providing extensive Federal assistance for law officer education. Our society can be best served only by the best educated police force. The President's Commission on Crime and Administration of Justice said in its "Task Force Report on the Police" that "the quality of police service will not significantly improve until higher educational requirements are established for its personnel."

Yet S. 917 provides little or no emphasis upon or explicit assistance to law officer education. S. 824, however, provides the four programs noted in answer 1(a) supra. This is the principal difference between S. 917 and S. 824.

The tuition aid and NDEA loan foregiveness programs provided in S. 824 were expressly recommended by the "Task Force Report on the Police." The other program, to allow cross-fertilization of law enforcement techniques, would prove a useful supplement to the programs the Crime Commission recommends.

When the Attorney General sent me a copy of his letter of July 20 to the committee regarding S. 824, I was disappointed to see that he ignored completely these vital provisions of S. 824 which meet the police education needs which S. 917 wholly neglects.

Question 3: Do you think legislation is needed to raise salaries in our police departments as well as to furnish them with more and better equipment?

Answer 3: Though I believe the prevailing shamefully low police pay levels are one of the greatest handicaps we suffer in dealing with crime, I do not think that the Federal Government should subsidize local police salaries. To the extent the Federal Government paid part of a policeman's pay, he would be, to that extent, no longer an employee of his local police force. We should take no step which could lead to a national police force.

But I think that the Federal Government should go to the aid of State and local law enforcement forces by helping them procure modern police equipment and by providing them with educational opportunities. Thus, the quality of local law enforcement can be improved, and local revenues thereby freed to increase police pay.

Question 4: Is it reasonable to spend $150,000 in fiscal year 1968 to send police officers abroad to study and examine foreign police procedures and correctional agencies?

Answer 4: If current budgetary restraints require eliminating funding any provision of S. 824, I would agree that this appropriation should be the one to go. However, in the long run it would be penny wise and pound foolish to fail to provide this relatively slight financial assistance for American police departments to study the best foreign law detection systems and techniques, especially those in Europe and other comparably industrialized nations.

QUESTIONS ON S. 917

Question 1: Is it not desirable to require of each State a law enforcement council to approve plans and applications for a grant under this bill so as to gain greater coordination within the States?

Answer 1: Yes; I believe so, provided such State councils actually serve to increase coordination rather than indulging in politics.

Question 2: In your opinion, is the population requirement of 50,000 minimum to be eligible for a grant under S. 917 too restrictive?

Answer 2: I think it could be in individual cases. In introducing S. 824, I suggested a formula approach for final distribution based on the ratio between population density and crime rate. For example, as between two applications of otherwise equal merit, a preference would be assigned to the area with the greater crime rate per 1,000 people.

I think such a formula approach is superior to any arbitrary population limitations, particularly since many jurisdictions may have fewer than fifty thousand people, yet be part of an intercity or interstate population complex of greater numbers. Likewise, a small city might have a particularly difficult crime problem disproportionate to its population and resources.

Question 3: Should the title of the bill be changed to "Law Enforcement and Criminal Justice Act of 1967"?

Answer 3: If a change in the name of the bill is to be made, I believe it should be toward a name which helps serve notice on law violators of our intention to suppress the crime wave. A name like "The Police Assistance Act of 1967" or "The Crime Control Act of 1967" might be considered.

Question 4: Do you think S. 917 should be amended to provide greater Federal assistance to upgrade our policeman's salaries?

Answer 4: Please see answer No. 3 relating to S. 824.

Question 5: Do you think it would be preferable to increase the Department of Justice's budget to cover additional expenses for administering S. 917 rather than having the Department utilize portions of the funds appropriated for grants for administrative purposes?

Answer 5: I believe the program contemplated by this bill should be self-supporting, so that Congress can more accurately judge the cost-benefit ratio of the program.

Question 6: Is it not more desirable to promote all research and demonstration projects for law enforcement and criminal justice purposes within the Department of Justice rather than farm such undertakings out to public and private organizations?

Answer 6: Although I believe these kinds of expenditures should be strictly controlled and coordinated to avoid waste or duplication, I believe we should use whatever research and demonstration resources are available—public and private—in finding new and better ways to deal with crime.

Senator TYDINGS. I will, and thank you very much, Senator.

Senator MCCLELLAN. Senator, while you are here you have not commented on the other bills.

Could you give us your idea about how we should undertake, or if we should undertake to do anything, on the issue of confessions?

Senator TYDINGS. You mean as a result of decisions by the Supreme Court?

Senator MCCLELLAN. The *Miranda* case, in particular. We have bills pending here and you are a member of the Judiciary Committee. I have not been able to talk to you about these bills. I do not know whether you feel the Congress should do nothing in this area.

Senator TYDINGS. I think this, Mr. Chairman. I have been a U.S. Attorney. Reports on the results of the *Miranda* case have been conflicting. For instance, the district attorney for the county of Los Angeles has done rather a thorough report. Perhaps you have a copy of that report for your subcommittee. Perhaps you have even had him testify here. I have had an opportunity to speak with him and he has

reached the conclusion that the requirements laid down in the *Mirandx* case can be met by the law-enforcement officials in Los Angeles and have been met since the implementation of that decision without serious breakdowns in the police effort.

On the other hand, there have been very prominent law-enforcement officials and district attorneys from other jurisdictions who have made public statements and who have made speeches, some of which I have read, which are to the contrary. The Federal Bureau of Investigation for many years has required its agents to operate not entirely within the restrictions of the *Miranda* case, but close to them. That is, the agent, at least while I was U.S. Attorney and long before I came in, was always required at the time he arrested an individual to advise him that he was under arrest, that he was going to be charged, that anything he said would be used against him, and that he did not have to make a statement.

Now, at least in our district, they did not advise him that he had the right to see a lawyer at once and that if they were too poor to afford a lawyer they had a right to have one appointed. Those were the two new standards erected in the *Miranda* case, at least as I recall the decision.

I have heard a judge speak in the fourth circuit rather critically of the guidelines of the *Miranda* case and I have heard other judges speak on the other side.

I think the most helpful thing that this committee could do, Mr. Chairman, would be to try to shed a little light on this controversy and to try to get facts and a little information. For instance, I would like to hear what the district attorney of Los Angeles would say when you addressed that question to him; what the district attorney of Brooklyn or Queens County, or of Cook County, Ill., would say. I would like to have more facts.

Senator McClellan. My recollection is——

Senator Tydings (continuing). Rather than just, you know, statements and judgments which are not based on facts.

Senator McClellan. We have had reports from four or five of these district attorneys to whom you referred here, some of them actually testified, testified to the adverse affects of it.

The only exception, I believe, was the district attorney from Los Angeles, Mr. Younger. I understand the Younger survey was made just 2 or 3 weeks after the *Miranda* decision. I do not suppose that would be very impressive. But, anyhow, I think it is a grave situation.

Senator Tydings. The principal problem which concerns me is the fact that if a man is guilty of a crime, and has not been subject to coercion, but the arrest or the conviction can be thrown out because of a nonprejudicial policeman's error along the line. This does not seem to be consonant with our efforts to protect society.

Senator McClellan. It does not seem to be equal justice as between society and a criminal, does it?

Senator Tydings. That is the problem. On the other hand, there is no question you have to protect individual rights. I once thought that I had the answers here, but I am not so sure any more.

Senator McClellan. I am not trying to make you take a position or urge you to take a position at the moment, but I do think it is serious.

Senator Tydings. It is.

Senator McClellan. The emphasizing, and I think overemphasizing in some instances, in recent Supreme Court decisions of the so-called individual rights of persons demonstrated and admitted guilty, and freeing confessed criminals on some technicality—perhaps the inadvertent error or a policeman—does not tend to maintain the proper balance in the scales of justice. Society is becoming the victim of misguided justice, in my opinion.

Since several of these decisions have been by a one-man majority, 5 to 4, and there have been very strong dissents by the minority, I think it is imperative that the Congress exercise its authority to remedy this situation. I do not know what legislation we can enact; perhaps the Court would determine anything we do unconstitutional. However, I firmly believe it is our responsibility to legislate in this area and attempt to restore a more proper balance between the rights of the individual and the rights of society. The obligation is squarely on the Congress to act. Should legislation we enact be determined to be unconstitutional, then the consequences would be on the Court.

Senator Tydings I think one aspect that should be studied is the question of whether you should punish the police officer, or the district attorney when he makes a nonprejudicial mistake, either a mistake in the warrant or a mistake in the trial or a mistake in the arrest, by throwing out a conviction, even though there was no coercion or no unethical conduct on behalf of the law-enforcement officer. By throwing out such a conviction you may punish the police officer or you punish the prosecuting attorney but——

Senator McClellan. You punish society, do you not?

Senator Tydings. Yes, that is the problem; whether or not the end result is real admonishment of the policeman, and what you do accomplish by that philosophy.

Senator McClellan. It is a very grave question in my judgment and one to which I think we must give attention.

I agree with most everything in your bill and your approach in some areas are better, I think, than the administration's. I am for the objective of the administration bill. I think it is imperative that we train our policemen and certainly it is a national disgrace the low salary we pay them for the risks they take. The salaries should be increased, but the very fact that you pay them more and give them better training is not going to solve this question of restrictions on questioning suspects and obtaining confessions. They may occasionally by their skills and by their improved training and techniques find the evidence to convict without a confession. They may make some improvement that way, but it still does not help in the situation where a crime has been committed and a confession may be given and there is no other evidence, so, with the confession ruled out, they go free. You still have that problem.

We have our boys fighting in Vietnam. They are fighting what many believe to be the forces of aggression that seek to conquer the world. We believe that people should have a choice of what kind of a government they have. We are told it is to our interest to be in Vietnam because the freedom of the world is endangered if these forces are allowed to advance—if they can take Asia, then they can go on and the freedom of the entire world would be in jeopardy. We

have no business to be there unless we are fighting for freedom. But, while our boys are dying over there, the criminal here at home is gaining more and more privileges and the probability of apprehension and conviction for his crime is lessening to such an extent that the crime incidence in this country has created an internal menace that threatens our domestic security on a scale that is as great or greater than the threat of aggression from without. I feel it is imperative that we give this grave domestic problem our immediate attention.

We appreciate your coming before us, Senator, and I think you have some good proposals in your bill.

Senator TYDINGS. Thank you.

Senator MCCLELLAN. We will be glad to have you work with us as we go along on this administration bill, and we may very well like to use some of your approaches instead of some they have proposed. I am not speaking for the committee, but it struck me that some of them may be an improvement over the proposal made in the administration bill.

Thank you very much.

Senator TYDINGS. Thank you, Mr. Chairman. I would be delighted and honored to work with you.

Senator MCCLELLAN. Mr. Dillion, Michael Dillion. Have a seat please, sir.

STATEMENT OF MICHAEL DILLON, DISTRICT ATTORNEY, ERIE COUNTY, BUFFALO, N.Y.

Senator MCCLELLAN. Mr. Dillon, do you have a prepared statement?

Mr. DILLON. Yes, Senator. I have submitted, I believe, about 15 copies of it to Mr. Paisley.

Senator MCCLELLAN. Thank you very much. Will you give us a little of your background?

Mr. DILLON. Senator, I have practiced law in the city of Buffalo for approximately 13 years. I served 3 years as corporation counsel of the city of Lackawanna, a city located in the county of Erie.

Senator MCCLELLAN. Did that have to do with criminal law?

Mr. DILLON. No; that did not, sir.

Senator MCCLELLAN. That did not?

Mr. DILLON. I am now completing my fourth year as district attorney of the county of Erie in New York State.

I am a member of the Executive Committee of the National District Attorneys Association, and I am the first vice president of the New York State District Attorneys Association.

Senator, I appreciate the opportunity to appear before this committee and to participate in the deliberations of some of the most important problems confronting the Congress today. First I would like to say a few words about our crime problem in Erie County. Erie County, Senator, is located in the western end of New York State and includes the city of Buffalo, which is the second largest city in the State, and two other cities, Lackawanna and Tonawanda, and 25 towns. Our population is approximately 1,100,000 people. Our crime problems are quite similar to those of most growing metropolitan areas. We have a certain amount of organized crime in Buffalo and

western New York. We have a substantial amount of juvenile crime, and we have a vast number of social and organizational problems which both give rise to and result from crime. We have problems of welfare, education, poverty, housing, narcotics, unemployment, and less than ideal economic growth. These problems are compounded by a governmental structure which has not kept pace with the times. In that connection I have in mind specifically the problem of fragmented duplicity of police forces. In Erie County we have 29 separate police departments, each operates independent of the other, and they operate with varying degrees of cooperation and coordination of their activities.

Most of our police agencies are hampered by a lack of funds and skill for the use of technical and technological equipment. With the exception of the City of Buffalo Police Department and possibly one or two others, our police agencies are without specialized squads in such sensitive fields of criminal investigation as homicide, arson, narcotics, gambling, safe and other burglaries, and other areas where special skills are required.

Our police departments use a multitude of police radio signals and, therefore, the interdepartmental communications is time consuming, inefficient, and oftentimes results in the completion of the commission of a crime before the matter is made known to the police agencies and the police are able to travel to the scene of the crime.

Now, without recounting all the ills of our present system, it is sufficient to say there is a great need for updating and improving the general efficiency of law enforcement through a consolidation of police agencies.

It is for this reason that I am particularly pleased by those sections of Senate bill 917 which call for comprehensive plans in section 101, and I am also pleased especially with sections 204(b)(2) and 204(b)(3), which "encourage plans which encompass the entire metropolitan area—and deal with the problems of all law-enforcement agencies in the area."

And these problems, Senator, are severe. Though crime is essentially an urban problem, it is reaching out to the suburbs and the more rural areas. Few issues more trouble all of our people, not just the city residents, than the fear of walking the streets at night of burglaries and muggings and robberies. Juvenile crime is a particular concern, for, as the President's Crime Commission reported, juveniles account for a disproportionate and increasing share of crime. In our own city of Buffalo, the Buffalo Youth Board recently reported that 5 percent of all youths in the 16- to 18-year-old bracket appeared in youth court in 1966, and that these accounts for some 1,537 offenses.

Now, the teenage population has changed only slightly since 1961, but at the same time the number of teenagers involved with the law has doubled. And elsewhere in the Nation, I assume, the situation is the same.

To deal with these and related problems, we need the help of the Federal Government. Our cities, where the crime problem is most visible, are too poor and inundated by the avalanche of problems which overwhelm them to do more than just meet the morning's daily crisis. Our counties and larger units of local government generally

have more money. However, archaic governmental structures, blind complacency about problems that seem to be largely the city's and a lack of wealth and interest in vigorously approaching problems on a metropolitan basis—these are the factors which have kept our broader governmental units from tackling these problems effectively. Thus, we must turn to the Federal Government as sponsor and partner in the study phases, to help and support the operational aspects, but with prime responsibility for such operations left with the local government.

I, therefore, strongly support Senate bill 917 on both principle and specific application.

Proposals such as this are long overdue. Crime is both a symptom and a cause of deep trouble in our communities and it cannot be reduced without extensive study of the underlying problems, and without imaginative experimentation with new techniques. We cannot fight today's crime problems and their underlying causes with yesterday's methods.

I have two suggestions with respect to Senate 917 and I offer them quite tentatively. The first relates to that aspect of the bill which requires the local units of government to increase its budget substantially over the next few years, if it is to receive up to 60 percent of that increase for specific projects. I can well understand the feeling that Federal money should not go to those who are unwilling to lay out substantial amounts of their own. But our most acute urban problems arise from the desperate poverty of many of our major cities, many of which are just scraping by financially. For some of these it may seem just too difficult to file a complex grant application which may turn out to produce very little indeed because of the poverty which created the law enforcement problems in the first place. Thus, I would like to see a somewhat less exacting approach. I realize, of course, that section 202(d) allows the Attorney General to dispense with some of the restrictions if he thinks they are unreasonable. In that connection, Senator, I noted your comments with Senator Tydings. I have no comment to make as to where the power is reposed with respect to the dissemination and dispensation of these funds. It is in the administration bill and the Attorney General. My comments are directed to the distribution of the funds. It matters little to me as to where that power is reposed.

As I read this bill, the possibility exists for the Attorney General to allow additional funds only if the basic expenditure includes substantial and extraordinary amounts, and that does not get to the problem with which I am concerned. Perhaps the Attorney General's power might be extended to allow him to dispense with these requirements whenever he thinks the applicant cannot comply with the requirements, but that the purpose of the act will clearly be served.

My second proposal deals with the matter of emphasis—the omission of human relations training as a statutory purpose in section 201. Such training could probably be included in section 201(f) and I quote:

> Community Relations, including public understanding of and cooperation with law enforcement and criminal justice agencies.

However, there should be express reference to training personnel to understand the communities in which they work. The police task force of the President's National Commission on Law Enforcement and Administration of Justice has expressed the importance of such training. Indeed, it made a large number of recommendations dealing with the problem of police-minority group relations, including the formation of community relations units and police departments, advisory committees and the like. Our recent disorders in the city of Buffalo, Senator, about which you may have read, attest to the importance of such training. These disorders have many causes, I am sure, and our police acted magnificently, with self restraint and understanding, but at the same time with firmness. It seems clear, however, that there is often a great lack of understanding of mutual problems on both sides on the part of the community affected and the police, and I would, therefore, propose that subsection (f) be expanded to include police training in human relations and minority-group problems.

Now, with these comparatively minor suggestions I reiterate my wholehearted support for the principles and details of this bill.

I have also been asked to comment on certain other bills before this committee dealing primarily with wiretapping and confessions. I turn my attention now to bill 675, the wiretapping bill.

It is somewhat difficult to comment on S. 675 for the Supreme Court's recent decision in *Berger* v. *New York* has cast a cloud over any attempt to legalize wiretapping. Before that decision I would have wholeheartedly supported this bill as one which goes a long way toward clearing out the confusion and uncertainly in this area. It strikes a reasonable balance between the claims of privacy, claims which go to the essence of a civilized society, and the needs of law enforcement without which society cannot survive.

The *Berger* case, however, raises numerous questions which are very difficult to answer. Of course, the *Berger* decision does not deal specifically with wiretapping in the technical sense, but rather with the use of trespassery eavesdropping devices as applied to the State by the 14th amendment. In the Supreme Court the majority in the *Berger* decision clearly overruled *Olmstead* v. *United States* and held that it was not necessary to have physical entry upon premises to violate the fourth amendment.

The Court says that a conversation, like tangible evidence, is protected by the right of privacy secured by the fourth amendment, and that any statute which allows for the invasion of that privacy is subject to the same constitutional tests as a statute which allows an invasion of private premises for the purpose of a search to obtain things tangible.

The Court, in making this analogy, does not make eavesdropping or wiretapping unconstitutional per se, but allows for the possibility of a valid eavesdropping statute.

The directives in the *Berger* decision make it unlikely that this bill can stand up in its present version. For one thing, the period for which tapping can be authorized is too long, according to the *Berger* decision.

Secondly, there is no provision for limiting the tap to conservations involved. Whether this is even physically possible, I do not know.

Senator McCLELLAN. How can that be done?

Mr. DILLON. As I say, whether it is even physically possible, I do not know, sir. The *Berger* decision is contrary to the thinking that I have expressed many times throughout the State of New York with respect to the right of law-enforcement agencies to engage in court-authorized wiretapping. When I speak a little later here, Senator, with reference to recent Supreme Court decisions about which you and I may have some disagreement, please do not assume that I am including the *Berger* case. I do not agree with the *Berger* decision. I have had too much experience with wiretapping personally and I have been involved with too many other district attorneys in the State of New York who have had such experience, and I have concluded and agree with them that wiretapping is an essential tool in combating, not only organized crime, but other forms of crime in our other communities.

Senator MCCLELLAN. What will be the impact on organized crime if there can be no practical wiretapping statute?

Mr. DILLON. Well, in my judgment, Senator, the essence of organized crime is gambling. All gambling today is done in one way or another through the use and medium of the telephone. If we cannot engage in court-authorized wiretapping we cannot combat that form of gambling which is the essence of organized crime.

Senator MCCLELLAN. That is the principal source of revenue, is it not?

Mr. DILLON. Yes; in our judgment it is.

Senator MCCLELLAN. It will continue to thrive.

Mr. DILLON. It will continue to thrive, grow, prosper, and continue to infest the legitimate business communities of the United States of America.

Senator MCCLELLAN. And with impunity.

Mr. DILLON. Apparently so, Senator, if we cannot come up with a bill that meets constitutional tests.

Senator MCCLELLAN. Well, that is one place we agree.

Mr. DILLON. This bill also—yes, we do, Senator, unquestionably. This bill also allows for State wiretapping wherever evidence of crime may be obtained, and this was a specific provision of our statutes in the State of New York and the *Berger* decision criticized that that verbiates specifically.

Whether our New York State Legislature can enact a law which meets the standard set forth by the *Berger* decision remains to be seen. I devoutly hope that it will be possible. As a prosecutor, daily engaged in the business of fighting crime of all kinds, I can attest to the value of the wiretapping we have done in New York. Our court order system has worked quite well. It probably could have been improved somewhat, and obviously will be, but of what human institution cannot this be said?

It is no accident that such prosecutors as Frank Hogan, of New York, and the majority of the President's Commission consider law enforcement wiretapping both necessary and yet consistent with individual liberty.

Now, on the assumption that wiretapping will still be possible, I have a few suggestions apart from the implications of *Berger*. First, the bill requires the judge to find that "no other means are readily available for obtaining that information." We have not had such a

provision in New York and I have seen no indication that anyone has suffered thereby. Moreover, it might require a great deal of unnecessary extra effort to make such a showing.

Secondly, I think it would be a good idea, and I have long thought this, Senator, even in derogation of the statutes we have in the State of New York, that the power to apply for wiretapping orders should be limited either to the State attorney general or to the local prosecuting officer.

Senator McCLELLAN. I think our bill does that.

Mr. DILLON. Yes, I think it does provide that, Senator, as I reread the bill, the legislation in the State of New York allowed a police officer above the rank of sergeant to make such an application. I think for a multitude of reasons that that is not good procedure.

Senator McCLELLAN. I agree with that. I think your law was too liberal in that respect. I think it ought to be tight, very definitely as free from loopholes as it can possibly be made, but still I think this process ought to be made available in law enforcement. We can go out and get a search warrant. Well, they say you do search for something specific. That is true. But you are listening for something specific, too, as near as you can identify it. You might go out and search for a stolen watch or for a stolen piece of jewelry. You may visualize in your own mind what it's going to look like, but when you actually find it it may look different, and it may be somewhat different from the way it was described in the search warrant, but if it is a stolen article that should not preclude it from being used in evidence. And to combat organized gambling you have to tap a telephone, and the conversation may in part be very personal. But, that is not what you are after. You eliminate that and you use the other. When you go in a home and you search a home you see many things. You may be surprised at some of the things you see, but you do not take them and you do not use them as evidence, you do not use everything which you saw.

Mr. DILLON. Senator, the interesting thing, fact, that our experience with wiretapping in the State of New York is that court-authorized wiretapping has been in effect for approximately 30 years and then in all of those 30 years there has never been one known case of the abuse of the wiretapping provisions by law-enforcement officials. That is, the abuse and terms of the procurement of information aside from the information actually sought, for the use of information for extortion or for other purposes.

Senator McCLELLAN. During part of that time you enjoyed the distinction in your State of having the largest population in the Nation. I do not know whether now there may be an issue as between New York and California as to that, but it does seem to be—for how long did you have the law?

Mr. DILLON. We have had it approximately 30 years.

Senator McCLELLAN. For 30 years, three decades, if that law operated and was successfully used by law-enforcement officials in the State of New York, in perhaps thousands of instances, and there were no abuses of it, it seems to me that it is a pretty weak contention that there will be a lot of abuses if we enact wiretapping legislation. It would seem that the New York experience completely refutes the apprehension over abuses.

I believe we can put our confidence in the law-enforcement officials, the prosecuting attorneys, and the district attorneys when they give us the facts and evidence to support their contention that wiretapping is a necessary tool against certain specified crimes and can be successfully used under strict court supervision. I believe it would be a remote exception for our trust in these officials to be misplaced. There are, I suppose, instances of abuse of privileges in all areas of government. However, this very legislation we are trying to enact would provide punishment for those found guilty of irregularities in the use of wiretapping. Allowing for the human frailties that may enter into these things, we have to have some confidence in the law-enforcement officials and the law-abiding citizens of our land, as well as an obsession about individual rights, if we are going to preserve law and order in this country.

Mr. DILLON. I am very much in agreement with you, Senator, and on behalf of the district attorneys I deeply appreciate your comments.

Senator, in my prepared text I had noted some reservations with respect to the bill dispensing with the requirement for a court order in national security cases. Probably my initial thoughts and my initial reaction wth respect to that provision of the bill were prompted by my working with the court-authorized system and my total approval of it. On reflection, I have changed my thinking, or altered it somewhat, with respect to this, and though I am not a Federal law-enforcement official, though I am not familiar with the problems of law enforcement and national security cases, I do feel that the bill in that connection probably should stand as it is. All I did in my prepared text was note some reservations with respect to the breadth of the power given in that section.

Senator, with respect to other bills that you have discussed here with other witnesses, particularly bill 674, and bill 1194, each of these would repeal the *McNabb-Mallory* rule and permit the admission in Federal court of all statements otherwise deemed voluntary.

Now, again, I am not a Federal law-enforcement official and I do not feel that it would be appropriate or useful for me to comment on this aspect.

I am concerned about S. 1194, however, which goes further and would remove jurisdiction from all Federal courts to reverse or modify State court findings of voluntariness, if affirmed on State court appeal. I do not think that such a proposal would be sound.

Senator MCCLELLAN. State that again.

Mr. DILLON. Senate bill 1194, Senator, would remove jurisdiction from the Federal courts to reverse or modify a State court finding of voluntariness if that finding has been affirmed by the highest State court.

Senator MCCLELLAN. Yes, that is the bill introduced by Senator Ervin and I am a cosponsor. Now, my position has been that is a harsh remedy that we should not have to apply.

Mr. DILLON. Well, Senator, I think, however, that it is true that at the Federal level quite often we are viewing cases from a broader base than we are from the confined State level. Interestingly enough, Senator, the Supreme Court has handled relatively few confession cases. Now, I will admit that the impact of many of these decisions has been tremendous.

Senator McCLELLAN. Well, that is what we are talking about. The impact; judges feel constrained to dismiss these cases or suppress charges.

Mr. DILLON. Well, again, Senator, I think that the position that one takes with respect to this bill would be prompted by his reaction to Supreme Court decisions in this field. I think in that connection, Senator, that my reaction might be somewhat different than that which I have heard you express here this morning, and I say that, of course, most respectfully.

Senator McCLELLAN. I just believe in this right to dissent which you are emphasizing so much today.

Mr. DILLON. I believe strongly in that myself, Senator. Indeed, I think most of the Supreme Court's decisions have been good for the courts, for lawyers, for the police, and for the community. We can live with them and we have. In that connection, Senator, I believe I know of no survey from Mr. Younger's office, the district attorney of Los Angeles County, relating to *Miranda*. It may well be than one does exist; however, I had many conversations with Mr. Younger with respect to surveys he was conducting subsequent to the *Escobedo* decision and it was his reaction after a study of the facts that the *Escobedo* decision had little, if any, impact upon the administration of police agencies in his county.

Incidentally, that is also my reaction in a county of a million and one hundred thousand people. You see, Senator, the public reaction from these decisions is adverse primarily because the decision at the time of its promulgation changes the rules in the middle of the game.

Senator McCLELLAN. I understand they do.

Mr. DILLON. Now, I do not agree with the Supreme Court changing the rules in the middle of any game. My whole approach to the Supreme Court decision is that once the rules have been formulated, and once we begin to apply them in futura, I say the police and prosecutor can live with them, have lived with them up to this point, and I notice, interestingly enough, just yesterday reported in, I believe, the Buffalo Evening News, a study of—conducted by some official or agency associated with Georgetown University which have indicated a comparatively minor impact from these decisions. I have not had an opportunity to study any such report, and I am not equipped to comment at any great length upon them, but our experience up to this point has been that *Mapp* v. *Ohio*, *Escobedo*, and even *Miranda*, our experience with *Miranda* up to this point is still quite limited, have not materially adversely affected us insofar as the amputeral application is concerned. They did have a tremendous adverse effect upon pending cases, and I have always been concerned about the retroactive application of any Supreme Court decision. I feel that that has been the—the retroactivity——

Senator McCLELLAN. Can you tell us how many cases you have had to dismiss by reason of the *Miranda* decision?

Mr. DILLON. Well, Senator, I would say that we have dismissed upward of 250 to 300 cases because of it.

Senator McCLELLAN. Well, you do not think that is a serious impact?

Mr. DILLON. Well, as I have indicated to you, Senator, it is a tremendous adverse impact upon pending cases and there I refer only

to cases that were pending at the time of the promulgation of the decision by the Supreme Court with respect to new crimes, with respect to new criminal investigations commencing subsequent to the issuance of the decision. I say there we have not had such an impact.

Senator McCLELLAN. You say you have had upward of 250. If you related that to the whole country, considering the number of cases, how many thousand do you think have had to be dismissed?

Mr. DILLON. It would have to be, it probably would be beyond my power of mathematics, but it would be hundreds of thousands.

Senator McCLELLAN. Hundreds of thousands have had to be dismissed because of it.

Mr. DILLON. That is true.

Senator McCLELLAN. So then, there are potentially hundreds of thousands of guilty criminals on the streets today going unpunished for their crime by reason of the *Miranda* decision; do you agree?

Mr. DILLON. I not only agree with that, but there are literally more hundreds and hundreds of thousands of criminals walking the streets who are unmolested by us without any connection to the *Miranda* decision.

Senator McCLELLAN. Well, that is true, but it is a fact that you augment that number by the *Miranda* decision; is that not true?

Mr. DILLON. Yes.

Senator McCLELLAN. Sure there are hundreds of thousands of them never apprehended, never caught, never detected.

Mr. DILLON. Well, there is no question. I do not dispute, Senator, as a matter of fact I have spoken out repeatedly with respect to the immediate adverse impact. It is there and we cannot change—when we change the rules in the middle of the game on the police, you cannot expect the police to comply with rules that they could not anticipate 6 months earlier, or a year earlier, or a year and a half earlier.

Senator McCLELLAN. Let me ask you, do you think the *Miranda* decision strengthens law enforcement in this country?

Mr. DILLON. I think the *Miranda* decision, Senator, represents a balance between the interest of law enforcement and the rights of individuals. Senator, all people in our society are not as fortunate as you or as I am fortunate. My experience is that we hold people sometimes in jail, young people in jail, for days at a time with a complete lack of concern on the parents, if they do live in homes where parents live together, a complete lack of concern in many instances on the part of the community or other agencies as to where these young people are or what they are doing, and I busy myself and my assistants busy themselves on the telephone trying to find responsible people in the community who should be concerned about these youngsters and who are not. This would not happen, Senator, if others in the more affluent society were arrested under similar circumstances. There would be a lawyer there immediately, there would be a brother or a sister or a mother or a father there immediately, and since we do have tremendous poverty in certain areas of the city of Buffalo, I may be more aware of this problem than some other people. This concerns me, the human factor concerns me. So, I find no objection, Senator, with telling those who have engaged in criminal activities that anything they say may be used against them, because others in our society know that. I have no

quarrel with telling them that they have a right to remain silent, because others more affluent in our society already know that.

Nor do I find any quarrel with telling them that they have a right to an attorney and that if they cannot afford an attorney one will be provided for them. Therefore, I do not quarrel with the *Miranda* decision.

Senator McClellan. You have no quarrel with it?

Mr. Dillon. Incidentally, Senator, it is interesting to know that in Erie County since I have been district attorney, we have been recommending to police agencies long before the *Miranda* decision that we comply pretty substantially with the Federal Bureau of Investigations procedure, and that we do advise them of the first three mandates of *Miranda*, that they have a right to a lawyer, a right to remain silent, and that anything they said would be used against them in a court of law.

Senator McClellan. My quarrel is that if a man is guilty but because the policeman fails in one of those areas, then you have to acquit him. That is not justice with respect to the rights of society. If he is guilty, established, demonstrated, and confessed guilty, the fact that a policeman failed to say, "You are entitled to an attorney," is not sufficient reason to punish society by releasing this criminal.

Mr. Dillon. But, Senator, our experience is that in the future application of the *Miranda* decision that all policemen, at least we in Erie County, we have conducted seminars and classes and have fully advised our police agencies of these requirements of the *Miranda* decision. It is the talk of the community; it is the talk of the police department; and any police officer in Buffalo and Erie County now, in my judgment, knows of the requirements of *Miranda* and adheres to them.

Senator McClellan. Well, I can understand that. They have to do it. There is no alternative. Here is the problem——

Mr. Dillon. Sir, the situation about which you have spoken——

Senator McClellan. You may take in a confirmed criminal, you have to go through all of this process with him, if he comes in there and says, in effect, "Well, they did not tell me such and such rights I have," then you have got to turn him loose.

Mr. Dillon. Senator, I think the word "confirmed" is subject to definition and interpretation, but our experience is that the truly confirmed criminal was not giving us confessions in any event.

Senator McClellan. Well, I do not know. Some of them do, there is no question about that. I have been a prosecutor too. I have had just a little experience.

Mr. Dillon. I defer to your experience in that regard, then, Senator.

Senator McClellan. I have had some of these problems and had a little experience in the courtroom as a prosecutor and trying to enforce the law. I can go along with the idea that some suspects need advice and counsel, and I am not opposing that. But when you have a person who is known to be guilty, has confessed his guilt for perhaps a heneous crime such as murder, and then is turned loose on society because some policeman fails to tell him that he had a right to a lawyer or that whatever he said might be used against him. If that is justice, it is the wrong kind of justice in a civilized society in my book.

Mr. DILLON. Senator, I do not think there is any real disagreement between us. I think I agree with all that you have said and I have read those headlines and I am familiar with those cases with respect to cases that were pending when that judgment was first pronounced.

Senator MCCLELLAN. I received a few days ago, and I will place in the record at this point for the purposes of our discussion, a telegram from Ferris E. Lucas, executive director, National Sheriffs Association. It was sent on June 21 from Las Vegas, Nev., where they were having their convention. It is addressed to me and it says:

The National Sheriffs Association, in behalf of its more than 22,000 members, had its annual conference in Las Vegas, Nevada, today, unanimously adopted the following resolution:

"Whereas, in recent years the various trial courts throughout the nation have been hampered in the trial of criminal cases as a result of Supreme Court decisions, both state and Federal, wherein the admissibility of a criminal's confession of having committed an alleged crime has been all but outlawed and whereas law enforcement has suffered a serious setback through the court decisions referred to above and it is conceivable that more serious problems will result unless corrective measures are taken on a national level to safeguard the public from the evil effects of such court decisions, and whereas Senate Joint Resolution No. 22 proposes an amendment to the Constitution of the United States to provide that the voluntary admission of confessions of the accused in a criminal prosecution shall be admissible against him in any court sitting anywhere in the United States. And, that the rule of a trial judge admitting an admission or confession as voluntarily made shall not be reversed or otherwise disturbed by the Supreme Court or any other inferior court established by Congress or under its authority if such ruling is supported by competent evidence.

"Now, therefore, be it resolved that the National Sheriffs Association fully and completely endorses and approves the aforesaid Senate Joint Resolution No. 22 and recommends its adoption by both Houses of Congress and a copy of this resolution be furnished to the Clerk of the House of Representatives and the Clerk of the U.S. Senate with the request that each body cause this resolution to spread it on the record of the House and the Senate."

It seems they feel that confessions ought to be admitted. I do not know completely what that represents, some resolution adopted by the association. There might be members who disagree with it, but generally, they seem to favor it.

Mr. DILLON. Well, I think it would be fine, too, Senator, though I cannot speak on their behalf, but with exceptions, I think Mr. Younger of Los Angeles is one, that the district attorneys of the United States of America may well generally agree with the content of that resolution or document from which you read.

Senator MCCLELLAN. The U.S. attorneys?

Mr. DILLON. The district attorneys of the United States of America. I think a majority of them might well agree.

Senator MCCLELLAN. You mean they would not agree with you?

Mr. DILLON. I think, Senator, that with respect to the district attorneys of the United States I may well be expressing my right to dissent.

Senator MCCLELLAN. I see, you feel you may be in the minority with respect to what you have said here with respect to the district attorneys?

Mr. DILLON. I think so. Yes. I do not speak on behalf of all of the district attorneys of the United States. I think many times our judgments, however, in this connection, I think district attorneys and sheriffs and police agencies, and others are equally guilty of it, have

made too much upon the emotional impact of these decisions as they were first promulgated and as the judge then a few weeks later in the city of New York dismisses a case against a defendant to whom he refers as an animal and says, "I am insulting the animal kingdom when I refer to you as an animal."

I think the emotional impact of this kind of thing is sometimes such as to give rise to judgments that are not based upon a thorough analysis of the facts and upon relaxed thorough study of this situation. I know that from my personal experience we are not in the futural application of these decisions receiving the impact that was originally anticipated. And, again, our experience is not complete yet with respect to the *Miranda* case, but again I think in essence I must agree with the *Miranda* decision because, in effect, it is giving, it is giving to these—many of the people involved in criminal activities only the same rights that those of us who are blessed with good parents, good education, good social environment long since have had.

Senator McCLELLAN. You spoke of the U.S. attorneys maybe not agreeing with you, that is, you might be in the minority as among them. Does the chief of police of Buffalo agree with your views?

Mr. DILLON. Why, no. I did not know the commissioner testified, but I have had many conversations with him and I have a tremendous respect for him and we have worked closely together on many matters and he is an excellent police officer, Senator, and he does not fully agree with the thoughts that I have expressed to you here. I know that from personal experience. You would be correct, anyway, with respect to the commissioner of the City of Buffalo Police Department.

Senator McCLELLAN. We had Mr. Tamm of the National Association of Chiefs of Police to testify before and he said the *Miranda* decision seriously crippled the police in solving crimes.

Mr. DILLON. Well, Senator, I do not know the extent of his experience. I do not know how many cases he has analyzed and come up with that determination.

Senator McCLELLAN. I do not know either.

Mr. DILLON. And I think that I would enjoy talking at greater length with this distinguished gentleman about that problem. You see, I think when we speak——

Senator McCLELLAN. They are people out in the field having to work with it as you are, and I just point out that I have been under the impression *Miranda* is doing a great deal of damage and when you tell me here that 250-odd cases in your district had to be dismissed by reason of it, then you apply that ratio throughout the country, it seems to me incalculable damage is done. It lends credence to the statement made by the judge from Louisiana who just preceded you, the psychological impact of it on the criminal himself.

Mr. DILLON. Oh, I agree with that. I agree with that. I think that these decisions have given a certain security to the criminal in his mind.

Senator McCLELLAN. Sure.

Mr. DILLON. On the other hand, Senator, again, if we are talking about cases that were pending when the decision was promulgated I am in total agreement, but if we are talking about in futural cases,

cases which would develop and emanate say from today on or from the date of that decision on, our experience has not been that these decisions have had that catastrophic effect. We are still getting and the police are still procuring confessions in large numbers in cases wherein they have fully advised the defendant of his rights under *Miranda*.

Senator McCLELLAN. What is the change of procedure where maybe a suspect confesses and then when he come to trial says, "Well, I was not told these things"; what precaution do you take to make certain that the preponderance of evidence or evidence beyond a reasonable doubt will be presented that he was so advised?

Mr. DILLON. Well, Senator, I believe that that is a problem in all phases of criminal investigation and that is the problem of the truthfulness and veracity and believability of witnesses. And I think if the police in that situation testified that they did advise him of his rights it becomes a question of believability and I think you will find that most judges would or should be inclined to believe the police in that connection, particularly since the requirement that these admonitions be given has received such widespread publicity and is fully in the minds of the police agencies of the United States now, I am sure.

Senator McCLELLAN. Do you think the decision has had any impact on the morale of our policemen?

Mr. DILLON. Unquestionably, sir. Unquestionably they have had a tremendously adverse impact.

Senator McCLELLAN. Adverse?

Mr. DILLON. Unquestionably. However, I think that in the future, Senator, that with adequate training, and that is why these bills, in my judgment, are good and are healthy, with adequate training, with increased use of technical and technological equipment, and most importantly, Senator, and no one can tell me, at least I concluded, that this is the most important factor, adequate pay for police agencies of the United States of America, particularly in Buffalo and in the county of Erie. I think that you will get a much better job done and in some of this—some of this feeling of being left out in the cold by the courts which now permeates the policeman of our community will be set aside if the policemen are given better training, if they are given more salary and better equipment, and are able to cope with their tasks on a higher plane and a higher level.

Senator McCLELLAN. In other words, you think we can ultimately overcome the adverse impact of this decision?

Mr. DILLON. When the day comes, Senator, that we cannot look to the future with hope we are all in trouble.

Senator McCLELLAN. Well, we must do that, we must keep our hope, but we must not just take a position of helplessness against the conditions that prevail. It is our hope, but we must make an effort to do something about it.

Mr. DILLON. I was interested very much so in the dialog between you and the distinguished jurist from New Orleans. We talked about the exclusionary rule in *Mapp* v. *Ohio* and yet *Mapp* specifically says that this is a constitutional requirement and unless we get, unless there are people on the Supreme Court who will change their thinking

with respect to the mandates of the Constitution we are just spinning wheels about the exclusionary rule.

Senator McCLELLAN. Well, that is the trouble about the Supreme Court. They are human, they change their minds. You can put two more men on the Supreme Court and maybe reverse everything that has been done in these cases. That goes back to this; what is distressing, frankly, is that the Court is finding it either convenient or necessary or desirable from their particular point of view to try to upset precedents and reverse decisions that have been the law of the land and been constitutional from the founding of this Government. It disturbs me because you don't know what they will do next.

Mr. DILLON. That is true.

Senator McCLELLAN. Is that not true?

Mr. DILLON. That is true.

Senator McCLELLAN. And that is——

Mr. DILLON. I cannot predict what they will do next.

Senator McCLELLAN. No, because you cannot depend on them to follow the law of the land. They say everybody must obey the law of the land, but they have the privilege and exercise it, of changing the law of the land according to their whim or judgment as the case may be.

Now, that is what is happening in this country. Can we expect law-abiding citizens to have the same confidence in the stability of the law when it is made a plaything with the Supreme Court? I mean, apparently so, I do not mean to criticize an individual's views. Everyone is entitled to that, but I am talking about what is happening in America today with respect to law enforcement. What is the law of the land? What district attorney knows how, today, to try a particular case, or what policeman knows how he should behave in making a given arrest? He may think he knows; he may try to follow the latest rule, but we are getting a new rule, a new law, new innovations with almost every Court session. I do not know. There ought to be some fundamentals that we should cling to, not change them every few years. It is disturbing to me. I am the emotional type, as you say, in giving way to some feeling like that, but I do get a little emotional and I see nobody paying much attention to or caring for the victims and straining and stretching legalistic technicalities in order to turn a murderer loose. It does disturb me and it is a most important part of our internal security and I do not hesitate to say so. If I am wrong, I am wrong. That is my dissent.

Mr. DILLON. No, Senator, so that my position will not be misunderstood, I think that I am in absolute and total agreement with you with respect to these decisions as they do come down, so my position will be clear. I would like to see whenever the Supreme Court does come forth with a decision of the magnitude and import of some of the ones that have recently been promulgated, to have them applied only for the future, because I think the greatest impact and the greatest adverse impact has been with respect to pending cases.

Now, there is no question with respect to those, society's rights have not been protected and murderers and robbers and muggers and rapists have been allowed to walk out of the courtrooms and walk the streets. So, we are in total agreement, Senator.

Senator McCLELLAN. I think it is a tragedy; I think it is a national tragedy. I do not see how anyone, how anybody can place any other evaluation on it. Maybe I am wrong, but that is what I feel. If it is emotional; it is emotional, but I feel it and I feel it deeply. That is the only reason I am sitting here today. I am already burdened with legislative and official duties, but if I can make some contribution, just a small contribution, if I can throw some roadblock, even a minor one, in the pathway of this Nation's destruction by lawlessness and chaos that will ensue, I will feel like I have done the best, I have seized an opportunity to do something the best I could for my country.

Mr. DILLON. Well, Senator, I think that that attitude and that feeling is reflected in some of the legislation about which we are deliberating today, and I am pleased to have had the opportunity to come before you with respect to it, and I think that much can be accomplished by the passage of most of it.

Senator McCLELLAN. I want to say to you in conclusion, I appreciate your coming. I would like to get the other point of view. I may argue with you a little in the spirit of dissent, as I say, and as I say this I say it in all deference to your point of view. I grew up in an environment where you respected the court. From my youth I was inspired and it was instilled into me. I wanted to become a public servant. Certainly I get no satisfaction whatsoever in making any comment that is in the nature of criticism of our constitutional authority. That is why I have never been as partisan as I might have been. I think that if I am in a Republican administration it is my duty to serve my country and to do the best I can.

Well, anyhow, I do appreciate very much your appearance before us, and I hope out of our labors here will come something that will be helpful.

Mr. DILLON. Thank you very much, Senator.

Senator McCLELLAN. Thank you.

I believe I have another witness scheduled. Come right around, please, Mr. Sensing.

STATEMENT OF THURMAN SENSING, EXECUTIVE VICE PRESIDENT, SOUTHERN STATES INDUSTRIAL COUNCIL, NASHVILLE, TENN.

Senator McCLELLAN. I think we will proceed, if you do not mind. We will probably get through pretty soon.

Thank you very much for coming. Be seated and give us your background, please, sir, and do you have a prepared statement?

Mr. SENSING. I do.

Senator, as you probably know, my name is Thurman Sensing. My home is Nashville, Tenn.

I represent the Southern States Industrial Council, the headquarters of which are in the Stahlman Building, Nashville, Tenn. The council was established in 1933. Its membership is comprised of some 2,400 industrial and business concerns, located mainly in the 16 Southern States from Maryland to Texas, inclusive, with about 15 percent of its membership outside that region.

The council has some 110 of the industrial and business leaders of the Nation on its board of directors representing those 16 Southern

States and directors at large scattered across the country from Portland, Oreg., to New York City. The council is entirely nonpartisan, dealing only with principles and not with political parties. We appreciate this opportunity to be heard.

We now face in this country an almost intolerable situation. General crime and a new type of street lawlessness and rioting are sharply on the increase; the criminal and the rioter in the street are becoming more brazen and more contemptuous of the law and the lives and property of fellow citizens.

Yet at the very time as our laws need tightening, need more teeth, they are being stretched and bent and almost totally emasculated.

Rapidly mounting public concern, I might say public alarm, is shown by the fact that in recent months, numerous bills have been introduced in Congress dealing with crime and crime fighting. Among them are S. 675, S. 678, S. 916, S. 922, S. 1194, S. 917—the so-called President's bill on crime—and, of course, S. 674.

I have come here today, as a representative of the Southern States Industrial Council and its membership, to urge upon this committee and all Members of the Congress action in the area of law enforcement and reduction of crime. Specifically, I am here to endorse and support S. 674 as one of the major steps that must be taken to curb crime and violence in the streets.

In a recent meeting of the council's board of directors at Hot Springs, Va., the following statement was unanimously adopted:

> The Council views with alarm the Supreme Court decisions—*Mallory*, *Escobedo*, and *Miranda* cases—which have had the net effect of barring criminal confession under almost all conceivable circumstances, thus allowing the guilty to go free. The Council favors legislation to correct this situation.

These Supreme Court decisions make law enforcement exceedingly difficult—in many instances, almost impossible. They help the criminal escape the consequences of his crime, and hamper the policeman on the beat. Police authority has been sharply eroded by these decisions, when, in fact, law enforcement officers need to have their authority more firmly upheld.

We cannot look to the courts for relief in the incredible situation that has arisen, because it is the highest court in the land—the U.S. Supreme Court—which is making it harder and harder for the police to protect American communities, and for prosecutors to prepare an adequate case against the lawless.

If we cannot look to the courts for relief, neither can we look to the executive branch. Law enforcement, except for certain Federal crimes, is the responsibility of State and local authorities. In order for them to fulfill that responsibility, they must be freed from the unreasonable restrictions placed upon them by the U.S. Supreme Court, and for that we must call upon the Congress. We must appeal for enactment of new legislation such as S. 674 to insure that our laws are weighted in favor of the peaceful citizen and not of the criminal and lawless element in this Nation.

The distinguished chairman of this committee inserted a statement by FBI Director J. Edgar Hoover into the Congressional Record on March 6, 1967. I should like to quote a few particularly pertinent words from that statement:

Swift detection and apprehension, prompt prosecution, and proper and certain punishment are tested crime deterrents. As we have seen, however, this combination of deterrents can be ineffective because of breakdowns in one or all of its phases. That is why we cannot expect high-quality police service alone to bring full relief from the crime problem. If the hardened criminal is arrested but not punished, he is not long deterred from his criminal pursuits.

The council applauds that statement. There is another facet of current American life, and not a pleasant one, to which we must also give our attention.

At a meeting of the council's board of directors in May 1966, the following statement was unanimously adopted:

The Council views with grave concern the mounting violence and lawlessness ostensibly carried out in support of various aspects of the civil rights program...

A rising tide of mob terrorism and guerrilla warfare has been added to the rising tide of general crime. The policeman is thus caught between private crime on the one hand, and what I shall call public crime on the other. He is almost defenseless, without the certain and just backing of the law of the land. He is bedeviled by those who commit crimes ranging from murder to petty theft on one side and those who disregard law and take to the streets on the other. The peaceful, private, citizen is, apparently, the law's forgotten man. For the Supreme Court, while giving most liberal protection to the law breaker, has practically turned its head away from the vast majority of Americans of all sections of this Nation for whose benefit Congress makes laws.

S. 674, a bill which the council hopes will become law, provides that any confession shall be admitted in evidence if it is voluntarily given. Trial judges would determine whether a confession is truly voluntary in character.

This bill is designed to correct the U.S. Supreme Court decision in the notorious *Miranda* case, which made it virtually impossible to secure a conviction of self-confessed criminals in cases where the prosecution must rely on voluntary confessions of guilt. By its action in the *Miranda* case, the Supreme Court virtually assured the freedom of murderers, for example, who kill without witnesses being present and who do not leave fingerprints or other evidence. Murderers, of course, rarely make it a point to secure witnesses for their deeds.

Mr. Chairman and members of the committee, I am not a lawyer. I am an interested and concerned citizen testifying before this committee on behalf of many other interested and concerned citizens who comprise the Southern States Industrial Council. The council believes S. 674 to be a fair and equitable bill. It fully protects the law-abiding and peaceful citizen. It does not abridge the rights of the defendant. I want to congratulate the distinguished chairman of the committee and the other Members of Congress whose names are attached to this bill. On behalf of the Southern States Industrial Council, I urge the enactment of this measure.

Although I have stressed S. 674, the Southern States Industrial Council recognizes that it is only one of the steps that must be taken to reduce the frightening growth of crime and lawlessness in this country, to make the streets of this Nation safe again, and bring the lawbreaker and terrorist to justice.

We strongly urge congressional action in the whole field of crime control legislation. Passage of S. 674 and similar reform measures is the best way to conduct an anticrime crusade in this country.

Law and order must be observed by all people alike.

Thank you.

I would like to submit for the record copies of two newspaper clippings and read one brief paragraph from each one.

Senator McCLELLAN. We will check to see if they have already been printed in the record, and if not, they will be inserted at this point.

(The material referred to follows:)

[From the Washington (D.C.) Evening Star, June 15, 1967]

TERRORISM MAKING BUSINESS UNSAFE, D.C. BANKER SAYS

(By Donald B. Hadley)

WHITE SULPHUR SPRINGS, W. VA.—Terrorism is making it unsafe to operate businesses or even walk the streets in Washington. Thomas P. McLachlen, president of the District Bankers Association, said here today.

Addressing the first general session of the association's 49th annual convention at the Greenbrier, McLachlen said law-abiding citizens fear for their homes, their livelihoods and even their lives.

"Businessmen are being terrorized by the lawless element in our community, as witness you recall the recent Senate Small Business hearings, when local merchants actually appeared to testify wearing masks because of fear of reprisals," he added.

BACKS BOARD OF TRADE

McLachlen, who is president of McLachlen Banking Corp., said the bankers' association is giving strong support to the Washington Board of Trade's Committee to Reduce Crime Now, but he urged individual bankers to do more to persuade law-abiding citizens to openly and actively cooperate, support and respect law enforcement agencies.

The speaker conceded that poverty, hardcore unemployment and unstable family life all contribute to crime, but added: "The hard-core criminal element in our city must be dealt with swiftly, surely and firmly. Law enforcement agencies bear this responsibility, but to be effective, they must have the respect and public cooperation of all law-abiding citizens."

COURT JAM DEPLORED

The Board of Trade committee believes that quick arrest, speedy trial and fair, but sure punishment is one of the best ways to deter crime, yet the District courts are inundated with work and swift justice is almost unknown, he declared.

"It currently takes 21 months from filing a case until the case goes before a jury—almost two years," the speaker said. "Only four years ago, the time gap was only four months."

"Under present law and practice, a person charged with any crime other than a death offense may be released on his personal bond if he simply pledges to reappear for trial," he said. "The committee supports efforts to amend the Bail Reform Act to allow courts to consider a defendant's past record and his potential danger to the community when fixing bond and releasing this person.

"The committee also is seeking an increase in the police department which now is operating at nearly 300 persons below strength and urges increased salaries and better equipment to do the job now," he said.

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"The committee also is seeking an increase in the police department which now is operating at nearly 300 persons below strength and urges increased salaries and better equipment to do the job now," he said.

EXPECTS 10 PERCENT TAX BOOST

An estimated Fdeeral budget deficit of some $30 billion for fiscal 1968 will force Congress to approve a tax increase and it may be 10 percent rather than 6 percent, the bankers were told by Mortimer Caplin, Washington attorney and former Commissioner of Internal Revenue.

Congress can be expected to redefine mutual savings banks and remove some of the tax-exempt privileges they now enjoy before the end of the year, Caplin said.

Legislation passed in 1962 to increase the tax liability of savings and loans and mutual savings banks to levels more comparable with those for banks has been a disappointment, he said.

Collections from savings and loans were expected to yield about $168 million a year, but amounted to only $35 million last year. Collections from mutual savings banks totaled only $7 million in contrast to an expected $32 million, he declared.

BANKS PAY 26 PERCENT

While commercial banks pay an effective tax rate of around 26 percent on income, mutual savings banks are paying a rate of only around 2 percent, he said. Proposed legislation now calls for issuance of Federal charters for mutual savings banks and due to their unfair tax advantages, many new ones are likely to be formed, Caplin said.

Many savings and loans firms also are planning to convert into mutual savings banks, he said. This serious problem is being studied by the Treasury and legislation to remedy it also is under study, Caplin added.

ADVISES FOR INFLATION

Banks and investors should prepare for more inflation by placing funds in intermediate corporate, municipal and state bonds and assume slightly greater mortgage risks to get higher yields, Dr. Richard H. Rush, New York financier, consultant and author, told the bankers.

There is no point in putting money in short-term increments now because the yield isn't there, and if it is placed in 30-year mortgages, the money at maturity may be worth only half of what it is worth today, he said.

There is quite a bit of evidence of the hoarding of long-term money and keeping it in short-term obligations that can be converted into cash quickly, he said. In the first half of this year, corporate flotations of around $6 billion were 80 percent of their entire 1966 total and state and municipal offerings absorbed another $6 billion. Short-term rates have gone way down in relation to long-term rates, he added.

Rush advised banks to find higher yields in short-term mortgages for home improvement and debt consolidation, and also by seeking loans and participations in a wider area than formerly, especially in growth cities where yields are higher. Foreign loans are a promising field, he said.

AIB REPORT HEARD

Washington Chapter, American Institute of Banking, which trains men and women for banking careers, had a membership of 1,428 and total enrollments of 1,368 in the last year, C. Jackson Ritchie, Jr., immediate past president of the chapter, told the bankers.

While the chapter did not set new records, the year's totals were well above five-year averages of 1,345 in membership and 1,336 in enrollments, he said. The year's program provided 22 courses in some 49 classes and 92 certificates were presented to students at the last fall.

Mr. SENSING. The first one is from the Washington Evening Star of June 15 wherein Mr. Thomas P. McLachlen, president of the District Bankers Association at White Sulphur Springs, W. Va., on that date:

Businessmen are being terrorized by the lawless element in our community. As witness you recall the recent Senate Small Business hearings, when local merchants actually appeared to testify wearing masks because of fear of reprisals.

The other one is an editorial from the Chicago Tribune which was reprinted in the Nashville Banner on June 28, 1967:

The Rhode Island state police have been ordered to disregard the recent do-gooder rulings of the Supreme Court in their effort to stem a rising tide of crime. In issuing the order, Col. Walter E. Stone, the superintendent, said that "hoodlums have turned the streets into a jungle." The latest incident was a shooting fray Wednesday in Providence.

"I've ordered my men to grab these guys on sight," Col. Stone said, "and frisk them and make sure they're not armed. This situation requires firm, tough policemen . . . We're not going to be guided by do-gooder decisions of the last year or two which have been protecting these guys and putting halos around their heads."

That may not be the best way to handle the problem, but this man was faced with what I referred to in the beginning of my statement as an intolerable situation and perhaps this is the best way he could handle it under the circumstances.

Senator McCLELLAN. I guess he felt it was better to do that than to let the Supreme Court reverse all convictions and let them come out there armed.

Mr. SENSING. I am sure he did.

Senator McCLELLAN. And have the community be exposed to the violence at the time.

Mr. SENSING. I hope this committee will consider our statement.

Senator McCLELLAN. We sure will and we appreciate your coming. I note you represent about 2,400 different industries.

Mr. SENSING. Yes.

Senator McCLELLAN. Will you establish the fact that you are speaking for them? Would you say you are here representing them?

Mr. SENSING. The very fact that they are members of the council I think is best evidence that I am speaking for them.

Senator McCLELLAN. With what authority? How did they authorize you to speak for them?

Mr. SENSING. They didn't.

Senator McCLELLAN. They did not?

Mr. SENSING. No.

Senator McCLELLAN. You feel you are speaking then as a member?

Mr. SENSING. Right.

Senator McCLELLAN. And not for all of them?

Mr. SENSING. I am the executive vice president of the council and speaking as such.

Senator McCLELLAN. Speaking as such?

Mr. SENSING. Yes, sir.

Senator McCLELLAN. You have a contact with your membership that knows of this statement that you proposed to make?

Mr. SENSING. Yes; we referred to this bill and several others from time to time in our releases which we send to all our members. We get out a semimonthly full-page bulletin. I get out a weekly newspaper column under the title "Sensing the News." All of these go to all members and we have referred to these various bills and this problem of crime and I am sure they are all thoroughly in accord with it.

Senator McCLELLAN. Have you had responses from them?

Mr. SENSING. Oh, yes; a number of them. In fact, the chairman of our legislative committee has asked our members to write their Senators.

Senator McCLELLAN. Support this bill?

Mr. SENSING. Yes, sir; and we have heard from a great many members with copies of the letters that they have written.

Senator McCLELLAN. I see. I just wanted the record to reflect your authority was so that if you were speaking for the organization as a group, to so reflect it. If not, you might be speaking just for yourself in your capacity as executive vice president.

Mr. SENSING. Yes.

Senator McCLELLAN. Thank you very much. It would be my wish that many organizations throughout the country would weigh these issues and give us the benefit of their support, offer their suggestions, counsel, for this is a very, very grave problem in my judgment and it is one that will not permit inattention too long.

Mr. SENSING. Certainly is.

Senator McCLELLAN. Thank you very much.

Mr. SENSING. Thank you.

Senator McCLELLAN. The committee will stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 12:55 p.m., the subcommittee recessed, to reconvene at 10 a.m., tomorrow, Tuesday, July 11, 1967.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

TUESDAY, JULY 11, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 3302, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan, Hruska, Hart, Scott, Ervin, and Edward M. Kennedy.

Also present: William A. Paisley, chief counsel; Joseph D. Bell, assistant counsel; W. Arnold Smith, assistant counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel; and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

Our first witness is the Honorable Edward S. Piggins. Come around, Judge. Senator Hart wanted to introduce Judge Piggins. Since he has not yet arrived, we may as well proceed.

(Subsequently Senator Hart entered and introduced the witness.)

Senator HART. Mr. Chairman, members of the committee. I simply want to introduce to the committee a person who has been a friend of mine for a long time, who was a very distinguished member of the bar, a trial lawyer of great effectiveness, who took his post on the circuit court of Wayne County, court of general jurisdiction in our metropolitan center. His service there has been ratified overwhelmingly by the electorate—once or twice——

Mr. PIGGINS. Twice.

Senator HART. He assumed an assignment that is loaded with difficulty, that of a grand juror, and you can judge from the statement he has filed the deep convictions he brought to that assignment.

He served as the commissioner of police of the city of Detroit, so that his testimony reflects the experience of a lawyer, a police official, a judge, and a conscientious good citizen. I know the committee will hear his statement and later study it with great interest.

Senator MCCLELLAN. Senator Hruska is recognized.

Senator HRUSKA. It is a great honor to introduce this witness. He is a unique and highly competent official. He is a member of the Michigan Crime Commission and former police commissioner of Detroit. The Michigan Crime Commission is on record as supporting in general the wiretap bill, S. 675.

78-433—67——57

Judge Piggins is very knowledgeable on the subject of organized crime. I am sure he will make a great contribution to this record.

I might say, Mr. Chairman, that Michigan, as far as I know, is the only State that has what is referred to as a one-man grand jury. By statute a judge of the circuit court is designated to undertake the activities and to exercise the duties and powers of what in most States is either 12, 23, or 24 men grand jury. That grand jury convenes and the session this time was 1 year. It inquires into all phases of crime and allegations of irregularities or improprieties in government.

The judge, who composes and constitutes this one-man grand jury, has powers to grant immunity, subpena powers, and all the powers of inquiry which are ordinarily vested in a multiple-membership grand jury.

Judge Piggins brings with him a reputation which is wide, sound, and wholesome. Therefore, it is my honor to present him to this committee for testimony.

Senator McCLELLAN. Thank you, Senator.

Judge, we sincerely welcome you today and appreciate your willingness to come and testify at these hearings and give the committee the benefit of your experience and your counsel.

As I said to you a few moment ago when we visited in my office, this country is confronted with a very grave problem with respect to lawlessness and the need for more effective law enforcement. The Congress, the legislative branch of the Government, has a responsibility in this field and this committee in its capacity and function as an arm of the Congress is studying bills that have been introduced and have been referred to it with a view of trying to ascertain what legislation is needed. We are seeking to enact legislation which we feel is needed, so that the Congress may meet its responsibilities. We realize, of course, that the Congress is not the only branch of Government that has a responsibility, but to the end that we have that responsibility we want to try to meet it. We will need and we are earnestly soliciting the help of all members of the judiciary, of police establishments, and all good citizens who are interested in trying to help correct the critical crime conditions that today prevail.

We welcome and we appreciate your presence. You may proceed.

STATEMENT OF HON. EDWARD S. PIGGINS, JUDGE OF THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT OF MICHIGAN

Mr. PIGGINS. Thank you, Senator McClellan. I also want to thank Senator Hart and Senator Hruska for their kind remarks. I would like to make one limitation, however. While I happen to be a member of the Michigan Governor's Crime Commission, and at the moment chairman of the subcommittee on organized crime, I do not speak officially for that group. It may be that some of the members of that commission share my points of view. But as I say, I speak as a result of no official action that they have taken one way or the other. I have a statement that I should like to make.

Senator McCLELLAN. Will you give us a little of your background. training, and experience, for the record?

Mr. PIGGINS. Well, I am a lawyer. I practiced law in the city of Detroit for 25 years. In 1954, the then living mayor of Detroit ap-

pointed me commissioner of police, which position I held for almost four and a half years, during which time I think Detroit had its last major strike involving any violence of any kind, namely, the Square D strike.

Following my tenure of service as commissioner of police, I returned to the practice of law for a year and was then elected to the circuit court, which is the highest trial court of Michigan. It is a State court. It so happens that its jurisdiction covers the third circuit, which is the metropolitan county of Detroit, or the county of Wayne, some 3 million to 4 million people.

During my 8 years as judge of the circuit court, to be more specific, in August 1965, I was directed by other members of that bench to conduct a grand jury inquiry into, as Senator Hruska said, certain allegations of crime and certain allegations of impropriety in government which allegedly existed in Wayne County, which, incidentally, is the fourth largest or the fourth most populated county in this country, although Detroit is only the fifth largest city. Under the statute, at least the interpretation of the statute, my investigation terminated at the end of 1 year and I was willing to continue and I felt I should continue because I was in the middle of the stream and I felt I could reach the other side. But circumstances beyond my control prevented that.

So for the last year I have been back on the bench.

Now, if I may talk to you for a few minutes, I would like to talk about four or five matters that I think are of interest to you.

1. Propriety of legislative intervention to strengthen those areas of the criminal law affected by recent appellate decisions.

Let me make it clear at the outset that I do not come here to debate the soundness of recent Supreme Court decisions nor to criticize them. While I do possess my own personal judgment of these rulings, little can be gained by censure and a great deal can be gained by seeking intelligent solutions. It is perhaps sufficient to state that rarely have these recent decisions in the field of criminal law been unanimous, and violent criticisms of majority opinions have been expressed by some Justices themselves in dissent. Whether they are right or wrong it must be honestly conceded, even by the distinguished members of the High Court, that many Americans are disturbed.

There are thousands of Americans today who in their lay judgment believe that our courts have overextended themselves to create legal escape routes through which guilty criminals may flee to undeserved freedom. It cannot be denied that the hardened professional criminal recognizes these advantages and will avail himself of every opportunity to use them when necessary. Neither can it be denied that they have not made the work of the police easier. While I do not subscribe to the methods he suggests, I point to a recent example of attitude when the director of a State police agency recently instructed his officers to ignore "*Miranda*" and "*Escobedo*" and get out and do some effective police work. I say I don't subscribe to that theory, but at least that is the attitude.

Senator McCLELLAN. Do you find that attitude prevails in many areas, that people feel that way about it?

Mr. PIGGINS. I don't think they will go so far as to say to ignore the decision, but I do feel they are a little bit disgusted with some of them.

Senator McClellan. Disgusted?

Mr. Piggins. Yes, sir.

One cannot be entirely out of sympathy with an American public that voices a vigorous protest when it watches confessed rapists and murderers go free to repeat their crimes because their confessions have been barred from evidence for what appears to the lay public, at least. to be an unrelated technicality.

One of the basic purposes of our American system of jurisprudence is to discover the truth. It is likewise just as basic that for a confession to be used against the confessor it must have been freely and voluntarily made. In determining the voluntariness of a confession, however, it would seem only logical and this Congress by legislative fiat might legislate the requirement that in deciding the question of voluntariness a judicial inquiry should be made into all of the surrounding circumstances and a confession ought not to be ruled out merely for some technical reason that does not relate to the substance. This same substantive inquiry ought to be exercised in applying the law of search and seizure and in the authority of the police to detain and interrogate suspects for reasonable lengths of time.

I don't think there is any dispute about this. There are not only laymen but lawyers who believe we are reaching a point of imbalance. There are some lawyers in this country today who believe that the rugged legal principle of precedent or stare decisis no longer exists. There are some who are convinced that many of the decisions today are born out of sociological theories rather than out of solid legal thinking.

Senator McClellan. You feel the majority on the Court think that they are no longer bound by previous decisions. When you talk about Supreme Court decisions being the law of the land, who is it now who is violating the law of the land? Who is disregarding it? I ask you that question because a citizen feels he has to obey the law.

The citizen is bound by law founded on precedent, the wisdom of the past—the law of the land; then five men decide all at once it is not the law and change the law. The citizen is confused. Now, that is a condition we are witnessing in America today and I wonder what happens to respect for law and order? What impact does it have on respect for law and order, when the majority of the Supreme Court acts in that manner?

Mr. Piggins. Not only that, Senator, but there are lawyers in the civil field who have to tell their clients, this is the law today, this is the precedent that has been established, but I don't know what it will be tomorrow.

Senator McClellan. What is the reason for that? Can you tell us why this condition now obtains?

Mr. Piggins. I think I am going to come to that in just a minute. There are some lawyers who believe the doctrine of stare decisis is outmoded. I reserve my opinion but I do say that while individual rights are entitled to just and reasonable protection so too the whole of society must be accorded the same just and reasonable protection from the individual criminal and whenever our system of criminal jurisprudence fails to maintain that balance, we threaten the basic philosophy which gave rise to the birth of this country 191 years

ago. When a system we consider sacred fails to maintain that balance, as I say, I think we threaten the basic philosophy that gave rise to the birth of this country so many years ago.

I recite these things because the Congress of the United States now finds itself faced with a serious responsibility. The responsibility of determining whether it has the power, and I believe that it has, of determining whether there is a need, and I believe that there is a need, of enacting constitutional legislation which will not contravene the rights of the individual but which will guarantee to the American people that high degree of protection from the criminal element that they must have to live in peace and freedom.

Senator McCLELLAN. And which we think they do not now have.

Mr. PIGGINS. They do not now have. There are many manifestations of it.

Careful inquiry and study should be made into the field of the criminal law and proper legislation when required should be enacted. It can be done, but it must be done thoroughly and cautiously. It must be done with an eye to what the Supreme Court might do, if you can visualize that.

I urge your immediate consideration of this problem in the area of confessions, search and seizure, detention, investigation by police and arrest.

2. Constitutional and legal legislative authorization to law enforcement officers to momentarily detain and search individuals for weapons when sufficient probable cause exists.

This is an area into which skittish politicians hesitate to venture for fear of political repercussions. Yet, this is one phase of criminal law that is so vital in this time of emergency that it deserves honest, prompt, and forthright consideration.

It has often been erroneously and improperly alluded to as the stop-and-frisk procedure implying the unrestricted authority of the police to indiscriminately stop a citizen and search him without just cause. It has also been improperly and unjustly labeled as a means by which minority groups may be harassed. The truth is that carrying weapons today is widespread and those who carry weapons illegally are not confined to any one minority group. They are found in all segments of society.

Police officers and good citizens who know will tell you that the one single police procedure which will have the greatest immediate impact on holdups, robberies, and other street crimes is the authority of the police to confiscate weapons from those who have no right to carry them. The greatest percentage of holdups, robberies, assults, and other street crime is committed by young criminals who are illegally armed with guns or knives. Minus these weapons, it is my personal opinion, they would hesitate in many instances but possessed of a gun or knife their psuedo sense of bravado is shored up. Observers for the President's Commission learned that in some large cities 10 percent of those frisked were found to be carrying knives and another 10 percent were carrying guns.

No one can defend the unrestrained, unreasonable, promiscuous detention and search of individuals without valid reason but here again a balance must be achieved between the rights of the illegally

armed potential vicious criminal and the absolute necessity of guaranteeing the physical safety of society.

The fourth amendment prohibits "unreasonable" search and seizure. When this qualifying language was inserted into the amendment it was obviously the intention of the framers to restrict only "unreasonable" searches and seizures. The word "unreasonable" must not be given such a strained interpretation that it invades the right of society to protection from the lawless. When the suspicious conduct of individuals or gangs of individuals, under suspicious circumstances—I can give you an example—4 o'clock in the morning in a high-crime neighborhood three or four young hoodlums who have previous records are standing on a street corner—to me that creates a suspicious conduct—creates probable cause to believe that a crime has been committed or is about to be committed, the police should be permitted to act. The mere knowledge that such authority is about to be restored of the police, in and of itself, would constitute a significant psychological deterrent to young potential hoodlums who loiter on street corners, in high-crime areas, illegally armed with weapons. At the moment, this right of the police is in the gray uncertain area of the law and as a consequence many American police officers are hesitant to act. They don't know if they are going to be criticized by their superiors.

Senator McCLELLAN. Today the policeman hesitates to take any action, does he not? He is reluctant to?

Mr. PIGGINS. Very much so.

Senator McCLELLAN. He can be charged with false arrest or brutality.

Mr. PIGGINS. Disciplined and made a victim of some public criticism by some public organization that really don't know the facts.

Congress and State legislatures should immediately proceed to clearly and explicitly define by law when the American police officer can exercise this necessary procedure. Whether we are prepared to admit it or not, we are in a war against crime—just as much as the one in Vietnam and probably more visible to the American citizen—and every available statistic will prove that we are losing. Crimes of violence and street crime have created an emergency and law enforcement must have the weapons to meet and defeat this vicious enemy and must have them now. If this valuable police procedure—and it is valuable—which will unquestionably alleviate the condition can be lawfully conferred by legislation, its consideration should be given immediate priority.

Contrary to the false conclusions of many shortsighted politicians, there are millions—and I have tested this out—of honest, good citizens from all groups of society—minority, racial, ethnic, and others—who would endorse and support this procedure because they once more would like to walk the streets of America—and I am including the steps of the U.S. Capitol—free from fear of criminal attack and there are thousands of capable police officers who can and would carry it out without offending the individual rights of the decent law-abiding American.

3. Stringent controls over efforts to corrupt public officials: I am talking about this in the vein of organized crime.

Investigators for the President's Commission on Crime report conclusively that there is corruption in public office today and while they are not aware of the extent, they indicate that it is of sufficient magnitude to require study and action as well as public concern. I am speaking of the attempts of organized crime and others who seek to purchase political influence and protection.

I know of no greater trust in our social structure than that of discharging the duties of public office. The beneficiaries of that trust are millions of dependent Americans whose interest and welfare should at all times be the paramount consideration. When a public official abuses that trust to enhance his own personal or political fortune to the exclusion of the public's interest he should be summarily stripped of both title and authority. There is no place for him.

Fortunately there are hundreds of dedicated public officials who are invulnerable to ulterior efforts but there is the occasional invertebrate, the perfect target for the corrupter, whose weakness of character or naivete makes him the victim of those who seek to buy power and favoritism. It is he who tarnishes the escutcheon of public service. It is he whose conduct nurtures the seeds of crime and corruption, particularly organized crime.

From police experience, it is axiomatic that wherever organized crime successfully operates you will find bribery and corruption of public and police officials. Organized crime simply cannot function successfully without protection. Payments to public and police officials are just one of its accepted and normally expected costs of operation. How is it done? Ingeniously. Practically gone is the day of the direct payoff, except on rare and stupid occasions. The methods employed today are far more subtle and devious. Excessively large political contributions indicating more than a normal altruistic interest in good government should always be suspect. Sizable political donations from questionable sources are often channeled down through a maze of levels until the original donor becomes almost obscure, yet still retains his purchased influence through the same chain of contact which frequently sometimes includes innocent go-betweens who may not even be aware of their involvement.

This is the common modus operandi of organized crime. So-called testimonial banquets and similar occasions are often nothing more than methods of paying money by which the honoree receives far more currency than testimony and are of times arranged, financed, and contributed to by questionable persons whose prime purpose is to obligate the recipient. Quick and certain money making and profitable investment opportunities, sizable holiday gifts—I am not talking about a small insignificant matter—commissions, referral fees, and other considerations are danger signals to which every public official should be alert. Often a public official can innocently find himself in a predicament which may be difficult to explain. These are but some examples of the machinations employed by those, particularly organized crime, who seek to corrupt and gain power over the weak and vulnerable office holder.

To provide safeguards against these dangerous practices as well as to eliminate traps into which well-meaning officials might unknowingly fall, Congress and State legislatures should enact effective and

enforceable laws requiring a full, complete, and meticulous accounting, setting limitations, of all such receipts including precise limitations, details, and circumstances. They should be subject to governmental audit and they should be made periodically public through the press and through other forms of the news media. Tax laws relating to such matters, particularly gifts, should be made absolutely clear and stringent as an additional safeguard against such dangers, as well as a protection for the innocent. There are many examples of that all over the country.

I can conceive of no honest public official who would ever voice an objection to such control and surveillance, and I urge this committee to give this potentially dangerous area its most careful and thorough attention. Public confidence is a mandatory ingredient to the successful operation of government and nothing undermines that confidence more than questionable practices in this area.

4. Wiretapping: No facet of the criminal law has been subjected to more confusion and misunderstanding, or fanfare, in recent months than that of wiretapping or eavesdroping by the use of electronic devices. It has provoked a conflict between individual privacy and the needs of law enforcement in its battle to protect society. One of the major causes for this confusion and misunderstanding is ignorance in too many quarters as to what wiretapping or eavesdropping actually is. What are we talking about? How is it defined?

Generally, wiretapping is electronic eavesdropping without the consent of either party to the conversation, without the consent of either one or both parties.

If one party consents there is no illegal wiretapping as we generally construe it. When neither party to the conversation consents, electronic eavesdropping becomes allegedly illegal—I say allegedly because I am not sure it is illegal—although there are those who would still make it illegal even though one party to the conversation consents. Because of these refinements and because of the advance of technology in this field it becomes a subject necessary of a most thoroughly studied inquiry. Because of the scientific ingenuity of man, laws controlling electronic surveillance must contemplate the invention of even more fantastic devices. Although not yet practical, considerable advances have been made in the use of ultrasonic waves or laser beams through which minute vibrations from window panes or thin walls will enable the eavesdropper to listen to closed-room conversations without any intrusion or trespass and at a safe distance. Microphones the size of a sugar cube, or a button on a coat, or a martini olive have proven usable.

Senator SCOTT. Which may prove that martinis may be injurious to your health or safety.

Mr. PIGGINS. And there is a twofold danger, Senator. It might not only upset your stomach, it might upset your domestic life.

Senator SCOTT. It could well do that.

Mr. PIGGINS. But aside from all of this which Congress must necessarily consider, let me make my position crystal clear. Responsible police agencies must be allowed the use of scientific and electronic wiretapping devices for the purpose of detecting and preventing crime, particularly organized crime. I am aware of the recent decision

in the *Berger* case in which the Supreme Court declared the New York statute unconstitutional, but the real import of that opinion did not declare wiretapping per se illegal. If there is a careful analysis of it there is some indication that the authority might well be granted to law enforcement if the law concerning it contains proper legal limitations within the restrictions of the fourth amendment. Congress should enact legislative authority that will stand the test of constitutionality to clothe the police with this valuable weapon and should clearly define its reasons for so doing.

Senator McClellan. Let us assume that such a law could be enacted within the Constitution. There are those who oppose it, as a matter of principle, saying that it is an invasion of privacy and therefore, legal or not, it should not be permitted. These opponents say that the use of such means should not be made available to the law-enforcement agencies because of the possible abuse of the use of that tool and because it may infringe on the right of privacy which we cherish in America as free men. Will you comment upon that briefly?

Mr. Piggins. I am going to do that in just one moment. I might say that those who oppose it base their opposition, as you pointed out, on freedom of speech, right of privacy, and based not only on the fourth amendment, search and seizure, but the fifth amendment, which does not demand a man to be a witness against himself and the sixth amendment which gives him, which gives an individual the right to counsel. That's stretching it a bit, but they use that in any event.

The Constitution of the United States guarantees the privacy of the individual and these guarantees must not be toyed with to the extent that they may be gradually chipped away and eventually lost. The promiscuous unrestricted use of wiretapping should never be permitted but the legal constitutional employment of this vital enforcement and detection procedure—for the purpose of protecting society from the criminal, under adequate regulatory safegurads—is a mandatory necessity and this Congress should so legislate. I don't know how or why I call it the McClellan-Hruska bill.

Senator McClellan. Senator Hruska is a cosponsor as are also other members of the committee. It is not a question about who may be the author. There is a question of what is needed for the country and there are many who favor the legislation and many who oppose it.

Mr. Piggins. In any event, it is the bill numbered 675. The McClellan-Hruska Senate bill No. 675 in substance carries out this objective.

The American public should be told and made to understand that the most constant illegal users of wiretapping are the members of organized crime. It is as obvious as the nose on your face. All over the country they use it to operate the off-track betting.

Senator McClellan. The ones who complain about it and fear it most are the criminals.

Mr. Piggins. That is right.

The American public should be told and made to understand that the one segment of our social structure most vitally concerned with depriving law enforcement of this weapon, is organized crime. What a clear open field it would have, operating its vast network of electronic

interceptors in the perpetration of its numbers racket, its off-track horse betting syndicate, its narcotic distribution and its multitude of illegal conspiracies, knowing that it enjoyed the full protection—I document the potential that they violate the law—of the very law it was deliberately violating while frustrated law enforcement, deprived of such use, stood by as helpless and as ineffective as a bow and arrow against a machinegun. I have given to the members of the committee a detailed explanation of how the numbers racket operates in the city of Detroit—the northern part of Ohio, throughout Michigan and in parts of Canada. You may have some questions to ask me in connection with it. I think you will find it interesting. To me it is the best living proof that organized crime exists in that area that there is.

Would any fear-stricken American parent, beside himself over the kidnaping of his child, ever oppose police interception of a telephonic message from or between the kidnapers? Could the source of telephonic obscenity, extortion, anonymous threats and related offenses ever be discovered without the police having the authority to tap the caller's message?

The fourth amendment since its enactment has authorized search and seizure under prescribed procedures. I am aware of the Supreme Court decision that does say information obtained under wiretapping is not the same as seizing tangible objects. However, I say, is there any difference? Is there any difference between the search for and the seizure of contraband materiel, lethal weapons and narcotics used in the perpetration of crime and the search for and seizure of contraband information also used in the perpetration of crime? I say there is no difference. Both should be allowed in the interest of public safety, which, in the final analysis, should be the real test.

The smokescreen continually laid down by opponents is the threatened invasion of the privacy of the good unsuspecting citizen. I say in answer—that if law enforcement is deprived of this indispensible weapon that same good unsuspecting citizen will lose far more than his right of privacy. He will endanger his own physical safety and that of his children. He will jeopardize his right to free enterprise. He will not only invite but he will guarantee a social climate which breeds even more criminal misconduct than that which now plagues us and he will eventually threaten the very existence of his own precious freedom.

It is difficult for anyone who is experienced in this field or who has knowledge in this field, not to convince you gentlemen, but to convince the average citizen, that this menace exists, that there is such a thing as the Mafia or the Cosa Nostra or the syndicate or the family or the mob. But let me say to you on this record it is not a myth, it is not a fantasy, it is not a fiction. It is a legal, living, evil thing that every American ought to know about.

I sincerely and emphatically urge this honorable body to study this entire subject with unlimited thoroughness and recommend legislation authorizing the use of electronic and scientific interception by responsible police agencies within properly controlled constitutional and legal limitations and prescribed procedures.

Senator McClellan. May I ask you this? Have you any suggestions with respect to specific provisions that such a law should contain? This legislation, as you know, requires rather thorough court super-

vision through the application for a court order made by the Attorney General or officials designated in the bill. A court, of course, would have to weigh the probable cause or the reasonable cause in support of such an application. I do not know how to tighten it up any more than we have in the bill.

You have studied the bill that we have before us. Can you tell us how to tighten it up any more?

Mr. PIGGINS. I think you have done a pretty good job on it. What I would do is to take the *Berger* decision and go over it in relationship to the proposed legislation. I think generally speaking the same procedure that is used in connection with getting a search warrant—making it a little more strict, putting a time limit on it, describing the area to be tapped—even the method—prescribing for the return of the tapped information to the custody of the court. All of these precautions.

Senator MCCLELLAN. I thought we might require the executing officer to report to the court or permit the court to require him to report at intervals on the progress being made.

Mr. PIGGINS. From time to time I think that is a good idea.

Senator MCCLELLAN. That will strengthen whatever we have here.

Mr. PIGGINS. You might go further, that is to require the contents of the tape be turned over to the court, to the custody of the court and retained there.

Senator MCCLELLAN. As it is received.

Mr. PIGGINS. As it is received, and perhaps made available to defense counsel on proper motion.

Senator MCCLELLAN. After the charge is made.

Mr. PIGGINS. Right.

Senator MCCLELLAN. I simply believe that this instrumentality is vital to law enforcement, particularly in the area of organized crime, as you say. I do not think the use of this weapon against organized crime should be denied to society. I am opposed, as every citizen is, to promiscuous wiretapping, but that is what is happening now. It is a privilege that is being enjoyed by underworld characters, particularly in organized crime, and unless this weapon, under control of the courts, is made available to law enforcement, we are just waging a losing battle against organized crime. It now has all the advantages in the use of wiretaps.

Mr. PIGGINS. Senator, I will make this statement, that if responsible police agencies, those agencies where organized crime exists, are deprived of the use of this vital weapon, our generation and the generation that follows us and maybe the generation which follows them are going to live under organized crime.

I have been asked many times, do you think organized crime can be stamped out in this country? My answer is, if it can't be stamped, out, an awful crimp can be put in its operations. Give me the powers of a grand jury—perhaps strengthened a little bit—give me a period of 10 years, give me capable investigators and police officers, give the power of contempt, give me the use of proper legal wiretapping and I will guarantee you within 10 years there will be a big crimp in organized crime in this country. It is not a short-range deal. It is a long-range deal. But if we don't get after it now, this evil octopus is

going to move until it gets hold of a lot of areas of our society we don't want it to get hold of.

Senator McClellan. It is like a disease, if we do not get it under control now it will be fatal.

Mr. Piggins. Five. Reply to Senator Edward V. Long.

During the past several months I have spoken by invitation to a number of audiences throughout the State of Michigan. In the context of those remarks, I have expressed criticism of certain procedures employed by the subcommittee chaired by Senator Edward V. Long, of Missouri. The Senator took issue with my comments and invited me to appear before his tribunal to answer. I promptly accepted advising him of several dates, any one of which he was free to choose from and on which a brief respite from my judicial responsibilities would permit my absence from Detroit. None of these dates were ever convenient for him and he persisted in inviting me on dates on which he knew, or should have known from my previous advice, that it was impossible to walk away from my obligations to the people of the State of Michigan. When Senator John McClellan, who with no apparent difficulty whatsoever, arranged a convenient date for my appearance, I suggested that Senator Long be invited to be present. I don't know if he is here or isn't. I also wrote Senator Long advising him of my planned appearance here and suggested that he attend to interrogate me if he wished.

What I propose to now say briefly for this record is more than a mere reply to the Senator from Missouri. I believe that it should be of considerable interest to this committee—which, incidentally, has cordially treated and courteously treated me—to the entire Congress and to the people of this country who should be vitally concerned in preserving the integrity of this high legislative body.

It is reasonable to assume that the Long subcommittee was established to conduct a fair, unprejudiced, open-minded inquiry into criminal law administration practices including but not limited to the propriety of the use of wiretapping devices, particularly by law enforcement agencies. I am sure many members of that committee, including Senator Hart, who is here, share that belief. Prior to the commencement of formal committee hearings in Washington, Senator Long visited Detroit and while there, on more than one occasion, publicly announced, and I am able to document these announcements by news releases, that he had already concluded that law enforcement officers should not be allowed to use wiretapping devices. He stated publicly that his hearings would serve "as a prime example of how corrupting wiretapping and eavesdropping can be." He announced that he had already learned that certain governmental agencies had been violating Federal, State, and local laws, and that government agents believed that they had a right to trample on citizens' rights. While he had already concluded that the use of wiretapping should be restricted to instances involving national security, without defining that vague phrase—and I might say that Arnold Toynbee has pointed out that 22 or 23 civilizations, world civilizations, have come and gone and 19 have gone down because of weakness within. And I think it was President Thomas Jefferson who said if this country is ever to be destroyed it will be destroyed by the enemy from within rather than by the enemy from without.

So when he is talking about national security I wish he would define that phrase—he stated bluntly to the utter astonishment of every sophisticated enforcement official in this country, that he did not consider crime of the Cosa Nostra or Mafia type a menace to national security. He proclaimed during a nationwide television documentary that he would make wiretapping illegal for all. He had already fathered the administration bill in the Senate which would impose harsh and unreasonable restrictions on the use of electronic detection and had authored a book—I don't know what the name of it was—I think it was called the "Intruders"—expounding the same general philosophy. All of this, gentlemen, before his formal Washington hearings of April 4, 1967, had ever commenced. Could there be any doubt that the chairman's mind had already been made up? Could there be any doubt that he had already arrived at preconceived conclusions? It is sacredly implicit in our American concept of justice and fair trial that no issue of importance should ever be decided until after a full, complete, and fair hearing of both sides. What Senator Long did, not only violated this basic American concept, but was tantamount to a judge deciding a case before he has heard all of the evidence. This is not the kind of committee procedure that strengthens the integrity of this high body. I stated and I repeat now that this procedure was wrong and un-American.

The majority of witnesses summoned to testify were able and highly respected Detroit career police officers and government agents. They were exposed to an atmosphere that strongly suggested that unless their testimony coincided with the Senator's preconceived conclusions it was unwelcome. They were interrogated in such a fashion as to leave the false impression that they themselves were deliberate law violators called only to confess their misdeeds before a television audience. This is clearly verified by the statement of the committee's chief counsel that "we decided to put the spotlight on Detroit" and that Detroit had been selected by the subcommittee "to choose which was the easiest to demonstrate the point we wanted to make." The Senator made much of affidavits, if indeed they were affidavits, of two individuals who were not even summoned to testify, both of whom had histories of emotional disturbance. He noticeably made no visible effort to summon the hierarchy of organized crime, the members of which are notoriously the most flagrant users of electronic interceptors. This not only resulted in a distortion but constituted a withholding, from the Congress and the people, of the total facts. This I say was wrong and un-American.

The distinguished Senator from Missouri, and I am sorry he is not here, stated on the committee record, obviously with Senate immunity but with absolutely no credible foundation in truth, that a respected Federal judge of the Sixth Circuit Court of Appeals had not only permitted but had encouraged illegal wiretapping and bugging. It is in the record and I can point it out to you. He likewise indicated on the record that I had been invited to appear before him but had never found it convenient, when the real truth is that I had accepted his invitation and was waiting for him to select a date when I could leave the Michigan court and appear—incidentally, at my own expense. This, again, I say is wrong and un-American.

I take no sadistic pleasure in criticizing any one, but I should like to remind Senator Long that under our democratic philosophy of a free people, neither the figurative purple toga of a U.S. Senator nor the black robes of a judge cloak him with immunity from vocal expressions of public disapproval. Very often it has a valuable and humbling effect.

Gentlemen, I appreciate your consideration and your courtesy in listening to my comments which may have merely touched upon some aspects of a vital subject. May I close with this one observation. The real, the basic underlying cause—not the superficial efforts we make—of the predicament in which we Americans find ourselves today is a neglect of the simple moralities of life.

We have been too busy striving to amass a material fortune, seeking prestige and status, trying to reach the moon and accumulating physical and temporal comforts to devote the necessary proper time toward stressing the human ethical and moral virtues of life. Anybody who knows American history knows that. America's creation and its very existence rests on a bedrock foundation of morality and the greatest service that any public leader can render his country today is to point it back in that direction.

Senator McClellan. Judge Piggins, we thank you very much. You have presented a very forceful and persuasive statement with respect to legislation needed in certain areas of law enforcement. We have heard over 30 witnesses since these hearings began and I think your testimony this morning will be as helpful and useful as any we have had.

I share very deeply many of the views you have expressed and conclusions that you have reached regarding the crime situation in this country. I share with emphasis your statement that organized crime and lawlessness in this country have reached proportions which threaten national security. We find on this issue there are those who say they favor the use of wiretapping for national security, thinking in terms of a foreign enemy, I assume. But I think in terms of national security overall—which includes our internal security. As you point out, many great powers in the world have fallen from the impact of forces from within rather than asaults from without. To me the crime situation in this country is a danger to our security, to our national security.

I speak of it as our internal security, and if we are not able to reverse present trends it is only a matter of simple calculation to see chaos ahead. We have only to compare the rate that crime is increasing over and above the population increase to see that it is just like compounding interest. Project that ahead for the next 10 years and see where you are. I do not believe that this Nation can survive. I do not believe any sovereign power could survive without effective law enforcement. We cannot allow crime to prevail over society. I think action is urgent.

I appreciate your presence. With respect to the mutual numbers betting document that you submitted to us, with your permission I will have it printed in the record at this point as a part of your testimony, without objection.

(The document referred to follows) :

MUTUEL NUMBERS BETTING

The Detroit Metropolitan area presently operates two forms of mutuel betting, the Detroit number and the Pontiac number.

Mutuel numbers betting is made in three categories:

1. Mutuels: three digit betting.
2. Bolita: two digit betting.
3. Single action: single digit betting.

DETROIT NUMBER

The Detroit number is one of organizational control, derived from the minds of men. In contrast to the method used in determining the winning Pontiac Number which can be verified through the racing form and newspapers, the Detroit Number is impossible to verify because of its origin.

HOW OBTAINED

Selectors are chosen by the syndicate and operate by clandestine methods. The selectors are responsible to the big men of the syndicate and serve at their whim. It is the selectors responsibility to secure the two winning combination bets (three digits) daily except Sunday which are satisfactory to those paying service to the syndicate.

The first digit of the three number combination remains the same as the first digit of the first three number combination which is commonly referred to as the Pontiac number. After the first number has been determined the selectors contact all units throughout the area to arrange a second digit for the first win combination. The selectors, after contacting all units and having been informed by them what numbers are carrying the heaviest bets, arrange a second number compatible to all units with the least amount of money bet upon it. This process is followed throughout in the arranging of the first and last win combinations (mutuel betting) for the Netroit Number.

SIMILARITY BETWEEN THE DETROIT AND PONTIAC NUMBER

The first digit of the first win combination are alike in the Detroit and Pontiac numbers. The third digit of the first win combination becomes the first digit of the last win combination in both the Detroit and Pontiac numbers.

Example: Detroit winning number:

1st winning number	625
Last winning number	574
Pontiac winning number:	
1st winning number	699
Last winning number	908

Post time of the fourth race of the preselected horse race track which is used to obtain the Pontiac Number is the same "deadline" used by the syndicate for the accepting of bets on the Detroit Number.

STIMULATING BUSINESS FOR THE DETROIT NUMBER

The Detroit Number is relatively new and had its beginning on April 28, 1964. Prior to this time the syndicate paid 500 to 1 odds on a winning bet. If a player placed a $2 bet he could expect to win $1,000. However many bettors are disappointed when the operators refuse to acknowledge the winning hit. Since the inception of the Detroit Number the syndicate has reduced the payoff odds on the Pontiac number to 400 to 1 and as low as 300 to 1 while increasing the payoff odds on the Detroit Number to 600 to 1 and as high as 700 to 1. The changing odds are an instrument toward encouraging a greater influx of business on the "fixed", Detroit Number. The odds of a bettor hitting on the Pontiac Number are 1000 to 1 (000–999). The odds of a bettor hitting on the Detroit Number are infinitesimal, because of the manner in which is is contrived.

PAYMENT TO SYNDICATE FOR SERVICE

Those operators expressing disdain for the organization and refusing to pay for the service performed are rapidly enlightened to the advantages of

compliance. Those that remain adamant are lined up with large bets and the syndicate arranges the bets placed to become the winning numbers. The last five gangland murders were directly related to organized gambling.

PONTIAC NUMBER

The Pontiac Number receives its name from the city of Pontiac. The syndicate devised this system and its results are published throughout Michigan, Ohio, and sections of Canada, which shows its extensive influence. This system publishes two winning numbers daily except Sunday. The mutuel houses customarily pay 500 to 1 odds on a win combination, a three digit number. The mutuel houses gain a 2 to 1 advantage because there are a possible 1,000 combinations.

The winning number for this system is determined by computing the mutuel prices paid at a preselected horse race track.

Detroit syndicates only use those tracks having totalisators (tote-boards). In the summertime the Illinois tracks are used and in the winter the southern tracks are used for the determination of the winning number.

"Deadline" is that time of the day when the syndicate refuses to permit further collection of mutuel bets and all bet tickets must be in responsible, trusted hands. "Deadline" is established as post time of the fourth race of the preselected horse race track. At this time the syndicate is able to determine the first digit of the first winning combination.

The first eight races of the preselected horse race track are used to compile the two win combinations for mutuel numbers betting. If the race results in a dead heat, all mutuel prices posted are included.

METHOD OF OBTAINING WINNING NUMBER COMBINATIONS

The following winning combinations for mutuel numbers was extracted on June 20, 1967 from the preselected Arlington Park race track:

1st race mutuel prices

Horse	Win	Place	Show
Horatio C	$4.00	$3.00	$2.60
My Favor		17.60	10.00
My Opinion			4.40
Total mutuel win		41.60	

1st race paid	$41.60	
2d race paid	72.40	
3d race paid	20.80	
4th race paid	41.80	"Deadline" for accepting mutuel bets.
4 races paid	176.60	Digit *6*, the 1st number to the left of the decimal point becomes the 1st digit of the first winning combination.
5th race paid	32.80	
5 races paid	209.40	Digit 9, the 1st number to the left of the decimal point becomes the 2d digit of the 1st winning combination.
6th race paid	20.20	
6 races paid	229.60	Digit 9, the 1st number to the left of the decimal point becomes the 3d and last digit of the 1st winning combination.

First winning mutuel number: 699.

In selecting a last winning number combination under this system, the last digit of the first winning combination automatically becomes the first digit of the last winning combination. On this date, Number 9 became the first digit of the last winning combination.

7th race paid	$20.60	
7 races paid	250.20	Digit 0, the 1st number to the left of the decimal point becomes the 2d digit of the last winning combination.
8th race paid	18.60	
8 races paid	268.80	Digit 8, the 1st number to the left of the decimal point becomes the 3d and last digit of the last winning combination.

First winning mutuel number: 699.
Last winning number: 908.

TYPES OF BETS

Each winning number is called a race, for example if the bettor wishes to bet on only the first winning combination for the day he will make the notation F.R. (first race) on the bet ticket. If the bettor desires to bet on only the second winning combination for the day he will make the notation L.R. (last race) on the bet ticket. If the bettor wishes to bet on both winning combinations for the day he will make the notation B.R. (both races) on the bet ticket.

Bets are recorded in triplicate in a book called a "K" book. The original ticket (yellow) is delivered to the "house" for tabulation. The first copy (thin white tissue) is left in the "K" book as a record for the writer. The second copy (white) is given to the bettor as his record of the bet. When a writer is recording a bet in the "K" book he will first record the date in the space provided at the top of the ticket and then record the name, initial or other identifying mark or code of the bettor in the square provided in the upper right hand corner of the ticket.

Assuming that the bettor desires to bet the number 563 for $2 in the first race, the writer will then record this bet as follows: 563—$1 F.R. The writer will then total the amount of the bets and record it in the square provided at the lower right hand portion of the ticket marked "Total Sales". If the bettor desires to bet the number in both races, the total of his bet will be doubled.

The term "boxing a number" is explained as follows: The bettor wishes to bet the number 563 in a box for $2; this means that the bettor desires to bet on all combinations of this number. For example: if the number 635 would win the bettor would have the winning number. This bet is recorded in the "K" book as follows: 563—$2. Inasmuch as there are six possible combinations the total bet would cost $12 for the first race and $24 for both races. However, if the bettor desires to bet a number in which the same digit appears twice, such as 565, there are only three possible combinations that could win and the cost of the bet would only be tripled.

A bettor can place any amount of money, beginning with one cent, if he so desires, on a number. However most mutuel houses in the Detroit area limit the amount of the bet to $5 on any one number.

The bulk of numbers bets are recorded in "K" books, however, in such places as factories or hospitals where the supervision is strict in relation to the writing of numbers and it is not practical to carry a "K" book, the bets are then recorded an any piece of paper that might be available to the bettor or writer. In many cases these bets have been recorded on the back of invoices, napkins, order blanks, and even on toilet tissue. In these cases there will only be two copies of this bet, one is delivered to the "house" for tabulation, and a copy is retained by the bettor or writer for his own record.

BOLITA

In betting "Bolita" the player bets two digit numbers instead of three. The bettor bets any combination of two numbers from 00 to 99. There are a possible 100 different combinations. If the player hits, he is paid off at odds of 49 to 1. In making bets the player must play at least 25 cents on any two digit number. If he desires to play more, his bet must be in multiples of 25 cents. The same numbers posted by mutuel houses as winning numbers in three digit playing are used as payoff numbers in Bolita. In making a bet the player must indicate what "station" or position he is wagering his two numbers to hit, they must be consecutive stations. For example, he can bet on the first and second digit, the second and third, the third and fourth, or the fourth and fifth. On June 20, 1967, the five winning digits were 69908. On this date the four winning "Bolita" combinations would have been 69, 99, 90 and 08.

If a player would have bet 69 to hit in the first two stations (the first and second winning digits) he would have a winner and would be paid off at odds of 49 to 1 for every quarter so bet. Inasmuch as the same winning numbers are used in Bolita as in the three digit mutuel numbers play, the same deadline for accepting bets also prevails.

A writer will accept bets on the first two winning numbers up until post time of the fourth race of the race track which was preselected for the winning numbers. Bets will be accepted on the second and third digits up to "post time" of the fifth race, and so on. This type of betting is getting more popular with players daily as they can bet on four winning combinations daily instead of two as in three digit mutuel betting. Another big advantage to this type of betting is that the writer usually has the bank roll with him and the player gets paid off as soon as the winning digits become known.

SINGLE ACTION

This form of betting is similar to "Bolita" and "Mutuels" (the three digits betting) inasmuch as the numbers used to determine the winners are the same. The term "single action" speaks for itself—it is a system of betting on each individual number with the same deadline for accepting bets prevailing. In the same as Bolita, the bettor is required to bet a minimum of 25 cents and if he so desires to bet more his bet must be in multiples of 25 cents. The winners are paid off at 6 to 1 odds. This is an attractive form of betting and has grown in popularity in recent years. The reason for this is that the bettor places his bet with the writer and as soon as the first number is released, he collects his winnings and has about 20 minutes to place his bet on the second digit and so on. The writers for single action usually station themseves in poolrooms, stores, barbershops, etc., and accept their bets and then call them into a central office where the record of each bet is kept. The writer receives 20 percent of the money bet as his commission. However, some houses will pay as high as 25 percent, depending upon the volume of business the writer has.

METHOD OF OPERATION

The entire process must start with the player who has chosen his bet for the day and will then contact his writer who may be stationed in a home or business place which is called a "walk-in" station or may accept bets by phone. Some writers will walk about their neighborhood accepting bets from their players. The writer will gather all these bets and put them into an envelope which is called a "book" and await the arrival of the "pick-up-man" (women engage in these activities as frequently as men). The pick-up-man will collect several "books" from locations across the entire city and convey them to either a "Substation" or "drop". In a large operation, to eliminate heavy traffic at any one location, several "substations" may be used. At each "substation", three or four "route men" will turn in their "books" and then one person will transport the "bag" to the "main drop". This insures secrecy as fewer persons know the location of the "Subdrop" or "Maindrop" and by eliminating traffic at these locations it makes detection more difficult. Prior to post time of the fourth race at the preselected horse race track, which is known as "deadline", all bets must be in the drop and prepared for delivery to the "office" or to an "office worker" by the "bag man". Generally only the "bag man" will know the identity of the "office worker" and he is completely trusted by the "house". The "bag" leaves the "drop" and is conveyed to "the meet" with the greatest caution and secrecy and must be delivered just before deadline.

Once in the hands of the office worker the bets are taken to the "office" and tabulated to determine the amount of money to be collected from each route. After the winning numbers are known the bets are checked for "hits" and each route has a "tape" run showing the total amount of bets, hits to be paid out and the profit or loss. These tapes travel down the chain of command in the organization and the organization then sets out to collect their profits, payoff on hits and secure the necessary supplies for the next days business.

Senator McCLELLAN. With respect to our colleague, Senator Long, the Chair wants the record to show that I, of course, did not have time to read your statement which we just received. I think you did advise us, however, that you had written to Senator Long inviting him to be here.

Mr. PIGGINS. Suggesting that he be here. I have no power to invite him.

Senator MCCLELLAN. I assumed the Senator would use his own discretion. I did not take it on myself to invite him again. I had no idea what you were going to say.

Mr. PIGGINS. Perhaps if his counsel is here, I would be glad to answer any questions.

Senator MCCLELLAN. Of course Senator Long is chairman of a subcommittee, and he is functioning in accordance with his standards and ideals. I am not commenting upon that. Should he desire to make any statement, he may, and he may appear before this subcommittee if he should like. He may prefer to continue with his committee and make his record there of what he wants to have in support of his position.

Mr. PIGGINS. I am sure you understand my comment related to Senator Long and not to the members of that committee. Senator Hart is a member of that committee. My comments were related to Senator Long and not to the members of that committee.

Senator MCCLELLAN. I understand and Senator Hart is a member of this subcommittee and he is your Senator, I believe. He is a valuable member of this subcommittee, I might say. While we do not always agree, he brings up strong arguments and presentations for his points of view and most often we do agree. He has heard your testimony this morning, and in view of the fact he is your Senator, the Chair is going to defer to him for first questioning.

Senator Hart.

Senator HART. It would not be fair of me to abuse the chairman's privilege by now asking 20 minutes of questions.

Senator MCCLELLAN. Proceed.

Senator HART. I really have not that many questions. Perhaps I might in a sense repeat the chairman's question.

In light of the recent Supreme Court decision to which you make reference which evaluated the New York statute, you say that you believe we could constitutionally provide for wiretapping. Do you believe than under the language of that decision such a statute could be drafted without having as preliminary conditions to the authorization of the tap so much disclosure and advertising and conditions as to make absolutely useless the resulting tap? As I read that decision, and I confess I read it the way layers are not supposed to read it, thinking about two other things and listening to a Senate debate, I got the impression that the New York statute went further than any statute that we have seen in State jurisdictions, and yet failed to meet the constitutional test, because among other things it did not advise in public with sufficient particularity the taps, the period, and the persons.

Now, if you were to write a statute that did that, would not that be sort of putting a label on the phone, "Don't use it if you are engaged in illegal transportation or activity"?

Mr. PIGGINS. It also talked about trespass. I have talked with individuals—not directly, but indirectly—who participated in writing the amicus curiae. The impression I get from reading it, and I recognize that there could be different impressions, is that it did not come right out and say wiretapping per se is wrong. It said the New York statute was wrong because of certain defects. Now, it seems to me that the Congress, by legislation could well cure those defects.

Now, if the defects are cured and another test case made of it, and the Supreme Court says, well, it is still wrong because it is a violation of the search and seizure provisions of the Constitution, or it is a violation of the first amendment, there isn't much you can do about it. The onus then is on the Supreme Court. I don't know whether they will go that far. But I would say that if they went that far, the thinking was more sociological than it is legal.

Senator HART. The chairman has identified me as one of your Senators. I do not want to fly under false colors, but I know because of reading the earlier record you have some difficulty of my sort of a schizophrenic feeling on this wiretap business.

Mr. PIGGINS. No: I really don't.

Senator ERVIN. That is encouraging because I have the same feeling.

Mr. PIGGINS. I know you personally, I know your family background and I would have an idea as to what your feelings are. I have not, to tell you the truth, read any specific quotation as to how you feel.

Senator HART. Well, this subject was a matter of hearing by the Judiciary Committee the first year I landed here—that was 1959—and I suppose it goes back before that.

Senator SCOTT. Was there not a time when the Attorney General, Robert Kennedy, testified in favor of a wiretapping bill which had been brought up before the committee?

Senator HART. Now you know, in case you did not know before, Hugh Scott's party—you know exactly what it is now. But you are wrong, Senator. That was 1959 and that was when——

Senator SCOTT. Was it not when he first came here?

Senator HART. Attorney General Rogers came up. In 1961 Kennedy came up.

Senator SCOTT. And recommended passage of a wiretapping bill.

Senator HART. Yes, he did.

Senator SCOTT. I want the record to be clear on that.

Senator HART. I disagreed with both Attorney General Rogers and Attorney General Kennedy. I did not buy the idea that we could balance out these competing principles, society's interest, the individual's rights in the fashion that they proposed it without doing more damage than good. I still have terrible difficulty convincing myself that there is a way. You mentioned the kidnaper and the parent—of course you describe the feeling of the parent. He would do anything to insure the recovery of the child and the punishment of the kidnaper.

Mr. PIGGINS. I might point out, Senator, that there are very relatively—with the exception of District Attorney Hogan's statement in New York, the average metropolitan police department does not day in and day out do wiretapping. It is a rare thing. It is only used in cases of extreme importance and emergency. If you can say that it is unconstitutional and you cannot balance the rights of the individual against society, how do you justify search and seizure which has been the law in this country since the enactment of the fourth amendment?

Senator HART. This analogy has been suggested and I respect it up to a point. I can follow it up to a point. I think we will all agree that there are distinctions which to some of us, suggest that there is a difference. This is a particular property designated. There is a particular tangible object that may be obtained. Nothing else, nothing else inci-

dental may be picked up. How in Heaven's name do you avoid the incidentals that you pick up on a telephone? This, you see, is where I think the analogy breaks.

Mr. PIGGINS. Maybe the advance of technology will be able to screen that out. I don't know.

Let me give you another example. I am sure you have been on a boat, a yacht, and you heard a ship-to-shore radio and you have heard a dozen conversations that you didn't want to hear and didn't intend to hear innocently. I don't know where you are going to be able to eliminate it unless they have some kind of fantastic scrambler, and I wouldn't put anything past the technological brains of this country. They can do anything.

Senator HART. We are in agreement on that one. As a matter of fact, I have suggested that a few years from now all of this will be a pretty academic case—because of that police commissioner job, you are better able to make this guess than I—but I assume that the day is not long distant when our thoughts will be known. We have the lie detector with all of its fallibility now—that involves, as I understand, some physical contact with you. But the day after tomorrow, as history runs, and I am sure we all know how we each feel about the other and thank God we will not be alive to see it, but in any event, this will become academic, I suspect. But in the meantime, with you and others, we will try to gear up a Federal response that is adequate. I am delighted that you came today.

Incidentally, I thank you—I did not realize the correspondence you have had with Senator Long. I am very grateful you did not involve me as your social secretary on that one. I think I am lucky and you were kind—thank you very much, Mr. Chairman.

Senator MCCLELLAN. Senator Ervin?

Senator ERVIN. Case and Comment which is a lawyer's magazine for May–June 1967 has this to say:

> The existence of crime, the talk about crime, the reports of crime and the fear of crime have eroded the basic quality of life of many Americans. A commission study conducted in high crime areas of two large cities found that:
> 43 percent of the respondents stay off the streets at night because of their fear of crime.
> 35 percent say they do not speak to strangers any more because of their fear of crime.
> 21 percent say they use cars and cabs at night because of their fear of crime.
> 20 percent say they would like to move to another neighborhood because of their fear of crime.
> The findings of the Commission's national survey generally support those of the local surveys. One-third of a representative sample of all Americans say it is unsafe to walk alone at night in their neighborhoods.

Do you not think those facts indicate that Congress ought to do something to protect those who do not wish to be murdered, raped or robbed?

Mr. PIGGINS. Very clearly, very definitely they do. There are people in large cities in this country today, as you pointed out, who can't find areas where they can take a walk after dark for fear of rape or assault or mugging or some other crime. And when we reach that stage in this country I think as Senator McClellan has pointed out, we are getting pretty close to national insecurity.

Senator ERVIN. You are familiar with the *Miranda* case, are you not?

Mr. PIGGINS. Yes.

Senator ERVIN. The *Miranda* case is based on these words of the fifth amendment: "No person shall be compelled to be a witness against himself in any criminal case." Do you not think these words require the interpretation which was placed on them by the Supreme Court of the United States and virtually all other Federal courts from the time of the writing of the Bill of Rights down to June 13 of last year; namely, that they apply only to testimony which is compelled or required?

Mr. PIGGINS. Do you mean Senator, do I agree with *Miranda*?

Senator ERVIN. I am asking the exact opposite, I think. Do not those words in your view, apply only to testimony which one is compelled to give?

Mr. PIGGINS. I think that's a fair interpretation. If you were going to put it the other way around, then even a confession would never be admissible because a confession is made by the defendant and even though it is now admissible on the basis of voluntariness freely made, if a person does not have to take the stand or can't be compelled to testify against himself, on that theory you can't even use his confession.

Senator ERVIN. Those words have no possible application to voluntary statements, do they?

Mr. PIGGINS. I don't think they do. I think it is stretching it a little far.

Senator ERVIN. They also do not apply unless a man is a witness, is that not correct?

Mr. PIGGINS. Of course, he can't be a witness in a criminal case unless he takes the stand himself. That's the purpose of the amendment. If he does that, that's a different story.

Senator ERVIN. The third condition is that there must be a case which is a criminal case, or a case that can result in subsequent criminal prosecution against the witnesses.

Mr. PIGGINS. Which could incriminate him, as the amendment said.

Senator ERVIN. Now, do you see how anyone who has any proper regard for the plain meaning of the word of the English language can say that the words "No person shall be compelled to be a witness against himself in any criminal case" have any possible application to a voluntary confession by a person who is not a witness, made in a colloquy with a police officer?

Mr. PIGGINS. I may agree with you. I don't like to be in a position as a lawyer or a judge of criticizing those decisions. I don't mean to say I agree with them. There are many cases I disagree with them. But I think they have stretched it a little bit. They have not only stretched it, they have not only stretched the significance of the law, but the meaning of the word. I pointed out awhile ago the reason for search and seizure in the fourth amendment.

Senator ERVIN. I used to have some reluctance to criticize things myself—court decisions—until I read what Chief Justice Harlan Stone said. He said where courts deal, as ours do, with great public questions, careful scrutiny and frank criticism constitute the only protection we have against unwise decisions and against judicial usurpation.

Mr. PIGGINS. What you are saying is something very important. I think many people forget this, that the Supreme Court decisions in the final analysis may take time. Eventually we will be governed by public opinion.

Senator ERVIN. The *Miranda* decision states in substance that even a voluntary confession made by the accused in custody to a law enforcement officer will be excluded unless it appears that prior to the making of the confession the law enforcement officer stated to the accused that he didn't have to say anything, that anything he said could be used against him, that he didn't have to answer any questions unless he had a lawyer present and that if he was unable to get a lawyer of his own the court would appoint one, and that even in these cases he could not waive those requirements unless he stated expressly and in substance that he did not want a lawyer and wanted to make a statement.

And it had to be made within a reasonable time after the police officer gave such a warning. Do you not think those rules result in keeping people from making voluntary confessions?

Mr. PIGGINS. There is no doubt about it. Let me answer your question by asking another.

There is an old basic fundamental legal maxim that I learned in law school—ignorance of the law is no excuse. Every man is presumed to know the law. But apparently that is not the rule today. He is not presumed to know the law. You have to tell him that he is entitled to keep quiet and entitled to a lawyer. What has happened to the old legal maxim?

Senator ERVIN. Under the *Miranda* decision you may have the most brilliant professor or teacher of constitutional law, or the most learned judge in the United States, and if he was arrested for a traffic violation—I will not make it more serious in this hypothetical question—his voluntary confession that he was violating the traffic laws could not be received in evidence against him unless the police officer who stopped him first, told him all of these things; isn't that so? It makes no exception.

Mr. PIGGINS. I think you can stretch to the ridiculous. It may be that every second-story burglar from now on will carry his lawyer with him. That is going pretty far.

Senator ERVIN. They almost held that in a couple of cases. They said the victim of a crime could not be permitted to look at the accused unless the accused had a lawyer.

Mr. PIGGINS. My suggestion, of course, carrying it to an extreme, will put the old lawyer out of business because it will be rather difficult for him to climb through a window.

Senator ERVIN. What percentage of those who commit serious crimes do not already know that they do not have to say anything and do not already know that whatever they say derogatory will be used against them and do not already know that they do not have to talk unless they have a lawyer?

Mr. PIGGINS. The punk on the street knows that who does not have much of a record yet——

Senator ERVIN. So, as a practical matter, the Federal and State courts throughout the United States are constantly being compelled by the *Miranda* decision to allow to go unwhipped of justice, persons

who have voluntarily confessed that they committed the crime with which they are charged, simply because the police officer does not tell them something they already know. Is that not a fact?

Mr. PIGGINS. That is exactly right.

Senator ERVIN. The court held, 2 weeks ago, that a victim of a crime cannot be permitted to look at a suspect in custody for the purpose of determining whether or not the victim can identify the suspect unless the lawyer of the suspect is present.

Do you think there is any provision in the Constitution that would justify such a holding as that?

Mr. PIGGINS. I think it is carrying it pretty far. I think it was a great impeding process to the police. If you have ever seen a showup, they walk across the stage and have them stop five or six suspects, have them turn right and left. They can't see the audience, but the audience can see them.

What earthly value is a lawyer going to be at that stage of the proceedings, except to say to his client, "Don't go in the showup?" I don't—I just can't understand it. I haven't read that decision.

Senator ERVIN. The only reason the court gives for it is, in effect, that the lawyer would be better prepared to combat the evidence about identifying—the evidence of the victim identifying the suspect at the trial if he was present at the confrontation. I would ask if the same thing would not apply at the time the crime was committed. Would not the lawyer be better prepared to defend the man on the criminal charge if he was present and saw all of the events that occurred at the time the crime was committed?

Mr. PIGGINS. Depends on the lawyer.

Senator ERVIN. So, the logical extent of these cases would be for the court to hold next that you cannot prosecute a man unless you have a lawyer present who was also present at the time he allegedly committed the crime giving rise to the criminal charge.

Mr. PIGGINS. All of which is enough to verify Joe Cook's jokes that all lawyers are criminals to begin with.

Senator ERVIN. Sam Johnson said, "Oh Justice, what crimes are perpetrated in thy name."

Mr. PIGGINS. Exactly right.

Senator ERVIN. Thank you.

Senator MCCLELLAN. Senator Scott.

Senator SCOTT. Judge, from your earlier testimony I wanted to comment on these close decisions of the Supreme Court, 5-to-4 decisions, for instance. They seem to me to—and I would like to know whether you agree—have had a teeterboard effect on the law—you have already said you think it reflects the uncertainty of the bench, the bar, and the public as to what is the law. Since so many major turns are occurring in legal precedents on 5-to-4 decisions one way or the other, and the Court has veered both ways lately—the justice who has had that swing vote in effect, is he not in a way creating a new maxim here of one man, one law?

Mr. PIGGINS. I suppose in a sense that one man then creates the law for 100 million people. On the other hand, a majority, a simple majority, perhaps in some legislative action is permissible where one man can swing.

Senator SCOTT. This is our system, but it does illustrate that the Constitution is all sails and no anchor. We are running into troubles with the system we have to live with and justify.

With reference to what you said about what is happening to the maximum of ignorance of the law, excluding no one, perhaps we ought to amend that and say ignorance of the law excludes no one except four members of the Supreme Court at any one time.

Mr. PIGGINS. Senator, you have a point there that gives rise to some good thoughts. I think there are certain issues which come before the Congress which require two-thirds vote or more than a simple majority and it may well be in certain matters which come before the Supreme Court, I think that is within your power to legislate, that there should be more than a simple majority, that there might be two-thirds vote of something. At least it's worthy of consideration.

Senator MCCLELLAN. What if we so legislated and the Supreme Court held the legislation unconstitutional?

Mr. PIGGINS. We get back to our basic system of a government by checks and balances. It depends on the individuals who grace the High Bench at that time.

Senator SCOTT. What would you think of the comment made by a previous witness, the district attorney of Philadelphia, Mr. Arlen Spector, who suggests in his testimony that it would be highly desirable for the Supreme Court to conduct extensive hearings and consider much basic evidentiary material before making fundamental modifications in the constitutional law?

Mr. PIGGINS. You mean they should hear evidence?

Senator SCOTT. If they are going to make fundamental modifications he suggests the possibility that they have before them, not necessarily a hearing of evidence, but as he puts it, they conduct extensive hearings in order to consider much basic evidentiary material.

In other words, hearing above and beyond the arguments of counsel. This is a normal thought. I'm not adopting it as my own, but I wonder what your reaction is.

Mr. PIGGINS. It is a new concept, of course. I presume the court has a right to lay down its own rules of procedure. We never had appellate courts where they go beyond the judicial hearing or conduct hearings from others who are not lawyers. It may have merit. But if these decisions keep coming down the way they are, there may be some clamor for some such things as that.

Senator SCOTT. One other thing. I have before me the Congressional Quarterly fact sheet which points out that not until the 1960's did these efforts, that is, to enact a wiretap bill, relate to crime. In the 1950's the issue of consequence was subversive activities and in 1954 the House passed a bill that legalized the use of wiretapping in national security prosecutions. The Kennedy administration in 1961 endorsed a proposal for a wiretapping law authorizing Federal agencies to wiretap in cases of national security, organized crime, and other serious crimes and placed no limit on State wiretapping.

In 1962 the Kennedy administration sent a bill to Congress somewhat more restrictive, authorizing Federal wiretapping in cases of national security, organized crime, and other serious crimes, limited statewide tapping in certain serious crimes, and then in 1963 following the Cosa Nostra hearings, Attorney General Kennedy proposed legis-

lation which included the provisions granting immunity to witnesses in certain court cases.

I read that because I have to confess a certain inconsistency of my own—that is the difficulty of speaking outright and discussing these matters—that I supported Attorney General Kennedy at that time. I find myself in somewhat an embarrassing position of having cosponsored the Long bill and having publicly to admit some doubts about that bill as to whether or not we should seriously consider the inclusion of organized crime within the wiretapping proposal. It is always difficult to admit that you may have been wrong. But I am afraid that I may have been, so at this point I would have an open mind and am very much concerned, especially because of the impact of your testimony and other matters that I have read since and particularly the Supreme Court's recent decisions in such matters as the *Berger* case. But I do thank you very much.

I would like to conclude, if I may, with one comment. I do not want to delay the next witness.

Like yourself, I have had a good deal of experience with criminal law and I have no doubt whatever, that in many major cities, perhaps in most of them, organized protection of organized crime is widespread, protection which continues to be made for the operation of houses of prostitution, for the highly affluent and prosperous numbers games and I have read the testimony of the next witness and I will not comment on that at this point, but I wish there were more muckraking than less. I wish there were more exposures of the kind of protection I had to deal with as a senior assistant district attorney, the kind of protection I am certain exists today and exists to support political parties, among other doubtful fringe benefits. I think it is extremely dangerous. I think it will destroy the organization of our system and viability unless something is done about it. This is not a question, but I wanted to indicate that your testimony has been most helpful and I appreciate it.

Senator McCLELLAN. Thank you very much. Thank you kindly.

Mr. PIGGINS. Thank you, Senator.

STATEMENT BY SENATOR EDWARD V. LONG, DEMOCRAT, OF MISSOURI, RELATIVE TO TESTIMONY OF JUDGE EDWARD S. PIGGINS, JULY 1, 1967

Senator LONG. Senator McClellan, chairman of the Subcommittee on Criminal Laws and Procedures, has this morning furnished me a copy of a proposed statement to be made before his subcommittee by Judge Edward S. Piggins of Detroit, Mich. I have read those portions of Judge Piggins' statement which are critical of the activities of my subcommittee.

First, let me say that I share Mr. Piggins' concern about the increase in organized crime. My voting record proves this conclusively as I have supported numerous measures to aid in the fight against organized crime. As chairman of the Senate National Penitentiaries Subcommittee, I have worked closely with the Bureau of Prisons and the Department of Justice to improve our Federal correction system. My efforts in this area will continue.

The public records of my Subcommittee on Administrative Practice and Procedure contain testimony to the effect that the Detroit Police

Department was active in the use of modern electronic surveillance devices. When Judge Piggins was the commissioner of police, our records indicate that there was considerable illegal wiretapping and eavesdropping by the Detroit police. If Commissioner Piggins did not know of these illegal activities, he should have known.

During our investigations in Detroit and during the course of the hearings, we received the full cooperation of Mr. Ray Girardin, the present commissioner of police in Detroit. It would seem that Mr. Girardin would be the best judge as to what adverse effect, if any, our inquiries had upon either the morale or effectiveness of the Detroit Police Department.

Judge Piggins did not attend the hearings of my subcommittee and our records fail to reflect that he was ever furnished with a transcript. I have today instructed my staff to furnish him with a typewritten transcript in lieu of our yet unprinted hearing record which I hope will put his anxiety at rest. If, after having read the record, he still has reservations, we will again endeavor to afford him an opportunity to express the same on the record.

After 2 years of investigating eavesdropping and wiretapping, I do not believe it unusual that I should have reached a definitive stand on the subject. I introduced the administration's Right of Privacy Act because I shared the opposition of the President and the Attorney General to the unconstitutional and unconscionable use of these electronic devices. A majority of the Supreme Court recently placed severe limitations on State law enforcement eavesdropping and the Attorney General has issued regulations stopping Federal use. Thus, it appears rather clear that I do not stand alone in advocating the right of privacy.

Senator McCLELLAN. Attorney General Sennett, if you will come around, please, sir. Senator Scott is recognized.

Senator SCOTT. Mr. Chairman and members of the committee, I take great pleasure in introducing at this time the attorney general of the Commonwealth of Pennsylvania, the Honorable William C. Sennett.

Attorney General Sennett was in private practice in Pennsylvania for 10 years, was a special assistant attorney general in 1963, executive assistant to the then Lieutenant Governor Shafer and in 1966 was appointed by him as attorney general and is representative of Governor Shafer's highly commendable practice in naming a cabinet who combine youth and experience.

Interestingly, the cabinet is 10 years younger on the average than the cabinet of his immediate predecessor, which also was a very good one. I take pleasure in presenting Attorney General Sennett to you.

Senator McCLELLAN. Thank you very much, Senator.

Mr. Attorney General, you may proceed.

STATEMENT OF HON. WILLIAM C. SENNETT, ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA

Mr. SENNETT. Thank you, Senator McClellan.

Mr. Chairman, members of the committee, thank you, Senator Scott for the graciousness of your remarks in introducing me to the chairman and to the members of the committee.

I direct my remarks to organized crime and to the legislation which is currently before you, S. 675.

Thank you for inviting me here today. I very much appreciate this opportunity to appear before the subcommittee to discuss some of the critical facets of our crime crises.

First, I must commend this subcommittee for the fine work you are doing here. The agonizing problems in our criminal justice system will not submit to simple solutions. This subcommittee has taken an intelligent, determined, and dedicated approach in its attempt to solve many of our perplexing crime problems by much-needed legislation.

The enacting of criminal statutes requires great care and deliberation. The criminal law, it is said, is the cutting edge of the law. In a free society, it is critical that the cutting edge be tempered in the interest of individual liberty.

Mr. Chairman, the core-center of our freedom is undoubtedly the right to privacy. Privacy or the right to be left alone by government unless there is cause for contact, is indispensable to our way of life.

But evil men must not be assured the sanctuary of privacy to plot the criminal destruction of our communities.

In April of this year, the Governor of Pennsylvania, Raymond P. Shafer, said:

> The National Security is today being threatened by crime. We must not limit an effective war on crime just as we would not restrict a total effort against any foreign aggression, if we allow the use of electronic devices to prevent an enemy nation from endangering our national security, why should we prohibit the use of such devices to prevent or help eliminate this present domestic danger?
>
> The legitimate interest of society, for its own protection, requires that law enforcement agencies be able to use wiretapping and electronic listening devices in their fight against Twentieth Century crime.

These remarks of Governor Shafer project Pennsylvania's view that there is immediate need for wiretapping authority in order to combat crime—particularly organized crime. I am here today to document that "need" for this subcommittee.

Pennsylvanians have become increasingly alarmed by several warnings issued by the President's National Crime Commission. That Commission's specific identification of a National Confederation of Organized Criminals, together with its ominous report that some of the tentacles of this deadly confederation reach deep into Pennsylvania, make it imperative that our system of criminal justice in Pennsylvania have the capacity to respond to this creeping menace.

According to the National Crime Commission:

> Organized crime is a society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits.

And further, the President's Crime Commission emphasized:

> The purpose of organized crime is not competition with visible, legal government but nullification of it. When organized crime places an official in public office, it nullifies the political process. When it bribes a police official, it nullifies law enforcement.

If this be true, as I think we can accept it as being true, then internally organized crime is in fact—as Governor Shafer has indicated—a clear and present danger to our national security.

Further, in carefully documented reports, the President's Crime Commission unequivocally emphasized the failure of current National and State efforts to control organized crime. This, coupled with the almost universal belief that traditional investigative techniques by law-enforcement officers are not adequate to confront high echelon organized crime figures, makes the demand for new techniques to combat crime imperative.

Should these new law enforcement techniques so necessary to combat crime in this country include authority for eavesdropping? Mr. Justice Black seems to suggest one answer for us in his dissenting opinion in the *Berger* case:

> Today this country is painfully realizing that evidence of crime is difficult for governments to secure. Criminals are shrewd and constantly seek, too often successfully, to conceal their tracks and their outlawry from law officers. But in carrying on their nefarious practices professional criminals usually talk considerably. Naturally, this talk is done, they hope, in a secret way that will keep it from being heard by law enforcement authorities or by others who might report to the authorities.
>
> In this situation "eavesdroppers," "informers," and "squealers," as they are variously called, are helpful, even though unpopular, agents of law enforcement. And it needs no empirical studies or statistics to establish that eavesdropping testimony plays an important role in exposing criminals and bands of criminals who but for such evidence would go along their criminal way with little possibility of exposure, prosecution, or punishment . . . .
>
> The eavesdrop evidence here shows this petitioner to be a briber, a corrupter of trusted public officials, a poisoner of the honest administration of government, upon which good people must depend to obtain the blessings of a decent orderly society.
>
> No man's privacy, property, liberty or life is secure, if organized or even unorganized criminals can go their way unmolested, ever and ever further in their unabandoned lawlessness. However obnoxious eavesdroppers may be, they are assuredly not engaged in a more "ignoble" or "dirty business" than are bribers, thieves, burglars, robbers, rapists, kidnappers and murderers, not to speak of others.
>
> And it cannot be denied that to deal with such specimens of our society, eavesdroppers are not merely useful, they are frequently a necessity.

Mr. Justice White in the same case, *Berger* v. *New York*, also focused on the necessity for electronic eavesdropping authority:

> If the security of the National Government is a sufficient interest to render eavesdropping reasonable, on what tenable basis can a contrary conclusion be reached when a state asserts a purpose to prevent the corruption of its major officials, to protect the integrity of its fundamental processes, and to maintain itself as a viable institution? The serious threat which organized crime poses to our society has been frequently documented. The interrelation between organized crime and corruption of governmental officials is likewise well established, and the enormous difficulty of eradicating both forms of social cancer is proved by the persistence of the problems if by nothing else.

The President's Commission on Law Enforcement and the Administration of Justice in an in-depth report on organized crime in the United States presented a detailed analysis of the death of a city. Not a mythical city—but a city mythically called Wincanton. Some have wondered where Wincanton, U.S.A., is located. Where it is, is not important. What is important is the tragic fact that organized crime literally stripped the honor, decency, and government of the city,

layer by layer. When the gangsters finished, nothing was left of the soul of the city.

In Wincanton, the chief racketeer-overlord with "national connections" contracted, bartered, and sold the position of chief of police for $10,000. The mayor, the police chief, and the police department were paid on a weekly basis, by the overlord and his syndicate. The chief racketeer gave the police specific instructions to keep hands off gambling and prostitution within the city.

With this kind of stranglehold on the government of the city, the city's growth and development was choked and its government paralyzed.

Who can deny that this city was put to plunder? Who can deny that democratic government in this city was totally and ruthlessely destroyed by criminals? Who can deny that the capture of this city by organized criminals was as great a threat, if not a greater threat to the city's security than invasion by hostile armies? Mr. Chairman, and members of the subcommittee, let us not delude ourselves, our very national security is at stake in this battle to combat crime.

Where is Wincanton, U.S.A.? Wincanton will be everywhere unless we get the investigative tools needed to bring organized crime to its knees.

Is there a need for court-approved eavesdropping? What kind of evidence is produced by this investigative device? Little is written on the subject, but recently the U.S. District Court of the District of Rhode Island made summaries of 10 days electronic surveillance an official part of the record in a pending organized crime prosecution in that district.

These 10 days of electronic surveillance show in graphic detail the day-to-day, hour-to-hour, minute-to-minute machinations of New England's No. 1 criminal czar.

These electronic surveillances revealed private criminal conversations by this New England czar wherein he discussed—among other things—sending bank robbers to Philadelphia; the kidnaping of an individual in Miami, Fla.; the induction of a Cosa Nostra member in New York; splitting of $18,000 proceeds from a crime to get the man who committed it out of jail; the replacement of a numbers baron in Baltimore who was going to jail, and the hiring of a "hit" man to be used in the Providence area.

Senator McCLELLAN. Do I understand that all this information was gained in one wiretap?

Mr. SENNETT. In 10 days of surveillance.

Senator McCLELLAN. How recently?

Mr. SENNETT. This year.

Senator HRUSKA. The testimony was released this year, but it was gathered electronically at an earlier date.

Mr. SENNETT. That is right.

Senator McCLELLAN. In the last two or three years?

Mr. SENNETT. It is fairly current.

Senator McCLELLAN. Go ahead.

Mr. SENNETT. Other topics of conversation by this top organized crime figure in New England included: The effect of the Bonanno defection on Canada; shylocking personnel; arrangements to pay off

one of the State police departments in New England; discussion concerning labor racketeering; discussion concerning the sale of a track in New England for $900,000; and the discussion of franchises of juke box machines under the control of Angelo Bruno in Philadelphia.

Finally, the electronic surveillance revealed that the New England racketeer kingpin categorically stated: "If the killings—in Boston—don't stop, I'll declare martial law."

These electronic surveillance summaries unquestionably demonstrate the need for court-approved electronic surveillance. The supreme arrogance of the man—he'll declare martial law. Where is government when he declares martial law?

Does organized crime cripple effective government? Recently a civic leader in Westchester County, N.Y., charged publicly that organized crime figures had stopped redevelopment in that county dead in its tracks. An underworld figure purportedly explained the syndicate's attitude on redevelopment: "You make more money out of a Harlem than a Scarsdale."

Surely, if we do not protect ourselves against the scourge of organized crime, we shall lose our government and our freedom. The experts agree that we have failed to effectively combat this urgent criminal problem. The experts agree that, at present, it is clear that traditional investigative techniques are totally inadequate to bring organized crime figures to justice. For the sake of free government and for the safety of our citizens, I urge you to present to the Congress a constitutionally sound act to permit closely supervised court-approved electronic eavesdropping.

Senator McClellan. You appreciate our problem there when you say present to the Congress a constitutionally sound act to permit closely supervised court-approved electronic eavesdropping. We may so think, but the Supreme Court may disagree with us.

Mr. Sennett. In answer to your question, I think the Supreme Court in the *Berger* decision, has given us the guidelines within which both the Congress and the States may draft and enact constitutionally sound legislation.

Senator McClellan. I hope it has and I am inclined to share your view, but I am not fully convinced. But I take this position: Let the Congress meet its responsibility in the light of its judgment, and then if the Supreme Court disagrees, let it take the onus of such consequences as may follow.

Mr. Sennett. After a searching examination of the *Berger* decision, it is Pennsylvania's view that a workable, constitutionally sound statute for strictly supervised court-approved electronic eavesdropping is feasible.

Pennsylvania's view is that there must be sufficient safeguards to justify the extreme degree of invasion of privacy caused by eavesdropping. Pennsylvania's proposed statute, therefore, will include the following safeguards:

1. Applications to court for court-approved eavesdropping must be made on application of the attorney general and the local district attorney.

2. Court-approved orders for court approved eavesdropping will issue only after a precise and definite showing of "probably cause"

under oath. The oaths would be by the police officer who would have the necessary information, but the application would always be by the district attorney and the Attorney General.

3. The person or persons whose conversations and communications are being sought, the nature of the conversations and communications, the crime and the place must be described with detailed particularity—as much as is possible.

4. The maximum time of coverage for court-approved eavesdropping will be 24 hours.

I would suggest, as I say, my statement, keeping it to as short a time as 24 hours.

Senator McClellan. Let me ask you this: I have no objection to limiting it if you can get results. But it takes a little while to place a wiretap. You cannot place a wiretap just any time of day. Without advertising the fact you've got to take these things into account. Do you not agree?

Mr. Sennett. I think the devices that would be currently, if not at least available, possible, are to the extent sophisticated that the matter of placement has become almost no problem.

Senator McClellan. That may be true. All right, go ahead.

Mr. Sennett. 5. A specific provision waiving the requirement of any advanced notice to the accused on the basis of need and emergency. This is one of the most important things that the *Berger* decision has left open. But the *Berger* decision certainly implies, as I interpret it, that if you recite there is a need and an emergency, you do not have to give advance notice to the accused.

Senator McClellan. What would be the point of the wiretap if you have to give advance notice to the accused?

Mr. Sennett. If you have to give advance notice there is no chance possible. But the *Berger* decision recites this possibility, it says its advance notice or the showing of need in an emergency.

Senator McClellan. In other words, I take it from the *Berger* decision, if you want a wiretap, got the court's approval, and gave advance notice, it would be legal. It would also be futile as well as legal, would it not?

Mr. Sennett. Absolutely futile.

Senator Hruska. Is that not part in keeping with the Supreme Court's recent decision in the matter of regular searches and seizures?

Mr. Sennett. I think there is an analogy between the theory in the search-and-seizure matter that you mentioned and this also.

Senator Hruska. Thank you.

Mr. Sennett. 6. Provision for the official return of the court order as a matter of record similar to the return requirements of search warrants. I don't believe I mentioned in my prepared statement, but certainly, in addition for return of the court order, making the information available at a subsequent time to the accused under discovery procedures.

With these specific safeguards it is Pennsylvania's belief that law enforcement officers will have, in some measure, the weapons which they need to combat organized crime and, at the same time, our citizens' right to privacy will be carefully protected by the safeguards I have just outlined.

I might then, Mr. Chairman, in conclusion, that not only the evidence brought forward by the electronic surveillance in New England, not only the statements in New York, not only the reports of the President's Crime Commission, but also his prosecution with which we are familiar in Pennsylvania, both Federal and State, over the last several years, show the absolute factual existence of organized crime and its effect upon government and communities. One of the best ways to root it out is to give our State law enforcement officials a constitutional statute, and I believe it can be drawn within the guidelines suggested by Justice Clark in the majority opinion in the *Berger* case.

Senator McCLELLAN. If the Congress provided a statute authorizing it in Federal cases, a State law not in conflict therewith would, I assume, be held constitutional and the States could therefore enact statutes that do not contravene to Federal law.

I thank you very much for your statement. I see nothing to argue about or quarrel with the requirements, other than the 24 hours.

Mr. SENNETT. The 24 hours may be somewhat restrictive.

Senator McCLELLAN. It may be too short. I do not know. But I agree that it ought to be under the strictest supervision of the court issuing the warrant with the authority to recall the order and the authority to require a report. I have no objection, as someone has suggested, to requiring the filing with the court promptly upon discovery any testimony, or all testimony, and let it be placed in the court's custody. I have no objection to any reasonable restriction or requirement to prevent, as far as possible, any abuse. But to deny to law enforcement this instrument, this means of combating crime, I think, is a grave injustice to society.

Senator Scott?

Senator SCOTT. I thank you, Mr. Attorney General, for a very useful statement.

I have the same concern Senator McClellan has expressed about the 24 hours, partly because of certain experience with sometimes the lethargy or interruptions which occur in the actions of a political—of a police official who may be diverted to some other business by orders of his superior or simply slow moving—all because of the continuity which may occur during a wiretap where a conversation was interrupted by one of the parties who says, "I will call you back tomorrow." This may be a minor thing, but perhaps a period of longer than 24 hours may be useful.

On two other bills which Senator McClellan and I have cosponsored, if you would care to express any reaction—the obstruction of criminal investigation—this is related to criminal activities. It is a crime to obstruct court proceeding, yet it is not a crime to obstruct an investigation. By stifling the flow of information at the investigative level some persons can prevent the case from ever reaching the court. This bill would make such obstruction of activity, for example, through threats, violence, and force, a criminal activity. Do you have any opinion on that?

Mr. SENNETT. Yes, Senator, I think that it would be our view that such legislation is necessary. I have had the opportunity to review the statute which you provided to me prior to my coming here, and I believe there is a deficiency in the law in not allowing us to proceed in this particular area. I believe the legislation is sound.

Senator SCOTT. Thank you. This bill, S. 677 on witness immunity—these bills are now pending in the House. The witness immunity bill is intended to cover situations where many witnesses who can provide necessary information in criminal cases refuse to do so, exercising their constitutional right against self-incrimination which results in the defendant going free, whereas if there were witness immunities another result may well occur.

This bill would prevent such a possibility—such a possible miscarriage of justice by vesting the Attorney General with the power to ask the court to compel the witness to testify and without a promise not to prosecute.

Mr. SENNETT. Yes, Senator, and certainly a general immunity statute where it is limited to the attorney general's providing the immunity is necessary. I would also say that at the present time in Pennsylvania we have drafted a similar immunity statute which would be limited to the attorney general's discretion and we hope to have it inrtoduced and enacted by our general assembly.

Senator SCOTT. Just in conclusion, so the record shows the background, I would appreciate your correcting me if I am not stating this accurately, but for a period of a great many years in Pennsylvania, there was no effective restriction on wiretapping. It was conducted interstate and intrastate. Then there was a decision which I think outlawed intrastate wiretapping. There was a subsequent decision which outlawed interstate wiretapping. At least in both cases they restricted the practice, following which in a session of the legislature where there was some emotion surrounding it the legislature repealed all wiretapping legislation in Pennsylvania. That is the present situation; is it not?

Mr. SENNETT. That is correct. We are one of the few States where the legislature has enacted several years ago a statute which make wiretapping a criminal offense. Incidentally, there has never to my knowledge, been a prosecution under that statute and it is our view, of course, that that statute should be repealed and replaced with the type of statute authorizing which I have described today.

Senator SCOTT. A Senator said to me this morning before we met here that we seem to proceed in the way of a pendulum, that we go too far in one direction and permit too much and then go too far in other directions and outlaw everything. I think that's the purpose of these hearings, to find out if wiretapping is to be permitted and what scope should be allowed, what protective safeguards provided for and whether such a bill can be enacted, as Senator McClellan says, which will pass the scrutiny of whichever five members of the Supreme Court happen to form a temporary majority on that day.

That is all I have.

Mr. SENNETT. It is a problem.

Senator MCCLELLAN. Thank you very much. Any other questions?

Senator ERVIN. Just one or two.

The *Berger* case is based on the fourth amendment?

Mr. SENNETT. Yes, sir.

Senator ERVIN. If I remember correctly, it says the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

And no warrant shall issue except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized. That is substantially it, is it not?

Mr. SENNETT. That is right, sir.

Senator ERVIN. The Supreme Court recently held in several cases that the provisions of this amendment relating to unreasonable searches and seizures of the person apply where intrusions are made below the surface of the body to obtain evidence, did it not, such evidence as the contents of the veins in cases to show intoxication or lack of intoxication?

Mr. SENNETT. Yes, that is correct.

Senator ERVIN. Now, they imply that the provisions of the fourth amendment—is not a voice essentially a part of the person as much as what courses in the man's veins?

Mr. SENNETT. No question in my mind.

Senator ERVIN. So there is nothing in the amendment which would outlaw a reasonable search and seizure of the person for the purpose of ascertaining what the voice was uttering in respect to criminal matters.

Mr. SENNETT. As long as it is reasonable and within the safeguards, I think the amendment applies.

Senator ERVIN. So your paper makes it very clear that there is no doubt in your mind that Congress would have the power under the fourth amendment to permit eavesdropping for the purpose of ascertaining where the crime was being committed, provided there were sufficient restrictions to make certain that whatever process was used was at least sufficient to comply with the minimum requirements about warrants under the fourth amendment.

Mr. SENNETT. As I interpret the *Berger* decision, they have given really to Congress the guidelines within which such legislation can be drafted.

Senator ERVIN. I wanted to commend you on the excellence of your statement.

Mr. SENNETT. Thank you, Senator.

Senator MCCLELLAN. Senator Hart?

Senator HART. Mr. Attorney General, with Senator Ervin I want to thank you for the statement that is brief and very explicit.

Just two things. You heard me express some concern to Judge Piggins about what the *Berger* decision would permit us to do. In a sense you anticipated the question. You indicated what you think it could do. Clearly, the greatest difficulty, the greatest hangup is this fifth item, what is needed in an emergency to justify your going ahead without putting the label on the phone "Use at Your Risk."

You emphasize the necessity that whatever activity in terms of tapping is authorized shall be under the strict supervision of the court.

Now, we go to the court, we explain that we want to tap the phone of this New England crime figure that you have discussed here. And whatever the assertion of necessity and urgency is that will permit us to do it without telling him, we recite that. In any event, the court is persuaded that there is a necessity. So we get on that tap and then we hear two things which you describe as having been picked up here—discussion concerning the sale of a track in New England and discus-

sion of franchises of jukebox machines under Angelo Bruno's control. We hear them in a discussion that the man has with his lawyer, because both of them involve legal arrangements.

How do you screen that out, and do not we have a right to absolute protection in our conversation with our own lawyers?

Mr. SENNETT. There is no question at all, Senator, I don't think, that if we enact this legislation we are going to get conversations which we probably should not have and in any event cannot use. But I think the protection is here if we can't use them. Certainly the conversations between attorney and client are privileged. So we can't use them.

Now, the fact that they are known is unfortunate. But I think the balance should be weighed between the individual's right to privacy and security, and the Nation's right to security from organized crime.

Senator HART. You should not have the information but you get it. If you were a law-enforcement official you could not use it, but would you not feel an obligation, acting on the knowledge that you should not have, to go out and make the case which you make only because you have the knowledge you should not have?

Mr. SENNETT. Well, certainly, the tainted——

Senator HART. Are we not turning over that to you, which we should not turn over to you?

Mr. SENNETT. I think what you say is correct, but I also think that the balance must weigh in favor of the country.

Senator HART. What I am anxious to do is see that we understand that we are doing these things if we do enact this law, compelling us therefore to make the judgment that public good justifies the intrusions which otherwise ought not to be permitted. That is the only reason I ask the questions.

Mr. SENNETT. I think you have to come to that conclusion.

Senator HART. Some people like to sort of fog it up and avoid—not Members of Congress—but people who write— editorials, et cetera.

Mr. SENNETT. But of course we are assuming somewhat in the Senator's question that information which we are going to get is perfectly legitimate information, we should not have it and so on. There is no question in the first instance we are not looking for that information, nor do we want it. What we are looking for is the type of information that we should have if we are going to effectively combat crime.

Senator HART. Thank you very much.

Senator MCCLELLAN. Senator Hruska?

Senator HRUSKA. Mr. Attorney General, I sympathize with the struggles that the Senator from Michigan, has in this matter. I have seen him agonized on previous occasions, starting 7 or 8 years ago, and I know that he holds these convictions deeply in his heart and in his thinking and philosophy. However, in putting the case of the disclosures of a privileged communication that is overheard on one of these taps between a lawyer and his client on a $900,000 deal to buy a race track, we cannot quite consider that segment all by itself, can we? Is it not true that we would have to take the sweep of the disclosures over the 10-day period and find out what those brought to society that will enable us to combat efforts being made by the Cosa Nostra? Do we not have to put that in prospective rather than say

that you are violating a highly privileged liberty of Americans, namely, the privilege of communication between attorney and his client?

Mr. SENNETT. I think so. As I believe I said to Senator Hart, you have to weigh it in the balance and you have to look at the danger and the threat, you have to look at the broader perspective of all of the information you are going to obtain and then you are going to come to the conclusion that it is necessary.

Senator HRUSKA. A witness who will appear later will go into great detail about telling us what was disclosed in some of those airtels, and I think perhaps we can await that testimony before we get into too big a hurry to make a judgment.

I notice one line in *Berger* against *New York*—it says that the fourth amendment is the basis of the decision. In any event we cannot forgive the requirements of the fourth amendment in the name of law enforcement.

Mr. Attorney General, from the tenor of your testimony I would think that if there is going to be any forgiving of the requirements of the fourth amendment it would not be in the name of law enforcement, it would be in the name of survival of our civilization and the freedoms and liberties that constitute that civilization. Would that be a fair characterization?

Mr. SENNETT. I think so, Senator. I think what we are challenged with is the basic threat to our national security and survival. Just as the justification for use of these devices in external security against hostile forces.

Senator HRUSKA. In all fairness to the Court and Judge Clark did say this, on the other hand the Court has in the past under specific conditions and circumstances sustained the use of eavesdropping devices.

Let me ask you this one more question: Last Friday on July 7 there appeared in the New York Times under date Washington, July 6, what purports to be the text of a memorandum by the Attorney General Ramsey Clark on new regulations limiting wiretapping and electronics eavesdropping by Federal agents.

This is supposed to be a classified document—I am beginning to understand the ingenuity and resources of the fourth estate—but it appears in print. I assume it is a copy. Have you had occasion to read it?

Mr. SENNETT. I am sorry, Senator, I have seen the New York Times which came across my desk yesterday. I read it briefly, but I have not read the purported document.

Senator MCCLELLAN. A newspaper article is not classified. However, we have copies of the memorandum by the Attorney General and this document can be printed in the record.

Senator HRUSKA. We can take judicial notice of the fact that the New York Times has a fairly large circulation.

Senator MCCLELLAN. The memorandum will be printed in the record at this point.

(The article above referred to follows:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 16, 1967.

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

RE: WIRETAPPING AND ELECTRONIC EAVESDROPPING

It is essential that all agencies having any responsibility for law enforcement take steps to make certain that electronic and related devices designed to intercept, overhear or record private verbal communications be subject to tight administrative control to assure that they will not be used in a manner which is illegal and that even legal use of such devices will be strictly controlled. In order further to assist you to achieve these ends, the following rules have been formulated.

I. Prohibition against Use of Mechanical or Electronic Devices to Intercept, Overhear or Record Conversations

A. *Prohibition against Interception of Telephone Conversations.*—1. Section 605 of the Communications Act (Title 47, U.S.C. § 605) prohibits the interception and divulgence or use of telephone communications and is applicable to federal law enforcement agents.

2. Interception by federal personnel of telephone conversations, by any mechanical or electronic device, unless with the consent of one of the parties to the conversation, is prohibited by Presidential directive, and this prohibition applies whether or not the information which may be acquired through interception is intended to be used in any way or to be subsequently divulged outside the agency involved. Any question as to whether the use of a particular device can be said to involve a prohibited interception of a telephone conversation should be referred to the Department of Justice.

3. To further assure protection of the privacy of telephone conversations, each agency shall adopt rules governing the interception by its personnel of telephone conversations under circumstances where a party to the conversation has consented. Such rules shall, where appropriate, provide for the advance approval by the agency head of such interception.

B. *Prohibition against Overhearing and Recording of Non-telephone Conversations.*—Legal principles applicable to the overhearing and recording of non-telephone conversations are discussed in paragraphs 1–3 below. These principles are consistent with the recent decision of the Supreme Court in *Berger* v. *New York*, 35 Law Week 4649, decided June 12, 1967.

1. Eavesdropping in any form which is accomplished by means of a trespass into a constitutionally protected area is a violation of the Fourth Amendment. The penetration by inches into a party wall by the spike of a microphone has been held to involve a trespass. *Silverman* v. *United States*, 365 U.S. 505 (1961). And, although the question has not been squarely decided, there is support for the view that any electronic eavesdropping on conversations in constitutionally protected areas is a violation of the Fourth Amendment even if such surveillance is accomplished without physical trespass or entry. Homes, private offices, hotel rooms and automobiles are clear examples of constitutionally protected areas, but other locations may also be held within the scope of constitutional protection depending upon the particular circumstances.

2. Even where no invasion of a constitutionally protected area has occurred, surreptitious electronic surveillance involving an intrusion into a privileged relationship, such as that of attorney-client, may violate rights entitled to protection under constitutional provisions other than the Fourth Amendment, including the First, Fifth and Sixth Amendments.

3. Under presently controlling court decisions, however, certain uses of electronic devices are legal. See, for example, the decisions in *Lopez* v. *United States*, 373 U.S. 427 (1963) and in *Osborn* v. *United States*, 385 U.S. 323 (1966), where the use of recording devices was held to be legitimate if the consent of a party to the conversation had been obtained. Moreover, the use of mechanical or electronic equipment to record statements intended to be disseminated to the public generally, public speeches for example, is clearly not illegal and is not subject to the rules formulated in this memorandum.

4. In the light of the immediately foregoing discussion in paragraphs 1–3, any use of mechanical or electronic devices by federal personnel to overhear or record non-telephone conversations involving a violation of the Constitution or a statute is prohibited.

5. In order further to assure protection of the right of privacy, to resolve questions which may arise under paragraph 4 and strictly to limit legal electronic

surveillance, agencies shall, except as provided in paragraph II. 2 below, obtain advance written approval from the Attorney General for *any* use of mechanical or electronic devices to overhear or record non-telephone conversations without the consent of all of the parties to such conversations.

II. Controls Over the Use of Mechanical or Electronic Equipment

1. A request for advance approval from the Attorney General pursuant to paragraph I.B.5. hereof for the use of mechanical or electronic devices to overhear or record non-telephone conversations shall be made to the Attorney General in writing by the head of the requesting investigative agency and shall contain the following information: (a) the reason for such proposed use; (b) the type of equipment to be used; (c) the name of the person involved; (d) the proposed location of the equipment; (e) the duration of proposed use; and (f) the manner or method of installation.

2. If, in the judgment of the head of the investigative agency involved, the emergency needs of an investigation preclude obtaining such advance approval from the Attorney General, he may, without having obtained such approval, authorize the use of mechanical or electronic devices to overhear or record non-telephone conversations without the consent of all of the parties thereto. In any such circumstances, however, the head of the investigative agency shall, within twenty-four hours after authorizing such use, provide the Attorney General in writing with the information referred to in paragraph II. 1, above, and with an explanation of the circumstances upon which he based the judgment that the emergency needs of the investigation precluded him from obtaining such written advance authority.

3. In connection with the use of mechanical or electronic devices authorized above, the responsible agent shall, where technically feasible, record the conversations overheard by means of a tape or similar permanent record. The responsible agent shall preserve the tape or other permanent record of the conversations. He shall also submit to the investigative agency a written report setting forth the actual use or uses made of each mechanical or electronic device in connection with the authorization. Such report, the tapes or other permanent records of conversations, and any logs, transcripts, summaries or memoranda and similar material which may have been prepared shall be treated as agency records, but shall be specially classified, filed and safeguarded and shall not, nor shall information contained in such material be made available to agency personnel or others except when essential to government operations. A record shall be made and retained concerning each person to whom such information or material has been made available.

4. The head of each investigative agency should be responsible for limiting the procurement of devices primarily designed to be used surreptitiously to overhear or record conversations to the minimum necessary for use consistent with the rules formulated herein. To the extent possible, all mechanical or electronic devices used in intercepting, overhearing or recording conversations shall be stored in a limited number of locations to insure effective administrative control.

5. The agency shall maintain an inventory of all such equipment at the place where it is stored, including a record of the date that the equipment was assigned to an agent and the date the equipment was returned. Copies of these records should also be maintained at agency headquarters, together with the written report of the responsible agent referred to in paragraph II. 3 hereof. All agency records should be maintained for a period of six years.

6. The head of each investigative agency shall submit to the Attorney General on July 1st of each year a report of all uses of mechanical or electronic equipment by such agency during the previous year in accordance with the rules formulated in this memorandum, containing with respect to each use the information required by paragraph II. 1, above, and a brief description of the results obtained. The report shall also include a complete inventory of the devices referred to in paragraph II. 4, above, in the possession of the agency.

7. The functions to be exercised by the head of an investigative agency in accordance with this memorandum may be delegated by him to another officer of his agency.

III. National Security

The foregoing rules have been formulated with respect to all agency investigations other than investigations directly related to the protection of the national

security. Special problems arising with respect to the use of devices of the type referred to herein in national security investigations shall continue to be taken up directly with the Attorney General in the light of existing stringent restrictions.

RAMSEY CLARK,
Attorney General.

Senator HRUSKA. I do not want to impose duties or burdens on you beyond the call of duty, and you have already passed that point. Would you care to read this in the light of your testimony—would you care to read this and study it and favor us with any comment you have, in line with your previously given testimony as to its impact, as to its meaning for law-enforcement purposes?

Mr. SENNETT. I will have it analyzed, Senator, and if you desire I will comment on it to you.

Senator MCCLELLAN. We will be pleased to have your comments if, after you have had an opportunity to study it, you wish to comment.

Senator HRUSKA. That concludes my questions at this time.

Senator MCCLELLAN. Do you have a wiretapping statute in Pennsylvania?

Mr. SENNETT. As I understand it, Senator—as I understand the statute books in Pennsylvania, at the present time there is a law outlawing wiretapping. We are preparing legislation, such as I have described here today, which will be introduced during the current session.

Senator MCCLELLAN. Thank you very much.

We appreciate your interest and your assistance.

Mr. SENNETT. Thank you very much.

Senator MCCLELLAN. The next witness is Professor Blakey. Will you come around, please?

I would like to mention this, Professor Blakey, before you are introduced. The attorney general of California, Hon. Thomas C. Lynch, was invited to appear at our hearings to give his views on pending legislation. Mr. Lynch was unable to attend at this time, but he has submitted a statement concerning S. 674, S. 1194, Senate Joint Resolution 22, and S. 675, which I will place in the record at this point.

Also, I will place in the record a telegram the subcommittee received from the National Police Officers Association; a letter from Justice Miles McDonald of the Supreme Court of the State of New York; a letter from Mr. William Hopf, State attorney, Du Page County, Wheaton, Ill.; and a letter from Hon. Warren P. Knowles, Governor of Wisconsin.

(The statement of Mr. Lynch and letters referred to follow:)

STATEMENT OF THOMAS C. LYNCH

My views have been requested on the following Senate Bills, introduced at the current session of Congress: S. 674, S. 1194, S.J. Res. 22, and S. 675. I am most grateful for the opportunity to place these views before this Subcommittee. A discussion of the individual bills follows:

S. 674

S. 674 is a bill to provide that, in federal prosecutions, the sole standard of admissibility of a confession or admission shall be voluntariness. I heartily endorse the bill, and consider it a promising start toward restoring the right of law enforcement officers to solve crimes through meaningful interrogation, while fully protecting the rights of the individual.

One portion of the bill would eliminate the rule of *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957). These cases held that failure of the police to observe the federal statutes and rules requiring that an arrested person be brought before a committing magistrate without unnecessary delay bars the admission in federal prosecutions of any confession made after arrest and before arraignment. Eradication of this rule seems to me long overdue and badly needed. While perhaps some incentive should be given federal officers to obey the prompt-arraignment statutes, the exclusion of confessions obtained in violation thereof is too high a price for society to pay for this type of "constable's blunder." Since the *McNabb-Mallory* rule was formulated in the exercise of the Supreme Court's supervisory powers over lower federal courts, and has never been considered a constitutional requisite, no constitutional obstacle is imposed in the way of its legislative repeal.

The remainder of the bill appears to be an attempt to modify the rule of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Some modification of this decision seems to me eminently desirable. The restrictions upon police interrogation imposed by *Miranda* have significantly reduced the number of confessions obtained through interrogation and thus impeded the solution of many serious crimes. Moreover, I do not believe that the limited protection of individual rights which *Miranda* affords adequately compensates for the deleterious effect the decision has on law enforcement.

The bill takes the eminently sound approach of making voluntariness the sole condition for admissibility of confessions or admissions. It is difficult to quarrel with the proposition that a confession should be admissible if, and only if, it is voluntary. The factors, enumerated in subsection (b), for determining whether a confession is voluntary, seem well adapted to that end.

There is, of course, some question as to the constitutionality of S. 674, but it is my opinion that the bill is constitutional. It will be recalled that the essence of *Miranda*, constantly reiterated throughout the opinion, was the proposition that voluntariness is the sole limitation placed by the Constitution on admission of confessions. But the precise holding was involuntariness of any confession is conclusively presumed where the accused, before making his confession, has not been warned of his rights to remain silent and to have the assistance of counsel, and steps at least as effective as the warning therein prescribed had not been taken to insure that any confession was the product of the accused's free choice. But the Court realized that its guidelines were laid down in the absence of legislative action, and encouraged Congress and the states, "in the exercise of their creative rule-making capacities," 384 U.S. at 467, to formulate alternative means of protecting individual rights.

It seems to me that the Court has implicitly acknowledged that Congress, with its vastly superior fact-gathering powers, is in a much better position than the Court to formulate standards most likely to result in a correct determination, in a given case, of the issue of voluntariness of a confession. The bill under consideration sets out factors bearing on the voluntariness of confessions. If findings of fact are made by Congress that demonstrate the relevance and importance of these factors, and their superiority to the rules laid down in *Miranda*, it would seem that the Court would have little choice but to defer to the expert judgment of Congress. Accordingly, I consider the bill constitutional and am happy to give it my full support.

Since I have been asked to recommend changes in the bill, I would like to point out a possible loophole which could easily be closed. Nothing in S. 674 expresssly states that the absence of the "fourfold warning" set out in *Miranda* does not prevent a finding of voluntariness. It will be recalled that *Miranda* rests upon the proposition that voluntary confessions are admissible, but confessions made in the absence of the warning are not voluntary. In an effort to construe S. 674 so as to harmonize with the Constitution, the Court could say that the bill, on its face, does not show an intent to change the *Miranda* rule, but in fact codifies it, while adding other factors than the fourfold warning which are to be considered in determining voluntariness. It would seem that there is a sufficient likelihood of such an interpretation to make it advisable to amend S. 674 so as to provide that the presence or absence of any of the factors listed in subsection (b) shall not be conclusive on the issue of voluntariness.

Speaking as a member of the President's Crime Commission, I consider S. 674 of vital importance. However, it applies only to federal prosecutions.

As Attorney General of California, I am particularly concerned with the need for modifying the *Miranda* rule insofar as it applies to state prosecutions. It has occurred to me that Congress might be able to fill this need. Accordingly, I would like to urge the introduction of a bill which would make the provisions of S. 674 applicable to state prosecutions, except where individual states elect to establish more stringent rules for the admission of confessions.

A most promising source of congressional power for such legislation has been suggested by Mr. Jon O. Newman, United States Attorney for the District of Connecticut, and former law clerk to Chief Justice Warren, in his article, "Cops, Courts, and Congress," The New Republic, March 18, 1967, p. 16. The recommendations of this article have been embodied in S. 1333, introduced by Senator Ribicoff. The theory therein suggested can be summarized as follows: *Miranda* rests on the proposition that the Fifth and Sixth Amendment rights therein interpreted are applicable to the states through the due process clause of the Fourteenth Amendment. In section 5 of the Fourteenth Amendment, Congress is expressly given power to enforce the Amendment by appropriate legislation. It would thus appear that congressional regulation of state rules of evidence, derived from interpretations of the Fourteenth Amendment, would lie within the realm of appropriate enforcement of the Amendment.

I recognize that there is a distinction between enforcing the Amendment and defining or interpreting it, the latter presumably being beyond congressional power. But I do not find the distinction troublesome. The Fifth and Sixth Amendments declare, respectively, the privilege of self-incrimination and the right to assistance of counsel. The rule excluding evidence obtained in violation of those rights was developed by the Court solely in order to enforce the rights. The legislation I have in mind would not attempt to alter Fifth and Sixth Amendment rights, but merely to modify the rules which the Court, in the absence of congressional action, has developed for their enforcement. Thus, the distinction between defining and enforcing constitutional rights would be preserved.

There is a paucity of authority on the limits of congressional power under section 5 of the Fourteenth Amendment, as Congress has seldom had occasion to make use of this section. Following the Civil War, Congress enacted a public-accommodations bill, based on section 5, which was invalidated in the *Civil Rights Cases*, 109 U.S. 3 (1883), because it was considered to prohibit individual rather than state action, and was thus beyond the scope of the Amendment. The only attempt by Congress under section 5 to regulate evidentiary rules in state courts was post-Civil War legislation providing that Negroes were competent witnesses. The constitutionality of this legislation was apparently never passed upon by the Supreme Court, and state courts reached different results. *Compare The State* v. *Rash*, 1 Houston Cr. Cas. 271 (Ct. Gen. Sess. Del. 1867) *with Ex parte Warren*, 31 Tex. 143 (1868).

However, broad congressional action under section 2 of the Fifteenth Amendment, which is identical to section 5 of the Fourteenth Amendment, has recently been upheld. In *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), the Court upheld congressional action which affected voter qualifications in the states. The enactment was held an "appropriate" exercise of congressional power to enforce the Fifteenth Amendment. The following language is instructive:

"South Carolina contends that the cases above are precedents only for the authority of the judiciary to strike down state statutes and procedures—that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, § 2 of the Fifteenth Amendment expressly declares that 'Congress shall have power to enforce this article by appropriate legislation.' *By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights* [emphasis added] created in § 1. 'It is the power of Congress which has been enlarged. Congress is authorized to *enforce* [emphasis in original] the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective.' *Ex parte Virginia*, 100 U.S. 339, 345. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." 383 U.S. at 325–26.

To my mind, the foregoing language supports two propositions: (1) Congress has full power to enforce the Fourteenth and Fifteenth Amendments, and the

Court has acted only in default of congressional action, and (2) Congress may adopt any appropriate means of enforcement. The balance of the *Katzenbach* opinion indicates clearly that Congress has great latitude in determining what is "appropriate" legislation, and its judgment will not lightly be interfered with by the courts.

Also instructive is the following language from an even more recent Supreme Court opinion:

"We have no hesitation in saying that the right of these defendants not to be punished for exercising their Fifth and Fourteenth Amendment right to be silent—expressly created by the Federal Constitutiton itself—is a federal right which, *in the absence of appropriate congressional action*, it is our responsibility to protect by fashioning the necessary rule." *Chapman* v. *California*, 87 S.Ct. 824, 826–27 (1967). [Emphasis added.]

I can only concur with the following words of Mr. Newman, *supra* at 20:

"No one can guarantee how the Court would rule. However, the Court would pause for a long, hard look before telling Congress that it could not enforce the Fourteenth Amendment in ways with which the Court disagreed. In any event, the possibility of an adverse ruling is no reason not to enact the statute and force the Court to face the constitutional issue."

S. 1194

S. 1194 seeks to change the *Miranda* rule by limiting the jurisdiction of the federal courts. Section 1 provides that the sole test of the admissibility of a confession or admission in a federal criminal prosecution shall be voluntariness, and the federal appellate courts shall not have jurisdiction to disturb a trial court's finding of voluntariness if the finding is supported by any competent evidence. Section 2 provides that the federal courts are without jurisdiction to disturb a finding by a trial court in a state criminal prosecution that a confession is voluntary if the finding has been upheld by the highest state appellate court having jurisdiction of the cause.

While I support the aims of the bill, I must confess some doubt as to its constitutionality. While Congress has the express constitutional power to limit the appellate jurisdiction of the Supreme Court, and exercises of that power have been upheld, see *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1868), the power is arguably limited to fixing the subject-matter jurisdiction of the Court. S. 1194 appears to be an attempt to deprive the Court of power to render a certain decision in a case over which it has subject-matter jurisdiction. It is doubtful that the Supreme Court would acquiesce in the excision of its most important power—the power to decide a case as it sees fit.

Constitutional considerations aside, I am not sure that I am able to give my wholehearted support to the bill. The provision foreclosing federal-court review of state-court determinations of voluntariness could pose some considerable dangers to basic constitutional rights. While most state courts can undoubtedly be relied upon to uphold the strictest standards in determining voluntariness of a confession, a few may feel that dangerously lax standards are sufficient. It must be remembered that beginning with *Brown* v. *Mississippi*, 297 U.S. 278 (1936), all of the confessions which the Supreme Court has held involuntary in the constitutional sense, and hence inadmissible in state prosecutions, had been held admissible by the highest state courts which had passed on the question. The bill would thus seem not only to sanction wide discrepancies among the states in the standards of voluntariness, but would leave an admitted federal constitutional right at the mercy of state courts.

In sum, while S. 1194 represents a well-intentioned approach to an urgent problem, I would prefer the enactment of S. 674 and similar legislation relating to state prosecutions, as I have previously indicated.

S.J. Res. 22

S.J. Res. 22 is a proposed constitutional amendment providing that, unless Congress or a State provides a different test for criminal prosecutions within its respective jurisdiction, the sole test of the admissibility of a confession or admission shall be whether it was voluntarily made. The ruling of a trial judge admitting a confession or admission as voluntary shall not be disturbed by any federal court if the ruling is supported by competent evidence.

I wholeheartedly support this proposed amendment. The case for an amendment of this type has been well stated in the Supplemental Statement on Constitutional Limitations, in which I joined, appended to the report of the President's Commission on Law Enforcement and Administration of Justice:

"There is no more sacred part of our history or our constitutional structure than the Bill of Rights. One approaches the thought of the most limited amendment with reticence and a full awareness both of the political obstacles and the inherent delicacy of drafting changes which preserve all relevant values. But it must be remembered that the Constitution contemplates amendment, and no part of it should be so sacred that it remains beyond review....

"The legitimate place of voluntary confessions in law enforcement must be reestablished and their use made dependent upon meeting due process standards of voluntariness."

To my mind, S.J. Res. 22 represents an eminently sound implementation of those principles. It is not entirely foolproof, since the courts could always misuse their powers by holding that a finding of voluntariness is not supported by competent evidence unless it appears that *Miranda* was complied with. But such a gross distortion of legislative aim is not to be anticipated. Moreover, I believe that some provision for limited federal-court review of state-court determinations of voluntariness is a necessary and proper part of the bill.

Until *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), and *Miranda*, voluntariness of a confession was the sole constitutional requisite to its admission in evidence in a criminal prosecution. It might well be noted that the judicial interpretation of the Bill of Rights in these cases discovered constitutional rights theretofore unrecognized in 180 years of judicial history. The amendment would seem only to restore the pre-*Escobedo* rule. As such, it cannot be said to represent such a tampering with the Bill of Rights as to impair the values secured therein. It would give the federal courts, particularly the Supreme Court, sufficient latitude to prevent erosion of due process standards of voluntariness, while preventing the courts from applying standards that have no relationship in fact to the central issue of voluntariness. I therefore am happy to endorse it.

My support of the proposed amendment, however, should not be taken as disparaging the need for prompt enactment of other legislation, such as S. 674 and the complementary legislation relating to state prosecutions which I have urged, while S.J. Res. 22 takes its slow, painful, and perilous course toward adoption.

S. 675

S. 675 is a bill to prohibit wiretapping except by law enforcement officers acting under court order, or at the direction of the President in national security cases.

I am happy to support this bill. As noted in the report of the President's Commission on Law Enforcement and Administration of Justice, the present state of the law on wiretapping is intolerable. Remedial legislation is urgently needed, and S. 675 fills the need very well.

I do not believe that wiretapping by an individual or nongovernmental entity can ever serve a sufficiently valid social purpose to compensate for the invasions of privacy occasioned thereby. Accordingly, I approve of those provisions of the bill outlawing wiretapping except by law-enforcement officers.

At the same time, unrestricted wiretapping by law-enforcement officers would seem to pose a grave danger to citizens' right of privacy. I consider that the dangers of arbitrary and unjustified wiretapping are sufficiently obviated by the bill's provisions permitting wiretapping by law-enforcement officers only with the prior, express, and specific approval of a court. These provisions entrust to the discretion of a neutral, detached magistrate the decision as to when invasions of citizen privacy will be permitted. This insures that such invasions will be sanctioned only in cases of compelling social need. Wiretapping is at once too valuable a tool for the solution of crime to be abandoned altogether, and too dangerous to be allowed to be used arbitrarily. To my mind, S. 675 adequately accommodates the sometimes conflicting rights of the citizen to privacy and the law-enforcement officer to solve certain crimes in the only effective matter available.

If S. 675 is enacted, I will promptly seek enactment by the California Legislature of the state legislation which the bill authorizes.

NEW ORLEANS, LA., *July 12, 1967.*

JIM WOOD,
Assistant Counsel, McClellan Subcommittee,
Senate Office Building, Washington, D.C.

DEAR MR. WOOD: The National Police Officers Association of America, representing the interest of 480,000 law enforcement officers throughout the United States, welcomes the Senate subcommittee's consideration of S-675 relating to the admissability of voluntary confession in Federal criminal prosecution as a helpful forward step in its battle against crime in its deliberation. The subcommittee is urged to bear in mind the onerous burden placed upon law enforcement officers as a result of recent court decision. We recommend that it seek a middle ground where the vital interest of the defendant, the police officers, and society in general will not only be satisfied but receive the maximum benefit. We would remind the subcommittee that individual liberty is meaningless if it disrupts the social system under which we live. Obviously unwarranted extension of privileges to either the law enforcement agency or the defendant in a criminal action is undesirable by withholding law—and the means to enforce it—there can be no real personal liberty. The legislation under consideration we believe represents a sincere effort on the part of the Congress to recognize the problem and to clarify many areas left in question by the court and to protect the rights of the defendant through its double face guard of providing for a judicial termination of the voluntariness of a confession and permission for a jury to determine the relative importance of confession in a court trial. At the same time it seeks to remove many of the obstacles confronting today's police officer and, in the long run, will promote the better serving of the ends of justice. We respectfully request favorable consideration of S-674 and wish to go on record as registering our deep convictions that its reporting and passage will aid the nation in its towering fight against crime.

Respectfully,

LT. MARIO BIAGGI,
National President, National Police Officers Association of America.

SUPREME COURT OF THE STATE OF NEW YORK,
Brooklyn, N.Y., May 31, 1967.

WILLIAM A. PAISLEY,
Chief Counsel, U.S. Senate Committee on the Judiciary,
Washington, D.C.

DEAR MR. PAISLEY: Please accept my sincere thanks for your letter of May 17th, which I have been endeavoring to answer since its receipt. The pressure of work has been so great that this is the first opportunity I have had to furnish you with the information you desire.

With reference to the question of importance of confessions in criminal cases, and specifically in regard to Judge Sobel's statistical survey, I must inform you as follows: After 25 years of active participation in the enforcement of the criminal law, as Assistant District Attorney, District Attorney, and a Judge presiding at criminal trials, I am convinced that confessions are by far the most reliable evidence in criminal cases. Frequently one has doubts with regard to eye-witness identifications, and this, I believe, is an area which causes great concern to prosecutors who, like every other citizen, are most anxious not to convict an innocent person. With respect to confessions, however, a false confession is almost always easily detected, and while there are false confession from time to time, they are usually readily recognized and disregarded.

As far as Judge Sobel's figures are concerned, these figures are, in my opinion, most unreliable, as they were based upon a very small cross-section of the actual cases pending in this court during the period which Judge Sobel used as the basis for his investigation, the reasons being as follows:

Shortly after the decision in the U.S. Supreme Court case of *Jackson* v. *Denno* (378 U.S. 368), which arose in this court and in this state, the Court of Appeals of the State of New York laid down certain specific rules in a decision entitled *People* v. *Huntley* (15 NY 2d 78). This decision laid down certain rules which were later incorporated in the Code of Criminal Procedure of the State of New York (Sec. 813 (f), (g). (h) and (i). The statute and the decision required that in a case in which the People intended to offer a confession, they must

serve notice thereof on the defendant prior to the trial. Defendant thereafter had an opportunity to demand a hearing to contest the voluntariness of the confession. This hearing had to be conducted prior to the trial.

After the decision in *Escobedo* and *Miranda*, any objections to the confession, based upon either of these decisions, were similarly to be determined in the course of this hearing. The District Attorney of this County adopted the practice of serving the required notice upon the defendant at the time the case was assigned to a trial part—usually two weeks to a month in advance of the trial. All that was required of the defendant was that he serve a notice on the District Attorney that he desired a hearing with respect to the issue of voluntariness of the alleged confession.

Judge Sobel, in the computation, used as the basis for his estimates only the cases in which the District Attorney served a notice that he intended to use the confession at the time of the trial. He failed to realize that prior to this time all of these cases had at least two preliminary conferences before the court for the purpose of disposing of the case by a plea to a lesser degree of the crime. My experience during these pretrial discussions (I sit in a pre-trial part a great percentage of the time) has been that approximately 40% of all indictments filed result in a disposition in the pre-trial part. From my experience in these parts, I have ascertained that at least 75 to 80 percent of the cases disposed of in the pre-trial parts were cases in which there was a confession by the defendant; and by far in the greatest percentage of the confession cases, the defendant was willing to plead to a lesser degree. The greatest majority of the cases, in which confessions had been obtained, were disposed of by a plea of guilty before the case reached the stage of being noticed for trial, and for that reason Judge Sobel's figures have no validity regarding the importance of the confessions, and he has eliminated a large number of cases in which the defendants had confessed and already pleaded guilty before the necessity for the service of the notice upon the defendant ever arose.

I pointed this out to Judge Sobel but as far as I have been able to ascertain he has never rechecked his figures or conducted any further survey, either to validate the existing figures or to disprove my assertion with respect thereto.

I am extremely interested in the Bill introduced by Senator McClellan to limit the appellate jurisdiction of the Supreme Court and jurisdiction of other Federal courts. I am afraid, however, of what the Supreme Court would do if it were offered the opportunity of passing upon the constitutionality of the Bill. I am inclined to believe it would hold that the Bill was unconstitutional and that only a constitutional amendment would remove the effect of the *Miranda* decision.

I am grateful to you for your thoughtfulness in forwarding to me the various legislative documents and Senator McClellan's speech. If I can be of further assistance, I shall be only too glad to cooperate, as I am convinced that we have gone much too far in protecting the accused. I have always been of the opinion that the first 10 Amendments were a limitation on the Government of the United States and were never intended to convey to the Federal government the right to limit the activities of the states in their enforcement of their penal laws. The colonists who adopted the Constitution were afraid of the Federal government, not of the state governments. That fact that for over 150 years the Constitution was so interpreted seems to me to bear out this point of view.

Sincerely,

MILES F. MCDONALD.

WHEATON, ILL., *June 14, 1967.*

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: Some months past I wrote to you in response to a letter relevant to cases that we may have had where some of the Supreme Court decisions acted as an impediment. In following this up, we have had two cases in this jurisdiction, involving the death of an infant where there was some appearance that this may have been a result of child abuse, and most particularly is this so in the most recent death we are investigating. In years past in this very critical area of child abuse, interview of the parents would prove beneficial, investigation wise. However, with the recent Miranda decision you are in a very unusual situation due to a fear of talking with the parents. By its very nature, child abuse is a type of case where it is seldom if it is ever

viewed by disinterested people and secondly, it is only rare that there would be external physical real evidence for prosecution.

I pass this on to you as an area that I see that the Miranda decision hampers tremendously, and this area of child abuse is becoming such a critical problem.

Very truly yours,

WILLIAM V. HOFF,
State's Attorney.

THE STATE OF WISCONSIN,
Madison, June 12, 1967.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: We in Wisconsin have followed with great interest the introduction and progress of S. 917, "The Safe Streets and Crime Control Act of 1967." We are pleased that legislation of this type has been introduced and are hopeful that Congress will move ahead with this important legislation.

In reviewing this legislation, our staff has analyzed certain portions that we believe should be modified to assure an adequate role for state government in coordinating these programs. We believe the bill should be modified as follows:

(1) Set a time limit for a designated state agency to develop a comprehensive plan for the purposes of the bill. The state agency is to be designated by the Governor.

(2) If the statewide plan is developed within the time limit, one of the primary criterion for accepting local plans should be conformity with the statewide plan.

(3) Local projects should also fit within the framework of the statewide plan unless the designated state agency recommends exceptions.

Wisconsin presently has a Governor's Commission on Law Enforcement and Crime which I would designate along with the State Bureau of Management as a review agency for projects developed in the area of law enforcement systems. This would be done for the following reasons:

(1) This bill is an extension of the present Law Enforcement Assistance Act.

(2) The Governor's Commission on Law Enforcement and Crime was set up to carry out the purposes of the Law Enforcement Assistance Act at the prompting of LEA.

(3) The purposes of the Governor's Commission on Law Enforcement and Crime are almost identical to the purposes of the bill.

This commission was the first in the nation established under the LEA program and has an outstanding membership. I believe it would be most unfortunate if local communities were allowed to develop applications that were inconsistent with the statewide plan as presently being developed.

If it would be helpful to your committee to receive direct testimony from Wisconsin State Government, I hope you will provide us with this opportunity and suggest that you call me at your convenience to arrange for proper representation.

Sincerely,

WARREN P. KNOWLES, *Governor.*

Senator MCCLELLAN. Senator Hruska wishes to introduce our next witness, Prof. G. Robert Blakey.

Senator HRUSKA. I should like to say Professor Blakey is a member of the Notre Dame Law School faculty and he is recognized as one of the authorities in the field of electronic surveillance. He was attached to the President's Commission on Crime and was for several years with the Department of Justice in Washington.

I think it is a particularly great achievement of this committee that he does appear here and testifies as he will today.

Senator MCCLELLAN. You may proceed, professor. I notice you have a prepared statement. It is a bit lengthy, but I do not want to deprive you of making a full and thorough presentation of your views.

Senator Hruska, I understand, cannot be at the session this after-

noon because of some other hearing which he feels compelled to attend. Senator, did you wish to ask some questions now, before we proceed? I doubt if we are going to have time for him to read all the statement before you ask questions.

Professor BLAKEY. If it is all right with the committee, I would just as soon insert the entire text in the record at this point.

Senator MCCLELLAN. We will put it in the record.

Professor BLAKEY. I can summarize it.

Senator MCCLELLAN. In the meantime, to accommodate Senator Hruska, we will let him proceed if he wishes to ask some questions, at this point before he leaves.

STATEMENT OF PROF. G. ROBERT BLAKEY, NOTRE DAME LAW SCHOOL

(Professor Blakey's statement follows:)

STATEMENT OF PROFESSOR G. ROBERT BLAKEY

Mr. Chairman, members of the Committee: My name is G. Robert Blakey. I am a professor of law at the Notre Dame Law School. My subjects include Criminal Law and Procedure and a special seminar on organized crime. My appearance here today is personal. My views are my own. They should not be attributed in any group or organization with which I am now or have been associated in the past.

I deeply appreciate this opportunity to appear before you and discuss the problems associated with the use and abuse of electronic surveillance. There can be no question that these problems are some of the most vexing that this Body has ever faced. Striking the proper balance between privacy and justice in a free society is always difficult. All too often controversies in this area tend to become arid debates between contending ideologies. Too often aspects of the problem are identified as the whole problem. Here, as elsewhere, we must view things in context. "For that which take singly and viewed by itself may appear to be wrong when considered with relation to other things may be," as Burke says, "perfectly right—or at least such as ought to be patiently endured as the means of preventing something that is worse." (Stanlis, *Edmund Burke: Selected Writings and Speeches* 318 (1963).)

I have on other occasions taken up some of the problems associated with electronic surveillance. In the June issue of *Current History* (Blakey, "Organized Crime in the United States" 52 *Current History* 327 (1967)), I discussed the scope and challenge of organized crime in the United States today. As a special consultant to the President's Commission on Crime and the Administration of Justice, I prepared a detailed legal analysis of the evidence gathering process in organized crime investigations, which included a proposed statutory scheme for court controlled electronic surveillance. (Blakey, "Aspects of the Evidence Gathering Process in Organized Crime Cases" *Task Force Report: Organized Crime* 80, 91–113 (1967).) I do not want today to repeat what I said on those occasions. Instead, I would like to discuss two questions with you: the implications of the Supreme Court's recent decision in *Berger* v. *New York* No. 615, decided June 12, 1967, and the assertion made by some that electronic eavesdropping is "neither effective nor highly productive." (Statement attributed to the Honorable Ramsey Clark, Attorney General of the United States, *New York Times*, May 19, 1967 p. 23, col. 1.)

I

Berger v. *New York*, of course, reversed by a vote of 6 to 3 the conviction secured through a court ordered eavesdrop of a New York public relations man for conspiracy to bribe the chairman of the New York State Liquor Authority. Mr. Justice Clark delivered an opinion for the Court in which the Chief Justice and Justices Brennan, Fortas and Douglas joined. Justices Douglas and Stewart each concurred in the reversal for special reasons of their own. Dissents were filed by Justices Harlan, Black and White.

Broadly, the majority reversed because the New York statute which authorized the eavesdrop on its face failed to meet certain standards the Justices felt constitutionally mandatory; they did not undertake to examine the administration of the statute. Significantly, they indicated that a statute meeting those standards would pass constitutional muster. The dissenters, on the other hand, would have upheld the statute as administered without addressing the broad questions found by the majority to be presented by the face of the statute. In a very real sense, the majority and the minority did not disagree so much on the answers to be given but on the questions to be asked. Indeed, if a different case were presented to them tomorrow involving a new statute constructed on the blueprint laid down in the majority opinion and administered according to the criteria of the dissenters, I would fully expect to find the Court by a substantial majority upholding the statute and affirming the conviction if it were secured through the careful use of electronic surveillance techniques. In short, I read *Berger* as an invitation by the Court to the Congress to get down to the difficult business of drafting a fair, effective and comprehensive electronic surveillance statute. All that remains now is the question of legislative will.

II

Mr. Justice Clark began his opinion with a careful delineation of the issues which he felt faced the Court. He noted that Berger essentially challenged the New York statute on three grounds: 1) the statute on its face set up an unconstitutional system of trespassory intrusions into constitutionally protected areas, 2) it authorized searches for "mere evidence," and 3) electronic surveillance constituted a violation of the privilege against self incrimination.

Mr. Justice Clark immediately relegated to a footnote Berger's contention that the statute could not stand because of the evidence per se rule. This contention was, he said, settled adversely to Berger by the Court's recent decision in *Warden* v. *Hayden*, No. 480 decided May 29, 1967, which overturned the old rule. Justices Harlan and White explicity agreed with the majority on this score. Only Mr. Justice Douglas lamented the passing of the rule. He would have employed it to strike down all electronic surveillance however authorized or limited. Until the Court's decision in *Berger*, the evidence per se rule represented an implacable foe. Its demise was a significant victory for those who advocate carefully controlled court order electronic surveillance.

Mr. Justice Clark next announced the holding of the majority: ". . . the language of New York's statute is too broad in its scope resulting in a trespassory intrusion in a constitutionally protected area and is, therefore, violative of the Fourth and Fourteenth Amendments." He then noted that this disposition obviated the necessity of a discussion of the other issues raised.

The recognition by a majority of the Court that the constitutionality of electronic surveillance was properly handled solely in terms of the search and seizure standards of the Fourth Amendment was of enormous importance. The American Civil Liberties Union of New York as amicus strenuously pressed on the Court First Amendment objections to the New York statute. They presented an extraordinarily able brief arguing that all electronic surveillance—court order or otherwise—had an unconstitutionally inhibiting effect on free speech. As I just noted the Court found it unnecessary to discuss this point. I think we may therefore infer that the Court has rejected it on the level of a principle which would render a court order system per se unreasonable. Indeed, Mr. Justice Harlan in dissent explicitly makes the point that the First Amendment would only have a case by case impact in this area. This, too, is a significant victory for those who advocate carefully controlled court order electronic surveillance.

The majority's similar treatment of Berger's Fifth Amendment self incrimination claim carries with it an identical inference. We may safely conclude that there is no danger now of the Court expanding the traditional scope of the privilege against compulsory self-incrimination into an insuperable barrier to court order electronic surveillance. This conclusion is buttressed by the treatment the dissenters accorded this claim. Both Harlan and White dismissed the claim with cryptic cites to recent opinions of the Court such as *Hoffa* v. *United States*, 385 U.S. 293 (1967), which hold that a finding of compulsion is a necessary predicate to the application of the privilege. Again, we have a significant victory for the advocates of carefully controlled electronic surveillance.

III

Having thus announced the holding of the majority, Mr. Justice Clark moved on to an analysis of the case. He first set out a short description of the facts of the case, which, I might add, constituted a truly frightening example of the danger governmental corruption poses in a society which today finds so many aspects of its business and private life regulated by government. Next he gave a short review of the legal and factual history of eavesdropping covering the ground from the old fashioned practice of listening outside windows to modern techniques of wiretapping and bugging. I only wish he had also traced the growth and development of organized crime and shown the threat it presents to so many sectors of our national life. Curiously, too, he attributed to California a court order bugging statute. Finally, he reviewed the history of the Court's own cases dealing with the constitutional principles involved in electronic surveillance.

Mr. Justice Clark's review for the majority of the history of the Court's own cases is especially important. Traditionally, the Court has drawn a distinction between wiretapping and bugging. Wiretapping has never been treated as a violation of the Fourth Amendment, since it does not involve an actual entry into a constitutionally protected area. Instead, the Court has treated it as a violation of Section 605 of the Federal Communications Act of 1934 (48 Stat. 1103). Bugging, on the other hand, has been rejected as a law enforcement technique only where it was accomplished through a physical invasion without warrant into a constitutionally protected area. Otherwise, it has been upheld. Many people fully expected the Court to overturn this distinction and hold unconstitutional the unconsented or unwarranted overhearing of conversations which took place within a constitutionally protected area or which were projected over constitutionally protected means. Surprisingly, the Court did not disturb its precedents. (Mr. Justice Douglas in his concurring opinion observes that *Olmstead* v. *United States*, 277 U.S. 438 (1928), which held on two grounds—no trespass and no tangible seizure—that wiretapping did not violate the Fourth Amendment, was overruled, but I think he is right in this only on the second ground, and that this result had been obtained anyway in other cases.) Instead, Mr. Justice Clark chose for the majority to handle the case within the rather narrow confines of the Court's old precedents. This means, of course, that wiretapping remains—at least for now—purely a policy question for Congress, and non-trespassory bugging poses—as yet—no constitutional questions. This result will probably not withstand the pressure of further appeals in the area—the Court has a non-trespassory bugging case on its docket for next term—but it does give the Congress and the states considerable room for legislative activity now. If a comprehensive scheme of regulation were now adopted, moreover, this might obviate the necessity for further Court action in this area on the constitutional level. In the long run, this course of action would be preferable, since legislative solutions are more amenable—at least in theory—to reform in light of experience.

IV

After noting that the standard was the same for federal and state authorities—and that the standard was the "reasonableness" of the search under the Fourth Amendment and the opinions of the Court applying that Amendment—Mr. Justice Clark subjected the face of the New York statute to a detailed analysis. First, he noted with approval that the statute employed the court order technique with its "neutral and detached magistrate." He then raised, but did not press, an objection going to the difference in terminology employed by the Fourth Amendment and the statute on the question of pre-search justification. The Fourth Amendment says "probable cause," while the statute said "reasonable ground." Mr. Justice Harlan rightly pointed out in dissent that the distinction was without difference. I suppose on the other hand, that legislators would be prudent to employ the right terminology in the future. In any event, he then moved to what the majority found to be the central objection to the statute: its "blanket grant of permission to eavesdrop * * * without adequate judicial supervision or protective procedures."

Mr. Justice Clark first noted with disapproval that the statute was not limited to particular offenses and that the statute did not require a description of the type of conversations to be overheard. Absent this sort of particularization, the statute gave, he said, the officer executing the order "a roving commission." In

contrast, Mr. Justice Clark held up for a model the procedures used to approve the tactical use of electronic surveillance techniques given approbation by the Court in *Osborn* v. *United States*, 385 U.S. 323 (1966). There, federal officers sought judicial authorization for the overhearing of bribery conversations which the agents had probable cause to believe were going to take place at a meeting in a lawyer's office on a particular afternoon. For Mr. Justice Clark, the face of the New York statute did not contemplate that sort of discriminating use of electronic surveillance techniques. Its authorization was objectionable because it was blanket in all cases.

Mr. Justice Clark pointed out next that the face of the statute apparently automatically authorized a two-month period of continuous surveillance. This, he said, was the equivalent of authorizing a series of intrusions even though a single limited showing of probable cause might have been made. In contrast, *Osborn* had upheld a surveillance carefully tailored to intrude only to the extent required to meet the limited objective established as reasonable by the showing of probable cause. In *Osborn*, the constitutional standard of reasonableness was met, for "no greater invasion of privacy was permitted than was necessary under the circumstances."

The *Osborn* authorization, too, envisioned a quick termination of surveillance once the officer's limited objective was achieved. In contrast, the New York statute apparently permitted the surveillance to continue for the statutory period even though the objective for which the order had been sought may have been realized. Extensions could also be obtained on the mere showing that it was in the "public interest." No new showing of probable cause was apparently required. The New York statute, in short, failed to draw a careful distinction between tactical and strategic surveillance and failed to require a showing proportionate to the two distinctly different uses of electronic surveillance. Permitting what amounted to strategic surveillance on a tactical showing was, Mr. Justice Clark observed, "a blanket grant." As Mr. Justice Stewart observed in his concurring opinion: "The standard of reasonableness embodied in the Fourth Amendment demands that the showing of justification match the degree of intrusion." Legislators contemplating new legislation in this area would do well, therefore, to draw a sharp distinction between the showings required and the authorizations granted depending on the contemplated use of the surveillance techniques. Provision, too, should be made for quick termination when the objective is reached and for close periodic supervision during an extended duration of surveillance.

Finally, Mr. Justice Clark recognized the distinct difference between the conventional warrant and the electronic surveillance warrant: the electronic surveillance warrant depends for its success on the absence of notice. Yet Mr. Justice Clark observed the New York statute required no showing of "special facts" or "exigent circumstances" to overcome the normal requirement of pre-search notice. Here, of course, Mr. Justice Clark was undoubtedly referring to the sort of analagous situation sustained by the Court in *Kerr* v. *California*, 374 U.S. 23 (1963), a case in which he authored the majority opinion sustaining unannounced entry to arrest and search where there was reasonable fear that announcement might result in the destruction of evidence otherwise lawfully subject to seizure. Such a showing of "special facts" or "exigent circumstances" would unquestionably be met by a legislative requirement that judicial authorization for the use of electronic surveillance techniques be conditioned on a showing that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried." This is the English standard now for the use of wiretapping on the Home Secretary's warrant. (Devlin, *The Criminal Prosecution in England* 65–69 (1958)) Mr. Justice Clark observed, too, that there was no requirement of post-search notice. No inventory or return was required to be filed. This requirement, of course, presents no legislative difficulty. Indeed, it is already a requirement on conventional warrants. (Cf. Fed. R. Crim. Proc. 41(d))

V

Having thus finished articulating the majority's blue print for constitutional electronic surveillance, Mr. Justice Clark took up the question of need. First, he noted the opinion of the majority of knowledgeable law enforcement officials that

the use of these techniques is indispensable. He then noted that this opinion is today not supported by empirical statistics. I only wish he had also explained why empirical statistics are needed. Much of our modern understanding of human psychology, for example, rests on clinical not empirical data. Yet the law has rightly not demanded empirical proof before it has updated its techniques in that area. Here, of course, informed law enforcement opinion is the comparable clinical data. Hopefully, however, when new legislation is passed, it will provide for the gathering of this kind of data to the degree possible in this area.

Mr. Justice Clark did, however, refer to some statistics collected in the early 1950's, which, according to him, seemed to show that wiretapping was not needed in organized crime cases. Curiously, he classified extortion as not involving organized crime, and seemed to feel that a quantified judgment, that is, a percentage judgment, could be made of the importance of the cases. The English Privy Councilors who studied wiretapping in England over a twenty year period—concluding that both the interests of privacy and justice could be well-served in a system of controlled electronic surveillance—answered Mr. Justice Clark's mistaken notion in these terms:

"We cannot think it to be wise or prudent or necessary to take away from the Police any weapon or to weaken any power they now possess in their fight against organized crime. . . . * * * If it be said that the number of cases where methods of interception are used in small and that an objectionable method could therefore well be abolished, we feel that . . . this is not a reason why criminals in the particular class of crime should be encouraged by the knowledge that they have nothing to fear from methods of interception. * * * This, in our opinion, so far from strengthening the liberty of the ordinary citizen, might very well have the opposite effect." (*Report of the Committee of Privy Councillors Appointed to Inquire into the Interception of Communication* (1957) reprinted in, *Wiretapping, Eavesdropping and the Bill of Rights.* Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 85th Cong. 2nd Sess Pt., 460–99 at 489 (1958)).

Mr. Justice Clark also referred to the recent confessions of the Department of Justice in certain bugging cases. He noted that the Department has stated that it presently no longer plans to use the techniques in organized crime cases. Interestingly, he did not note the Department's announcement that it would continue to use them in the future without judicial supervision of any type albeit in a more serious class of cases. Here I cannot help but speculate with Mr. Justice White how the federal government can constitutionally use these techniques in "security cases" on the national level but state governments cannot use these techniques even under judicial supervision in "security cases" on the local level.

Mr. Justice Clark also, Mr. Justice White in dissent rightly observes, incredibly suggests "that there has been no breakdown of federal law enforcement in the area of organized crime." Here, of course, he simply ignores, as Mr. Justice White points out, the findings of the President's Crime Commission, which were brought to the Court's attention in the briefs of the parties. Nothing in the briefs or the record suggests that these findings are not in accord with the true situation. I cannot help but feel with Mr. Justice White that on this score the Court is not dealing with the "facts of the real world."

"In any event," and this is important, Mr. Justice Clark for the majority found the question of need not determinative. For the majority, their blueprint for constitutional electronic surveillance was compelled by the interests of privacy independent of the interests of justice. Their standard was no mere "formality." Yet it was not, Mr. Justice Clark said, "inflexible, or obtusely unyielding to the legitimate needs of law enforcement." Instead, it was merely the "basic command of the Fourth Amendment."

Finally, Mr. Justice Clark indirectly referred to the opinions of the dissenters and the suggestions there made that no warrant or statute could be drawn to meet the majority's requirements. He then conceded if that were true the fruits of eavesdropping had to be banned under the Fourth Amendment. But he followed his concession quickly with the reminder that the Court had approved the careful use of electronic surveillance techniques in the past and suggested that the majority was not willing to make the "precincts of the home or office . . . sanctuaries where the law can never reach." The Court, he said, only wanted the use of these techniques to meet "a constitutional standard." The New York stat-

ute for them did not meet that standard. Had it been drafted differently, it would have been sustained. Because it was not, it had to be struck down. But he left the clear impression that if the statute were redrafted along the lines suggested by the majority it would be upheld.

VI

The Court has thus given this Body the blueprint for a constitutional system of authorized electronic surveillance. Only the question of legislative will remains. One obstacle to that will is the position of the present Attorney General. As I noted at the beginning of this statement, it is apparently the position of Mr. Clark and others that electronic eavesdropping is "neither effective nor highly productive." Testifying before Subcommittee No. 5 of the House Judiciary Committee, he suggested that this opinion was based on an examination of the logs kept by the Federal Bureau of Investigation in selected organized crime cases in which under previous Departmental direction the Bureau had employed electronic surveillance techniques. These logs have neither been made public nor made available to this Body.

What I have just suggested, of course, remains generally true. Summaries of some of these logs, however, have become public during the course of litigation in which the Department is now engaged. Attached as an appendix to this statement is a story which appeared in the *Providence Journal* of Providence, Rhode Island, on May 20, 1967. That article reprints verbatim ten "airtels" of the Federal Bureau of Investigation summarizing for the Washington office of the Bureau information electronically obtained by the Boston office of the Bureau.

To the uninformed reader these airtels seem relatively meaningless. To make them pregnant with significance, it takes only a little familiarity with the nature of organized crime. (See generally the *Task Force Report: Organized Crime* (1967) and *Organized Crime and Illicit Traffic in Narcotics*, S. Rep. No. 72, 89th Cong. 1st Sess. (1965) (hereinafter cited *Rep.*) along with the relevant supporting hearings (hereinafter cited *H.*)) When you have this familiarity, the impact of these few airtels is staggering.

What I would like to do now is to outline in general terms what these airtels mean and to place them in a context from which the indispensable character of electronic surveillance techniques to any serious attack on organized crime will emerge.

VII

These airtels were disclosed during a post-trial hearing in a tax case involving Louis "The Fox" Taglianetti, a member of La Costa Nostra. (*Rep.* 44) His criminal activities include gambling, robbery and burglary. (*H* 551) the airtels are summaries of daily logs kept by Bureau agents of conversation picked up on an electronic device used for the purpose of obtaining strategic intelligence placed by the Bureau in the office of the National Cigarette Service, a vending machine corporation, located at 168 Atwells Ave., in Providence, Rhode Island. The device was placed there to obtain accurate coverage of the activities of Raymond Patriarca, the head of the New England "family" of La Cosa Nostra and a member of its national ruling board, the "Commission." (H. 567). Patriarca's criminal record includes convictions—during his younger years before he obtained the immunity which goes with success in organized crime—for such crimes as armed robbery, arson and the White Slave Act. The decision to place Patriarca under surveillance, in short, was not without justification. His associates—as the airtels show—include nearly every hood in the country who has graduated from the drugstore cowboy stage, and his criminal activities—again confirmed by the airtels—run the full gamut.

The device was in operation from March 1962 to July 1965. The ten airtels made public are the airtels from this period in which Taglianetti was mentioned. The other airtels were kept confidential by the District Court. What is contained in them can only be inferred from those made public.

VIII

What then in broad outline does a careful analysis of these ten airtels establish—out of the mouths of the men themselves—in a context in which there was no reason to lie?

,. That there is an organization called La Cosa Nostra (10–20–64 ¶5; 10–22–64 ¶7);
2. That it is headed by a body called "the Commission" (10–20–64 ¶4; 10–27–64 ¶¶3, 7 & 9);
3. That it is broken up into groups called "families" (9–13–63 ¶¶4 & 10; 10–27–64 ¶6);
4. That families are headed by "bosses" (9–13–63 ¶10; 10–27–64 ¶3);
5. That families are staffed by "underbosses" (9–13–63 ¶10);
6. That families are staffed by "caporegine", i.e., lieutenants (1–25–65 ¶25);
7. That families are composed of members called "soldiers" (10–27–64 ¶9);
8. That the Commission can rule families in the absence of a boss (9–13–63 ¶10);
9. That the Commission makes the boss (9–13–63 ¶10; 10–27–64 ¶¶3 & 7);
10. That the Commission must approve new members (9–13–63 ¶¶4 & 7);
11. That the Commission settles disputes (10–27–64 ¶¶3 & 7);
12. That the Commission holds hearings (10–27–64 ¶7);
13. That the Commission acts by voting (10–27–64 ¶7);
14. That the boss of a family engages in the following activities:
    A. he intercedes for members in other groups (10–27–64 ¶6);
    B. he orders members to live up to personal obligations (10–27–64 ¶11);
    C. he orders members to live up to illegal business obligations (3–7–63 ¶4);
    D. he grants or withholds permission to operate illegal businesses (1–26–65 ¶22);
    E. he settles the division of the profits of illegal businesses (1–26–65 ¶23);
    F. he declares when necessary "martial law" (1–26–65 ¶41);
    G. he is kept informed of the illegal activities of his associates (3–14–63 ¶5 (Kidnapping); 10–20–64 ¶1 (murder));
    H. he arranges bail (4–16–63 ¶¶2 & 3);
    I. he arranges to hold illegal business during incarceration (10–31–63 ¶8);
    J. he can delay a death order for convenience of others (10–20–64 ¶7);
    K. he worries about his image with up-coming members (10–31–63 ¶2);
    L. he has contacts with the legitimate world which permit him influence in:
        a. affecting the decisions of state attorneys general (1–26–65 ¶2);
        b. affecting the decision of high ranking state police officials (10–31–63 ¶10);
        c. affecting the granting of legitimate licenses (1–26–65 ¶12);
        d. affecting parole decisions (4–16–63 ¶5);
        e. affecting probation decisions (1–28–65 ¶5);
        f. affecting sentences (10–31–63 ¶2);
15. That the boss insulates himself from possible criminal investigation:
    A. shows concern for scientific investigation (4–16–65 ¶6);
    B. uses public phones (10–31–63 ¶1) under special arrangements (1–26–65 ¶14);
    C. appointments are required to see him (1–26–65 ¶14);
16. That members are referred to as "a friend of ours" (1–26–65 ¶30);
17. That members are brought into the organization by a ritual (9–13–63 ¶4);
18. That members transfer from family to family (9–13–63 ¶2; 10–20–64 ¶28);
19. That members are ordered to kill (10–27–64 ¶10);
20. That some families have in excess 150 members (10–20–64 ¶24);
21. That a family of 120 is "small" (10–20–64 ¶25);
22. That the organization is nation-wide:
    A. Providence, Rhode Island;
    B. Chicago, Illinois (9–13–63 ¶7);
    C. New York, New York (9–13–63 ¶10);
    D. Baltimore, Maryland (10–31–63 ¶8);
    E. Washington, D.C. (10–31–63 ¶8);
    F. New Jersey (10–20–64 ¶11);
    G. Boston, Massachusetts (1–26–65 ¶5);
    H. Miami, Florida (1–26–65 ¶17);
    I. Philadelphia, Pennsylvania (1–26–65 ¶19);
23. That the organization is international:
    A. Canada (10–20–64 ¶24):
24. That members are involved in the following illegal activities:

A. murder (10–20–64 ¶1; 1–28–65 ¶¶5, 6, 7, & 9; 10–27–64 ¶10; 1–26–65 ¶¶38–41);
B. kidnapping (3–14–63 ¶5);
C. extortion (1–26–65 ¶30–37);
D. fraud (10–20–64 ¶3);
E. bribery (1–28–65 ¶2; 10–27–64 ¶10);
F. perjury (1–26–65 ¶10);
G. loan sharking (10–20–64 ¶27; 1–28–65 ¶7; 1–26–65 ¶3);
H. gambling (4–16–63 ¶4; 10–31–63 ¶8; 1–26–65 ¶5; 1–26–65 ¶¶20–23); and

25. That members are involved in the following legal activities:
A. gambling (9–13–63 ¶2);
B. labor unions (1–28–65 ¶12; 2–12–65 ¶¶2–3);
C. race tracks (10–20–64 ¶7; 10–27–64 ¶¶12–13; 1–26–65 ¶3);
D. vending machine (10–20–64 ¶3; 1–26–65 ¶¶18–19); and
E. liquor (3–7–66 ¶2).

Among those with whom Patriarca had direct or indirect dealing are the following:

1. *Jerry Anguilo*—underboss in the Patriarca family (H. 568)
2. *John Biele*—a caporegima in the Vito Genovese family in New York City (H. 248)
3. *Joseph Bonanno*—head of a family in New York City (Rep. 30)
4. *Anthony Corallo*—a caporegima in the Thomas Lucchese family in New York City (Rep. 24)
5. *Eddie Coco*—a caporegima in the Thomas Lucchese family in New York City (H. 274)
6. *Thomas Eboli*—acting boss in the Vito Genovese family in New York City (Rep. 20)
7. *Patsy Ezra*—"enforcer" for Mike Coppola, a caporegima in the Vito Genovese family in New York City (H. 248)
8. *Carlo Gambino*—head of family in New York City (Rep. 26) successor to Albert Anastasia
9. *Vito Genovese*—head of family in New York City (Rep. 20) successor to Frank Costello and Charles Luciano.
10. *Thomas Lucchese*—head of family New York City (Rep. 24)
11. *Salvatore Mussachio*—underboss in the Joseph Profaci family, New York City (Rep. 28)
12. *Sam Rizzo*—caporegima in Steve Magaddino family, Buffalo, New York (H. 580)
13. *Henry Tamelo*—"messenger" in the Patriarca family (H. 568)

IX

From August 1960 until June 1964, I was a special prosecutor in the Organized Crime and Racketeering Section of the Department of Justice. Nothing in the routine reports that I read from any federal agency contained data of this quantity or quality. Apparently, the Federal Bureau of Investigation was not then making electronically obtained data directly available to Departmental attorneys. I read, of course, general intelligence reports, but these seldom were on the concrete level of these airtels, and they could not be used for prosecution or investigation purposes. The investigation reports I read were the product of the use of normal investigative methods. There is just simply no comparison in the two kinds of reports. In light of this, I find it nothing short of incredible that Mr. Clark and others would seriously suggest that the use of electronic surveillance techniques is "neither effective nor highly productive."

X

Mr. Clark also suggested that organized crime, though important, is a "tiny part" of the entire crime picture. I would also like to register my disagreement with this suggestion.

Mr. Justice Brandeis in his classic dissent in *Olmstead* v. *United States* 277 U.S. 438, 485 (1928) rightly remarked: "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." Mr. Justice Brandeis then spoke in the context of lawless law enforcement. There is, however, another way in which government teaches by example. Its failures, too, do not go unnoticed especially among the young, who watch what

we do but seldom listen to what we say. Unlike other successful criminals who operate outside of an organization who require anonymity for success, the top men in organized crime—like Raymond Patriarca—are well known both to law enforcement agencies and to the public. Like Patriarca, in the earlier stages of their careers, they may have been touched by the law, but once they attain a top position in the rackets they acquire a high degree of immunity from legal accountability. The statement of a leading worker with gang boys long ago pointed out the effect of this process:

"When a noted criminal is caught, the fact is the principal topic of conversation among my boys. They and others lay wagers as to how long it will be before the criminal is free again, how long it will be before his pull gets him away from the law. The youngsters soon learn who are the politicians who can be depended upon to get offenders out of trouble, who are the dive-keepers who are protected. The increasing contempt for law is due to the corrupt alliance between crime and politics, protected vice, pull in the administration of justice, unemployment, and a general soreness against the world produced by these conditions." (Quoted in Thrasher, *The Gang* 455 (1927))

As part of organized crime, an ambitious young man knows that he can rise from body guard to a power in the community. Roy French the horsetrainer who got word to Patriarca to help him get a license as a horsetrainer at the Rhode Island tracks knows something about our society today that Mr. Clark does not (1–26–65 ¶¶ 12–13). The man who contacted Patriarca about his labor troubles at his construction sites in Maine, Connecticut and Rhode Island knows something about our society today that Mr. Clark does not (1–28–65 ¶ 12). Nick, the young man who got Patriarca to get him membership in La Cosa Nostra, knows something about our society today that Mr. Clark does not (9–13–63 ¶¶ 4–7).

No civilized society can long permit the operation within it of an underworld organization as powerful and as immune from accountability as La Cosa Nostra. The success story of this group is symbolic of the breakdown of law and order increasingly characteristic of many sectors of our society. To hold the allegiance of the law-abiding, society must show each man that no man is above the law. The President's Commission on Law Enforcement and the Administration of Justice summed it up in these terms:

"In many ways organized crime is the most sinister kind of crime in America. The men who control it have become rich and powerful by encouraging the needy to gamble, by luring the troubled to destroy themselves with drugs, by extorting the profits of honest and hardworking businessmen, by collecting usury from those in financial plight, by maiming or murdering those who oppose them, by bribing those who are sworn to destroy them. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested in open and continual defiance of the law, they preach a sermon that all too many Americans heed: the government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers." (*The Challenge of Crime in a Free Society*: A Report by the President's Commission on Law Enforcement and the Administration of Justice 209 (1967))

This is what I wish Mr. Clark understood.

XI

The Supreme Court has now handed down the blueprint for constitutional electronic surveillance. The President's Crime Commission has called for legislative action. If there is any doubt in this Body's mind of need for this legislation, I suggest that the doubt be resolved by this Body calling for the other airtels in the possession of the Department of Justice. It is a fair inference if Patriarca was under surveillance that the other members of the Commission—9 to 12 in number (H. 7)—were as well. The Department has found it in the public interest to disclose various airtels to District Courts to insure that fair trials have been given to the worse sort of hoodlums. I suggest it would be equally in the public interest to disclose all of the airtels in every situation where a Commission member was involved to this Body. Examine them for yourself. Make your own judgment on the clear and present character of the threat to free institutions in our society posed by organized crime. See for yourself if electronic surveillance tech-

niques are the indispensable tools knowledgeable law enforcement officials say they are. When this is done I have no question that the problem of legislative will have been overcome.

Thank you.

APPENDIX A

[New York Times, New York, N.Y., May 19, 1967, p. 23, col. 1]

CLARK SAYS RISE IN CRIME IS SMALL

ATTORNEY GENERAL DECLARES "THERE IS NO WAVE"

By Sidney E. Zion

Attorney General Ramsey Clark said yesterday that he did not believe there was a crime wave in the nation.

"The level of crime has risen a little bit," Mr. Clark said, "but there is no wave of crime in the country."

Mr. Clark gave this assessment in an interview here after addressing a luncheon meeting of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., at the Americana Hotel.

Asked about official statistics that indicate substantial increases in the crime rate yearly, the Attorney General said: "We do ourselves a great disservice with statistics."

Thus, he said, it is "quite clear," despite impressions to the contrary, "that the murder rate has declined steadily since the 1930's," from 7.8 slayings per 100,000 population to 5.4 last year.

"MOST ACCURATELY REPORTED"

"The fact is," Mr. Clark said, "that murder is the crime most accurately reported, so we can make comparisons with the past."

The Attorney General said he met with police chiefs from 14 major cities on Wednesday and that they generally reported a slight increase in crime.

"One city was up 1 per cent from last year, but last year they had been down 1 per cent from the year before," he said.

Mr. Clark said that despite President Johnson's nearly total ban on wiretapping and bugging imposed in July, 1965, the Department of Justice's prosecutions against organized crime were now "at an all-time high."

He said that in the fiscal year following the President's order, which banned all electronic eavesdropping in Federal cases except where the national security was directly endangered, organized-crime prosecutions went up 30 per cent.

"With the rarest exceptions," Mr. Clark said, "we have found that electronic surveillance was unnecessary, either in obtaining direct evidence of crime or in developing leads."

He has concluded, he said, that electronic eavesdropping is "neither effective nor highly productive."

The Attorney General said that organized crime was a "tiny part" of the entire crime picture, though an important one.

"In his speech to the Legal Defense Fund luncheon, which was in honor of the 13th anniversary of the Supreme Court's desegregation decision, Mr. Clark noted that as a result of that ruling nearly half a million Negro students were enrolled in schools with white students in the 11 Southern States.

"What greater transformation effected by the rule of law does history reveal?" he said.

OUTLOOK ON RIGHTS

In a panel discussion of the luncheon meeting, the prospects for the civil rights movement were reviewed by Saul D. Alinsky, executive director of the Industrial Areas Foundation; Mr. Kenneth B. Clark, president of the Metropolitan Applied Research Center, and Bayard Rustin, executive director of the A. Philip Randolph Institute.

"We are fine at demonstrating and protesting," Mr. Alinsky said. "But we don't yet have the organization to compel the power structure to follow through on the concessions they make. It's as though a labor union won a contract, then dissolved and expected the employer to live up to the agreement."

APPENDIX B

[Providence Journal, Providence, R.I., May 20, 1967, p. 1, col. 1]

THE TAGLIANETTI CASE: WHAT THE 'BUG' TOLD AT 168 ATWELLS AVE.

Chief Judge Edward W. Day of U.S. District Court has reserved decision as to whether evidence in the income tax evasion conviction of Louis "The Fox" Taglianetti in April, 1966, was tainted by Federal Bureau of Investigation "bugging" of the office of a "close associate."

In seven days of court hearings which ended last Thursday, evidence was adduced that the electronic surveillance was maintained by the FBI on a daily basis from March, 1962, to July, 1965, and that the microphone was planted at 168 Atwells Ave. to monitor conversations in the office of National Cigarette Service.

It was further testified during the hearing that Raymond L. S. Patriarca and Philip Carrozza are the "principals" in National Cigarette Service.

During Taglianetti's trial 13 months ago, Patriarca, summoned by the government, had testified that he was a "partner" with Carrozza in National Cigarette Service and that Taglianetti was a "good will" man who got the firm many "locations" for its cigarette vending machines.

Taglianetti was found guilty by a jury of evading income taxes in the years 1956 through 1958. Last September, Judge Day sentenced him to seven months and a $3,000 fine. Taglianetti appealed, which stayed the sentence.

While the appeal was pending before the Circuit Court at Boston, the Justice Department came forward last December and volunteered that the FBI had "bugged" the "place of business of a close associate" of Taglianetti. The Justice Department said no fruits of the microphone surveillance had tainted the income tax case, but asked the court to decide.

The Circuit Court rejected a defense motion for a new trial, remanded the case to Judge Day on the narrow issue of whether the evidence had been tainted and said that if he could not determine this issue after a hearing, he could order a new trial.

Judge Day began hearings on May 9. When they were concluded last Thursday after seven court days, he gave defense counsel until June 15 to file a brief and the government until July 15 to file an answering brief.

At the outset of the proceedings, defense counsel asked production of the records of the FBI surveillance. Under the Jencks Act, Judge Day examined the entire record in chambers and ordered the government to give defense counsel all FBI records of conversations in which Taglianetti had participated.

The Jencks Act provides that in any federal criminal prosecution a defendant shall be entitled to examine and use any government statement or report relating to the testimony of a government witness, and if it contains matter which does not relate to the testimony of the witness, the government shall deliver the statement or report to the judge, who shall examine it privately and excise the material not relating to the witness' testimony before directing the government to deliver it to the defendant.

The defense was given only a fraction of the complete FBI record. The remainder is locked in Judge Day's office. The hearing began after defense counsel had time to examine the FBI material turned over to them.

Through a series of Internal Revenue and FBI witnesses, Charles J. Alexander, Justice Department attorney from Washington who was assisted by U.S. Dist. Atty. Edward P. Gallogly, undertook to demonstrate that no information from the FBI bugging had been communicated to Internal Revenue and that, with two exceptions not relating to Taglianetti, none of the information had been disseminated outside FBI channels.

By intensive cross-examination of government witnesses, Bruce M. Selya, defense counsel with John A. Varone, undertook to undermine this government claim by showing a wide distribution of multiple copies of the surveillance data to FBI headquarters in Washington and to branch FBI offices in several cities, beyond the knowledge of witnesses here as to what happened to the information elsewhere.

The defense also claimed that the FBI bugging of a conversation between Taglianetti and Robert G. Crouchley, Providence attorney, while Mr. Varone was incapacitated after an automobile accident in 1965, was an invasion of lawyer-client relationship.

Repeatedly in cross-examination Mr. Selya drew acknowledgements from government witnesses that Taglianetti was not the "subject" of the electronic surveillance at 168 Atwells Ave.

John F. Kehoe, special agent in the Boston FBI office who was coordinator of the surveillance for the Justice Department organized crime and racketeering division, described how the FBI data was recorded.

The agent operating the tape recorder at Providence kept "logs" in which he made note of individuals speaking and the subject matter discussed.

The tapes and logs were delivered daily to Mr. Kehoe. Listening to the tapes, and checking what he heard with what the logs said, he made memorandum notes. From the memorandums he later dictated "airtels," the FBI term for air mail messages sent through FBI channels, which went to Washington FBI headquarters and other FBI offices as subject matter indicated. At the bottom of each "airtel" the numerals and cities named show how copies were sent to which FBI offices.

The tapes later were erased and used over and over at Providence.

Mr. Selya introduced a series of these airtels, furnished the defense by the government, as a defense exhibit last Wednesday afternoon.

The defense exhibit on record in the case follows:

4/18/63

To: Director, FBI (92–2961)
From: SAC, Boston (92–118)
Subject: Raymond L. S. Patriarca, akaAR
Re Boston airtel 4/16/63.

BS 837–C* advised on 4/16/63 that Patriarca took his wife to the New England Baptist Hospital, Boston, Mass., for an operation.

On 4/17/63 Rudolph Sciara, who was recently acquitted in State Court on a charge of murder, was told by Patriarca that he is doing too many favors for people and that he should discontinue doing same as it will lead him into trouble. Sciara had mentioned that he had arranged the bail for three individuals, not identified.

Patriarca instructed him that, when arranging bail for any individual, he should make sure that the bondsman does not know his (Sciara's) identity as he believes that all bondsmen are stool pigeons.

He then was very critical of an individual he believed to be a dentist, who had just visited him and said that this dentist is a stool pigeon for the FBI. (This statement not true.) He pointed out that when he had taken his wife to the hospital in Boston, the dentist, whom he had not seen for several months had dropped in and inquired about her health. When Raymond told him that his wife was in the hospital in Boston, he apparently notified the FBI because they surveilled the hospital and observed Patriarca meeting with various individuals, including (name blanked out).

(Blanked out) Patriarca said that he was contacting (blanked out) in an effort to obtain the parole of Leo Santaniello and Lawrence Baiona.

He also told Sciara that today the criminals are fighting scientific crime detection and, therefore, have to be very careful.

3—Bureau
1—New York (Info)
2—Boston (92–118)
(1)–92–118 Sub 4
JFK
(6)

3/12/63

To: Director, FBI (92–2961) SAC, Philadelphia
From: SAC, Boston (92–118)
Subject: Raymond L. S. Patriarca, aka AR
Re Boston Airtel to Bureau dated 3/7/63.

On 3/9/63, BS 837–C* advised that two unmen discussed Taglianetti's tax case in which he has recently been indicted. Raymond thought that if they obtained the proper attorney, and that he pointed out to the judge that Taglianetti has a young family, no criminal record, and has a good employment record, that he might get a suspended sentence. Raymond suggested that Taglianetti ought to attempt in some way to have the USA recommend a light sentence be-

cause of the above facts. If the USA does recommend a light sentence, Patriarca believes that the judge would go along with the recommendation.

On 3/11/63, Johnny (LNU) (not John Williams) and another Unman told Patriarca that they intend to get some whiskey from the warehouse but do not intend to go through the kid who works in the place. He pointed out that this source of supply of whiskey has not been available to them in the recent past which necessitated that they purchase their own whiskey. The location of this warehouse was not mentioned.

On the same date, another Unman told Raymond that one gang is competing against the other but did not describe either gang. He said that Pete (LNU) is all done as he is going to the (can). Pete wanted to take a couple of banks alone and there was mention of Philadelphia but the informant was unable to ascertain the details of same. Immediately thereafter Patriarca said "We can't send him to someone down there as there is too much heat around." Efforts are being made to identify a Peter who was probably recently arrested in this area.

On the same date, Eddie (LNU) told Patriarca that he grabbed the kid yesterday, not further identified. This concerned a bet which a woman had placed and Eddie was of the opinion that the woman pastposted the bookie. The woman threatened to call Johnny Barborian of Providence, Rhode Island and it was not clear to the informant whether she did contact Barborian. At the end of the conversation Patriarca told Eddie to pay the hit.

The sensitive nature of the informants position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau (92–2961)
1—Philadelphia (Info)
2—Boston (92–118)
(1)—92–118 Sub 4)
JFK:Atl
(6)

3/19/63

To: Director, FBI (91,2961)
From: SAC, Boston (92–118)
Subject: Raymond L. S. Patriarca, aka AR
Re Boston airtel 3/14/63.

BS 837–C* advised on 3/14/63 that Raymond Patriarca was contacted by Louis Taglianetti relative to his pending IRS case. They discussed his IRS case somewhat in detail but mentioned nothing of significant value.

Raymond discussed with Unman regarding R.I. registration RL490 which allegedly was observed in a parking lot when Raymond had a meet sometime ago. This plate was checked out and found not significant to this investigation.

On 3/15/63 Raymond accepted some checks from an unidentified individual who owed Raymond money. This individual said that he would pay Raymond $85.00 thereafter to fulfill his obligation.

Another unidentified individual told Raymond that Nicholas Parlato of Newport, Rhode Island, was interviewed for two hours relative to the job not specified. Raymond said he hopes that he gets the job.

John Barborian discussed with Raymond the kidnaping of an individual in Miami, Florida, last July. This information is set out in a separate letter.

Another unman tells Raymond that the fellow from Chicago wants $2.00 a case for 25,000 cases of shoe polish. Second unman said it was only worth $1.50 per case. They decided that Sam LNU should go to Chicago relative to this matter but Raymond said it was not worth it.

On 3/16/63 Patriarca reminded Frank Forti that he had a meet with (Tony Pussy) Russo at the hotel at 5:00 that day.

On 3/18/63 unman tells Raymond that the girl who was supposed to go to the track with the money lost her pocketbook and billfold with the money in it and that they lost the bank roll. This apparently concerns a gambler, not identified and that this individual went to New York to get another bank roll.

Another unman asked Raymon how he could get a hold of Mickey the Wise Guy (Michael Rocco) and he directed this individual to Frank Rossetti of Providence, Rhode Island. Said that Rossetti would know the phone number of Mickey the Wise Guy.

The sensitive nature of this informants' position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau
1—Chicago
2—Boston
1—92118
1—92-118 Sub 4
JFK: pd
(5)

9/17/63

To: Director, FBI (92-2961) SAC, New York
From: SAC, Boston (92-118) (P)
Subject: Raymond L.S. Patriarca, aka AR

Rebestel, 9/13/63.

BS 837-C * advised on 9/13/63 that Patriarca was in NYC on 9/9/63. While Patriarca was waiting at the Edison Hotel for some unknown person he met Pogey (believed to be Pogey Torriello). Pogey was with Hymie (LNU). Pogey indicated to Patriarca that his money is all tied up with Frankie (LNU) and, in order to get some capital, he, Pogey, will have to sell his stock.

Mike (LNU) ascertained from Joe Lindsey, noted Boston Philanthropist, that he, Lindsey, was not interested in obtaining the points. Informant was of the opinion that the points were worth $10,000 but was unable to determine what corporation the points were being sold for. Lindsey was of the opinion that the points were not worth $10,000 and, therefore, declined to purchase same.

Patriarca told Henry Tameleo of Providence, R.I. that he is going to NYC, probably on Monday, September 23rd. It should be noted that the informant was not positive about this date but did learn the following:

Patriarca is going to New York with Henry Tameleo and that they are going to make Nick or Chick a member of the "family" Wednesday night, 9/25/63, at the Roma. The reason they are going to make Nick on Wednesday night is "in case they want to make peace Thursday." If they did, he indicated that he (Patriarca) would be tied up trying to effect the peace. Patriarca has obtained permission from the Commission to make Nick because it was an emergency and pointed out that if it were not an emergency, the Commission would not recognize him as a member. He obtained the permission from Tony (LNU) to make Nick a member and the ceremony is to take place at 4:00 p.m. on 9/25/63.

Ray indicated he talked to Pogey only for a short time because Pogey's kid was coming down and Pogey did not want to permit the boy to see Patriarca. Patriarca does not like to hang around New York when he is conducting business there but only stay a sufficient amount of time to allow him to conduct his business.

Raymond was unable to understand Pogey completely "as he juggles his words all the time." Pogey did tell him, however, that some guys are coming tomorrow, meaning 9/14/63, and Joey (LNU), Dana and another individual (not known) went there on 9/12/63. Informant was unable to ascertain the significance of this but was of the opinion that it concerned the selling of points in some gambling casino. The sale is a legitimate sale and the person investing would obtain at least 6 per cent on his investment legitimately.

Patriarca instructed Tameleo to go to Boston and tell Jerry Angiulo what is going on and the Commission has Ok'd the making of this kid (Nick). Patriarca is going to turn Nick over to an individual, whose name the informant could not ascertain, or "whoever they put in Chicago."

Patriarca advised that the other kid, Moe (LNU), called Doc (LNU) and he, Moe, is going to string him out. Informant was unable to ascertain the significance of this.

Raymond said that the other 24 guys are not made, but the informant did not ascertain the significance of this.

Patriarca then told Tameleo to tell Joe (possibly Joseph Lombardo of Boston) that the boss and underboss in New York are out; that right now that "family" is under the Commission. Patriarca did not know who they were going to make as boss of this "family" as they have not picked the person as yet. He specifically warned Tameleo to give this information to Joe and Joe alone; if he wants

to tell it to anyone else that is his business. He also told Tameleo to tell Joe that the kid will be made at 4 o'clock on September 25th.

On 9/16/63, Frank Davis, Providence, R.I., has been summoned to appear before IRS for a formal interview inasmuch as he has not reported correct income. Consideration is being given to possible criminal action.

The sensitive nature of the informant's position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau
1—Chicago (Info)
2—New York
3—Boston (92–118)
(92–446) (92–130)
JFK: po'b
(9)

11/5/63.

To: Director, FBI (92–2961) SAC, Baltimore
From: SAC, Boston (92–118) (P) Raymond L. S. Patriarca aka AR

Rebossirtel 10/31/63.

The following information was furnished by BS 837–C.*

On 10/31/63, Unman told Patriarca that he had a mysterious telephone call. As a result of this call he was of the opinion that his phone had been tapped. Unman was involved in bookmaking but the informant did not have details concerning this. Patriarca uses a public telephone booth when it is necessary to make important calls.

Another Unman requested Patriarca's help in a case involving an unknown individual who is facing a jail sentence for a crime committed by him. The defendant still has $18,000 from the result of the crime. Patriarca will assist this individual, providing he gets half of the money or $9,000. He did not indicate in what way he would help the defendant. Unman would contact him later when he discussed the details with the defendant.

On 11/1/63, no pertinent information was developed.

On 11/4/63, Louis Taglianetti, Providence, R.I., discussed his Internal Revenue case with Patriarca. No pertinent information was developed.

Frank Davis, Providence, R.I., still owes the Cranston Loan Co. a substantial amount of money. Davis' former partner Harrington is afraid that he will lose his collateral on a loan that Davis has outstanding.

Patriarca was not sympathetic and told Davis not to worry about Harrington but let him lose his money.

Davis requested Raymond to speak to Dario, President of the Lincoln Downs Race Track, Lincoln, R.I., about the loan with the Cranston Loan Co.; however, Patriarca advised he could not do this under the present circumstances. Raymond stated that he has not made any money in legitimate businesses in the past.

Joseph Krikorian (aka Joe Kirk) contacted Patriarca. Krikorian was not too enthused about taking over Julius Salisbury's gambling business in Baltimore, Md., while Salisbury was in prison. According to the informant, Kirk did not believe that there would be sufficient money in the enterprise; and, further, that he did not like the idea of giving up the business when Salisbury is released from prison. He did mention that the number play in Baltimore is extremely good, as in Washington, D.C. Informant was unable to ascertain all details concerning this operation in Baltimore.

Kirk and Patriarca are disgusted with the operation of the Berkshire Downs Race Track, Hancock, Mass. It appeared that the Berkshire Downs Race Track is going into bankruptcy.

Unman, who formerly ran the fights in Providence, R.I., had previously contacted Col. Walter E. Stone prior to his testimony before the Senate Crime Commission in Washington, D.C. He warned Stone not to go out on a limb and to be very general in his statements before this Crime Committee.

Stone apparently did not take this man's advice and, consequently, made a fool out of himself with his testimony concerning Patriarca. Patriarca, however, cleared himself to a great extent at the State Grand Jury, Providence, R.I. on 10/24, 25/63.

Patriarca claims that 90% of Stone's testimony was untrue. Patriarca denied ever being dishonest with his friends and thought that probably Stone, when he testified concerning Patriarca's dishonesty among his friends, was trying to get him, Patriarca, knocked off.

Patriarca is aware of the possibility that some of the young punks coming up might figure Patriarca at one time was a stool pigeon and, therefore kill him.

Patriarca does not intend to testify before the Federal Grand Jury at Providence, R.I., which is to be held in the near future. He intends to force USA Pettine to prove everything. Patriarca believes that Col. Walter E. Stone must have been brain-washed by the AG, Robert Kennedy, to have testified in the manner that he did for the Senate Crime Commission.

The sensitive nature of the informant's position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau
2—Baltimore
1—Washington Field (Info)
2—Boston
(92–118) (92–118 sub 1)
JFK: po'b
'8)

Date 10/22/64

To: Director, FBI (92–2961) SACS, Newark, New York
From: SAC, Boston (92–118) (P) Raymond L. S. Patriarca, aka AR
(OO: Boston)
Rebosairtel, 10/20/64.

BS 837–C* advised on 10/19/64 that Unman explained to Raymond that he (Unman) was trying to line up some man for a hit and the difficulties which have arisen concerning this. (This possibly deals with the attempted killing of Willie Marfeo, Providence, R.I., which information has previously been disseminated. Nothing additional was obtained concerning this as set out in previous airtels.)

Louis Taglianetti, Providence, R.I., discussed in detail his IRS trial which is in progress.

Patriarca has been subpoenaed to testify in this case inasmuch as Taglianetti claims that he received a salary from the National Cigarette Vending Machine Co. which is owned by Patriarca.

USA Raymond J. Pettine, Providence, R.I., is attempting to force Taglianetti to plead to an income tax violation.

Patriarca was extremely angry in that all his witnesses in the libel case between the Boston Herald Traveler and Patriarca were held in contempt for taking the 5th Amendment. They were also ordered to pay all lawyers fees in connection with this hearing. In the event he is questioned about the Mafia or La Cosa Nostra he is going to reply that the only Mafia he ever heard of is the Irish Mafia that the Kennedy's are in charge of. Patriarca will deny knowing of Cosa Nostra until Valachi mentioned it at recent hearings.

Taglianetti is considering feigning a heart attack in order to postpone his tax case.

On 10/20/64, Joe Modica advised that Sam (LNU) is in bad shape financially. Joe inquired of Patsy Capaldo (apparently in connectiton with the Berkshire Downs Race Track). Patsy appeared before the Crime Commission sometime ago. Joe then discussed the racing dates for the Berkshire Downs Race Track and both he and Patriarca were very disturbed that Lou Smith, who owns Green Mountain, might ask for the same racing dates as Berkshire Downs. Patriarca stated that the track lost $185,000 this year.

Modica was concerned that Patriarca might be of the opinion that he (Modica) was trying to "horn in" on the Hancock Race Track. He explained how Sam Rizzo borrowed the $5,000 to assist him in purchasing the Hancock Raceway at auction. He stated that Rizzo is not off the hook for the $5,000 and that he is still trying to obtain same.

Patriarca told Modica that the word had come down that no one was to do any business with any of Bonanno's group because of the fact that he (Bonanno) failed to show up at a commission hearing when ordered to do so.

Nick Bianco, Brooklyn, N. Y., told Raymond that concerning "that thing" in Jersey he left Tuesday and did not expect to return until Thursday. He met

Johnny Coco (Lardiere) and Coco and Nick looked around "for that guy." Nick was of the opinion that he was going to live with them (probably meaning Coco and his group) for a few days. He (Lardiere) showed us where the guy lived and told Nick to go back to Brooklyn and wait for his call.

Patriarca mentioned that Coco helped a lot of the individuals in New Jersey.

Nick stated that Coco called him yesterday and said that he was talking to Tommy (LNU). He told Tommy that he was "pretty successful" and told him (Tommy) "what had to be told." Nick said that it was a telephone conversation and he was not able to fully comprehend the message but was of the opinion that everything was going along satisfactorily. Coco told him to wait for a call from him.

Patriarca mentioned that Rudolph (possibly Sciarra) was in Jersey and he (possibly referring to the victim) "hides in the joints."

Nick left and returned later the same day and continued the conversation relative to the Jersey thing. He stated that he was with Johnny Coco for four or five hours. Nick explained to Coco who the guy was and they searched all the joints.

He told Raymond the guy had a light blue car, registration CL 591. He then added that the 591 was possibly a combination of the numbers 591 and further, added that the initials of the guy were backwards, and then added, "RC."

Nick stated that he (victim) hung around with Sonny Diorio's kid whom Patriarca described as a redhead or blond kid. Sonny is a couple of years older than Nick, but the informant had no further description of either the victim or those associated with him.

Patriarca mentioned that the kids were on the junk but the informant was not sure whether he was referring to Sonny Diorio's kid or "the fat kid" that hangs around with him.

Nick was thinking of approaching the "fat kid" but was afraid of scaring him.

Nick further advised of a situation that occurred a short time ago. It appeared that the Feds left and the cops came in—"right into the house." They told Joey that "if you run, we'll put you in for a material witness" and demanded a $200 payoff, which Josey gave them. They ordered Joey to stay in the house. A short time thereafter Rocky (LNU), who is very close to Joey, came walking down the street. He apparently was confronted by the police with shotguns and, after being observed by Joey, the cops were convinced that he was "OK."

Nick stated that those guys have 20 guys who "write for them" and they (meaning the police and Feds) have very good information. They figured out that the information is coming from somebody who is very close to Frank (LNU).

They keep knocking the Carlo and Joey thing.

Ray stated that Joey, whom he described as the guy with Carlo, called him a few weeks ago and said that Carlo wanted to see Patriarca on Thursday, but Patriarca was unable to make the trip. He told Joey to call Friday if Carlo (Gambino) wanted to see him on Friday or thereafter. He has not received a call from Joey since that time.

Nick stated that he met Carlo's brother Joe on the street the other day and Joe told them that Bonanno's group was pulling away from him (Bonanno).

He stated that Mike Zepella (PH), who is with Bonanno, "turned in the other thing" with 63 or 65 guys and they expect more.

Vito, the one in jail, was described as the muscle man for Lelow (Ph). It appeared to the informant that Lelow is the top guy of the Bonanno group in Canada. Lelow, according to Nick, took his side (probably Bonanno's) and "does not want to know anything." Everyone else is coming along and the number is now up to approximately 150 (who have apparently defected from Bonanno).

Nick made the statement that Profaci had the smallest group, namely 120. According to Patriarca, Bonanno has a lot of old people on account of his (Bonanno's) father. The individual who started the ball rolling in connection with the defection from Bonanno was Gasper. He went to Joe Bonanno and said to him "Why don't you straighten this out?" and when Bonanno did not comply with the orders, apparently from the commission, he was the first to defect and they all followed.

Patriarca asked whether the Sheik had straightend that thing out and Nick replied in the affirmative. Nick stated that he is going to move into a hotel in Joey's neighborhood until he can get an apartment.

Nick stated that he has two kids shylocking, one of whom is pretty good. He described one of these kids as the Casale kid who lost his brother and is considered by Nick to be a good worker.

Patriarca mentioned that Johnny Williams is Coco's compare and further that he (Patriarca) made Coco and turned him over to the Jersey group. According to Nick, Coco hangs around at the bowling alley on Bloomfield Ave. The guy that owns the joint (probably meaning the bowling alley) was recently arrested for counterfeiting and all the guys that hang in there are bank robbers.

The sensitive nature of the informant's position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau (RM)
2—Newark (RM)
4—New York (1–92–3407) (1–92–2600) (RM)
2—Boston (5–92–118) (92–118 sub 4) (92–118 sub 3)
JFK:po'b
(16)

FBI

Date: 2/2/65

To: Director, FBI (92–2961) SACs, New York, Newark
From: Boston (92–118) (P)
Subject: Raymond L. S. Patriarca, aka AR (00—Boston)

Re Boston Airtel January 28, 1965.

BS 837–C* advised that Louis Taglianetti and Bob (LNU) contacted Patriarca. They intend to contact Bernie Ezhaya in order to resolve the Union situation. Informant did not know the details of same.

Henry Tameleo advised he contacted George Kattar and reiterated to Kattar that in order to operate he "must have the State". Kattar told him that he has arranged to pay-off the State Police and that he would furnish to Tameleo the identities and the amounts paid to individual members of the State Police. This apparently refers to a gambling operation that Kattar will open in Biddeford, Maine, which was previously reported. The Boston Office is conducting an investigation relative to this matter. It appeared that "Blackie" (LNU) who owns the club had been tipped off by members of the State Police that a game was to be held. In view of this, the opening of the operation has been temporarily discontinued.

Peter Kattar is also attempting to swindle some doctor or dentist of $50,000.

Jack Tripoli has inquired of Kattar whether this deal was actually a swindle and suggested to Kattar if it was, he desired a piece of it. Kattar is of the opinion that Tripoli was only feeling him out to ascertain if same was actually a swindle.

Tameleo stated that Joe Barbosa of East Boston, Massachusetts, was the person who killed Joseph Francione in Revere, Massachusetts, recently. Tameleo also advised that he had contacted Jimmy D. (Deangelis) and requested his assistance to help Louis Grieco. Jimmy was going to contact Probation Officer Hildredge in order to assist Grieco.

Tameleo told Patriarca that he ordered "Big Benny" Teresa to get rid of Barney Villani. Villani, according to Tameleo is a stool pigeon and has testified in court against an unknown individual involving an arson deal.

Tameleo advised that Jerry Angiulo had requested that he, Tameleo, find out who was responsible for the murder of Henry Reddington recently. Anguilo had received inquiry from New York concerning this. Tameleo ascertained from Joseph Modica that Samuel Linden had been asked by some unknown individual whether he desired the killing of Reddington to be postponed inasmuch as Linden was owed $8,000 by Reddington, Linden told this individual that he did not care about the $8,000 and did not desire to hear any further information concerning the proposed killing of Reddington. Patriarca instructed Tameleo to ascertain the identity of the individual who approached Linden.

There was also talk of Frank Smith who was a close associate of Linden. Patriarca was of the opinion that Smith, a local hoodlum, was the individual who probably asked Linden the above.

On 1/29/65, Edward "Whimpy" Bennett and Stephen Flemmi contacted . . . who was responsible for the Reddington murder. Bennett and Flemmi did not

know but did discuss various murders in Boston and the reasons therefor. The Informant was unable to ascertain the details of this information.

There was also talk about the McLaughlin-McLean feud but the Informant was unable to ascertain the details of same. There was mention of a meeting in connection with this but the Informant could not ascertain the details of same.

Unman contacted Patriarca and indicated that he has construction jobs in Maine, Connecticut and Rhode Island. Unman claimed that the Union Hall was not sending men to his jobs and that he was suffering because of this, laborwise. Patriarca indicated that we would assist him in this regard. Details were not known to the Informant.

On 1/30/65, Informant advised that Patriarca was leaving Providence. Patriarca was surveilled to New York City by Boston Agents where the surveillance was taken up by New York Agents.

The sensitive nature of the informants position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

cc:
3—Bureau (RM)
2—New York (RM)
1—Newark (RM)
7—Boston (5-92-118) (92-118 Sub 4) (92-118 Sub 3)
JFK:ds
(13)

Date: 2/18/65

To: Director, FBI (92-2961)
From: SAC, Boston (92-118) (P)
Subject: Raymond L. S. Patriarca, aka AR (co: Boston)
Rebosairtel, 2/12/65.

BS 837-C* advised on 2/16/65 that no pertinent information was developed, with the exception that Patriarca's wife was feeling extremely bad that day and indications are that she will probably have to go back to the hospital.

On 2/17/65 three unmen (one of whom is possibly Arthur (LNU) discussed a union problem involving the Gilbano Construction Co. One of the unmen is seeking a position in this union and another unman says that the union is the "lousiest in New England" and is the second largest.

The union representative in Hartford, Conn., is Mike Bolozano (PH) who apparently hires only members with criminal records. One of the unmen is attempting to obtain a pension from the union inasmuch as he is physically incapable of being employed.

Louis Taglianetti was complaining about additional IRS inquiries concerning him and the fact that he thinks his telephone is tapped.

He complained to William Adams of the New England Telephone & Telegraph Co. concerning this possible tap.

No further information was developed.

The sensitive nature of the informant's position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau (RM)
1—New Haven (Info) (RM)
Seven—Boston (3-92-118) (92-118 Sub 4) (92-118 Sub 3)
JFK: po'b
(11)

Date: 10/29/64

To: Director, FBI (92-2961) SAC, New York
From: SAC, Boston (92-118) (P)
Subject: Raymond L. S. Patriarca, aka AR (00: Boston)
Rebosairtel, 10/27/64.

BS 837-C* advised on 10/26/64 that John Biele, aka John Foto contacted Patriarca. Foto stated he saw Pogey Tauriello in Florida last year and also saw Patsy Erra but did not indicate the circumstances under which he met them. Foto is carrying a .32-caliber Derringer gun. General conversation took place between Patriarca and Foto which was not pertinent.

Louis Taglianetti of Providence, R.I., discussed his IRS income tax trial in detail with Patriarca, none of which is pertinent to this investigation.

An individual believed to be Danny Raimondi's father contacted Patriarca. Raimondi questioned Patriarca about the fate of Bonanno. Raymond explained that he was called to New York three weeks ago, during which time the fate of Bonanno was discussed. They decided that Bonanno was no longer a Boss or Commission Member. They also put out the word that nobody is to have any business dealings or association with any members of the Bonanno group.

A week later, Patriarca received another call from New York to attend another meeting. However, prior to the time he left Providence, this meeting was cancelled for some unknown reason. It was Patriarca's opinion that Bonanno was not killed by any member of the opposing faction. He pointed out that, if the opposing faction wanted him killed, they would have done so at the time they grabbed him on Park Avenue, as is the case in most killings of this type, particularly when there are witnesses, such as the lawyer, around.

He pointed out that they were taking a chance in kidnapping Bonanno and killing him later and could not see why it would serve any purpose to kidnap him first. Because of this, he believes that Bonanno is still alive and that he, Bonanno, engineered the alleged kidnapping. He pointed out that he is not sure of this, but it is only his opinion.

Raymond stated that he spoke to the group in New York in behalf of Raimondi and told them that, because his son is "with him," meaning Patriarca, they should not cause him, Raimondi, any harm. Raimondi pointed out that Gus Marino (ph) was thrown out, apparently by the Bonanno group. Raimondi is a member of the Bonanno family.

Patriarca further pointed out that, when Bonanno did not appear before the Commission when requested on eight or nine different occasions, he was given one additional chance. Instead of Bonanno himself appearing, his son appeared, but they told him that they did not want to talk to the son, but the father. Raymond explained that about one-half of Bonanno's group have turned themselves in to the Commission. He pointed out that even Bonanno's relation by marriage who was on the Commission voted to throw Bonanno out of Cosa Nostra. This Commission member was described as being from Detroit.

Raimondi mentioned the name of Caruso and stated that Larry (probably Gallo) was going "there" Thursday again. Informant did not know the significance of this statement.

Raymond pointed out that the Soldiers of Bonanno are regarded as being with Bonanno until they declare themselves otherwise to the Commission. Raymond pointed out that he wanted no fighting among this group and stated that Bonanno was the cause of his own downfall, because he was so greedy.

Raimondi then mentioned that he at one time was very wealthy and, because of his habit of helping friends financially, he has lost most of his money. He pointed out that at one time an individual name not mentioned, somebody. While completing was given an order to kill the murder, he was observed by a witness. Later, on another job, probably murder, he was picked up and identified by the witness in the first murder. A payoff of $5,000.00 was necessary to "square the rap away." $5,000.00 was furnished to a Lt. Dunn (ph) for this purpose and the charge was dropped. The individual was released and the following day he was also murdered. This resulted in the loss of $5,000.00 to Raimondi.

The main purpose of Raimondi's visit to Patriarca was to force his son, Danny Raimondi, of Providence, R.I., to call his mother twice a week and send her $10.00 a week, as she is very sick. Patriarca said that he would make Raimondi telephone the mother twice and visit her at least once every two weeks and send her $10.00 per week.

On 10/27/64 John Baborian and Patriarca discussed the Berkshire Downs Race Track. This track lost $140,000.00 last year and Baborian requested Patriarca's intervention with Lou Smith, owner of Rockingham Race Track, Salem, N.H., and the Green Mountain Race Track in Vermont. The reason was to make sure that Smith would not request the same racing dates at Green Mountain Race Track as those requested by Berkshire Downs Race Track.

According to Baborian, Doc (probably Sagansky, who has a financial interest in Berkshire Downs Race Track) does not desire to sell his interest. The Berkshire Downs Race Track now owes $12,000.00 to various horse men and $5,400.00 to someone else. They have reduced the mortgage by $50,000.00. $11,000 of the

money in Berkshire Downs belongs to Campanella & Cardi Construction Company. Patriarca advised that he would have Smith contacted in order to eliminate any conflict in racing dates.

The files of the Boston Office reflect that Daniel Raimondi, aka Daniel Lytwyn, is the son of Nellie Raimondi, nee Lytmyn, who in 1959 resided with Danny's step-father (FNU) Raimondi, with a married daughter, Mrs. Walter Mates, 2037 West Fifth Street, Brooklyn, New York.

The sensitive nature of the informants position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau (RM)
4—New York (1 92–2600)
(RM)
(1 92 Raimondi (RM)
7—Boston (5 92–118) (92–118 sub 4) (92–118 sub 3)
JFK/ner
(14)

1/28/65

To: Director, FBI (92–2961) SACS Miami, New York, Philadelphia
From: SAC, Boston (92–118) (P)
Subject: Raymond L. S. Patriarca AR (00: Boston)

Rebosairtel, 1/26/65.

ES 837–C* advised on 1/25/65 that Joe Modica, Boston, Mass., contacted Patriarca specifically concerning the Berkshire Downs Race Track in which Raymond Patriarca allegedly has a financial interest.

Patriarca told Modica to contact his friend who is allegedly extremely close to Attorney General Edward W. Brooke of Massachusetts and have him arrange to release the $100,000 bond that is being held by the Massachusetts Court in connection with civil suits that have been heard in Massachusetts courts.

Patriarca told Modica that it was necessary for "Doc" (possibly "Doc" Sagansky of Boston, Mass.) to put an additional $300,000 in to the track in order for it to open for the 1965 season. In the event the $100,000 bond mentioned above is released by the courts to Salvatore Rizzo, Patriarca assured Modica that he would get his $5,000 back, which he loaned to Rizzo, plus an additional $5,000 interest.

Patriarca explained that Johnny Wilson's uncle in NYC had indicated that he had a prospective buyer for the track for $900,000, but the deal fell through.

Modica mentioned Abe Barese (PH) located in East Boston and his connection with some crap game located there. (Informant was unable to ascertain details concerning same.)

Gennaro J. Angiulo and Peter Limone contacted Patriarca. Angiulo discussed in detail his pending case involving the assault of a federal officer in the North End section of Boston.

It will be recalled that an Internal Revenue Service undercover man was questioned by Angiulo and his associates, Peter Limone and William Cresta, concerning his true identity and was told to get out of the North End section of Boston.

Angiulo stated that he had contacted Attorney Francis Di Mento, a former Assistant United States Attorney, and requested him to defend him. Di Mento asked for $25,000, plus an additional $5,000 in the event it went to the Supreme Court. Angiulo refused but subsequently did agree on a fee of $10,000, plus $5,000 in the event the case went to the Supreme Court.

Their plan of defense is to attack the words noted in the indictment, "willfully and forcefully assaulted," and point out that they did not know the identity of the individual, nor did they actually forcefully eject him from the location in which they talked to him.

Their alibi is to contact Eddie Griffin who is a "90% blind man" and request him to testify that he asked Angiulo to question a sailor who lived in his house concerning the rape of a girl in the North End.

It is to be noted that the undercover man was posing as a sailor and resided in the North End section.

They intend to get another stand-up witness who will testify that he overheard Griffin ask Angiulo the above, but that he did nothing about it just walked away. In this way they feel that Griffin's testimony will be substantiated.

Roy French, a horse trainer, contacted Angiulo through an intermediary requesting assistance to obtain a license as a horse trainer at the Rhode Island tracks.

Patriarca indicated he would assist in this.

Jimmy O'Toole, close associate of Top 10 Fugitive George Patrick McLaughlin, contacted Peter Limone and requested that arrangements be made for him to see Patriarca. The reason for the request was to make arrangements that George McLaughlin could contact Patriarca telephonically. A lengthy discussion took place as to the best procedure and the tentative arrangements were that O'Toole was to call Peter Limone. He, in turn, would give a number of a public phone. Fifteen minutes later O'Toole would call the public phone number, during which time Limone would attempt to contact Patriarca and make arrangements for him to go to another public telephone. The telephone number would be relayed to McLaughlin as to the phone number Patriarca could receive a call and, thereafter, he would call Patriarca. (The reason for this contact is not known to the informant.)

During the conversation concerning McLaughlin Patriarca asked Angiulo whether he heard that Georgie "wanted to get in with Bernie McGarry." (This apparently occurred some time ago when Harold Hannon was involved in efforts to arrange George's "getting in with Bernie McGarry.) There was also a comment that Bennett, according to Hannon, was trying to frame the McLaughlins and the McLaughlins were very apprehensive of Bennett.

According to Angiulo, Hy Gordon bought the diamonds from the kids (no further description) for $29,000. (This probably occurred in Miami, Fla., as Johnny Foto, who allegedly is presently in Florida, was the individual who brought the kids to Hy.)

Angiulo stated that when he was recently in Miami, Santo (Trafficante) introduced a lawyer for Hoffa to Patsy Erra. He described Erra to the lawyer as the owner of the Dream Bar. Erra denied same emphatically in front of the lawyer.

"Keystone" Lepore of Providence, R.I., presently vacationing in Miami, Fla., received a franchise for juke box machines with a small television attached thereto, whereby an individual can actually see the recording artist singing and dancing for Massachusetts, Rhode Island and Michigan.

Angelo Bruno of Philadelphia, Pa., is one of the individuals issuing the franchises for various states in the country.

Angiulo stated that the crap game in Boston has a bank of $15,200, and they decided to cup up $6,000 of the above.

An individual named Bandes, whose first name is possibly Danny, was the original owner of this crap game which was taken over by Patriarca and his group.

Larry Baione, recent release from Massachusetts State Prison, requested permission to open another crap game, and Patriarca refused same inasmuch as Bandes did request permission from Angiulo to give a certain percentage of the crap game to Baione when he was in prison and renewed the offer when he was released.

Patriarca agreed to Bandes' furnishing 5% of his take of the crap game directly to Larry Baione but warned that Baione's piece was not to come off the top.

Raymond also advised that during his recent visit to NYC, he was to meet Tommy Brown and Tommy Ryan. However, when Mike walked in to the restaurant he told them that there was "a 24-hour watch" on both Brown and Ryan.

"Tony, the Sheik" was mentioned as being scheduled to attend the meeting and it was not clear to the informant if he actually did attend same. One of the individuals probably who did attend, named Tony, was recently made a "capo regime." Sam Cufari of Springfield, Mass., also attended. Because of the warning by Mike of the 24-hour surveillance of Brown and Ryan, they became particularly alert to any surveillance.

They did observe an individual wearing a hearing aid, and all suspected him of being "a Fed."

Patriarca warned Angiulo to be cognizant of any individual wearing a hearing aid and instructed Angiulo to warn the individuals around Boston.

On 1/26/65, Louis Taglianetti of Providence, R.I., advised Patriarca that he was worried about the FBI inquiries made concerning him in Brooklyn, N.Y. He believes that his troubles with IRS created an FBI interest in him.

Patriarca, in the discussion, stated that Carlo (possibly Gambino) was related to the man in Springfield (possibly referring to Sam Cufari).

Taglianetti told Patriarca about a scheme that he has been working on for approximately two years. It appears there are two associations—one in Brooklyn, N.Y. and one in New York, N.Y., consisting of 100 and 300 members, respectively.

The president of one of these associations is married to the daughter of "a boss." Taglianetti could not recall his name. The president of the other association knows a "friend of ours."

Taglianetti ——— and Frankie (LNU) attempted to bring them together as the New York association has "a little weight" and is hurting the Doctors in Brooklyn.

Arrangements were made for the two Doctors to meet with Taglianetti and Frankie; however, the Doctor in New York kept postponing a meeting, the last time his excuse being that he was going to Michigan.

Taglianetti intends to cause dissension and then has threatened one of the doctors by having someone else make threatening calls to him.

When Taglianetti met one of the Doctors he (the doctor) "knew who we were and what it was all about." Taglianetti apparently intends to shake down the Doctors in these associations and made the comment that "We'll get in there somehow."

Patriarca cautioned him to be very careful as he could not trust the Doctors involved.

Taglianetti stated that one Doctor called him and agreed to make Louis' Doctor friend from Brooklyn president of the association, but arrangements have not been finalized in this direction. Louis desires that Frankie get someone to threaten the Doctors, as "You can't get money from nothing," and further points out that the Doctors scare easily.

Bobby (LNU) called Louis the previous night and stated that one Doctor had changed his mnd. Louis made mention of the fact that the associations cost the Doctors $100 to join the organization. (Possibly Chiropractors Association).

Frankie (LNU) from Boston, Mass., contacted Patriarca and discussed the recent underworld killings in Boston.

Raymond tells Frankie to keep off the street as much as they can because of the recent roundups of criminals in Boston by the local police.

Frankie stated that all the people are getting scared of Jimmy (apparently referring to James Flemmi) and asked Raymond to talk to Jimmy and impress upon him that there should be no more killings in Boston.

Raymond agrees to talk to Flemmi and made a statement that "if the killings don't stop I'll declare martial law."

Patriarca indicated that he thought very highly of James Flemmi.

The sensitive nature of the informant's position necessitates that every effort be exercised to maintain his security.

Subject should be considered armed and dangerous.

3—Bureau (RM)
2—Miami (RM)
4—New York (RM)
2—Philadelphia (RM)
7—Boston (5-92-118) (92-118 sub 4) (92-118 sub 3)
JFK: po'b
(18)

How FBI Abbreviates

FBI initials and terminology appearing in the hearing transcripts have these definitions:

"SAC"—"special agent in charge"
"UNMAN"—"unknown male"
"LNU"—"last name unknown"
"FNU"—"full name unknown"
"(PH)"—"phonetic."
"BS 837-C*"—the identification of an FBI agent.
"aka"—"also known as."

Senator Hruska. This will be very well, and I appreciate your courtesy. It is in keeping with that which you also extend to brethren in distress.

Professor Blakey, would you comment briefly upon your connection with the President's Crime Commission and the scope of your role there?

Professor BLAKEY. I was a special consultant to the President's Crime Commission. My task was primarily analyzing Federal and State law as it might apply to organized crime. A certain portion of my time was also spent in dealing with the problem of electronic surveillance. I had the opportunity to study procedures in this area on the Federal level and in New York, Illinois, and in California, on the State level. I also prepared a rather lengthy document for the President's Crime Commission analyzing electronic surveillance.

Senator HRUSKA. In your written statement you comment and analyze the *Berger* case in a very penetrating fashion, in a focus and perspective that is truly remarkable. It excited my admiration and high respect for a mentality that would produce that kind of statement.

Professor BLAKEY. Thank you.

Senator HRUSKA. I am told you wrote the amicus curiae brief in the *Berger* case.

Professor BLAKEY. Yes, I represented the attorney general of Massachusetts, the attorney general of Oregon, and the National District Attorneys Association in that connection and I prepared the amicus brief, urging affirmation in *Berger* v. *New York*.

Senator HRUSKA. I understand that you are also a member of the American Civil Liberties Union, pay dues, and have a card.

Professor BLAKEY. Yes.

Senator HRUSKA. How, in view of that fact, can you support permissive electronics surveillance? It is a little bit of a mystery to me, but maybe it need not be. Can you explain that?

Professor BLAKEY. First, Senator, I think it involves not a difference between the values that I hold and those held by a large number of the members of the American Civil Liberties Union, but in terms of the way that we see that, I think, they can best be realized. I support court order electronic surveillance because I think it is the only way to secure privacy in this country. It is because I love privacy more, not less, that I support a system of court-ordered electronic surveillance. I agree with the judgment of the President's Crime Commission that if we can regulate this situation and bring it into some sort of court-order system, we will be able to curtail police abuse. It is that feeling that makes me support such legislation.

Second I see that the primary victims of organized crime are the people in urban areas, chiefly the poor, the people who, in so many other contexts, the American Civil Liberties Union stands up for. I believe if we are to ever do anything about getting organized crime off the backs of the urban poor, it will only be through the authorization of electronic surveillance techniques. As it has been brought out many times it is not the rich, it is not the middle class, who take dope or are victimized by loan sharks; it is the urban poor. They are the people who, out of desperation, a feeling that perhaps tomorrow I will hit the number and strike it rich, who are victimized by the professional gambler. They are the people who have their income and their resources drained away from them through professional gambling. So it is also because I share with many other members of the American Civil Liberties Union a deep concern for the urban poor that I think it is time we get organized crime off their backs. And I believe electronic surveillance is needed to do the job.

Senator HART. Would the Senator yield at that point?

Senator HRUSKA. Yes.

Senator HART. I welcome a fellow member of the American Civil Liberties Union. In our material soliciting membership we list about a dozen questions—as to how a prospective member feels about the following—and we say, "These are some of our answers. If you agree with us 75 percent of the time you should be a member of the American Civil Liberties Union." So we are a group that makes allowance for 25 percent deviation on everything.

Senator HRUSKA. That is most notable and I thought that there was an explanation of it. Not all people are aware of that explanation and I thought it might be well to place it on the record here.

Professor Blakey, the principal opinion in the *Berger* case was written by Mr. Justice Clark. At one time, he held the office of Attorney General.

There seems to be a discrepancy between the *Berger* opinion he wrote for the court and the position that he took when he was Attorney General. Then he authorized wiretapping on the grounds that it was "imperative" that it be used in "major criminal cases." Would you like to comment upon these two stages of Justice's professional career?

Professor BLAKEY. I find no inconsistency between Mr. Justice Clark's position as a Supreme Court Justice and his position as Attorney General. I find no inconsistency in it because I read the *Berger* opinion as laying down a constitutional blueprint for electronic surveillance. It is true the court struck down the New York statute, but I think it is very important to note the way in which it struck the statute down. It did not strike it down in any per se way, that is by finding that all electronic surveillance is always unconstitutional. It said that the statute did not contain certain safeguards and therefore it had to go. Well, I think the logical inference is that had the statute contained those provision, those protections, the Supreme Court would have sustained it. I thus see Mr. Justice Clark's vote in the case, and particularly his authorship of the opinion, as an attempt to bring to the Court his own experience as the Attorney General and to guarantee that the principle that electronic surveillance can constitutionally be used in major criminal cases might be upheld on the constitutional level. I interpret his vote in the case as really upholding the principle of electronic surveillance even though it resulted in the New York statute being struck down.

So I find no inconsistency between the two.

Senator HRUSKA. There is some apparent difference on the surface.

Professor BLAKEY. I think, Senator Hruska, there are people who would like to use the *Berger* opinion as a means of preventing legislative action in this area. They are apt to see some inconsistency, but I don't think it is in the opinion itself.

Senator HRUSKA. The last sentence of the opinion reads something like this: "Our concern with the statute here is whether its language permits a trespass or invasion of the home by general warrant contrary to the command of the fourth amendment"—and then the final sentence—"As it is written, we believe that it does."

As I understand the opinion as summarized in that sentence, the Supreme Court really examined the face of the New York statute rather than analyzing the facts of the cast. Is that correct?

Professor BLAKEY. Yes, Senator Hruska, and I think that that in itself is a significant indication of the Supreme Court's attitude on electronic surveillance. If they had handled the case within the narrow confines of their precedents, particularly their procedural precedents, and analyzed only the facts of *Berger*, they would have sustained the case. But I am afraid—and now when I speak I am putting into words what I think was on the Supreme Court's mind—had they sustained *Berger*, the likelihood is that the New York statute would have become the model and would have been copied and enacted by other States and the National Congress. I think that there were some members of the Supreme Court who did not want to see the New York statute drafted as it was to become that model. So they went to the face of the statute itself and struck it down and struck it down in such a way that they could write, in effect, an advisory opinion to the Congress and the States on the kind of statute they would like to see. Now, the only way they could do that would be to go to the face of the statute. And so I say again, by their use of that technique, striking at the face of the statute, we have another independent reason to believe that the Supreme Court would like to see a fair, effective, and comprehensive electronic surveillance statute passed. In short, they have issued what they were not supposed to issue, an advisory opinion.

Senator HRUSKA. They have held out an invitation?

Professor BLAKEY. Yes.

Senator HRUSKA. Are you familiar with the *Miranda* case?

Professor BLAKEY. Yes.

Senator HRUSKA. They went into that situation pretty much on the surface and on the face. They did not inquire into the circumstances of that case; am I correct?

Professor BLAKEY. Yes.

Senator HRUSKA. From the explanation you give it would appear that there was a reluctance to have the New York law used as a model.

Professor BLAKEY. Yes.

Senator HRUSKA. Professor, during the discussion of the majority opinion in your statement you refer to "strategic" and "tactical" surveillance. Could you explain the difference?

Professor BLAKEY. Yes. The objective which a law enforcement agent might have in placing a criminal or a group of criminals under surveillance can be one of two things. The first would be to obtain strategic intelligence but since this deals with a broader problem perhaps it might be helpful to draw a distinction between "incident" and "organized" crime.

The normal criminal situation deals with an incident, a murder, a rape, or a robbery, probably committed by one person. The criminal investigation normally moves, from the known crime toward the unknown criminal. This is in sharp contrast to the type of procedures you must use in the investigation of organized crime. Here in many situations you have known criminals but unknown crimes.

So it is necessary to subject the known criminals to surveillance, that is, to monitor their activities. It is necessary to identify their criminal and noncriminal associates; it is necessary to identify their areas of operation, both legal and illegal. Strategic intelligence at-

tempts to paint this broad, overall picture of the criminal's activities in order that an investigator can ultimately move in with a specific criminal investigation and prosecution. Now, tactical intelligence is the kind of intelligence that is needed when you are aiming at a narrow objective in the context of a specific investigation, a narrow investigation. Perhaps the best illustration I can give you is the "airtels," which form the appendix to my statement. They represent the gathering of strategic intelligence against organized crime, in that case against Raymond Patriarca.

Senator HRUSKA. The case of "Louie the Fox?"

Professor BLAKEY. Yes. Tactical intelligence, on the other hand, is illustrated by the *Osborn* case, which the Supreme Court heavily relied upon in the *Berger* opinion. You moved in there and monitored only one conversation or only one meeting. You had a limited, tactical purpose, whereas in the Patriarca situation you had a broader purpose. You wanted intelligence on a series of activities of one individual. So the distinction deals, first, with the purpose of the agency and then perhaps, second, with the extent of time the subject is under surveillance.

Senator HRUSKA. There is pending before the Senate and this committee has under consideration S. 2050, which this Senator introduced. Its introduction was postponed, incidentally, after it was learned that the *Berger* decision was to be rendered. We tried to adapt it to the guidelines and the blueprint that was set out by the Supreme Court. Have you had time to analyze that bill?

Professor BLAKEY. Yes, I have had.

Senator HRUSKA. Would you like to comment on this bill in regard to the tactical and strategic surveillance that you have used—that you have just told us about?

Professor BLAKEY. Yes, I would.

In general, let me congratulate you, Senator Hruska. I find much in the bill that I like. It is an exceptionally well-drafted bill. I think it would be both a fair and effective instrument if passed.

I am, however, somewhat disturbed that the distinction between tactical and strategic intelligence is not sufficiently drawn in the bill, because the use of electronic equipment for strategic intelligence purposes is fraught with the possibility of abuse and I think such uses should be surrounded by greater safeguards than appear in the statute as you have introduced it.

Senator HRUSKA. Would it be an improvement of the bill to modify it or amend it to the point where it would draw more sharply between the two types of surveillances?

Professor BLAKEY. Yes.

On the other hand, I think that a court, probably in the process of interpreting the bill, would draw a distinction in the probable cause requirement and relate it to this kind of distinction anyway. But, personally, I would rather see the Congress draw the distinction itself, rather than leave it up to the process of interpretation.

Senator HRUSKA. You heard the testimony of Attorney General Sennett. He testified about a bill that he would like to see become law and he had a 24-hour period of surveillance in it. That would be strictly within the field of tactical surveillance, would it not?

Professor BLAKEY. Yes, it would.

Senator HRUSKA. It would not fit at all the situation of strategic surveillance.

Professor BLAKEY. That is right, and I think to that extent, it would not be effective against organized crime.

Senator HRUSKA. You note in your prepared statement the announcement of our present Attorney General that organized crime prosecutions are up 30 percent as of now. You made quite a study of organized crime for the President's Crime Commission and also as a professor of law. Would you like to comment on that statement?

Professor BLAKEY. Mr. Chairman, during the course of this oral presentation I will mention some newspaper articles and other sources and make some references to them. In fairness to the people involved, I would like to have this material incorporated in the record, so that there would be no question as to whether I have quoted anybody out of context.

Senator MCCLELLAN. They may be incorporated in the record at the places you refer to them. Indicate as you proceed where each document is to be inserted and make it available to the reporter.

(Excerpts from hearings before the House Committee on Government Operations on the subject of the "Federal Effort Against Organized Crime" follows:)

HEARINGS ON THE FEDERAL EFFORT AGAINST ORGANIZED CRIME BEFORE A SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, 90TH CONGRESS, FIRST SESSION, PART 1

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Mr. VINSON. As a direct result of this meeting, the Attorney General's Special Group on Organized Crime was appointed in April of 1958. This group established some regional offices and began to gather intelligence information on all of the attendees at the Apalachin conference. Extensive grand jury investigations were conducted and, as a result, 20 of the attendees were indicted and convicted of conspiracy to obstruct justice.

The case, however, was subsequently reversed in the Second Circuit Court of Appeals. After the Apalachin trial, the Special Group, which had been established in response to Apalachin, was disbanded and some of its personnel and its functions were shifted into the Organized Crime Section of the Department.

In 1959, the Special Group that had been created proposed that there be established an Attorney General's Office on Syndicated Crime, with nationwide jurisdiction under all Federal laws, I believe we previously tendered to committee counsel the report of that group. The suggestion was that the unit be a field prosecution office first, operating just as closely to the cooperating Federal, State, and local agencies as possible.

But despite these steps, it is a fact that little alteration in the staff of the Section or in the program took place, except for minor increases in manpower, until 1961, when the Department's present organized crime program got underway.

In 1961 a sharp "beefing up" of our Organized Crime Section began, and by 1963, we had 60 attorneys assigned to the Section. They began making regular trips to the field to meet with representatives of investigative agencies and U.S. attorneys. The flow of information to the Section increased considerably, and the interagency exchange of information and cooperation improved to a marked degree. The increase in convictions over preceding years was impressive.

I have here something I could offer for the record now. It is our Organized Crime Section statistics, running from 1961 through 1966, indicating the number of criminal informations and indictments by year, the individuals indicted by year, and the individuals convicted.

In each of these categories, there is a steady trend upward, with one exception, one category in 1 year, where there was a dip.

Mr. FASCELL. Without objection, that will be included in the record at this point.

(The document referred to follows:)

DEPARTMENT OF JUSTICE, ORGANIZED CRIME AND RACKETEERING SECTION

Organized Crime Section statistics, 1961–66

	1961	1962	1963	1964	1965	1966
Number of criminal informations and indictments	45	118	262	316	491	609
Individuals indicted	121	350	615	666	872	1,198
Individuals convicted	73	138	288	593	410	477

Mr. VINSON. One of the most beefed-up activities of the new Section was a gathering of substantial intelligence. This was largely contributed by the Federal Bureau of Investigation, which showed the definite existence of a national cartel known as the Cosa Nostra.

* * * * * * *

Professor BLAKEY. I am familiar with a large number of investigative agents on the Federal level and, indeed, most of the personnel in the Department of Justice. I know that they are honest, forceful, perhaps underpaid and overworked, but, in general, they represent probably the best investigative force in this country today dealing with the problem of organized crime. They have available to them the finest scientific equipment and laboratories. They have been spending in recent years upwards of $20 million a year on the organized crime drive.

If you examine the work that was done a number of years ago, I think you can say the existing program is a success. But if you examine the existing program in reference to what could be done, I think you are going to have to say it is a colossal failure. Let me give you a measuring stick to test this judgment.

The Department has identified an estimated 5,000 members of La Cosa Nostra. Between 1961 and 1966, the Department has succeeded in indicting approximately 200 of them and convicting approximately 100. That gives them against the hard core in organized crime about a 2-percent batting average. With the best we have to offer, that is, the FBI, the Internal Revenue, the top lawyers of the Department of Justice, with an expenditure of $20 million a year over a 5-year period, we have not secured the conviction of more than 2 percent of the hard core of identified people. I think that is an indication of failure. And the reason we haven't been able to get beyond that point is simply because we haven't given the best men the necessary legal tools.

(The following was supplied for the record:)

HEARINGS ON THE FEDERAL EFFORT AGAINST ORGANIZED CRIME BEFORE A SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, 90TH CONGRESS, 1ST SESSION

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Mr. VINSON. We stand ready, of course, to furnish to the States whatever assistance we can so that, in a unified effort, we can achieve maximum reduction in the influence and in the extent of organized crime.

Now, I noted that your opening statement was oriented largely to the Organized Crime Section of the Criminal Division. My statement, of course, was so oriented also, as that is my primary responsibility.

However, I must point out in fairness to them, the people who are massively involved in the effort against organized crime and the people whose efforts pay

off in the struggle against organized crime are the investigative agencies, the principal ones of whom I have mentioned.

I have two further exhibits that may be of interest to the committee. The first is a quantitative analysis of indictments, convictions, acquittals, and so forth, of persons in the period 1961 to 1966, whom we have definitely identified as "Cosa Nostra personnel."

It is broken down on pages 2, 3, and 4 as to type violations for which they were indicted.

Mr. FASCELL. Without objection, the exhibit will be included in the record.

(The document referred to follows:)

Quantitative analysis of indictments, convictions, and acquittals of Cosa Nostra personnel, 1961–66

	Total
Indictments	185
Convictions	102
Acquittals	6
Dismissals	6
Reversals	4

Violation	Indictment	Conviction	Aquittal	Dismissal	Reversed
Narcotics	35	20		2	3
Tax evasion	25	10		1	
Wagering (stamp, taxes)	16	2		1	
Interstate gambling	12	6			
Extortion	12	9	1		
SEC:					
Interstate transportation of stolen securities	[1] 3	3			
Interstate transportation of counterfeit bonds	2				
Illegal sale of securities	1	1			
Sale of worthless stock	1				
Miscellaneous	1				
Contempt	8	8			
Theft from interstate commerce	8	2			1
Assault on Federal officer	7	6			
Obstruction of justice	7	4	2		
Bankruptcy fraud	6	4			
False statements—					
On FHA loans	3				
To IRS agents	1	1			
On SBA loan applications	1		1		
To Federal savings and loan company	1		1		
Liquor laws	5	4			
Interstate transportation of stolen merchandise	4	3			
Jumping bail	4	4			
Labor.					
Racketeering	2			2	
Taft-Hartley	3	2			
Perjury	3	1			
Bank robbery	2				
Counterfeiting	2	2			
Mail fraud	2	1			
Parole violation	2	2			
Harboring	1				
Interstate transportation of stolen money, et al	[2]				
Migratory Bird Act	1	1			
Moving goods from bonded area	1		1		
Smuggling contraband to prisoners	1				

[1] 1 severed.
[2] 1 violator died.

* * * * * * *

Senator HRUSKA. In the principal opinion in the *Berger* case we find this language:

We are also advised by the Solicitor General of the United States that the Federal Government has abandoned the use of electronic eavesdropping for "prosecutorial purposes."

Then a number of cases are cited. Then the opinion resumes:

Despite these actions of the Federal Government there has been no failure of law enforcement in that field.

In view of the statistics that you have given us, has there been any spectacular numerical success in prosecution in that field?

Professor BLAKEY. Well, Senator, it is possible to say there have been successes. I don't want to take away from the men in the Department the legitimate convictions that they have secured. They secured a conviction against Genovese in New York and that was a good conviction. Recently, they secured a conviction against Battaglia in Chicago and that was a good case. Recently according to the Times they indicted Raymond Patriarca in Rhode Island and that will be a good case. Yet that case itself illustrates the difference between normal investigative methods and the use of electronic equipment. When the device was operating, the FBI prevented Marfeo's killing; after it was removed, they were only able to solve his murder. Which is better?

But they also failed to secure a conviction twice against Marcello in New Orleans. They failed in a case against Bruno in Philadelphia. They failed in the case against Balesteri in Milwaukee. They have not even brought indictments against some of the other heads of families such as Maggaddino in Buffalo or Catena in New Jersey or Zerilli in Detroit. The truth is they have simply not been able to move against the top people. If you have to measure their success against the job that they could do, if they were given effective legal tools, you have to say the program is a failure. If you measure it in the context of the existing limitations, I would say the program is a success. But I would much rather have them on the go with effective legal tools.

(The following was supplied for the record:)

[The New York Times, July 2, 1967]

(By John H. Fenton)

BOSTON, July 1—The Federal Government began this week the first legal steps on what may be a long road toward bringing to trial Raymond L. S. Patriarca, the reputed head of organized crime in New England.

Patriarca, 59 years old, was arrested June 20 in a dry-cleaning establishment operated by a close associate in Providence, R.I. A Federal grand jury here had indicated him a few hours earlier on a charge of conspiracy to commit murder.

Patriarca, who operates a cigarette vending machine company, among other enterprises, had not had any official brush with the law since 1938, when he was sent to jail for armed robbery in Massachusetts.

But in 1963, before a Senate subcommittee on Government Operations, he was identified as the leader of the Cosa Nostra crime syndicate in New England.

After pleading not guilty in Federal District Court here, Patriarca was released in $25,000 bail and the case was continued for a month to give his lawyers a chance to file motions aimed at forestalling prosecution.

In one of its first moves to close legal loopholes, the Department of Justice filed a memorandum in Federal Court Tuesday, in accordance with a new department policy, noting that the Federal Bureau of Investigation had bugged Patriarca's place of business over a period of three years, beginning in 1962.

MEMO ABOUT BUGGING

The memorandum also noted that "none of the monitored conversations will be used in evidence in this case nor were they the source of any leads to any evidence in this case."

It is expected that the filing of motions by both Government and defense and hearings on them will consume many months. No trial date has been set.

Patriarca is not alone in the murder case. Henry Tameleo, a business associate, and Ronald Cassesso, who is already in prison for armed robbery, were named in the same indictment.

Joseph Baron, also known as Joseph Barboza, who was a witness before the grand jury, was named as co-conspirator but not as a defendant. He, too, is in prison, convicted for illegal possession of firearms.

The murder victim was William Marfeo, a small-time hoodlum who operated a dice game in Providence. He was shot down in a restaurant on Atwells Avenue, in the Federal Hill district of Providence, last July 13.

The gunman, a short, stocky man wearing a straw hat, ordered Marfeo into a telephone booth, shot him four times and walked out.

Paul F. Markham, United States District Attorney in Boston, who was handling the case for the Government, said in an interview in his office that the grand jury might be asked to remain in session. It began its investigation three months ago.

NEW ENGLAND TARGETS

"We have targets in the continuing investigation of organized crime, and Patriarca was the first because of his being identified as the kingpin," said Mr. Markham.

Walter T. Barnes, chief of the organized crime division for New England of the Department of Justice, who was present, noted that the move against Patriarca and the others was helped by an antirackets statute enacted in 1961 at the urging of Senator Robert F. Kennedy, Democrat of New York, then the Attorney General.

One of the counts against Tameleo charged him with using interstate telephone communications with the intent of committing murder to further illegal gambling.

Aonther, in which both he and Patriarca were named, charged them with causing Baron and Cassesso to travel interstate with the intent of committing murder to further gambling.

There has been no indictment charging anyone with the actual murder.

"One of the disheartening aspects of the situation is that the general public is more or less apathetic," said Mr. Markham, "and until it becomes aroused, there will be difficulty enforcing the law at the local level, where we cannot operate."

"What the public does not seem to appreciate is that this is gambling money in action, involving millions in New England and probably billions nationally," he went on. "The racketeers put this gambling money into circulation through loan-sharking, which can involve otherwise innocent small businessmen who can't get collateral for a loan through regular banking channels and turn to the sharks."

NEW INQUIRIES URGED

"The state legislatures would do well to investigate just who owns the race tracks, for example," said Mr. Markham, "and the number of racketeers who own bars and other joints through straws is appalling."

The slaying of Marfeo, according to knowledgeable sources in Providence, stemmed from competition between dice games for high stakes, beginning in 1964.

For some time, racketeers had operated a "floating" dice game that moved from place to place to avoid detection. But Marfeo, the sources said, set up a stationary game in a private club on the second floor of a tenement in the Federal Hill district. This disturbed other gang factions because it centered police "heat," or surveillance, on the area. Marfeo had to go.

Federal Hill has long been an Italian community in Providence. It has been changing over the last five years as more and more Italians have moved away after becoming affluent.

But while he keeps his business address in the area, Patriarca never made his home there. He lives in the residential East Side where neighbors say they rarely see him.

Patriarca's wife died two years ago. He suffers from diabetes. He often sits in the doorway of one of his associates' business places on Atwells Avenue, puffing a cigar. He dresses casually most of the time. But he usually wears alligator shoes, which are expensive. They set off the white socks he has favored for years.

One sunny afternoon about a week ago revolver shots rang out on Atwells Avenue. No one was hit, but the window of a restaurant was shattered. The police are said to know the intended victim, but they cannot prove it. Persons in the area who were questioned said they did not notice anything unusual.

Senator HRUSKA. Whatever progress has been made to date, would it be your considered judgment if these additional tools which would come forth from the bill of the chairman of this subcommittee or my bill that a more effective job could be done?

Professor BLAKEY. Absolutely. And I say that based on my own analysis of the New York office—District Attorney Hogan's office——

Cenator MCCLELLAN. Will you yield a moment?

Senator HRUSKA. Certainly.

Senator MCCLELLAN. You made the comparison within the confines of what they have—the tools with which to do it now—and you say possibly they have had a measure of success. But within the confines, or within the limitations of what they could do, if they were given the tools, you would say it is a failure; is that correct?

Professor BLAKEY. Yes, Mr. Chairman.

Senator MCCLELLAN. Now, then, within the broad concepts and needs of society—what is needed today to protect society against the criminal—have they achieved success or failure?

Professor BLAKEY. A failure.

Senator MCCLELLAN. That is our problem.

Professor BLAKEY. Let me say, Senator McClellan, that the job they are doing is going to get tougher, too, because if you analyze the statistics carefully you will note that their major cases are income tax cases, and if you analyze the testimony of their people before the Fascell committee in the House in this area, you find that the racketeers are paying more taxes in response to the existing Federal effort in the area of organized crime—and paying more taxes means it is going to become more and more difficult in the future to repeat even the limited success they presently have had. So the picture in the future is bleak. Quoting the existing statistics is misleading.

Senator HRUSKA. You were a special prosecutor for the Organized Crime and Racketeering Section of the Department of Justice. Could you tell us how long you served in that capacity?

Professor BLAKEY. Just about 4 years.

Senator HRUSKA. From what time to what time?

Professor BLAKEY. August 1960 to June 1964.

Senator HRUSKA. Thank you very much. There is a claim of some that electronic surveillance leads to the police state, and "hag-ridden community"—familiar language—sounds quite effective and formidable. Would you have any comment on it?

Professor BLAKEY. Let me say this, Senator. It seems to me the burden of proof ought to be on the people who make that kind of allegation to show that New York, which has had electronic surveillance since the 1930's, is, in fact, or at least was up until July 12 a police state or a "hag-ridden community." Yet when we examine the New York community you find four political parties, you find a center of finance, you find a center of art, you find a center of all sorts of activities—in many ways literally the center of the Nation—located in the State of New York. There is as much or more freedom of speech there, as much or more artistic activity there, than anywhere else in the United States. Anybody who says that court ordered use of electronic surveillance techniques will inevitably lead to a police state, in short, has to show that New York today is a police state and this is nonsense because they have been able for 30-some-odd years to use the equipment carefully and avoid abuse and not become a police state.

Senator HRUSKA. Would you say that, in support of your statement, that that way of gathering evidence does have the support of the people?

Professor BLAKEY. Absolutely.

Senator HRUSKA. In recognition of what they are getting in exchange for it?

Professor BLAKEY. I am familiar with a poll that was conducted by the Mutual Broadcasting System, Inc., which indicated that approximately 80 percent of the people who were interrogated about their attitude supported the possibility of the FBI using this equipment both in security cases and in major organized crime cases; they were of the opinion that it should be used in both of these kinds of cases. So it seems to me that knowledgeable people in this country are concerned and do support fair and effective criminal legislation.

(The following was supplied for the record:)

[Excerpt from the FBI Law Enforcement Bulletin, October 1966]

PUBLIC POLL GIVES STRONG SUPPORT TO FBI

Director J. Edgar Hoover and the FBI received a resounding vote of confidence from the public in a recent survey conducted by the Mutual Broadcasting System, Inc. The study, made under the network's feature, "The American Consensus," shows that the public overwhelmingly supports the FBI in its responsibilities of investigating crime and subversion.

According to the Mutual Broadcasting System release, polls showed that 80 percent of the people polled and having opinions agreed that the FBI should be permitted to use wiretapping in cases when national security is threatened, specifically in the investigation of foreign agents, saboteurs, and foreign spies. In addition, the same percentage of the public expressed the opinion that the law should be changed to permit wiretapping when the FBI is tracking down white slavers, riot leaders, and extortionists. Asked to evaluate the FBI's success at apprehending kidnapers, a whopping 97 percent of those polled and having opinions stated that the FBI is doing a good job.

Here is a list of the pertinent questions and the percentages as reflected in the poll:

1. As you know, wiretapping of telephone conversations is now illegal. Some people say that the law ought to be changed so that the FBI could use wiretapping to catch foreign agents, saboteurs, and foreign spies. Do you agree or disagree that the FBI should be able to use wiretapping in these instances?

	Percentages			Those having opinions		
	Male	Female	Total	Male	Female	Total
Agree	68.7	68.4	68.5	78	83	80
Disagree	19.8	14.1	16.8	22	17	20
No opinion	11.5	17.5	14.7			

2. Some people say that the FBI should also be able to use wiretapping of telephone conversations in their work of tracking down white slavers, dope peddlers, riot leaders, and extortionists. Do you agree or disagree that the law should be changed to permit the FBI to use wiretapping in these instances?

	Percentages			Those having opinions		
	Male	Female	Total	Male	Female	Total
Agree	70.1	67.7	68.9	79	81	80
Disagree	19.0	16.2	17.5	21	19	20
No opinion	10.9	16.1	13.6			

3. Catching kidnapers is one of the functions of the FBI. In this would you say that the FBI has done a good job or a bad job?

	Percentages			Those having opinions		
	Male	Female	Total	Male	Female	Total
Good	76.9	72.3	74.5	98	95	97
Bad	1.5	3.9	2.7	2	5	3
No opinion	21.6	23.8	22.8			

[Article from the New York Post, July 6, 1966]

HARRIS POLL: THE PUBLIC'S VIEW ON CRIME

By Louis Harris

About one American in five is convinced that an organized crime syndicate is operating in his community, that the syndicate is tied to the Mafia and that there is a close tie between organized crime and local politics. The number rises to about one in three in big cities and in the suburbs.

Awareness of organized crime seems to be slightly higher in the suburbs than anywhere else. One reason appears to be that higher visibility of wrongdoing in a small community may keep it down. City residents are more inclined to say they simply can't be sure.

Bookmaking, prostitution and liquor rackets are reported to abound in suburbia, while narcotics, robbery and juvenile gangs are all considered as more likely in the cities. Rural and small-town Americans report a drastically lower incidence of organized criminal activity.

People believe that crime syndicates are seeking power and control of elected officials protection to operate rackets, money shakedowns and beneficial legislation.

A cross section of adult America was asked:

"Do you think an organized crime syndicate exists in this community?"

Organized crime syndicate

[In percent]

	Exists	Doesn't
Nationwide:		
By size of place:		
Cities	30	38
Suburbs	34	48
Towns	6	77
Rural	7	81
By income:		
Under $5,000	16	57
$5,000 to $9,999	21	62
$10,000 and over	33	53

(*Remaining percentages are "Not Sure."*)

When asked to identify the main activities of the syndicate in their community, a sizable roster of crime emerged:

"What are the main activities of organized crime in your community?"

Main types of organized crime

[In percent]

	Nation	Cities	Suburbs
Gambling, bookmaking, loan sharks	17	18	35
Narcotics	8	13	10
Robbery	5	7	5
Prostitution	5	5	10
Liquor	2	1	6
Juvenile gangs	2	5	1
Murder	2	3	2
Insurance rackets	1	2	1
Political shakedowns	1	1	2
Legitimate business (as coverup)	1		4
Labor unions	1	1	1
Night clubs	1	1	2

The pattern on organized crime syndicates was explored on two other questions:

"Do you think the Mafia or Cosa Nostra, the world-wide crime syndicate, has members in this community?"

Mafia here

[In percent]

	Nation	Cities	Suburbs
Mafia here	21	31	33
Not here	51	26	39
Not sure	28	43	28

"Do you feel there is a close tie-up between organized crime and some elements in politics in this community or do you feel there isn't any tie-up?"

Crime and politics tie-up

[In percent]

	Nation	Cities	Suburbs
Close tieup	19	34	24
No close tieup	58	38	50
Not sure	23	28	26

People were asked what they think organized crime seeks out of politics: *"What do you think organized crime wants to get out of politics?*

What organized crime wants out of politics

	Total Nation (percent)
Power, political control	33
Shakedown, graft	21
Protection to operate freely	20
Beneficial legislation	6
To run country	4
Fixed court cases	3
Not sure	13

* * * * * * *

Senator HRUSKA. New York has had that law for 30 years ending June 12?

Professor BLAKEY. Yes.

Senator HRUSKA. Why have not they made more progress against organized crime?

Professor BLAKEY. That is a difficult question to answer, Senator. No one law is going to solve all problems. Organized crime is related to more things than the presence or absence within a jurisdiction of the right on the part of the police to use electronic surveillance techniques. But solely from a legal point of view, a number of things have to come together. You have to have competent men, enough men, and you have to give them the necessary time. They have to have the support of the community and they have to have legal tools. In various places in New York, at various times, you have not had the right combination of these factors and for that reason, New York has not done more. But I think, strikingly, in the one place where, at least for the last 27 years, more or less, you have had the proper combination of men, tools, laws, dedication, competence and honesty, you have had a brilliant record of legal success against organized crime. I am referring to New York County and District Attorney Frank

Hogan's office. There is no district attorney's office in the country, State or Federal, that can stand up to or match the record of Hogan's office. And I can say to you categorically that the key thing in Hogan's office, in addition to men, talent, honesty, integrity, has been electronic surveillance, and without electronic surveillance Hogan's shop will be shut up to a significant degree in its activities against organized crime.

Senator HRUSKA. We have run into this—that there have appeared on the scene in New York vast organized crime activities which are not only national but international. Yet, when the New York authorities exposed a major satellite operation in the State of California which forbids wiretapping altogether, and the FBI is forbidden to use it, it is a blind alley to the New York authorities, or to any law enforcement authority insofar as this type of source of evidence is concerned.

Professor BLAKEY. Yes.

Senator HRUSKA. That also would be a heavy factor.

Professor BLAKEY. Absolutely.

Senator HRUSKA. You heard me earlier this morning refer to what has been published as a statement by the Attorney General on new regulations limiting wiretapping and electronic eavesdropping by Federal agents. It is entitled, "Memorandum to the Heads of Executive Departments and Agencies," and it bears the date of June 16, 1967.

Senator MCCLELLAN. That is going to be printed in the record in full.

Senator HRUSKA. Have you had a chance to analyze this release?

Professor BLAKEY. Yes, I have analyzed it as it appeared in the New York Times.

Senator HRUSKA. Have you any comment on it?

Professor BLAKEY. Three things need to be said about that memorandum. Insofar as it reflects existing law, it is probably not particularly helpful because it only reflects existing law. Insofar as it attempts to anticipate the probable result of a decision of the Supreme Court next term in eliminating the distinction between trespassory and nontrespassory bugging, the memorandum is probably right because it is probably accurate in its anticipation. On the other hand, I think the memorandum, insofar as it ties up the use—the present lawful uses of electronic surveillance devices—primarily in the situation where one of the parties consents—ties them up with an enormous amount of redtape, that is, the specific approval, case by case, of the Attorney General—I think that the memorandum effectively abolishes the use of electronic surveillance techniques as a law enforcement tool, and it does so with little or no gain to privacy, because I see no issue of privacy involved when one of the parties consents. To go further, it does so at the cost of truth in the criminal trial, because when you can bring in a wire recording you have an accurate representation of what was said. If you don't have the wire recording you only have human memory, and the human being what he is, this is no good. So by tying it up in red tape, the memo abolishes the use of these techniques and it does so at the expense of truth in the criminal trial.

I think it will also have another unfortunate effect. Many times these electronic devices are used by informants, not only to record the in-

formants' statements with other people, but also to allow the police officer to monitor the transaction, so in case the informant's life is put in jeopardy, the police will have an opportunity to intervene. Well, insofar as this memorandum will, by tying it up in redtape, lessen the use of these devices in this way, I think it will unnecessarily jeopardize the lives of informants. I find nothing that I can say that is charitable about this aspect of the memorandum.

Senator HRUSKA. The last paragraph in the memorandum is this:

> The foregoing rules have been formulated with respect to all agency investigations other than investigations directly related to the protection of national security. Special problems arising with respect to the use of devices of the type referred to herein in national security investigations shall continue to be taken up directly with the Attorney General in the light of existing stringent restriction.

Is there room for the conclusion in view of your description of organized crime and its scope and the evidence that is before this committee—is there room for the conclusion that the threat posed by organized crime, and in particular La Cosa Nostra, falls within the label of national security?

Professor BLAKEY. I think that anybody who really knows what he is talking about and has actually examined the scope and nature of organized crime in this country today must conclude that it represents a serious threat to our domestic security and saying that somehow it does not, it seems to me, is hiding the plain facts, and insofar as the Attorney General has drawn a distinction between "national security" and "major criminal cases" and has excluded organized crime from the national security problem, I think he is taking very, very bad advice.

Senator HRUSKA. Mr. Chairman, in his concluding paragraph of the principal statement that he made, this witness refers to the summary of the surveillance, the airtel that was taken in the case of Patriarca, and he says further that Patriarca was one of some nine or 12 members of the commission of the La Cosa Nostra. It is reasonable to assume that if Patriarca was the subject of surveillance, that other members of this commission likewise were subject to surveillance by the FBI. The suggestion is made in the testimony that it would be equally in the public interest to disclose all of these airtels to this subcommittee.

The suggestion is made that we should examine them for ourselves and make our own judgment on the clear and present character of the threat to present institutions in our society posed by organized crime.

I make particular mention of that at this time because it would seem to me that it would be well to make that particular request of the FBI a part of the agenda for the executive session at some time and to make a decision on whether or not the committee should make a request for those airtels for the purpose that was stated.

And with that, Mr. Chairman, I conclude my remarks, but not before telling the witness again how much I admire his statement and how excited I was when I did read his testimony and when I considered the substance of his answers to the questions that I have asked him. We are deeply grateful to you for coming here with this information.

Senator MCCLELLAN. I believe the subcommittee has in its possession transcripts of some of the other airtels.

Professor BLAKEY. Mr. Chairman, I am generally aware that the subcommittee has in its possession copies of the airtels that were made public. Indeed, my appendix includes a copy of them and an analysis of them.

Senator MCCLELLAN. We do not have the others.

Professor BLAKEY. My reference is to that situation. If the FBI, pursuant to the Department instructions, placed Raymond Patriarca under surveillance for a period of 2 to 3 years, I think it is fair—and I am speaking now simply from the public record—to infer that they also placed the other members, some nine to 12 in number, under surveillance. And if there is any question in anybody's mind as to whether organized crime is national in scope, represents a serious threat to domestic security, or that electronic surveillance would be an effective way in which to deal with it, then this body, in executive session, should call for those airtels—perhaps not all of them—at least a representative sample of them—and you can examine them for yourselves.

There is nothing like seeing the raw data that these airtels show. I think the impact of them would be such as to clearly persuade those members of this body that may have some doubt in their minds as to the scope and nature of the threat of organized crime and whether or not electronic surveillance should be authorized.

I would not like to see the information made public. My suggestion is that it be given to the committee in executive session and that you should examine them for yourselves. This judgment is a judgment that should be made by Congress and not necessarily by the newspapers or the public generally. I am sure there is an awful lot of information in those airtels which, perhaps, ought not to be made public.

Senator MCCLELLAN. I appreciate your suggestion very much. The subcommittee will pursue the matter and ascertain if we can secure the documents for our own information. I agree that there might be much in there that should not be made public. At least, if we can procure them, we will have firsthand knowledge of what is going on and be enlightened sufficiently so that we will be able to legislate intelligently.

Senator Hart?

Senator HART. I enjoyed the questioning, but I was somewhat distracted.

Some suggestion was made about the committee considering or asking for additional airtels. The committee would consider that?

Senator MCCLELLAN. Yes. We would have to seek them from the FBI.

Sentor HART. I do not know how to frame this. Were some of these airtels obtained by trespass?

Professor BLAKEY. Senator, I am in a very difficult position.

Senator HART. I asked the question because we will be, too. I do not want to be a party to asking for them if in fact they were the result of trespass.

Professor BLAKEY. I am in a difficult position in answering your question insofar as it would deal with the factual question; that is, Did the FBI put in trespassory devices against some of these people? First of all, I am in a difficult position because if I have that knowledge I may have acquired it as a departmental attorney, or second, I may have acquired it as consultant to the President's Crime Commission. I am trying here to speak only from the public record.

But it would seem to me that for the legislative purpose of making up your mind about the nature and scope of organized crime and whether or not we ought to pass legislation, it shouldn't make any difference how the information was obtained. Assume it was obtained by trespass—that deals with something that happened in the past. Maybe administrative action should be taken or something ought to be done about what happened in the past. But the question that faces this committee, this Congress, is a question about the future. What we do tomorrow. Once the information was obtained, the eggs were broken. How the information might be used to make a legislative judgment is a wholly different question. I would have no hesitancy if I were a member of this body in getting my hand on the best information possible, from the best source possible, to make up my mind.

Senator HART. I knew a question like this would be apt to rock the boat, but I do not have to read that to be convinced that organized crime is a threat and a serious one. I am at this point reluctant to say that, I think, even if it was a bad guy whose conversation I shall read, that I nonetheless want to go ahead and read it—if, in fact, his rights fere violated. I do not know whether this trespass violates his rights or the public's rights. But I raise this before we get into a serious discussion within the committee as to whether we want seriously to consider asking the investigative agency of the Federal Government to turn over to the Congress raw material, some of which may be the consequence of trespass action on their part.

Professor BLAKEY. The context in which I made the suggestion is this: the Department of Justice presently thinks it is in the public interest to make this information available to Federal courts so it can guarantee people's rights.

Senator HART. Was there not some implied consent there?

Professor BLAKEY. No. In the *Taglianetti* case, for example, the device was in on Raymond Patriarca, and the court had to examine almost 3 years of airtels, while only 10 of them related to Taglianetti. The district court had to review them all. Assume the device was put in by trespass, as I think the record indicates it was, the court—a different branch of government, the judicial branch—in the pursuit of fair trial, had to examine those airtels to reach a correct legal decision.

I see this as an analogous situation: why should not Congress, which has to make a different kind of legal judgment, why should not they have the opportunity in executive session to examine those same airtels? I am not suggesting they be made public. That would be a wholesale violation of privacy. But the Members of the Congress must make a difficult public policy judgment. They ought to have access to the best information available, however it was obtained.

Senator MCCLELLAN. Will the Senator yield at that point? We are not going to convict anybody. We are not trying anybody. We are simply seeking background information to assist us in our legislative endeavors. This is not a trial where we are using trespass testimony.

Professor BLAKEY. An examination by you of the airtels in executive session would not be an evasion of privacy different from that involved when a court examines them in a trial.

Senator MCCLELLAN. We take all kinds of testimony about crime. This gives us information as to how crime is committed and the extent of it, and from this we will be able to recommend effective legislation.

Senator HRUSKA. This is true, Professor, that in connection with some of the objections made to this type of wiretapping; namely, that they would include in their body many private and privileged communications, even, a reading of these airtels in executive session would enable us to form a good judgment as to what proportion of that type of material is found in these airtels compared with the proportion of the business of the organized La Cosa Nostra.

Professor BLAKEY. Absolutely, Senator.

Senator HRUSKA. Then we could see from the standpoint of the legislation how much of the good stuff is being violated in order to get a lot of the bad stuff before us.

Professor BLAKEY. You would have an opportunity to strike a balance.

Let me say, too, in the execution of any search warrant for written documents it is necessary to pore over a large number of papers that are not subject to seizure. For example, it is possible today to get a search warrant for a lawyer's office to pick up there two or three incriminating letters. To find those two or three letters, the executive officer would have to read every single privileged communication that the lawyer had had for whatever number of years he decided to keep record. And that is authorized by the fourth amendment today. Simply the reading of them would not be a violation of the privilege. The violation would come in a subsequent use of the information.

Senator HRUSKA. A tail or stakeout is the same thing. A lot of it is not only irrelevant but it deals with perhaps some of the most intimate affairs of his life, yet it has to be done in order to achieve what has long been approved in the judicial process.

Professor BLAKEY. Correct.

Senator HART. My last question is very uncontroversial.

For the record, if you can, tell us what a law-enforcement agency can do in terms of intercepting in the mail a letter that I address and mail to John Smith?

Professor BLAKEY. If you had probable cause to know the contents of the letter, and the letter was subject to seizure, you could get a search warrant to seize the letter, and you could turn around and use the letter against the individual in a criminal prosecution, and there would be no violation of the fourth amendment or the fifth amendment. I see no difference whatsoever, moreover, between a search warrant for a letter and an electronic surveillance order for a telephone call.

I see, however, a better analogy, perhaps, in the use of a subpoena to bring in telegrams. It used to be that copies of telegrams were kept. This would be a written record of conversations and grand juries have subpoenaed telegrams numerous times, and this is not a violation of the fourth amendment.

Senator HART. Thank you. I think it is useful to have in the record the way we treat these things and respect and insure privacy and what limits there are in communications through the mail.

Senator MCCLELLAN. I wonder if you would like to give a further résumé of your testimony, Professor Blakey?

Professor BLAKEY. I certainly do not want to hold up the committee. I had hoped, however, to spend some time generally discussing the impact of *Berger*.

Senator MCCLELLAN. You can come back at 2:30?

Professor BLAKEY. Absolutely.

Senator MCCLELLAN. All right. The committee will stand in recess until 2:30.

(Whereupon, at 1:27 p.m., the committee recessed, to reconvene at 2:30 p.m. the same date.)

AFTERNOON SESSION

Senator MCCLELLAN. The committee will resume.

Professor Blakey, you may proceed.

Professor BLAKEY. Thank you, Mr. Chairman.

As I was just beginning to say before the noon recess, I would like to spend some time with the committee discussing two things. First, the Supreme Court's decision in the *Berger* case, and second, the position of some that electronic eavesdropping is "neither effective nor highly productive."

Berger v. *New York*, of course, reversed by a vote of six to three the conviction secured through a court-ordered eavesdrop of a New York public relations man for bribery. The opinion was written by Mr. Justice Clark. The Chief Justice and Justices Brennan, Fortas and Douglas together with Mr. Justice Clark made up the majority.

The majority reversed the case by going to the face of the New York statute and finding that it did not include certain safeguards or limitations that they thought constitutionally necessary.

Senator MCCLELLAN. That would bring it within the definition of reasonable search?

Professor BLAKEY. Yes.

Senator MCCLELLAN. They felt that the statute did not require it?

Professor BLAKEY. They felt the statute on its face didn't include certain limitations, and they thought there was a possibility that it might be administered in an unreasonable way and so they struck it down. The dissenters, and the decision really on the merits of the case was five-four, were willing to uphold the administration of the statute, without looking at its face. They felt that that was all that was properly before them. What I am suggesting, in short, Mr. Chairman, is that the Supreme Court, when it got to the question of principle, in the area of electronic surveillance, was probably 8 to 1 in favor of electronic surveillance under certain constitutional limitations.

Senator MCCLELLAN. In other words, they felt that it could be authorized under the Constitution and would not be unconstitutional under proper safeguards?

Professor BLAKEY. That is right.

Senator MCCLELLAN. In other words, you think only one felt that it would be unconstitutional?

Professor BLAKEY. Mr. Justice Douglas made that very clear.

What I am suggesting here is that the *Berger* opinion is really not an illustration of the striking down of electronic surveillance as much as it is an illustration of the affirmation of its basic principle. And the disagreements between the majority and the minority were over

what questions should be asked in the context of the case and not really the answers that should be given.

In short, I read *Berger* as an invitation by the Court to Congress to get down to the difficult business of drafting a fair, effective, and comprehensive electronic surveillance statute. Congress has got to decide for itself that this is a good idea and it should be done. If you make that decision and you follow the constitutional blueprint in the *Berger* opinion, I have no doubt that if a case comes back up to the Court, and the statute is fairly administered, that it will be sustained.

Let me elaborate a little bit on what I am trying to say.

Prior to *Berger*, before the *Berger* case was decided, there was a constitutional rule that the police could not seize evidence per se. Now, if this rule had been applied in the *Berger* opinion, in the *Berger* case, the New York statute would have gone down the drain on a per se ground, there would have been no hope of legislative action. Well, as you know, the Supreme Court rejected the application of the evidence per se rule in the context of the electronic surveillance, so here we have a significant victory for those who advocate court order surveillance

When you see also that a very strong, effective argument was presented to the Court in the briefs that electronic surveillance is inconsistent with the first amendment, that is, the fact of wiretapping and bugging being practiced would have an unconstitutionally inhibiting impact on free speech. Now, had the Court sustained this argument, it would not have been possible to draw constitutional legislation.

The court did not even dignify that argument—and let me say it was presented ably—did not even dignify it by mentioning it in its opinion. It treated the problem solely in the context of the fourth amendment, and this means that the question was one solely of reasonableness. This again, it seems to me, was a significant victory in the context of the case for those who advocate limited electronic surveillance.

Let me suggest also that there are some who would argue, and persuasively, that electronic surveillance is in some way inconsistent with the fifth amendment, that to record a man's conversations and then use them against him is taking his testimony and using it against him—against his will, and it is inconsistent with the fifth amendment. Had the Court sustained that argument, there would have been no possibility of legislation.

Senator McClellan. Was that argument presented?

Professor Blakey. It was. It was presented in some detail, and the Court dismissed it in a footnote—not the Court itself, not the majority—some of the minority dismissed it. The majority didn't even speak about it.

The point that I am making is that another per se argument didn't get off the ground. What the Court did, in effect, was—it handled electronic surveillance under a court order system squarely within the context of the fourth amendment. It left out the first, left out the fifth, and it said if a statute is drafted along these lines, we will sustain it. If it is not, we will strike it down. It is thus most important to ask ourselves what was the Court's blueprint for electronic surveillance?

The first thing the Court wants to see is some sort of judicial supervision, and I think most of us can immediately concede that this is an important safeguard and a needed safeguard.

The second is that it wants the statute related to specific offenses.

Senator McCLELLAN. Do you think that the statute should limit its application to specific crimes and name them in the statute?

Professor BLAKEY. Yes, Mr. Chairman, I do.

Senator McCLELLAN. That would be better. If you left it general, it might be struck down by the Court for not requiring that a specific crime be mentioned in the application.

Professor BLAKEY. Mr. Chairman, I am inclined to believe that the use of electronic surveillance techniques is a very serious—presents a very serious problem and as a society we should not authorize people to use these techniques except in those cases where it is absolutely necessary and a serious criminal problem is presented to us. I think we can draw a distinction between, for example, petty gambling, a poker game in which several friends would play—in many States this violates the law and could be called gambling—we can draw a distinction between that and felony gambling, where you have a professional bookie operation. One presents a general social danger; the other presents a danger only to a pocketbook. Wiretapping would be appropriate in one case but it would be clearly inappropriate in the other. The statute ought to draw that distinction.

Senator McCLELLAN. Your thought is, and I am inclined to agree, that the statute should name the specific crimes for which wiretapping operations would be permitted.

Professor BLAKEY. I think we could pick out the characteristic activities of organized crime, authorize the use of these techniques in those kinds of investigations, and refuse to authorize them in other situations.

Senator McCLELLAN. Would you name the crimes that you think should be covered?

Professor BLAKEY. I have given some thought to this, and the first problem that presents itself is that any list is somewhat arbitrary. Yet the important point is that there be a list and that you make an attempt to draw some lines. I would include such things as murder, felony gambling, narcotics, counterfeiting, and the other basic activities of organized crime.

Senator McCLELLAN. Extortion?

Professor BLAKEY. Yes, and kidnaping.

Senator McCLELLAN. A limited number.

Professor BLAKEY. The important thing is to try to make a judgment—what is organized crime active in today—and then authorize it in those areas but not others.

Senator McCLELLAN. That would be at least a conservative approach, to get it established as a valid procedure and then, if experience indicated, add other crimes.

Professor BLAKEY. Or subtract certain crimes.

Senator McCLELLAN. Certainly.

Professor BLAKEY. If we found that the possibility of abuse was higher in certain areas than others, and that therefore certain kinds of investigations perhaps ought not to be undertaken using these techniques, we could exclude them.

Senator McCLELLAN. Our first task is to get the procedure approved in a statute so drawn as to make it come within the category of a reasonable search.

Professor BLAKEY. The third major requirement set out by the Court had to do with time. The Court seemed to be concerned that the New York statute on its face would authorize a surveillance, a 2-month surveillance, on any kind of showing. For example, if you made the limited showing that you knew that two members of the Cosa Nostra were going to have a meeting, and they were going to discuss a bribery situation, you could get a wiretap or a bug order for that meeting, yet the face of the statute seemed to authorize 2 months of surveillance when, in fact, you only needed to listen for 2 hours. So the statute on its face was apparently broader than necessary. So the Court felt there ought to be some limitation on the time factor.

Senator McCLELLAN. On this particular point this morning, some mention was made of a 24-hour period. It occurred to me that 24 hours is simply too short a time. You might within that time hear a conversation wherein it was said, "We haven't got this quite worked out, I will call you tomorrow at 5 o'clock or the day after tomorrow I will call you and give you this full information." Then you would have to go back and get another order.

Professor BLAKEY. The important point, Mr. Chairman, is that there be some relationship between the time of the authorized surveillance and the kind of showing made beforehand. If the only thing that you can show beforehand is that you know there is going to be a specific meeting, I'm inclined to believe that this Supreme Court reading the fourth amendment would say an authorization to listen for a length of time longer than that meeting would be unconstitutional. On the other hand, if you can show that the individual is, for example, as in the appendix here, a member of the Cosa Nostra, a Commission member, and he is engaged in a course of criminal activity over a period of years, each day dealing in murder, narcotics, or other crimes——

Senator McCLELLAN. In other words, a crime of continuous or repetitious fashion.

Professor BLAKEY (continuing). Then it seems to me, the Court would be willing to authorize a longer period of surveillance, if you had close judicial supervision at periodic points of time.

Senator McCLELLAN. They report to the court.

Professor BLAKEY. Then a long-term surveillance could be undertaken. The vice of the New York statute was that it did not draw a distinction between tactical and strategic intelligence. The statute did not try to draw that distinction even though it authorized extended periods of surveillance.

Let me explain this with the use of a concrete example. In Chicago since 1919 there have been in excess of a thousand unsolved gangland slayings. Those gangland slayings have been the product of approximately 30 professional "hit men"—they are killers; they call them "hit-men." Those men receive their "contracts" from a board of Cosa Nostra officials on a regular basis. The going rate is from $1,000 to $10,000 per hit. Now, one of those individuals is a man named Vincent

Joseph Inserro, known as "the Saint." He is a favorite enforcer of Sam Giancana, the top man in Chicago. This man is a murderer by profession.

What I have just given you is a very general outline of a problem, of a situation. I think if you filled that in with a little more detail, established the connection between Inserro and Giancana, established what phones he used, where his hangouts were, and showed with reliable information that this man is, in fact, a professional killer, you could get or you ought to be able to get an order to tap his phones or bug his main areas of activity for the purpose of monitoring this professional "hit man's" activities. That would be for strategic intelligence. In contradistinction, tactical intelligence would be if you know that one conversation was going to take place or one meeting was going to take place between someone and a third person, you might monitor just that one conversation. That would be tactical intelligence.

I think an electronic surveillance statute in this area has to draw that kind of a distinction if it is to meet what the Supreme Court is demanding in terms of reasonableness. All they are asking is that the use of these devices be discriminate. That they discriminate, rationally, between the limited situation and the situation where surveillance of a greater duration is required.

Senator MCCLELLAN. There probably should be two sections, one for longer periods and one for shorter periods.

Professor BLAKEY. Which requires a different kind of showing in each section.

The last major requirement set out by the court in the *Berger* case dealt with notice. Now, this has been unfortunately misinterpreted by some to indicate that the Court somehow wanted you to give a letter beforehand to the fellow whose phone you are going to tap. I think that has to be read in the context of Mr. Justice Clark's opinion. He used two technical phrases, "special facts" and "exigent circumstances." Both of these phrases were taken from his own opinion in *Ker* v. *California*, where he wrote a majority opinion for the Court which sustained an unannounced entry to arrest and search where there was reasonable fear that announcement might result in the destruction of evidence otherwise lawfully subject to seizure. There he said because the police could show that there was a reasonable likelihood that the evidence would be destroyed the police could lawfully enter without announcement. That is an analogous situation from the area of search and seizure. What the Court is talking about here, I am inclined to believe, is that if we are to use an extraordinary means of investigation, that is, a search without notice, we've got to show that this case is something other than a normal case. My own suggestion is that before a statute authorizing electronic surveillance is passed a provision should be put in it that these extraordinary techniques could not be used absent a showing that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried." That, as a matter of fact, is the English standard for the use of wiretapping under the Home Secretary's warrant. As you know, the English have used wiretapping for some time in the administration of criminal justice on a Home Secretary's warrant.

They have to show to the Home Secretary that they couldn't have done it using normal investigative techniques.

This kind of a requirement would confine the use of this extraordinary investigative technique to those situations where they are clearly needed. If you make that special showing beforehand I think you have made the kind of showing that can dispense with the usual requirement of notice in the execution of search warrants. I don't think the court was saying anything more than that and I have a feeling that that kind of provision in the statute would pass constitutional muster.

What I am saying, in short, is that the Court has, in fact, laid down a constitutional blueprint. They have given us the constitutional framework of what electronic surveillance statutes ought to look like if they are to be constitutional, so the only question really left for us now is the question of legislative will. We must make up our minds if these techniques are neccesary.

It seems to me at this point that one of the major stumbling blocks to that decision, that is, the decision that we need this equipment, is the position of the present Attorney General, and I would like, if I may, to address myself to that for a few moments.

Mr. Clark has on a number of occasions been quoted in the press or testified before congressional committees that he does not feel wiretapping or bugging is necessary in major criminal cases. Specifically, he has said that they are "neither effective nor highly productive."

And he suggested, particularly in his testimony before the House Judiciary Committee that this opinion was based on his examination of logs that the FBI kept in past surveillance cases.

(Excerpts from hearing referred to are as follows:)

HEARINGS BEFORE SUBCOMMITTEE No. 5 OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, 90TH CONGRESS, 1ST SESSION, No. 3 (1967)

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Mr. CLARK. Yes, sir, there is.

Chairman CELLER. How many?

Mr. CLARK. About 38.

Chairman CELLER. Do they involve national security?

Mr. CLARK. Each of them involves directly the national security.

Chairman CELLER. And nothing else?

Mr. CLARK. Nothing else. There are no other wiretaps or electronic surveillances involving trespass.

Chairman CELLER. Some bills have been offered that provide that there cannot be any legalized wiretaps unless an order is obtained from a Federal judge. That is not in these bills.

Mr. CLARK. No, sir; that is not.

Chairman CELLER. I take it the reason for that is that in national security cases you would not wish to go to a Federal judge to get permission, because you would be in a way divulging the purpose of the wiretapping and it might reach the nation or the embassy or the consular agent whom you are following or shadowing or againt whom you were trying to get the evidence. Am I correct in that?

Mr. CLARK. That is part of the reasoning, yes.

Chairman CELLER. So that the wiretaps in that limited area would be carried out with the consent of the Attorney General.

Mr. CLARK. That is right.

Chairman CELLER. Would it have to be your personal consent or your subordinate?

Mr. CLARK. It would be in accordance with our present practice, which requires my written consent.

Mr. McCLORY. Would the chairman yield?

Chairman CELLER. Yes.

Mr. McCLORY. If it is permissible at this time to pursue the subject of wiretap with a couple of questions I would like to ask a few. There is a change in the policy in the Attorney General's office, is there not?

At the last session of Congress a much broader wiretap provision was recommended by the Attorney General which would have permitted this type of wiretap where you go in and ask the court for permission to tap and to secure evidence or at least to investigate the crime through that procedure.

Mr. CLARK. I think I could say—first I should say that I really had not planned to testify on wiretapping today, I understood we would take that up tomorrow—I think it would be fair to say that over a period of 6 years the Department has come more and more to the view that wiretapping should be prohibited. I think the last testimony before the Congress on this subject was by Attorney General Katzenbach, probably this month of last year. He said, among other things, that above all the present situation is intolerable and probably the worst that we could invent, that if we could not seek some control and security the best thing we could do was to prohibit wiretapping altogether. I am sure he was excepting the national security area.

Mr. McCLORY. You have taken a changed position. There has been a development in the Attorney General's position which now is to limit it to national security.

Mr. CLARK. That is correct.

Mr. McCLORY. Could I just ask this further question? Isn't it esssential, isn't it almost vital, in connection with the investigation of organized crime, where the communications media, particularly the telephone, are used so extensively and in an interestate context, to effectively investigate organized crime, to use wiretaps, at least for the purpose of investigation, even though the material which is received itself is not admissible, but to lead toward admissible evidence which the prosecution requires in order to prosecute organized crime?

Mr. CLARK. There are a great many problems about that. First, as you know, the Supreme Court has before it the *Berger* case from New York which raises a series of questions about the constitutionality of the use of evidence secured by this means. That would also perhaps include leads developed from this type of surveillance. I think first that there is a very, very heavy burden on those who would seek to permit wiretaps to show that it is essential. The evidence that I have does not indicate that at all. I think we may not know all that we need to know to make a final judgment, but we know this, for instance. We know that there were more indictments returned last year involving more people by more than 25 percent under the Federal organized crime statutes than in any preceding year. We know that the evidence that went into securing those indictments was not developed through the use of any electronic surveillance. Therefore, we have to assume that we can be effective without it. We might question why it is that so many jurisdictions—local jurisdictions—that use wiretaps have been ineffective in eliminating organized crime from their jurisdictions when other jurisdictions that have not used wiretaps don't find organized crime present there.

Chairman CELLER. Mr. Attorney General, as I understand it—I probably have been an offender—your idea was to touch and cover wiretapping in tomorrow's session, and that you desire to limit your testimony today to the bill called Safe Streets and Crime Control Act of 1967. Am I right in that regard?

Mr. CLARK. I would much prefer that if it would please the Committee, because in my judgment the Crime Control Act offers a thousand times the potential to control crime, to reduce crime, to protect the people of this country, than these other bills.

Chairman CELLER. I am sorry, I did not follow the procedures myself.

Mr. McCLORY. I will be better prepared to ask the questions tomorrow, too.

Mr. CLARK. I will be better prepared to answer them, I hope.

Chairman CELLER. Mr. Donohue.

Mr. DONOHUE. Tell me, Mr. Attorney General, do I understand that in the bill before us incorporates all the provisions contained in the Law Enforcement Act of 1965.

Mr. CLARK. Yes, sir, that is correct. Title III provides for the full potential of the Law Enforcement Assistance Act of 1965 and expands on it just a little. Titles I and II are the new and vitally needed measures that we seek.

Mr. DONOHUE. Under the Law Enforcement Assistance Act of 1965 there was appropriated about $10 million for implementing and carrying it out.

Mr. CLARK. Since its enactment there has been approximately $14½ million appropriated. That covers 2 fiscal years.

* * * * * * *

Mr. CLARK. Well, I think electronics is an area where we just can see immense technological development. And I think there is a very close relationship between technological devices that can be used perfectly lawfully and those that can be used for purposes of this act in a way that would be unlawful. So as far as technological development is concerned, I think it will and should go forward, and I think that the Federal Government would be authorized under the act to do whatever is necessary to stimulate it.

Mr. MATHIAS. Do you anticipate that you would search out these activities or would you act only in response to complaints?

Mr. CLARK. I think we would enforce it as much as we do other laws. We would confer very closely with the State and local law enforcement authorities, to be sure that there is perfect understanding about the Federal law and what is required to comply with it. Certainly where we had complaints or where we had other reasons to believe that there were flagrant abuses, investigation might be indicated.

Mr. MATHIAS. Would you believe this would require additional manpower in the Department to police the private wiretapping and eavesdropping violations being created?

Mr. CLARK. I think the enactment of the law would serve as a pretty substantial deterrent. I think most of the people in both private and public sectors that are involved in this sort of thing would know about the law and that most would comply with it voluntarily.

However, I can see, too, that there would be some additional burdens placed on the Department. We would just have to see, on the basis of experience, what additional staff we might need.

Mr. MATHIAS. The distinguished minority member of the committee, Mr. McCulloch, referred to the National Crime Commission's report and read some sections of it. I would like to refer to that part of the report on page 201, where it says:

"The great majority of law enforcement officials believe that the evidence necessary to bring criminal sanctions to bear consistently on the higher echelons of organized crime will not be obtained without the aid of electronic surveillance techniques."

Now, obviously the Justice Department disagrees with this conclusion, and I am wondering what alternatives do you have to offer to accomplish this job?

Mr. CLARK. I think we have a rather intense experience in organized crime. And I think that organized crime can be controlled, and its impact reduced, without use of electronic surveillance or wiretapping.

As an illustration of that potential, I point out that in calendar 1966 25 percent more indictments, involving 25 percent more people, were brought under our organized crime statutes than in the preceding year.

All of these indictments were brought without any use of electronic devices or wiretaps.

I think it is a matter of the quality of your investigative resources as well as the quantity. I think that is the way to control crime, not by a bunch of fellows having earphones on and hoping someone will say something they should not.

* * * * * * *

And former Attorney General Kennedy, in 1962, in testifying on this bill, stated, "I would think that an argument could be made for the counterfeiter. I think that a strong argument can be made for including robbery and perhaps we should have included it."

I have before me also the testimony given before the Senate Judiciary Committee in May—March and May 1966, and I am referring now to page 39 of that testimony, with regard to a wiretapping bill, where your immediate predecessor, Mr. Katzenbach, testified with regard to the bill, there stated, "I think it should be left to the States. I think in leaving it to the States this law should prescribe limits and guidance as to procedures." He would permit wiretapping to be carried on by the States.

In looking at his testimony, he seems to be in general agreement with regard to the so-called McClellan wiretapping bill that was introduced at that time.

Do you concur in that—those earlier positions taken, or do you agree that those positions were taken?

Mr. CLARK. Very much as you describe. I have a little different emphasis that I put on it. I have been with the Department since 1961. I think I can remember the very first discussions that we had in the spring of 1961, and even the place and characters, when we first started talking about wiretapping. And I was not a direct participant in most of them, in those earlier years, I was involved collaterally. I can remember the battles, and I think that there has been a pretty steady tendency within the Department and within the personalities involved to view the desirability of wiretapping outside the national security area with greater skepticism.

I think we have more or less continuously cut down the area where we thought it might be supportable and desirable for law enforcement purposes. And I think we finally came, last year, to the position that Nick Katzenbach stated, that a complete ban would be better than what we then had.

Mr. MCCLORY. In other words, there has been a general development of the thinking in the Attorney General's Office that wiretapping should be used in a continually narrower area, and so that its use has moved from these different offenses to which former Attorney General, now Senator Kennedy, made reference, to the limited subject of national security; is that substantially right?

Mr. CLARK. I think that is right. I should state that my views were highly restrictive from the inception. I think we also have new learning. I feel certainly that we have learned in the Department a great deal in reviewing the files in this task that we have been involved in since last fall.

We have looked at hundreds and hundreds of bug and wiretap logs and I think we have an experience on which to base a judgment now that we did not have as clearly earlier.

Mr. MCCLORY. Now, I know that many of us were surprised at the time the President delivered his state of the Union message with regard to the subject of wiretapping, since we were aware that the President's Crime Commission appeared to give general support to wiretapping, particularly with regard to combating organized crime; and my recollection is that the controversy between now Senator, former Attorney General, Kennedy and the Director of the Federal Bureau of Investigation, as to who authorized certain wiretaps, was very much in the news and then suddenly, at the time of the President's state of the Union message, he came out with this flat opposition to wiretapping, invasion of privacy, which seemed to be a rather blunt rebuke to Senator, former Attorney General, Kennedy.

Is it not a fact, Mr. Attorney General, that this Presidential attitude with regard to Senator Kennedy's advocacy of wiretapping and this controversy in which he was involved entered into the President's position with regard to wiretapping, which we are now pursuing in this legislation?

Mr. CLARK. I think I know that that was not a factor at all. I think I know from many years back that the President has been deeply opposed to wiretapping and electronic surveillance. I think that he made this more than manifest in 1963 and 1964 and 1965. I think that my recollection and chronology of the Hoover-Kennedy dispute, or whatever thing was, was that it took place primarily in November and December of 1966 and pretty well subsided then, so that when the President's state of the Union message came forward, I do not think it was in anybody's mind particularly; but I do recall that there was large applause at that part of the state of the Union message.

Mr. MCCLORY. Not by Senator Kennedy.

Mr. CLARK. I did not see Senator Kennedy at that particular time.

Mr. MCCLORY. I did.

Aside from that, would you answer this: As the head of the law-enforcement agency of the Federal Government, are you individually opposed to authorizing or permitting statutory authorization of wiretapping under court control with regard to, say, the activities of organized crime, in limiting it to organized crime activities?

Mr. CLARK. Yes, I am opposed to that. All of my experience indicates that it is not necessary for the public safety. It is not a desirable police investigative technique and that it should only be used in the national security field, where there is a direct threat to the welfare of the country.

Mr. MCCLORY. I want to read just a few excerpts from a testimony of Frank Hogan, district attorney for New York County, N.Y. One is from the testimony

that he gave on wiretapping before this subcommittee in 1955, in which he stated—he exhibited some charts and then he stated:

"The figures demonstrate that although wiretaps were installed in a very small percentage of our cases, they have produced, I think, remarkable results, especially in the toughest of all investigations to break: investigations involving organized crime and the corruption."

And then I will read from page 201 of the President's Crime Commission report with regard to also quoting the district attorney, Frank Hogan, where he states there:

"The single—most valuable weapon in law enforcement fight against organized crime—"

Professor BLAKEY. I find the Attorney General's public statements to be in shart contrast with certain other public statements of knowledgeable officials. For example, Mr. Cartha De Loach, who is an Assistant Director of the FBI, has been quoted in the New York Times as saying that wiretapping and bugging are very helpful and necessary and useful.

(The articles referred to are as follows:)

[New York Times, Nov. 23, 1966, p. 1, col. 7]

WASHINGTON, Nov. 22—The President's National Crime Commission has split with the Justice Department over wire-tapping and electronic eavesdropping by law enforcement officers.

The commission has tentatively decided to ask Congress to authorize wiretapping and "bugging" by Federal agents, under strict safeguards and only with court approval. A majority of its members have endorsed the view that police eavesdropping is necessary in the fight against organized crime.

This came despite strong opposition from Acting Attorney General Ramsey Clark, who asked the commission to avoid the subject entirely in its report.

Mr. Clark and President Johnson are said to favor a new Federal law that would outlaw all wiretapping and electronic surveillance by the police.

The break between the Crime Commission and the Justice Department came at the commission's meeting here Nov. 11, when Mr. Clark made an impassioned plea for the commission to stay out of the issue.

Reports have been circulating in Washington about the Nov. 11 meeting, at which a top official of the Federal Bureau of Investigation argued with Mr. Clark over his assertion that F. B. I. eavesdropping had been "a waste of time."

According to a knowledgeable source, Mr. Clark, in urging the commission to drop the eavesdrop issue, said he had read some of the transcripts from the F.B.I.'s "bugging" of Fred B. Black Jr., Washington public relations man.

The F.B.I. has recently been embarrassed by disclosures that it "bugged" conversations of Robert G. Baker, former secretary to the Senate Democratic majority, and Mr. Black, in connection with an investigation of criminal activity in Las Vegas and Miami.

Mr. Clark said its insignificance convinced him that the bureau had been wasting its time in eavesdropping.

At this point Cartha D. DeLoach, assistant to J. Edgar Hoover, F.B.I. director, was said to have interrupted Mr. Clark and to have said that the department's "bugging" operations had helped to gain valuable information about criminal activity.

According to the report, Mr. DeLoach mentioned specifically political corruption in Chicago and gambling activities in Las Vegas. He concluded that the F.B.I. would be handicapped in fighting organized crime unless eavesdropping was legalized.

Mr. Clark went on to say, the source reported, that if the eavesdropping issue was included in the commission report, it would act as a "red herring" to distract public attention from important but less controversial recommendations.

According to the report when Nicholas deB. Katzenbach, the commission chairman, called for a show of hands by those who wished to drop the eavesdrop recommendation, only two voted with Mr. Clark. They were Federal Judge Luther W. Youngdahl of the District of Columbia and Mrs. Robert J. Stuart, president of the League of Women Voters.

The crime commission, officially named the President's Commission on Law Enforcement and Administration of Justice, was created by President Johnson in an executive order issued July 26, 1965. Its purpose is to study the causes of crime in the nation and to make recommendations to the President on ways to combat crime.

The report of the 19-member commission is due on Jan. 23. If the commission sticks to its present position the Administration will be placed in an awkward position, as the President plans to use the commission report as the basis for his anticrime proposals to the next Congress.

As initially organized, the commission had no panel on organized crime. However, after Lewis F. Powell of Richmond, Va., former president of the American Bar Association, and other commission members insisted that any national crime study must deal with the problem, a panel and staff study group was established.

CHAPTER ON CRIME

At the Nov. 11 meeting the commission considered the chapter on organized crime written by the organized crime panel for the final report.

The chapter stated that electronic eavesdropping and wiretapping was crucial to the anticrime effort. It recommended a new Federal law that would allow Federal agents to obtain court approval to eavesdrop in cases involving organized crime and certain other serious crimes. It would also allow states to pass similar laws, as long as they contained the same safeguards provided in the Federal law.

A 1934 Federal law makes wiretapping a crime, but the Justice Department has ruled that Federal agents do not violate this law if the information is not disclosed outside the Government. Electronic "bugging" is not covered by any United States criminal law.

However, in June, 1965, President Johnson prohibited all Federal agencies from using either wiretapping or "bugging," except in national security cases.

Wiretapping is the interception of telephone calls. "Bugging" is the use of hidden microphones to pick up all conversations in a given area.

In recent instances of FBI "bugging" that have come to light, the devices picked up only one end of telephone calls made from the "bugged" room, so that the antiwiretap law was not violated.

The Supreme Court ruled in 1928 that police wiretapping does not violate a defendants' constitutional rights, but many legal experts think the high court will eventually declare both wiretapping and "bugging" unconstitutional.

[New York Times, Jan. 30, 1967, p. 1, col. 1]

WASHINGTON, Jan. 19—The President's National Crime Commission, under pressure from supporters of President Johnson, has backed away from a recommendation for new legislation to permit wiretapping and electronic eavesdropping by the police.

The decision, which came ten days before the President proposed an outright ban on police eavesdropping in his State of the Union message Jan. 10, removed the prospect that the President would be contradicted by a recommendation from his own crime commission.

However, the report, which will go to the White House Monday, will nevertheless provide ammunition for Congressional opponents of Mr. Johnson's proposed ban on eavesdropping, according to sources here.

A majority of the commission members, while agreeing not to contradict the President bluntly in their formal recommendations, have insisted on stating in the official report their "belief" that court-supervised eavesdropping by the police is necessary to combat organized crime.

According to reports here, another major recommendation of the crime commission will be a radical shift from "reform school" treatment of juvenile offenders to widespread reliance on closely supervised probation. The commission has figures showing that recidivism is twice as high among youngsters who have been sent to institutions.

The report is also said to recommend:

Laws requiring better locks on homes, businesses and cars.

Bail reform to let more suspects go free pending trial.

Treatment instead of incarceration for habitual drunkards.

Improvements in "mass production" lower courts.
More money for law enforcement and better-qualified policemen.

The commission will also express strong support for the Johnson Administration's antipoverty measures, which it considers necessary to reduce the causes of crime and delinquency.

The commission's decision on the eavesdropping issue came at a meeting on Dec. 30, after one of its members, Leon Jawarski, a Houston lawyer, said he would dissent from the panel's report unless the group rescinded its earlier decision to recommend permissive eavesdrop legislation.

Mr. Jaworski, a senior partner in a 102-man Houston law firm, is a longstanding supporter of Mr. Johnson's and was prominently mentioned as a possible successor to Attorney General Robert F. Kennedy in 1964.

FAVORED ON NOVEMBER 11

He was not present at the commission meeting, Nov. 11 when a majority of its members went on record in favor of recommending new legislation to let Federal and state law enforcement officials tap wires and use "bugging" devices under court supervision and strict controls.

Mr. Jawarski reportedly warned the group that unless the recommendation was changed he would file a strong dissenting statement, charging that the commission had acted without sufficient facts and had made its decision on ideological rather than factual grounds.

In response, four members, Prof. Herbert Wechler of Columbia Law School, Justice Charles D. Breitel of the New York Court of Appeals and Ross L. Malone of Roswell, N. M. and Lewis F. Powell of Richmond, Va., former presidents of the American Bar Association, insisted that the group stand by its earlier recommendation.

Some members of this group said that they would dissent and charge political interference if the recommendation was deleted.

THREE-DAY ARGUMENT

The argument continued sporadically over the three-day meeting, Dec. 28–30, with neither side willing to budge.

Finally, Under Secretary of State Nicholas deB. Katzenbach, the commission's chairman, persuaded the members to accept a compromise that would prevent the commission from contradicting the President outright, while retaining for the record the majority's view on eavesdropping.

Unless a last-minute change is made at the commission's meeting this weekend, the report will recommend only that Congress consider new eavesdrop legislation, without suggesting what its substance should be.

It will recommend that Congress wait until the Supreme Court rules on the pending case involving the constitutionality of New York's eavesdropping law, which is similar to the one advocated by a majority of the commission members.

AWKWARD TO JOHNSON

The published report will contain a statement, in different type than the formal recommendations, revealing that the majority favors court-supervised eavesdropping by the police, while the minority feels it has insufficient information to form an opinion on the subject.

But even this expression could prove awkward to the president, who plans to use the commission's recommendations as a basis for his anticrime program in Congress this year.

In his State of the Union Message Mr. Johnson said:

"We should protect what Justice Brandeis called the 'right most valued to civilized men'—the right to privacy. We should outlaw all wiretapping, public and private—wherever and whenever it occurs, except when the security of the nation itself is at stake and only then with the strictest safeguards. We should exercise the full reach of our constitution powers to outlaw electronic "bugging' and 'snooping.' "

In a telephone interview from Houston Mr. Jaworski declined to comment on commission affairs.

Professor BLAKEY. Mr. James H. Gale, Assistant Director of the FBI in charge of its organized crime program, has been quoted in the New York Times as saying the same thing.

(The articles referred to are:)

[New York Times, Mar. 30, 1967, p. 1, col. 5]

WASHINGTON, March 29—The chief of the Federal Government's organized crime unit charged today that the teamsters' union and the East Coast longshoremen's union were linked with each other and the Cosa Nostra.

Henry E. Petersen, chief of the Justice Department's Organized Crime Section, which co-ordinates the Government's interagency fight on crime, made the statement during a discussion session at a conference of law enforcement leaders here.

Frank E. Fitzsimmons, general vice president of the International Brotherhood of Teamsters, in a telegram of protest to Mr. Petersen this evening, called the statement "slanderous." Spokesmen for the longshoremen were unavailable for comment.

Mr. Petersen, who apparently did not know that the informal seminar was open to reporters, refused later to elaborate on his statements.

He has rarely spoken on the record to newsmen in the past and is not widely known outside of law enforcement circles.

His statement came as he delivered a casual, 10-minute explanation of the Government's program to combat organized crime. The statement was made this morning to a group of about 80 panelists, during the second day of the Justice Department's two-day National Conference on Crime Control.

Mr. Petersen said that four or five years ago, Senator John L. McClellan's Senate rackets committee was very much concerned about reports of a possible merger between the Teamsters and the International Longshoremen's Association.

No formal merger took place, but Mr. Petersen said, "I know for a moral certainty that this amalgamation exists."

Furthermore, he said, "In the upper echelons they have more than an effective liaison between the I.L.A., the Cosa Nostra and the Teamsters."

He said that the Government had identified about 5,000 persons across the nation who are members of the Cosa Nostra, the nationwide crime syndicate that was formerly known as the Mafia.

Shortly after Mr. Petersen spoke, Chief Justice Earl Warren said in a prepared speech to the delegates that "so long as businessmen in the name of private enterprise associate with hoodlums, accept their business, and peddle their influence, communities are bound to be unhealthy."

Chief Justice Warren's speech stressed the unhealthy impact of organized crime, as compared with street crime, and he said that "corruption is the basis of organized crime."

He specified corruption among policemen, prosecutors, courts, city councils and businessmen, but he did not mention unions.

"Organized crime can be stopped because it is a direct assault upon the community in which it thrives, and no crime syndicate can openly defy the law in any of its money-making activities if the community is determined that it shall not exist," he said.

Speaking to a group that includes a large delegation of police officers and prosecutors—some of whom have attributed rising crime to court decisions—the Chief Justice suggested looking at the beam in one's own eye "rather than at the mote in our neighbor's."

In an unusual move for a Chief Justice Mr. Warren had strong praise for President Johnson's anticrime efforts. He declared that the President's program afforded "the greatest opportunity the nation has ever had to rid itself of organized crime and at the same time destroy the conditions which inevitably breed degradation and crime of every description."

One panel session this morning produced a rare admission from a high official of the Federal Bureau of Investigation that wiretapping and eavesdropping were useful investigative tools.

The statement, from James H. Gale, the assistant director in charge of the bureau's efforts against organized crime, came during an exchange with Eliot H. Lumbard, special assistant counsel for law enforcement in New York.

Mr. Lumbard said wiretapping and eavesdropping "had been intensely useful" in the state's anticrime efforts, and expressed concern that law enforcement would suffer a serious blow if police eavesdropping was abolished.

President Johnson has asked Congress to outlaw all police eavesdropping except in national security cases, and the Supreme Court has agreed to consider the constitutionality of the New York law that permits court-supervised bugging by the police.

Mr. Lumbard said state officers in New York, using wiretapping, had jailed several important racketeers, while Federal officials in New York had been able to convict only minor figures.

Mr. Gale responded from the audience with statistics on successful F.B.I. prosecutions.

Asked by Mr. Lumbard if eavesdropping had proved useful, Mr. Gale said, "Yes. It was useful."

Mr. Lumbard asked how this could be squared with recent assertions by Attorney General Ramsey Clark that Police eavesdropping was an inefficient law enforcement device. Mr. Gale declared that he would stand on his earlier statements on the subject.

CHARGE CALLED "SLANDEROUS"

WASHINGTON, March 29 (UPI)—The Teamsters' general vice president, Frank E. Fitzsimmons, termed the statement by Mr. Petersen "slanderous" and urged him either to repudiate his remark or present evidence in court.

"Such slanderous statements should certainly be based upon reliable evidence and not on a 'moral certainty,'" he said. "If you have any evidence which supports your charges, it should be presented in court. If not, we urge that you address the same or an appropriate forum and deny the remarks in fairness to the more than 1.8 million Teamsters and their families across this nation and in Canada."

Professor BLAKEY. Mr. William O. Bittman, who was the prosecutor in the *Bobby Baker* and *James Hoffa* cases has been quoted in *The New York Times* as saying essentially the same thing.

(The following was supplied for the record:)

[New York Times, June 26, 1967, p. 15, col. 1]

WASHINGTON, June 26—William O. Bittman, the former Government prosecutor who won convictions against James R. Hoffa and Robert G. Baker, has disputed Attorney General Ramsey Clark's suggestion that the Government's electronic eavesdropping was ineffective in combating crime.

Mr. Bittman left the Justice Department last month, not because of any policy disagreements, but to become a partner of Hogan and Hartson, one of Washington's largest law firms.

He agreed to be quoted about his experiences with information picked up through electronic bugging because, he said, other lawyers who know the facts are still employed by the Government.

"I'm out now, so I can tell the facts," he said.

"There is no question, in my opinion," Mr. Bittman said in an interview, "that the use of certain electrical devices would be of great help in fighting organized crime in this country if it could be used as evidence."

He said that in preparing for certain trials as a Government prosecutor, he had read numerous logs in which agents of the Federal Bureau of Investigation had recorded conversations picked up by hidden microphones.

The Supreme Court has ruled that conversations picked up on bugs planted by trespassing, as these were, cannot be entered in evidence.

Evidence developed through leads obtained by bugging is also inadmissible. Therefore, Mr. Bittman said, he read the F.B.I.'s logs of all bugged conversations involving any individuals whom he prosecuted to make certain that none of his evidence had been tainted by bugging.

In the trial of Mr. Baker, the former Senate Democratic secretary, who had business contacts with Las Vegas gambling figures, Mr. Bittman read reams of logs of bugged conversations in Las Vegas casino offices. Last month seven Las Vegas casino operators were indicted for "skimming"—concealing gambling receipts and not paying income taxes on them.

"In Las Vegas," Mr. Bittman said, "the Government learned from bugging the amount of money that was being skimmed, who was doing the skimming, how

the skimming was done, who the couriers were that were delivering the money around the country, when they were leaving and who was going to receive the money.

"How can you say this was no help to law enforcement?"

The Government contends that the case against the Las Vegas gamblers were made by agents of the Internal Revenue Service, without the aid of any evidence picked up by the F.B.I. bugging, which occurred in various casinos from 1961 until some of the bugs were discovered three years later.

Mr. Bittman said that "we are losing the battle against organized crime.

"Since we're not staying even, I don't think we should deny reputable law enforcement any legitimate tool," he said.

LAW OPPOSED

Attorney General Clark has opposed a law to permit wiretapping and bugging by the state police and Federal agents. He and President Johnson support a bill that would outlaw all private and official eavesdropping, except in internal security cases with the permission of the Attorney General.

Mr. Clark's basic argument has been that police eavesdropping is a harbinger of the "big brother" state, but he has also said in Congressional testimony and published interviews that the Federal Government's eavesdropping proved ineffective and wasteful of police manpower.

Mr. Bittman emphasized that some of the individuals he had prosecuted had not be the subject of eavesdropping by Federal agents. Attorneys for Hoffa, the teamsters' leader, have claimed that bugs were used on him, but the Government has denied it and no evidence of this has ever been produced.

[South Bend Tribune, Nov. 16, 1966, p. 17, col. 1]

WASHINGTON.—The names of Lyndon B. Johnson and several top political figures pop up in transcripts released by the government of "bugged" conversations involving Bobby Baker.

But the government says the role of Baker, one-time Senate Democratic secretary, in the conversations was only coincidence and that the eavesdropping had nothing to do with his indictment for tax evasion, grand larceny and fraud.

FBI Director J. Edgar Hoover said in an affidavit presented to a federal court yesterday that the 34-page transcript covered all the Baker conversations on which the FBI eavesdropped. But Baker said there must have been more.

The transcript was released at a U.S. District Court hearing on whether the conversations should be suppressed because of Baker's claim they can be used against him.

The hearing was to continue today.

The 11 conversations in the transcript were monitored from three points: Miami, Fla.; Las Vegas, Nev., and the Washington hotel room of Fred B. Black Jr., a former Baker business associate.

The calls from Black's suite were recorded between February and April, 1963. Baker said he might have made 500 calls from Black's suite during that period.

DENY OTHER RECORDS

He said some conversations there involved Wayne Bromley, a key figure in Baker's indictment for evading $23,090 in federal income taxes and obtaining $100,000 by fraud. But the government insisted it had no other records of Baker conversations.

One conversation was between Baker and Dean McGee of the Kerr-McGee Oil Co. in Oklahoma City following the death of Sen. Robert Kerr, D-Okla.

"Well, Lyndon (then vice-president) told me the other day," Baker is quoted in the transcript, "that (Rep.) Carl Albert (D-Okla.) told him they did not think Bob (Kerr) Jr. could win that seat.

"They want you (McGee) to take it. I told them that was out."

TELLS OF DEAL

Then Black got on the phone and told McGee, ". . . Since the old man (Kerr) died, this fellow (space agency Director James) Webb has gotten weaker and

weaker where state of Oklahoma is concerned . . . He's just not doing anything for us. I'm getting concerned about a few things in Oklahoma City itself. NASA is not helping us. When the senator was alive, he'd be helping."

Later, Baker is quoted as telling Black that Earle Clements, former Kentucky senator, made a "deal" to settle his tax problems with the federal government and "the FBI and Internal Revenue couldn't do a thing."

The conversation ended with Black musing: "I wonder if they got the lines tapped."

Professor BLAKEY. Mr. Bittman's statements, in addition, were made in reference to the situation in Las Vegas of "skimming," that is, stealing money.

I might add at this point that there was a very enlightening series of articles in the Chicago Sun-Times in July of last summer—apparently outlining what was obtained by the FBI with the use of electronic devices in Las Vegas—and it indicated a truly frightening situation—perhaps a half million dollars a month was being taken without payment of tax and used for all sorts of illegal purposes.

(The articles referred to are as follows:)

[Chicago Sun-Times, July 10, 1966, p. 1, col. 1]

LAS VEGAS, NEV.—Amounts ranging from $200,000 for a former Nevada governor to $200 for a justice of the peace have been paid by gangsters who engineered enormous thefts from six gambling casinos here.

In one recent year, the illegal siphoning from gambling profits totaled more than $6,000,000.

The vast sums were divided and delivered as bundles of cash to crime syndicate gangsters around the country, including Chicago's gang leaders Anthony (Tony) Accardo and Momo Salvatore (Moe) Giancana.

The $6,000,000-plus vanished, at the rate of $100,000-a-month in each casino, from the Desert Inn, the Stardust, the Flamingo, the Sands and the Fremont. From the smaller Horshoe, in the same year $70,000 a month was stolen.

The money—from casinos and not hotels bearing the same names—was skimmed from the gambling take before the gross winnings were listed in the records on which Nevada computes its state gambling tax.

To protect the vast funding of syndicate operations, a generous and steady supply of money was kept flowing into politicians' warchests. The gifts were labeled political contributions but were considered as payoff by the gangsters and their casino frontmen.

The sums ranged from the $200,000 the Desert Inn paid out as a contribution to a former governor to $200 for a Clark County (Las Vegas) justice of the peace.

More recently, another governor got $20,000 from a casino, while one U.S. senator received $1,000 and another got a $12,000 contribution.

A member of the Nevada Judiciary received $5,000 from a casino. A U. S. congressman got $500. For Clark County officials and Las Vegas city fathers the contribution price tag did not customarily exceed $300 each.

PROMINENT FIGURES

Prominent figures in both the Democratic and Republican parties received the contributions which the gangsters hoped would ensure against Nevada officials prying into the casino procedures that made possible the illegal skimming.

The politicians got the money from the gangsters' casino frontmen, but the funds were really largesse from the hoodlums who held hidden interests in the six gambling halls.

No cash was given to politicians unless approved by the secret gang owners of the casinos.

In the Stardust Casino, the boss is Giancana.

At the Desert Inn, it was John Scalish, the Cleveland rackets boss.

And at three other Las Vegas casinos—at Fremont, the Sands and the Flamingo—the shots were called by Meyer Lansky, the New York underworld oldtimer now living in Miami.

SMOOTH THE WAY

In addition to providing insurance, the gangsters intended their political contributions to smooth the way for negotiations that occasionally could get ticklish.

One such case occurred when Mayor Riddle, the sauve political fixer for the casinos, confronted a Nevada official.

Years ago when he ran an illegal gambling hall in Illinois, Riddle learned not to mince words with politicians.

Accordingly, he told the Nevada official and political leader that gang henchman Irving (Niggy) Devine, 56, was willing to shell out $25,000 in cash for a state gambling license.

SOME PROBLEMS

The price was high because Devine feared that his links with notorious Cosa Nostra mobsters would bar him from obtaining a license.

Riddle's proposition presented some problems. As an outright payoff it appeared too blatant, but presented at the appropriate time as a political contribution, it might make the transaction possible.

Devine's deal fell through, only because his open gangland connections made him too hot as a licensee.

Once skimmed, the gangsters' millions were dispatched in cash bundles around the country to be poured into legitimate businesses. In gang argot, the cash was known as "black money" because it came from illicit sources and had yet to be funneled through legitimate enterprises, from which it would reappear as clean and lawful profits.

Sharing the black money in the year that skimming hit $6,000,000 were at least 10 underworld big shots.

THE SHARERS

Among them were Lansky, Scalish, Giancana and Accardo. Others were:

New York gangster Vincent (Jimmy Blue Eyes) Alo and the Eboli brothers, Pasquale and Thomas.

Three New Jersey hoodlums, rackets chief Gerardo (Jerry) Catena, Angelo (Gip) De Carlo and Anthony Boiardo.

Like the tip of an iceberg, a small part of the skimming story recently received public attention because of testimony in open court by FBI agents.

They told of a "vast sum of money" being diverted to "criminal elements" across the country from the Desert Inn Casino, which they said had secret owners.

Because of that, the agents told a federal court in Denver, an electronic bug was concealed in the Desert Inn.

The agents testified the microphone was hidden in an effort to determine how much money was skimmed and who got it.

The FBI also was interested according to the testimony of Las Vegas FBI Chief Dean Elson, in "such things as corruption of public officials."

After the FBI testimony in Denver, Nevada Gov. Grant Sawyer ordered the Las Vegas district attorney, Edward G. Marshall, to begin the probe of the FBI bug in the Desert Inn.

BIGGEST INDUSTRY

But up to now, no orders have come from the state for a full investigation of the skimming in the casinos.

In previous public statements, Sawyer described as "ludicrous" and "myths" reports of skimming in the gambling casinos that are Nevada's biggest industry, taxpaying or otherwise.

The governor told a 1965 convention in the Dunes gambling hotel here that stories of gangsters' secret interests were "pure nonsense."

Even the Las Vegas Internal Revenue Service chief, Dallman Davis, asserted publicly two years ago that whatever skimming took place in the casinos was small stuff.

In fact, however, the $6,000,000-a-year skimming take topped the $4,900,000 the state collected in gambling taxes in the first three months of this year.

POLITICAL INFLUENCE

Along the Las Vegas casino strip, the gamblers point to the Dunes owner, Riddle, as the man with sure thing political clout.

Riddle himself confirmed in an interview with a Sun-Times reporter that he has the political influence that the casino bosses call "juice."

Said Riddle:

"I am a very close friend of Gov. Sawyer."

Riddle stopped talking politics at that point.

His modesty, or caution, about discussing his political accomplishments was not shared by other bosses of the Las Vegas casinos.

The gamblers said Riddle boasted in the past of carrying messages from powerful Nevada politicians to the officers of the Nevada Gaming Control Board.

The NGCB enforces the state's gambling license statutes. It supervises the operation of the casinos and checks, as best it can with a small staff, the winnings on which the casinos pay tax.

Riddle also keeps a careful watch on the finances of some Nevada officials, to determine whether they need money or whether they didn't, The Sun-Times was told.

Monday: More revelations on how the skimmed loot is divided up.

[Chicago Sun-Times, July 11, 1966, p. 2, col. 2]

LAS VEGAS, NEV.—The roster of secret shareholders is a scrap of paper.

On it are nine names or initials. Each is preceded by a number.

Lush dividends go to those on the list. Each share of stock they hold yields $2,000 a month in cash. It is sealed in a numbered envelope and delivered by special messenger.

A single share in the illicit enterprise has a market value of $52,500.

It's a rich investment, to be sure. But the risks it presents are deadly.

For the dividends flow from secret interests in gambling casinos here to Cosa Nostra chiefs in Chicago and other cities.

And the hassles among them over the casino booty—like any quarrel between cutthroats—are often just plain murder.

The business of the undercover casino holding companies is skimming, the siphoning of millions of dollars a year from the gross winning of Nevada's state-licensed gambling halls.

Skimming is state and federal tax cheating on a mammoth scale.

Neither the Internal Revenue Service nor the gambling tax division of the State of Nevada collected a penny in tax on the skimmed, or stolen, millions.

The cash vanished from the casinos before the winnings were listed in records on which the state computes its gambling tax.

In a single year, The Sun-Times has disclosed, more than $6,000,000 was skimmed out of six casinos and into the hands of Cosa Nostra mobsters.

Four of the casinos—the Fremont, the Sands, the Flamingo and the Horseshoe—were controlled by one team of gangsters in 1963.

Another squad of hoodlums ran the other two casinos, the Desert Inn and the Stardust.

Chicago's wealthiest professional thugs, ever quick to move in numbers on a sure thing, were in both casino groups.

Representing the Chicago crime syndicate in secret ownership of the Fremont-Sands-Flamingo-Horseshoe was Anthony Joseph Accardo.

Accardo is known in the Chicago mob as Joe Batters, or Joe B. or simply J. B.

He was in the undercover casino combine that listed its members by numbers for payoffs.

No. 1 on the Fremont-Sands-Flamingo-Horseshoe skimming list was Meyer Lansky, a New York racketeer now residing in Miami.

Accardo came second. Beside the numeral 2 on the skimming list was Accardo's gang nickname, J. B.

No. 3 was Bennie Seigelbaum, 63, one of the couriers who fanned out from Las Vegas to deliver the numbered envelopes of skimmed cash to the gangsters.

NEW JERSEY CRIME LORD

The seventh name listed was that of Gerardo (Jerry) Catena, a New Jersey crime lord.

In eighth place, the name of Lansky appeared again for a second cut of the skimming booty.

How many secret casino shares were held by each of the nine is unknown. Their individual monthly take also is their own secret.

It has been established, however, that the individuals on the list split up about $100,000 a month in skimming money.

The skim in the four casinos seldom dropped below $94,000 a month. Sometimes it exceeded $113,000.

Among the clandestine owners of the Desert Inn and the Stardust were Chicago gang boss Momo Salvatore (Moe) Giancana and Cleveland rackets chief John Scalish.

$100,000 A MONTH

At the Stardust and the Desert Inn, as in the other four casinos, cash was sluiced from the winnings for the mobsters at the rate of about $100,000 a month.

The records, if any, of the Stardust-Desert Inn skimmers never have come to light.

But Giancana's end of the skimming thefts in the two casinos exceeds $65,000 a month.

Scalish, in Cleveland, gets slightly less than that. His monthly payoff is $52,000.

Lansky's second helping of the monthly skimming boodle is regarded as a reward for his indispensable service to the national crime syndicate.

He acts as the financial adviser to the Cosa Nostra supreme council, the Commission.

Giancana, Scalish and Catena are among the members of the 12-man commission. Accardo moved off it in 1956 to make room for Giancana.

WIZARD OF FINANCE

The Cosa Nostra commissioners might botch the skimming operation without Lansky, their wizard of finance.

His counsel is essential for gangsters who rise to the Commission by proficiency with guns and bomb, rather than the ability to count without using their fingers.

Lansky is the skimming price-fixer, too. A formula he devised established the $2,000-a-month yield from each skimming share and set at $52,250 the worth of each share in underworld markets.

None of the hidden holdings in the casinos may be peddled without mob approval, either from Lansky in one combine or from Giancana and Scalish in the other.

The owners of record in the casinos are licensed by the Nevada Gambling Control Board.

But the secret gangster owners operate on Cosa Nostra licenses. The only state record that bears their names is a blacklist.

BEHIND THE SCENES

The blacklist does have some effect on the mobsters. It compels them to shun public appearances in the counting rooms. They keep behind the scenes, using frontmen to control the casinos.

The mere appearance of the blacklisted Giancana in a casino hotel two years ago was considered by the state as an offense heinous enough to revoke the gambling licenses of singer Frank Sinatra.

To steer clear of that kind of trouble in the Stardust and the Desert Inn, Giancana has two frontmen.

One of Giancana's representatives, John Drew, is licensed by the state as an owner at the Stardust.

The other Giancana standin, George Gordon, is like his boss in that Gordon's Casino holdings do not show on the records.

The reason for that is simple—the state would reject Gordon in a hurry if he applied for gambling licenses.

RECORD OF ARRESTS

Gordon is a sidekick of notorious mobsters and thus unacceptable to the state as a licensee. Moreover, Gordon, a Miami lottery operator, has a record of arrests for bootlegging and possession of opium.

Nevertheless, Gordon boasts that he holds 14 secret shares in the Desert Inn and eight undercover shares in the Stardust.

Whatever the yield from Gordon's secret shares—it would be $44,000 a month if the Lansky $2,000-a-month computation were applied—Gordon earns it.

His main task in the Desert Inn and Stardust is to iron out the interminable wrangles of the Giancana camp and another gambling faction led by M. B. (Moe) Dalitz, majordomo in the Desert Inn.

The chief trouble between the Dalitz group and Giancana's men is that they don't trust each other, especially when it comes to counting skimming money.

OTHER MATTERS

But they have fallen out in the past over other matters, such as whether singer Eddie Fisher should appear at the Desert Inn or at a night club controlled by Giancana in Chicago.

The matter was debated for weeks until Gordon wangled the decision—what else?—that Fisher should sing in Giancana's club.

How Fisher himself felt about that apparently didn't concern the gangsters.

Skimming operations were pooh-poohed or ignored by state officials in Nevada until the testimony of Federal Bureau of Investigation agents brought the huge tax-cheating conspiracy out in the open where everyone was aware of it.

FBI agents told a federal court in Denver that a listening device had been installed in the Desert Inn to determine who received huge sums skimmed there.

THE LID IS LIFTED

That was the first time the lid was lifted on the FBI evidence of skimming.

It was viewed by most casino owners as a major disaster that should have been avoided by a Chicago ganster, Felix (Milwaukee Phil) Alderisio, in his attempts to keep out of prison.

Alderisio was convicted in Denver last year of threatening to kill an oil promoter to force him to repay $70,000 skimmed from the cashier's cage of the Desert Inn.

Found guilty with Alderisio was one of the Desert Inn owners, Ruby Kolod, a former Cleveland hoodlum.

Alderisio appealed his conviction and 4½-year prison sentence under a go-easy warning from Giancana.

Giancana—now identified as one of the gangsters who got the skimming money—reportedly instructed Alderisio to avoid any appeal action that might bring forth a disclosure of the vast casino thefts.

But Alderisio, Kolod and their lawyers didn't handle it that way.

FBI TESTIMONY

Their appeal—as yet undecided—provoked the FBI testimony about the multi-million-dollar skimming racket.

The chief defense counsel for Alderisio and Kolod is Edward Bennett Williams of Washington, D.C.

Williams also represents a number of Las Vegas casinos. His clients once included the Desert Inn and Stardust, connected by interlocking management. Williams does not represent either the Desert Inn or the Stardust at this time.

The Desert Inn skimming disclosures came after the Fremont casino boss, Ed Levinson—with Williams as his counsel—filed suit against the FBI, charging his privacy had been invaded by another electronic bug.

The wisdom of suing the U.S. government is something other casino owners have trouble comprehending right now.

In the Desert Inn, a reporter asked Dalitz just what the casinos had to gain by taking the FBI to court.

PUT IN A BIND

"What can I gain?" wailed Dalitz. "I don't want to talk about it."

Across the street in the Stardust, a state-licensed owner, Milton Jaffee, said the casinos had been put in a bind by Levinson's lawsuit.

"I don't want nothing to do with that lawsuit—nothing," he said. "The government's a cinch winner."

"I don't know what Levinson thinks he's doing. You'll have to ask him."

Levinson, in turn, passed the buck of comment to Williams.

"I've been told not to talk about any of this," said Levinson. "Call Williams in Washington."

Another casino-owner, Hy Abrams of the Sands, announced he would talk to a reporter only in the presence of his lawyers—all four of them.

Then Abrams indicated that he might reply to just one question on his own.

"When did you last see Meyer Lansky?"

"I'm not going to answer any question like that," said Abrams.

Tuesday: How the skimmers go about it.

[Chicago Sun-Times, July 12, 1966, p. 2, col. 1]

LAS VEGAS.—Come along to the counting room where the gangsters' bonanza of black money was skimmed from the winnings of a gambling casino.

The skimmed cash was counted in the casino executive suite. Step inside for a look at chicanery, thievery and tax-cheating on a vast scale.

The skimming loot was staggering. It topped $6,000,000 here in a year. That much was stolen from just six of the scores of casinos in downtown Las Vegas and on the gambling strip outside the city.

Once skimmed, the stolen cash was placed in numbered envelopes and dispatched around the country to top mobsters, including Chicago's Anthony Accardo and Momo Salvatore Giancana.

Occasionally the skimmed cash was even distributed to individuals outside the national crime syndicate for having rendered special services.

PAYMENT GOES TO NOTABLE

A Hollywood film star received a four-figure payment of skimming money three years ago. It was a tax-free bonus on top of his regular fee for an appearance in a Las Vegas night club.

Other payoffs from the stolen casino cash have gone to financiers who helped the Las Vegas gamblers swing big deals in legitimate business.

Investment in legal enterprises was a key factor in transforming the gangsters' "black" skimming money into clean, legitimate profits.

By skimming off millions before casino winnings were reported, the gangsters escaped Nevada and federal taxes. Here's how it was done:

Regular skims of cash took place at the end of each casino shift, when the drop boxes of money from the gambling tables were toted up in an office off the cashier's cage.

Only casino owners were permitted there during that count. But many of the pit bosses and cashiers who brought the money to the owners had knowledge of the skimming.

HOW WORKERS GOT THEIR SHARE

To buy the silence of those casino workers, a smaller, $5,000-a-month skim was set up for them. It wasn't completely effective, however.

Some casino employes, irked because their black money was a pittance by comparison to the whopping amounts harvested by the gangsters, were willing to talk to authorities about skimming.

When between $100,000 and $200,000 had been set aside in the casinos—that was once or twice a month in the year of the Big Skim—the cash was taken to the casino executive office where the gangsters' front men gathered to count and divide it.

The big headache in skimming was splitting the take to the satisfaction of such suspicious chiselers as Giancana, Accardo, and Miami hoodlum Meyer Lansky.

Their cuts of the black money were set by coded records that state and federal tax collectors never saw.

The secret records were a hodgepodge of tally sheets, memo books, and scraps of paper on which gangsters were listed by nicknames, initials and numerals.

THERE WAS CHAOS

If, as happened frequently, the count didn't come out even, there was chaos as the worried skimmers shuffled through stacks of currency and money bags again and again.

At a 1963 skimming session, a casino boss and courier pawed over $168,000 in greenbacks attempting to straighten out cash and records for an accounting demanded by Lansky.

That count went into overtime, lasting almost two hours. It usually took the skimmers only about an hour to split the money, put in on the books and dispatch it.

The skimmers use different systems to keep track of the cash and that was another source of trouble.

USED BOOKIE SYSTEM

One casino cashier used the bookie system of ins-and-outs when he skimmed. The skimmed cash was listed as "ins" and the gangsters' shares as "outs."

Another sticking to gangland tradition, kept his records in a little black book. But his couriers used the ins-and-outs system and their figures often conflicted with his.

In the year of the Big Skim, $6,000,000 disappeared from six state-licensed casinos, the Fremont, the Horseshoe, the Desert Inn, the Sands, the Stardust and the Flamingo.

SENT AROUND COUNTRY

The executive suites of the Fremont and the Desert Inn were the central collection headquarters for the cash stolen from the other casinos. From these two locations, the money was dispatched around the country.

Accardo received a share of the boodle diverted from the Fremont, Sands, Flamingo and Horseshoe.

Giancana got his cut from skimming at the Desert Inn and Stardust.

It would appear, from the amounts skimmed by the casino combines over two months in 1962, that Accardo had the best of the deal.

In one month, the Desert Inn-Stardust skimming was $132,000. The next month the two casinos did even better, skimming $138,000.

THE BIGGEST STEAL

But the four other casinos, at the same time, sluiced off $168,000 one month and $150,000 the next for Accardo, Lansky and others.

In fact, the biggest steal of all was in the Fremont-Sands-Flamingo-Horseshoe hookup early in 1963. It came to $320,000.

That record theft was not achieved voluntarily, however.

The skimmers were working under pressure. The previous month, they hadn't tended to business and got behind. Then they had to grab the $320,000 to square accounts with Lansky and New Jersey rackets chief Gerardo (Jerry) Catena.

For years, Nevada officials looked high and low for evidence of skimming but were unable to find it.

As it turned out, they were looking in the wrong place. State agents spot-checked the cashiers cages while the big thefts took place in the casino executive suites.

CONFIRMED BY FBI

The existence of skimming finally was confirmed by the Federal Bureau of Investigation, which disclosed in federal court at Denver two weeks ago that hidden microphones had been placed in the Desert Inn.

Dean Elson, FBI chief in Las Vegas, testified that secret shareholders in the Desert Inn were benefitting from "a vast sum of money" being taken off the top of the casino winnings.

Nevada state officials, acting on the request of Gov. Grant Sawyer, have since opened an inquiry into the FBI bugging but no inquiry has been started into the skimming practices or the charges that secret owners benefit from the casino gambling business.

OWNERSHIPS SHIFTED

The Gaming Control Board and the Nevada Gaming Commission have the authority to put any casino out of business by revoking the state license of its owners of record.

The secret casino interests sometimes are juggled by the gangsters' representatives at skimming sessions after the count of the black money. The mob front men shave one hidden interest and then another to gain extra shares for themselves or a hoodlum.

As they shift around the secret ownership, the gang agents must be sure that the total—the sum of the secret shares, and the holdings of state-licensed owners—does not exceed 100 per cent.

But now and then the swaps of the hidden shares are as chaotic as the dreadful times when the skimming count goes awry.

Once, in the Stardust, the conferee toted up the secret shares and legitimate holdings to find they had parceled out 110 per cent of the casino.

[Chicago Sun-Times, July 13, 1966, p. 2, col. 1]

LAS VEGAS.—Eight bagmen and a brunet satchelwoman were the couriers who hauled $6,000,000 to Chicago gangsters and other mobsters from gambling casinos here.

Packed in the attache cases of the bagmen—the woman used a black leather handbag—was cash skimmed illegally from the hoodlums from the winnings of six casinos.

So vast was the skimming thievery that the money movers fanned out from here several times a month to make the deliveries of currency to the mob.

Each toted a fortune—between $100,000 and $200,000.

Most of the casino loot went directly to the gangsters in Chicago, Miami, New York, New Jersey and Cleveland.

But sometimes the messengers dropped the money in foreign banks which kept secret the names of depositors.

The skimming money delivery network was circuitous and devious. It had to be, for the carriers of the money were key figures in a huge national conspiracy to cheat the U.S. government and the State of Nevada out of taxes on the skimmed funds.

EAST, NORTH, THEN WEST

The stolen casino cash was transported from Las Vegas to Miami and then up the East Coast to New Jersey and New York.

From there, the couriers traveld west, dropping off the cash in Cleveland and Chicago.

As they hauled the skimming money across the country on jet planes, many of the couriers appeared as businessmen, but a few were sporty. One was dressed in a pink sweater and blue slacks to pick up $136,000 for New Jersey gangsters at the Miami airport.

Earlier, the brunet girl friend of a casino boss popped up on the delivery circuit to carry $115,000 in her handbag as she went by train from Las Vegas to Miami.

BOTH HANDS ON HER PURSE

Whatever their pose as couriers, all of the messengers had one thing in common—a tight grip on the satchels that contained the mobsters' money.

One courier had the habit of putting his briefcase of money on the floor of the aircraft and planting both feet on it.

The bagwoman, on her three-day train journey from Las Vegas to Miami, clutched her cash-crammed purse with both hands whenever she ventured out of a roomette.

The gangsters insured themselves against any losses with a simple policy. It was that a courier who lost his bag risked losing his life along with it.

Among the couriers were:

1. George Gordon, 57, of 628 88th St., Surfside, Fla., a former big-time bookie who is on the payroll of the Desert Inn Casino.

Packages of skimming money for Chicago gang chiefs Momo (Moe) Salvatore Giancana and Anthony Accardo were carried by Gordon.

When he isn't carrying a satchel of skimming cash, Gordon travels across the nation, dunning hard-luck crapshooters to pay their debts to the Desert Inn.

2. Benjamin Seigelbaum, 63, who hauled cash from four casinos here to Miami gangster Meyer Lansky. Seigelbaum lives in Miami Beach.

Gordon was a member with many Las Vegas casino owners in a huge Newport (Ky.) bookie ring. His police record includes arrests in New York for dry law violations and possession of opium.

The stocky Seigelbaum has been seized by authorities in the past for concealing assets in bankruptcy, black marketing and embezzlement.

Another skimming courier, a playboy, carried payoffs to Miami until his penchant for gambling caused the gangsters to strip him of his satchel on the suspicion that he might steal from them.

Other members of the nine-man courier team were owners of casinos here.

One owner—when his international money mover was sidelined temporarily—moved more than $200,000 from Miami to vaults in Jamaica. Another casino chief diverted cash from the Desert Inn and carried it down to Miami himself.

The skimming racket here is mastermined by Lansky, a former New York racketeer.

His present base in Miami caused the stolen casino cash to be funneled through that city before it was passed on to other mobsters.

KEEPS THE SPLIT STRAIGHT

Lansky kept the split straight, making sure that each gangster received $2,000 a month from each of their secret shares in the Las Vegas casinos.

He also fixed at $52,500 the price for which the hidden casino interests could be peddled in Cosa Nostra markets.

The $6,000,000 was skimmed from six casinos—the Desert Inn, the Stardust, the Fremont, the Sands, the Flamingo and the Horseshoe.

The exact total of Lansky's undercover holdings in the casinos is unknown.

It may be computed, however, from the $84,000 he received in just one of the monthy skimming payoffs. The money came from a total skim of $150,000 in the Fremont, Sands, Flamingo and Horseshoe.

At the Lansky-set rate of $2,000 a month from each hidden share, the $84,000 indicates that he held 42 shares in one or more of the four casinos.

That probably makes Lansky the biggest of all the undercover casino owners.

After Lansky got his end, the couriers carried on the skimming money to New York and Chicago.

The total for Accardo and Giancana topped $100,000 a month. By Lansky's formula, it may be deduced that the Chicago mob had more than 50 secret casino shares.

In New Jersey, the payoffs were received by Gerardo (Jerry) Catena, Angelo (Gip) DeCarlo and Anthony Boiardo.

DeCarlo had two secret shares in the Horseshoe and the Fremont and three fourths of a share in the Sands.

The interests of Catena and Boiardo never have come to light. But a $48,000 skimming payment to Catena one month indicated that Catena had some 24 shares hidden somewhere in the Fremont, Sands, Flamingo or Horseshoe.

In New York, cash skimmed from those four casinos was dropped to mobsters Vincent (Jimmy Blue Eyes) Alo and the Eboli brothers, Pasquale and Thomas.

CLEVELAND MOBSTERS' TAKE

In Cleveland, skimming money from the Desert Inn was received by rackets boss John Scalish. His monthly payoff of $52,000 indicated a hidden interest of 26 shares in the Desert Inn.

To accommodate another Cleveland mobster, Frank Milano, a special Mexican spur of the skimming delivery track was set up.

Milano's money from secret ownership in the Desert Inn was taken to him in Mexico City, instead of being channeled through Lansky with the other payoffs.

Reports of skimming in the Las Vegas casinos were discounted by Nevada officials until two weeks ago, when it was disclosed in federal court in Denver that the Federal Bureau of Investigation was probing the racket.

Nevada authorities have the power to revoke gambling licenses and shut down a casino on any evidence that the owners are dealing with Lansky or other hoodlums.

Senator McCLELLAN. Let me ask you one thing. Prior to Mr. Clark's recent elevation to the position of U.S. Attorney General, is his experience comparable to those others whom we have quoted? In other words would his experience lend greater weight to his conclusions than would the experience of others you have cited?

Professor BLAKEY. The fascinating thing about Mr. Clark's position—and I feel myself uncomfortable in discussing it, because I know Mr. Clark to be a scholar, a gentleman, an eminently reasonable man whose mind is open—is to find him taking this position publicly; it

just disturbs me, because based on the public record, it is just not supportable. But he has indicated that he takes this position because he has actually read the FBI wiretaps and logs. I am specifically referring to his testimony before the Celler committee.

Initially, I mentioned to you the testimony of these other witnesses as some indication that other people who have had access to these documents have, I take it, different opinions.

Senator McCLELLAN. Others had access to the same documents?

Professor BLAKEY. Yes. To go beyond that now, all of those documents have not been made public, and therefore there is no way I can discuss what is in them based on the public record.

Senator McCLELLAN. What I was trying to emphasize was that Mr. Clark was only recently appointed to the position of Attorney General, and that does not give him any greater knowledge, necessarily, than he had before, and his opportunity for knowledge before assuming that position was comparable to those who disagree with him.

Professor BLAKEY. That is correct. But let us not leave it just on the basis of what he says and what they say; we have to resolve it. Let us take a look at the record.

It just so happens that in the *Taglianetti* case in Rhode Island certain of these FBI logs were, in fact, made public through court procedures. I have attached an appendix to my statement which includes those logs.

Mr. Clark suggests that the FBI's use of these devices was "neither effective or highly productive." Let's see what the logs show.

The electronic device was directed against Raymond Patriarca. He is the head of the Cosa Nostra family in New England and a member of its national ruling body. His criminal record includes such things as a conviction for armed robbery, for arson and for white slavery. What I am saying, in short, is that the device was not put in indiscriminately. It was put in against a person from whom you could reasonably expect to get significant data. It was in from March 1963 to July 1965. We have out of that 3-year period 10 "airtels," which are summaries of what the FBI overheard. They are just 10 summaries out of a 3-year period. Now, if we take and analyze just those 10 summaries——

Senator McCLELLAN. Would this be 10 separate conversations?

Professor BLAKEY. The FBI periodically——

Senator McCLELLAN. Made a summary.

Professor BLAKEY. Of what was heard and forwarded it to Washington.

Senator McCLELLAN. I see.

Professor BLAKEY. We have here then 10 summaries of what was heard.

Senator McCLELLAN. How many summaries were made during that same period would you say?

Professor BLAKEY. There is no way from the public record that I can indicate, but it is obviously a lot more than 10.

Let me make one more comment here, Mr. Chairman. In dealing with this problem—and I might say I have had this problem in class—sometimes there is a credibility problem. A lot of people just simply do not believe that organized crime is what it is and is as bad as it is,

I have taken students through the Valachi committee hearings, but their attitude has been, "I don't believe it," and to quote as an example of this attitude on a higher level, there is a passage in Arthur Schlesinger's book, "A Thousand Days," (p. 696) in which he notes that a number of criminologists were skeptical of the Department of Justice support of the notion at that time that there was a Mafia. What I find so terribly convincing about these airtels is that here it is from these peoples' mouths—no question about a paid informant—this is it.

What do these 10 airtels give us? I have outlined that in great detail in my statement and I don't want to repeat all of it here. But just those 10 documents establish the existence of the Cosa Nostra; they establish its structure; they establish the functions of the various members; they indicate the power of the various members—for example, of the boss—they give you the size of various families; they give you the geographical extent of their operations; and they indicate that the Cosa Nostra actively operates in such States as Rhode Island, Illinois, Maryland, Washington, New Jersey, Massachusetts, Florida, and Pennsylvania. They give you also an indication that it operates on an international scale; apparently a group is in Canada. They give you an indication of some of the illegal activities by the Cosa Nostra, including murder, kidnaping, extortion, fraud, bribery, loan sharking, and gambling. They give you some indication of their legal activities—the infiltration of business, including legitimate gambling. labor unions, racetracks, vending machines, and liquor. They show you that the associates of this one boss are in every major area of the country and consist of every hood who has graduated from the drugstore cowboy stage; all were contacted at one time or another by Patriarca. The only description that I can give which accurately capsulizes those airtels is this: Imagine if you could have had an electronic device in on an Italian duke in the 16th century, such as Cesare Borgia, who was dispensing largesse, ordering killings, and all that sort of thing. That is exactly what you had when you put the device in on Raymond Patriarca, and it wasn't Italy; it was the United States, and it wasn't the 16th century; it was today.

Senator McCLELLAN. This man is one of about a dozen of heads of families is he not?

Professor BLAKEY. Yes.

Senator McCLELLAN. In the United States?

Professor BLAKEY. Yes.

Senator McCLELLAN. So you can multiply what you here picture as one operation by a dozen.

Professor BLAKEY. And all we have is say 10 glimpses; we have only 10 still shots.

Senator McCLELLAN. That is of just his operation alone?

Professor BLAKEY. Yes, absolutely.

Senator McCLELLAN. And you have at least 10 or 12 more like him with the same power doing the same things in other places in the United States.

Professor BLAKEY. Mr. Chairman, you have 12 members of the Commission, but you actually, according to the President's Crime Commission, have approximately 24 groups.

Senator McCLELLAN. Twenty-four instead of 12?

Professor BLAKEY. The 12 is the "board of directors" and the 24 are the "branch offices" of the whole group.

Senator McCLELLAN. So you have 24 instead of the 12 operating as he does?

Professor BLAKEY. Yes. You have these groups in virtually every major metropolitan area in this country.

Now, from August 1960 to June 1964 I was a special prosecutor in the Department of Justice, and I was at that time in the Organized Crime and Racketeering Section. There I read the normal investigative reports of the IRS and FBI. I give this as background to make this point: I had access at that time to the best that normal investigator techniques could produce. At that time, apparently, the FBI was not making directly available to the Department electronically seized data. We had, of course, generalized intelligence reports which described some of these things, but nothing on the level of the specificity of these airtels. And let me say this, nothing that I saw at any time, in the 4 years that I was there, supposedly at the center of the strongest drive to date against organized crime, manned by the top people in the country, even touched on the specificity of these airtels. If I had had those airtels, and they were legally admissible, and a couple of FBI agents to do a little leg work, I could have made murder cases hand over fist. I wouldn't even have bothered about the gambling cases. But to find now that the Attorney General suggests that this equipment is "neither effective—or highly productive" in light of my own personal experience and my analysis of this information in the public record—I find it just incredible. Mr. Clark must be taking advice from the wrong people.

Senator McCLELLAN. Are you shocked at it?

Professor BLAKEY. I don't want to say that I am shocked, but I can't explain how he can take this position.

Senator McCLELLAN. You simply can't understand it.

Professor BLAKEY. I simply can't understand it. He has taken abnormally bad advice from somebody. I can say for a fact that he can't be taking advice from the men on the line.

Senator McCLELLAN. Do you think he is taking advice from people who know what the facts are?

Professor BLAKEY. I can't believe that he is taking advice from people who know what the facts are, because the advice just simply doesn't reflect the facts.

Senator McCLELLAN. The facts refute the stand he has taken and the course he is following.

Professor BLAKEY. That is my conclusion, Mr. Chairman.

Mr. Clark is also quoted as suggesting that organized crime is but a "tiny part" of the general crime picture. I would like, if I may, in conclusion, register a very serious disagreement with that

Organized crime is not a tiny part. Organized crime is a major problem in this country. Mr. Justice Brandeis, speaking of lawless law enforcement, in his famous dissent in the *Olmstead* case suggested that the Government was a teacher. Well, I am inclined to believe that he is right. I think, too, that the Government teaches, also by its failures. If we are unable to bring these people to book—the top leaders in organized crime—what does that teach our children?

What does that teach the slum kid who wants to work his way up, that he ought to go out and get a job and save and work and do the things that traditionally we have said was the right way to succeed in American life? Or does it teach him that the way to succeed is to be sharp—the way to succeed is to ignore our traditional values.

I am suggesting, in short, that the failure of our society today to bring to book the major leaders of organized crime—I mentioned this morning some of the statistics—5,000 people identified—and we have been able to get maybe 2 percent of them for just a bare conviction—says an awful lot to an awful lot of young people, an dmaybe we can find some of the causes of juvenile delinquency, some of the causes of lawlessness in this country, in the stark realization that crime does pay and, if it does, why should people go with the traditional values?

Senator McClellan. They have more reason now to conclude that crime pays than ever before in the history of this Nation.

Professor Blakey. These airtels are documented proof of it.

Senator McClellan. And the testimony is running daily that it is paying; is that not correct?

Professor Blakey. Yes. What I am suggesting is that no civilized society can long permit the operation in it of an underworld operation that is as powerful and as immune from legal accountability as La Cosa Nostra. The success story of this group is symbolic of the breakdown of law and order increasing the characteristic of many segments of our society. We must show everybody that nobody is above the law. For the simple, the blunt, truth is that these people are today above the law. And that is intolerable.

Senator McClellan. If they are immune from punishment, is that not tantamount to having a supergovernment above our Government—they have become the law?

Professor Blakey. I couldn't agree with you more, Mr. Chairman. I think the best illustration of what you say is this: Raymond Patriarca was discussing, according to the airtels, at one time the murder situation in Boston. You know, there were—there have been something like 43 gangland slayings in Boston—and Patriarca expressed his dissatisfaction with these gangland slayings—that the people in the underworld weren't exercising discipline—and his remark was, "If it doesn't stop, I am going to declare martial law." This remark is symbolic of what kind of power that man has. He can say in all seriousness that he can declare martial law among the underworld in Boston and stop the killings, or attempt to stop killings about which the normal investigative procedures and techniques of law enforcement have been able to do virtually nothing.

This is what I wish Mr. Clark understood, and I think if he did, he would change, and I think Congress could get down to the very difficult task of drawing a fair and effective electronic surveillance statute.

Thank you.

Senator McClellan. Professor Blakey, you have given us some very enlightened testimony with respect to this particular aspect of the overall problem in mounting a successful war on crime.

I do not recall anything you have said or any conclusions that you have reached with which I would disagree. There might be some of your suggestions that I will want to study and weigh further. But I think you have performed a real service for your country by coming here and giving the subcommittee, the Senate, and the Congress the benefit of your knowledge in this field. Personally I am grateful to you for it.

Professor BLAKEY. Thank you, Mr. Chairman.

Senator MCCLELLAN. I appreciate it and we will welcome any further contribution that you might be able to make for us.

Professor BLAKEY. Thank you, Mr. Chairman.

Senator MCCLELLAN. Do not be surprised if I call on you for some help.

Professor BLAKEY. Never hesitate.

Senator MCCLELLAN. Thank you very much.

I would like to have inserted and printed in the record the bill, S. 2050, introduced by Senator Hruska and others on June 29, 1967, and which has just been referred to this subcommittee. It will be printed in the record at this point.

(The bill, S. 2050, follows:)

[S. 2050, 90th Cong., first sess.]

A BILL To prohibit electronic surveillance by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of offenses, and for other purposes

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

SECTION 1. This Act may be cited as the "Electronic Surveillance Control Act of 1967".

SEC. 2. The Congress makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications. In order to effectively protect the integrity of interstate communications and the privacy of parties to such communications, it is necessary for the Congress to define on a uniform basis the circumstances and conditions under which interceptions of wire communications may be authorized and to prohibit any unauthorized interceptions of such communications.

(2) Electronic, mechanical, and other intercepting devices are being used by public and private persons to overhear oral communications, made in private areas, without the consent of the parties to such communications. The contents of these communications and evidence derived therefrom is being used by public and private person, as evidence in court and administrative proceedings. It is also being used by persons whose activities affect interstate commerce. The manufacture, distribution, advertising, and use of these devices are facilitated by interstate commerce. In order to effectively protect the integrity of court and administrative proceedings, to prevent the obstruction of interstate commerce, and to protect the privacy of oral communications, it is necessary for Congress to define on a uniform basis the circumstances and conditions under which the interception of oral communications made in private may be authorized, to prohibit any unauthorized interception of such communications, and to prohibit the manufacture, distribution, and advertising of intercepting devices.

(3) Criminals make extensive use of wire and oral communications in their activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to the administration of justice.

SEC. 3. (a) Part I of title 18, United States Code, is amended by adding at the end the following new chapter:

"Chapter 119.—INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

"Sec.
"2510. Definitions.
"2511. Interception and disclosure of wire or oral communications prohibited.
"2512. Distribution, manufacture, and advertising of wire or oral communication intercepting devices prohibited.
"2513. Confiscation of wire or oral communication intercepting devices.
"2514. Immunity of witnesses.
"2515. Prohibition of use as evidence of intercepted wire or oral communications.
"2516. Authorization for interception of wire or oral communications.
"2517. Authorization for disclosure and use of intercepted wire or oral communications.
"2518. Procedure for interception of wire or oral communications.
"2519. Reports concerning intercepted wire or oral communications.
"2520. Recovery of civil damages authorized.

"§ 2510. Definitions

"As in this chapter—

"(1) The term 'wire communication' means any communication made in whole or in part through the use of facilities (A) for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, and (B) furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

"(2) The term 'oral communication' means any communication uttered within a private area not audible outside of that area through the normal senses or subnormal senses corrected to not better than normal.

"(3) The term 'offense involving moral turpitude' shall include the offense of murder, extortion, arson, bribery, perjury, tax evasion, gambling (if that offense is punishable as a felony), the lending of money or thing of value at usurious rates, counterfeiting, bankruptcy fraud, or any offense involving narcotics, or any conspiracy to commit any of the foregoing offenses.

"(4) The term 'aggrieved person' means an individual who was a party to any intercepted wire or oral communication or any individual against whom the interception was directed.

"(5) The term 'interstate communication' means any communication transmitted (A) from any State to any other State, or (B) within the District of Columbia or any possession of the United States.

"(6) The term 'foreign communication' means any communication transmitted between the United States and any foreign country.

"(7) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any possession of the United States.

"(8) The term 'intercept' means the aural acquisition of the contents of any wire or oral communication through the use of any intercepting device by any person other than the sender or receiver of such communication or a person given prior authority by the sender or receiver to intercept such communication.

"(9) The term 'interception device' means any device or apparatus which can be used to intercept a wire or oral communication other than—

"(A) an extension telephone instrument furnished to the subscriber or user by (i) any communication common carrier in the ordinary course of its business as such carrier, or (ii) an investigative or law enforcement officer in the ordinary course of his duties, or

"(B) a hearing aid or similar device which corrects subnormal hearing to not better than normal.

"(10) The term 'contents', when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, contents, substance, purport, or meaning of that communication.

"(11) The term 'person' means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, or any individual, partnership, association, joint stock company, trust, or corporation.

"(12) The term 'investigative or law enforcement officer' means any officer of the United States, a State, or a political subdivision of a State, who is empowered by law to conduct investigations of, or to make arrests for, any offense described in section 2516 of this chapter and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

"(13) The term 'judge of competent jurisdiction' means—

"(A) the chief judge of a United States district court or such judge as he shall designate, the chief judge of a United States court of appeals or such judge as he shall designate, or the Chief Justice of the United States or such Justice or judge as he shall designate; or

"(B) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications.

"(14) The term 'communication common carrier' shall have the same meaning which is given the term 'common carrier' by section 153(h) of title 47 of the United States Code.

"§ 2511. Interception and disclosure of wire or oral communications prohibited

"(a) Except as otherwise specifically provided in this chapter, any person who—

"(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or attempt to intercept, any wire or oral communication;

"(2) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

"(3) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(b)(1) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, agent, or employee of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication.

"(2) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication or to disclose or use the information thereby obtained.

"(c) Nothing in this chapter shall be deemed to limit the power of the President to obtain information by such means as he deems necessary to protect the United States from actual or potential attack by, or other hostile acts of, a foreign power or to protect military or other national security information against foreign intelligence activities. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing power may be received in evidence in any judicial trial or administrative hearing only where such interception was reasonable, and shall not be otherwise used or divulged except as is necessary to implement that power or on a showing of good cause before a judge of competent jurisdiction.

"§ 2512. Distribution, manufacture, and advertising of wire or oral communication intercepting devices prohibited

"(a) Except as otherwise specifically provided in this chapter, any person who—

"(1) willfully sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other intercepting device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the interception of wire or oral communications;

"(2) willfully manufactures or assembles any electronic, mechanical, or other intercepting device, the design of which renders it primarily useful for the purpose of the interception of wire or oral communications, knowing or having reason to know that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

"(3) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of—

"(A) any electronic, mechanical, or other intercepting device, the design of which renders it primarily useful for the purpose of the interception of wire or oral communications; or

"(B) any other electronic, mechanical, or other intercepting device, where such advertisement promotes the use of such device for the purpose of the interception of wire or oral communications,

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(b) It shall not be unlawful under this chapter for—

"(1) a common carrier or an officer, agent, or employee of, or a person under contract with, a common carrier, in the usual course of the common carrier's business, or

"(2) the United States, a State, or a political subdivision of a State, or an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision of a State, in the usual course of the activities of the United States, a State, or a political subdivision of a State, as the case may be,

to send through the mail, send or carry in interstate or foreign commerce, or manufacture or assemble, any electronic, mechanical, or other intercepting device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the interception of wire or oral communications.

"§ 2513. Confiscation of wire or oral communication intercepting devices

"Any electronic, mechanical, or other intercepting device used, sent, carried, manufactured, or assembled in violation of section 2511 or 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeitures, (4) the compromise of claims, (5) and the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

"§ 2514. Immunity of witnesses

"Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter or any conspiracy to violate this chapter, is necessary to the public interest, such United States attorney, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in a proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

"§ 2515. Prohibition of use as evidence of intercepted wire or oral communications

"Whenever any wire or oral communication has been intercepted, no part of the contents of such communication or no evidence derived therefrom may be received in evidence in any proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State, if the disclosure of that information would be in violation of this chapter.

"§ 2516. Authorization for interception of wire or oral communications

"(a) The Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge, after making the findings required by section 2518(c) of this chapter, may authorize, in conformity with section 2518 of this chapter, the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which such application is made, to intercept wire or oral communications when such interception may provide evidence of—

"(1) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason);

"(2) any offense which involves murder, kidnaping, or extortion, and which is punishable under this title;

"(3) any offense which is punishable under the following sections of this title: section 201 (relating to bribery), section 224 (relating to sports bribery), section 1084 (relating to transmission of gambling information), section 1503 (relating to obstruction of justice), section 1751 (relating to injury to the President), section 1952 (relating to racketeering), or section 1954 (relating to welfare fund bribery);

"(4) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

"(5) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs or marihuana, punishable under any law of the United States; or

"(6) any conspiracy to commit any of the foregoing offenses.

"(b) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for authorizations to intercept, or for approval of interceptions of, wire or oral communications, may apply to such judge for, and such judge, after making the findings as required by section 2518(c) of this chapter, may authorize, in conformity with section 2518 of this chapter, such attorney to intercept wire or oral communications within that State when such action may provide evidence of the commission of the offense of murder, kidnaping, gambling (if that offense is punishable as a felony), bribery, extortion, or dealing in narcotic drugs or marihuana, punishable under any law of that State, or any conspiracy involving the foregoing offenses.

"§ 2517. Authorization for disclosure and use of intercepted wire or oral communications

"(a) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officers making and receiving the disclosure.

"(b) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom, may use such contents in the proper discharge of his official duties.

"(c) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this chapter may

disclose the contents of that communication while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding.

"(d) The contents of any wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this chapter may otherwise be disclosed only upon a showing of good cause before a judge of competent jurisdiction.

"§ 2518. Procedure for interception of wire or oral communications

"(a) Each applicatiton for an authorization to intercept an oral or wire communication or for approval of an interception of such a communication shall be made in writing upon oath or affirmation and shall state the applicant's authority to make such application. Each application shall include the following information:

"(1) the identity of the person who authorized the application;

"(2) a full and complete statement of the facts and circumstances relied upon by the applicant;

"(3) the nature and location of the wire communications facilities involved or the place where the oral communication is to be intercepted;

"(4) a full and complete statement of the facts concerning all previous applications, known to the individual authorizing the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same communication facilities or places specified in the application or involving any person named in the application as committing, having committed, or being about to commit an offense enumerated in section 2516 of this chapter, and the action taken by the judge on each such application; and

"(5) in the case of an application based on the grounds set forth in paragraph (1) of subsection (c) of this section, the number of orders authorizing or approving interceptions by—

"(A) Federal officers, if such application is authorized by a Federal officer,

"(B) State officers, if such application is authorized by a State officer, or

"(C) officers of a political subdivision of a State, if such application is authorized by an officer of that political subdivision,

which have been entered under that subsection on applications based on those grounds and which are outstanding on the date of the application.

"(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

"(c) Upon such application the judge shall enter an ex parte order, as requested or as modified, authorizing or approving interceptions of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that—

"(1) there is probable cause for belief that an offense with respect to which such an application may be filed under section 2516 of this chapter is being, has been, or is about to be committed;

"(2) there is probable cause for belief that facts concerning that offense may be obtained through such interception;

"(3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried; and

"(4) the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, a person who has committed, is committing, or is about to commit such offense.

"(d)(1) If the facilities from which a wire communication is to be intercepted are public, no order shall be issued under subsection (c) of this section unless the judge, in addition to the requirements of that subsection, determines that—

"(A) such interception will be so conducted in such a way as to minimize or eliminate the number of interceptions of wire communications not otherwise subject to interception under this chapter; and

"(B) there is a special need to authorize the interception of wire communications over such facilities.

"(2) If the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used or about to be used, or are leased to, listed in the name of, or commonly used by, a licensed physician, licensed lawyer, or practicing clergyman, or are premises used primarily for habitation by a husband and wife, no order shall be issued under subsection (c) of this section unless the judge, in addition to the requirements of that subsection, determines that—

"(A) such interceptions will be so conducted in such a way as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed lawyers and clients, practicing clergymen and confidants, or husbands and wives; and

"(B) there is a special need to authorize the interception of wire or oral communications over such facilities or in such places:

No such privileged wire or oral communication so intercepted shall be disclosed or used other than as it is necessary in the disclosure or use of wire or oral communications whose disclosure or use is authorized under this chapter.

"(e) Each order authorizing or approving the interception of any wire or oral communication shall specify—

"(1) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

"(2) each offense as to which information is to be sought;

"(3) the identity of the agency authorized to intercept the communications; and

"(4) the period of time during which such interception is authorized.

"(f) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period exceeding forty-five days. Extensions of an order may be granted for periods of not more than twenty days. An extension shall not be granted unless an application for such extension is made in accordance with subsection (a) of this section and the court makes the findings required by subsection (c) of this section.

"(g) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer who determines that—

"(1) an emergency situation exists that requires a wire or oral communication to be intercepted immediately, and

"(2) there are grounds upon which an order could be entered to authorize such interception,

may intercept such wire or oral communication if an application for an order is made in accordance with this chapter, within forty-eight hours after the interception has occurred, or begins to occur, for the approval of the interception. In the event such application for approval is denied, the contents of any wire or oral communication intercepted shall be treated as provided for in section 2515 of this chapter, and an inventory shall be served, in accordance with subsection (i) of this section, on the person whose wire or oral communication was intercepted.

"(h)(1) The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use pursuant to the provisions of subsections (a) and (b) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (c) or (d) of that section. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations.

"(2) Applications made and orders granted under this chapter shall be sealed by the Judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall not be disclosed except in accordance with this chapter, and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

"(3) Any violation of the provisions of this subsection shall be punished as contempt of the issuing or denying judge.

"(i) Within a reasonable time but not later than one year after the termination of the period of the order or extensions thereof, the issuing judge shall cause to be served, on the persons named in the order, an inventory which shall include notice of—

"(1) the fact of the entry of the order;

"(2) the date of the entry and the period of authorized or approved interception; and

"(3) the fact that during the period wire or oral communications were or were not intercepted and recorded:

On an exparte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

"(j) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any criminal proceeding in a Federal or State court unless each defendant, not less than ten days before the trial, has been furnished with a copy of the court order under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the defendant with the above information ten days before the trial and that the defendant will not be prejudiced by the delay in receiving such information.

"(k)(1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision of a State, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

"(A) the communication was unlawfully intercepted;

"(B) the order of authorization or approval under which it was intercepted is insufficient on its face; or

"(C) the interception was not made in conformity with the order of authorization or approval.

such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as provided for in section 2515 of this chapter.

"(2) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (1) of this subsection if the United States attorney shall certify to the judge or other official granting such motion that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

"§ 2519. Reports concerning intercepted wire or oral communications

"(a) Within thirty days after the date of the expiration of an order (or any extension thereof) entered under section 2518(c), the issuing Federal or State judge shall report to the Administrative Office of the United States Courts—

"(1) the fact that an order was applied for;

"(2) the kind of order applied for;

"(3) the fact that it was granted as applied for or as modified;

"(4) the period of time including extensions for which it was issued;

"(5) the offense or offenses specified in the order; and

"(6) the identity of the applying investigative or law enforcement officer's agency, and who authorized the application.

"(b) Within thirty days after the termination of the investigation in connection with which an order (or any extension thereof) was sought, or any trial arising out of such investigation, whichever is later, the Attorney General, or any Assistant Attorney General of the Department of Justice specially designed by the Attorney General, or the principal prosecuting attorney of the State, or the principal prosecuting attorney for any political subdivision thereof, as the case may be, shall report to the Administrative Office of the United States Courts—

"(1) the information required by paragraphs (1) through (6) of subsection (a) of this section;

"(2) the number of arrests resulting from interceptions made under such order, and the offenses for which arrests were made;

"(3) the number of trials resulting from such interceptions;

"(4) the number of motions to suppress made under section 2518(k)(1) of this chapter with respect to such interceptions, and the number granted or denied; and

"(5) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained.

"(c) In March of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications which were made, granted, or denied during the preceding calendar year for authorization or approval of interceptions of wire or oral communications. Such report shall include a summary of the data required to be filed with the Administrative Office by subsections (a) and (b) of this section.

"§ 2520. Recovery of civil damages authorized

"Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter, shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, such communication, and (2) be entitled to recover from any such person—

"(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

"(B) punitive damages; and

"(C) a reasonable attorney's fee and other litigation costs reasonably incurred:

A good faith reliance on an order issued under section 2518(c) shall constitute a complete defense to an action brought under this section."

(b) The table of chapters of part I of title 18, United States Code, is amended by adding the following new item:

"119. Interception of wire or oral communications ..... 2511".

SEC. 4. Section 605 of the Communications Act of 1934 (48 Stat. 1103; 47 U.S.C. 605) is amended to read as follows:

"UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

"SEC. 605. No person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communcation by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress."

SEC. 5. If the provisions of any amendment made by this Act or the application thereof to any person or circumstance is held invalid, the provisions of the other amendments made by this Act and their application to other persons or circumstances shall not be affected thereby.

SEC. 6. (a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective on the date of its enactment.

(b) The provisions of this Act shall not be applicable with respect to any State which, on the date of the enactment of this Act, has in effect a law permitting the interception of certain wire or oral communications, until after the final adjournment of the next regular session of that State's legislature.

Senator MCCLELLAN. In order to accommodate several witnesses who are very anxious to get away, I am going to call Mr. Hastings, Mr. McCullough, and Mr. Wood.

Your testimony, I understand, will be directed toward S. 552.

Very well, Mr. Hastings, state your background, sir, for the record.

STATEMENT OF J. L. HASTINGS, MANAGER OF SPECIAL SERVICES, THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM

Mr. HASTINGS. My name is J. L. Hastings. I am in charge of the railroad police department for the Atchison, Topeka & Santa Fe Railway System, and also vice chairman for the Police Advisory Committee of the Association of American Railroads.

Senator MCCLELLAN. How long have you held these positions?

Mr. HASTINGS. I have held the latter one just for 1 year and the former for 6⅓ years.

Senator MCCLELLAN. I note you have a prepared statement.

Mr. HASTINGS. I do.

Senator MCCLELLAN. With your permission, I will have the statement printed in full in the record at this time, and then let Mr. Wood make a brief statement as to his background.

(The prepared statement of Mr. Hastings follows:)

STATEMENT OF J. L. HASTINGS, MANAGER OF SPECIAL SERVICES, THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM, IN SUPPORT OF S. 552, ON BEHALF OF ASSOCIATION OF AMERICAN RAILROADS

My name is J. L. Hastings. My address is 80 East Jackson Boulevard, Chicago, Illinois. I am Manager of Better Freight Handling and Special Service for The Atchison, Topeka and Santa Fe Railway System. As Manager of Special Service. I am in charge of our Railway Police Organization and therefore am vitally interested in the protection of our passengers and employes. I am Vice Chairman of the Police Advisory Committee of the Association of American Railroads, which consists of 15 members from various railroads in the Northern, Southern, Eastern, and Western parts of the United States, as well as two members from the Canadian Railroads. I appear here in support of S. 552 "To amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

The Association of American Railroads is a voluntary, unincorporated, nonprofit organization. Its membership comprises railroads that operate 96 percent of the total mileage of all railroads in the United States, have annual revenues approximating 96 percent of the total annual revenues of the railroads, and whose employes constitute 95 percent of the total number of railroad workers in the United States.

I would like to speak first on the problems concerning my own railroad and assure you that I am only referring to a few representative cases which have been handled by members of my department in connection with the stoning and shooting at passenger trains.

On September 6, 1965, at San Clemente, California, rocks were through at our passenger train 2/27. One window was broken and the flying glass struck a passenger, inflicting several small lacerations about the side of his face and neck.

In an instance such as this, I'm sure we can all agree the injuries sustained could have been far more severe, possibly with the loss of vision.

Another incident occurred on December 31, 1965, when our Train No. 18 was hit by rocks as it was departing Los Angeles, with the end result of a passenger being struck and cut by flying glass.

More recently we were involved in a case near Kansas City wherein a lady passenger became ill from shock when a rock crashed through the window where she was seated.

My testimony will outline the general problems faced by the railroads of this country in dealing with acts of vandalism committed against trains and other vehicles operating on railroad rights of way. It will set forth and discuss some of the vandalistic acts which have occurred on certain other railroads of the country and will outline some of the activities of the railroads which have been undertaken in an effort to combat the problem. In addition to my statement, Mr. D. L. Wood, Chief Special Agent, Illinois Central Railroad; Mr. W. F. Meeker, Inspector of Police, and Mr. E. C. Sloan, District Claim Agent, Pennsylvania Railroad, will present the Committee with information relating specifically to problems which have arisen on the individual railroads they serve. My statement will also indicate how it is expected that the provisions of S. 552, if enacted, would be useful in combatting vandalism and will offer a minor amendment which, in our opinion, is necessary in order that S. 552 might better meet the problem.

There is nothing new about the problem with which the railroad industry is confronted except that it is a growing one and one which we have not been able to solve under existing law and law enforcement. Over the years, the matter has been the subject of numerous conferences, and the like, in a search for a better and more effective way to deal with it. For example, in 1964, under the sponsorship of the Association of American Railroads, the matter was aired extensively at a national conference of railroad police and protection officers. At the conference it was brought out that vandalism to the railroads presents a major problem today, and by far, the most common and most serious act of vandalism is stoning or shooting at passing trains. We are presently attempting to combat this problem through meetings held with parent-teacher organizations and other civic officials. You will find under the first attachment excerpts from the report of the 1964 meeting explaining some of the projects directed to this problem. This includes a commentary on the Railroad-Scouting Cooperative Program. The cooperation between the American railroads and the Boy Scouts of America has already produced some tangible results. A Railroading Merit Badge Course is offered to instruct the youngsters in railroading operations including safety. Attachment No. 2 gives evidence of the industry-scouting cooperation existing in Maine.

In the time available since it become apparent that hearings were to be scheduled on S. 552, the Association of American Railroads has been able to obtain from several railroads some rather detailed chronological data setting forth the record of vandalistic acts regularly occurring on such railroads which would be made a criminal offense under Federal law if S. 552 were to be enacted. Attached to my statement is such data furnished by the New Haven Railroad (Attachment No. 3), and the Rock Island Railroad (Attachment No. 4). The Chicago and North Western Railroad has submitted a memorandum which lists the material and labor costs involved in replacing broken windows (Attachment No. 5). Also attached is a summary of such reports covering occurrences on the Santa Fe Railway (Attachment No. 6). Information relating to the Pennsylvania Railroad and the Illinois Central Railroad is not included herein but is being furnished the Committee by the witnesses that will follow me and who are prepared to answer any questions members of the Committee may have with respect to data involving those two railroads. The problem is more serious on some railroads than on others. It can certainly be said, however, that it is national in scope and the same kind of vandalistic acts occur irrespective of the geographic area served. The three railroad witnesses here today represent railroads which serve the Eastern, Southern, and Western sections of the nation.

From the information attached it will be seen that the kinds of acts which most frequently occur are the following:

1. The stoning of trains.
2. The shooting of rifles at trains.

Of paramount importance to this Committee and also to the railroad industry is the unfortunate fact that as a result of the existing vandalism, people are suffering physical injuries. On the Rock Island Railroad alone during the year 1966, the records indicate that at least 25 persons were hurt as a result of vandalistic actions. Often such personal injuries are inflicted upon train crewmen as well as upon train passengers. In some particular areas train crewmen are actually fearful for their safety and apprehensive of performing certain assignments over certain routes, in particular, because of the frequent incidents of stoning and shooting. In this regard it is our understanding that a representative of railroad train crew employes will appear before the Committee in support of S. 552.

It should be emphasized that we are not dealing with a mere nuisance problem. Some occurrences have resulted in serious injury. Anytime anyone fires a bullet at a train it is possible that someone may be killed. Indeed this has happened. In 1959, for example, on the St. Louis–San Francisco Railway an express messenger riding in the caboose of a train near Belton, in Cass County, Missouri, was struck in the forehead by a .22 caliber rifle pellet and was instantly killed. Just about three years prior to that a soldier in the United States Army was struck by a .22 caliber rifle pellet while riding as a passenger on a train near Nichols, Greene County, Missouri.

Citing another instance on my own railroad, on October 30, 1966, numerous windows were broken in a passenger train near Carlsbad, California, and the engineer sustained several lacerations to his left arm and hand.

In another case near Belen, New Mexico, the windows of a Pullman car were broken by a .22 rifle slug.

On February 22, 1967, near Wichita, Kansas, trainmen reported unknown person fired several rifle shots at the engine. The engineer reported by radio that he had been forced to seek refuge on the floor of the engine cab to avoid these shots.

Still another case occurred on July 31, 1966, at Chicago when a bullet entered a window of the left side of RPO car, passed through a bag of mail and out a window on the opposite side of the car.

A shocking example of the threat to human life posed by vandalous acts was portrayed in newspaper accounts of the death of a Pennsylvania woman in 1960. While riding a commuter train on the Reading Railroad this woman was killed by flying glass when a window was shattered by a rock thrown at the train. (Attachment No. 7)

It follows that passengers who have been injured in such accidents will be reluctant to utilize railroad services in the future after having undergone such an experience. Likewise, it follows that passengers on trains who have witnessed such acts may have some hesitancy about their safety which will very likely influence their decision whether in the future to travel by railroad.

While our primary concern relates to the fact that people are being hurt and in some instances killed, we are also concerned that the railroads suffer financial loss as a result of these acts. Our claims filed indicate that such loss in terms of direct expense to the carrier is significant.

The needless waste involved in terms of property damage directly resulting from the stoning of and shooting at passenger trains is illustrated by a simple reference to the number of broken windows which have to be repaired by practically every railroad each year. The Chicago and Northwestern Railroad, for example, reported that during the year 1966 it was necessary to replace 3,014 windows which had been broken in this way. The New Haven Railroad reported that in the same year it was necessary for them to replace 1,011 windows for the same reason. The extent of the problem varies from railroad to railroad but it is fair to say that it occurrs to some degree on all railroads. When it is considered that there are around eighty major railroads operating in the United States, and large numbers of smaller ones, the magnitude of the problem (where 4000 windows in one year have had to be replaced on two railroads alone) is readily apparent.

The property damage is not limited to broken windows but is sometimes extensive with respect to an individual stoning or shooting. A very recent example was covered in the Washington Post Newspaper of November 3, 1966. A four Column story with picture, copy attached, shows that as a result of stoning six cars of a train were derailed. According to the article "a crew of 125 men working with three railroad cranes labored through the day to remove the damaged cars, clear and restore the torn tracks, and restore normal service." A reporter on the scene reported the spontaneous comments of a special

duty engineer who was aboard the locomotive at the time of the accident: "We're at their mercy. We get stoned every day." I am certain this engineer meant from rocks.

There is a need for enactment of S. 552. The evidence indicates clearly that local law and local enforcement are not adequate to meet the problem. It must be said, however, that State and local police departments are aware of the problem and have made every effort to curb these acts of vandalism. I have submitted examples of some efforts of three such agencies: The Chicago Police Department (Attachment No. 8); The Maryland State Police (Attachment No. 9); and the Baltimore City Police Department (Attachment No. 10).

Many of the offenders are never apprehended. In some cases this is the result of the inability of local police to devote the time and effort necessary to discover the perpetrators. In others, the action may have occurred at isolated places along the railroad rights-of-way where there is little local law enforcement available.

It is easy to say that enactment of Federal legislation will not improve the situation. However, this overlooks the fact that some of the vandalism results in major personal injury or property damage with respect to which all possible means of solution should be directed. At the very least enactment of S. 552 would make it possible to call in the F.B.I. to assist in the apprehension and conviction of offenders whose acts have resulted in major injury or loss. More importantly, it should be borne in mind that making such acts Federal crimes would be a substantial deterrent against the possibility of such acts occurring. It is in this area where the most fruitful possibility for improvement exists since the major goal is the prevention of such acts rather than simply apprehending those who commit them. It has been our experience that simply making it known that certain conduct is a Federal offense tends to deter some such activities. The F.B.I. has been very cooperative in this regard and has provided printed warnings (Attachment No. 11) with respect to other Federal crimes for posting in and around depots and yards. It is believed that such warnings serve as a positive deterrent.

On the Santa Fe we have a printed poster (Attachment No. 12) describing the U. S. Code, Title 15, Chapter 31, which covers the destruction of property moving in commerce. We have distributed these notices at strategic points over the Santa Fe System and have met with a certain degree of success in minimizing the damage to our freight. This statute has been utilized with the assistance of the F.B.I. and some arrests and successful prosecutions in Federal Courts have resulted.

The railroad industry has grappled with this problem for many years and has exerted a considerable amount of energy towards its elimination. Whenever possible we have our Special Agents ride the trains with two-way radio communication between the officer on the train and the one following in the patrol car. We also on occasion have supplied the officer riding the train with a camera so that we may photograph subjects trespassing along the rights-of-way for the purpose of identification and subsequent handling with the police department. A certain amount of success has been attained through this method of control, however, many locations are not readily accessible to the immediate arrival of officers. Often the culprit is obscured by cover of darkness, hidden by shrubbery or suddenly disappears into a house and is difficult to locate and identify.

There is nothing new about the concept of Federal criminal statutes to deal with this kind of criminal action. There is a Federal train wrecking statute, for example (18 U.S.C. 1992); a statute making it a Federal crime to destroy or injure property moving in interstate or foreign commerce (15 U.S.C. 1281); and a statute making it a Federal crime to embezzle or steal interstate or foreign shipments (18 U.S.C. 659). In such statutes Congress has previously recognized the National interest in similar matters and the need for Federal action. While these statutes to some extent overlap local and state law and are not in continuous use for enforcement purposes we firmly believe that their mere existence is important as a deterrent to the commission of criminal actions to which they apply.

My testimony and that of railroad witnesses who will follow me shows that a considerable number of the acts with which we are attempting to deal occur with respect to commuter or other short run passenger trains in metropolitan and urban areas. While the point is arguable it is possible that the present wording of S. 552 might not apply in these circumstances since, technically at least some of these trains might be said to be operating in intrastate service and not in interstate or foreign commerce. To make it eminently clear that the bill covers the entire problem, including commuter and short run train service, it is recom-

mended that S. 552 be amended to apply to any train, engine, motor unit or car used, operated, or employed "on the line of any common carrier engaged in interstate or foreign commerce."

In summary, it is very clear that existing law enforcement is not adequate. The number of violent and vandalistic acts which regularly occur are of a serious nature involving substantial personal injury, heavy property damage, and significant financial loss. Even though making such acts Federal criminal offenses, as S. 552 would do, will not solve the entire problem in our opinion it is essential legislation which will serve as a deterrent against the commission of such acts and will also be useful as an additional tool of law enforcement particularly in cases of more serious proportion.

S. 552 should be amended to make certain that it reaches all aspects of the problem including commuter and metropolitan services. There should be no opposition to this proposal for the reason that the only persons who might object are those to whom its provisions are directed. We respectfully request that the Committee approve and report S. 552, including the two amendments suggested herein, and that it be enacted.

LIST OF ATTACHMENTS

1. Excerpts from Reports of the 44th Membership Meeting; Railroad Police Officers—Association of American Railroads (Trespassing and Safety Education; Vandalism)
2. *Maine Central Messenger*, Maine Central Railroad Co., May, 1966.
3. New York, New Haven and Hartford Railroad Company. Record of Stonings, Etc., of Passing Trains. (1966–67)
4. Chicago, Rock Island and Pacific Ry. Co. Record of Stonings.
5. Chicago and Northwestern Railway Company, Inc. Memorandum dated May 23, 1967.
6. Memorandum and Summary dated June 5, 1967, Atchison, Topeka and Santa Fe Railway System, Inc.
7. Newspaper Accounts of Death of Woman Caused by Stoning Incident.
8. Chicago Police Department Bulletin; Juvenile Vandalism and the Railroads, 19, August, 1963.
9. Maryland State Police Bulletin; Juvenile Vandalism and the Railroads, December 1, 1963.
10. Baltimore City Police Department Bulletin; Juvenile Vandalism and Trespassing on Railroad Property, July 2, 1965.
11. Federal Bureau of Investigation; Notice to Public.
12. Atchison, Topeka and Santa Fe Notice to Public.

STATEMENT OF D. L. WOOD, CHIEF SPECIAL AGENT, ILLINOIS CENTRAL RAILROAD

Mr. WOOD. My name is D. L. Wood. I am chief special agent of the Illinois Central Railroad headquartered in Chicago.

I am past president of the Police Advisory Board of the Association of American Railroads. I have held the position of chief special agent of the Illinois Central Railroad for 20 years. Prior to that I was 7 years with the FBI stationed in Atlanta, Washington, and Chicago.

Senator MCCLELLAN. Very well. I am going to let your statement be printed in the record at this point in full.

(The prepared statement of D. L. Wood follows.)

STATEMENT OF D. L. WOOD, CHIEF SPECIAL AGENT, ILLINOIS CENTRAL RAILROAD, IN SUPPORT OF S. 552 ON BEHALF OF ILLINOIS CENTRAL RAILROAD AND THE ASSOCIATION OF AMERICAN RAILROADS

My name is D. L. Wood and I am Chief Special Agent of the Illinois Central Railroad with headquarters at 135 E. 11th Place, Chicago, Illinois. I am appearing on behalf of the Illinois Central Rairoad and the Association of American Railroads to support S. 552 "to amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

I have a B.A. degree from Macalaster College at St. Paul, Minnesota, LL.D. degree from St. Paul College of Law and am a member of the Bar of the State of Minnesota. I have worked with young people as a public school teacher and as a coach of basketball and football. From 1940 until 1946, I served as Special Agent, Resident Agent, and Supervisor with the Federal Bureau of Investigation. In December 1946, I resigned from the FBI to accept a position as Chief Special Agent in the Special Agents Department of the Illinois Central Railroad, a position I still hold. I am past President of the Police Advisory Committee of the Association of American Railroads, the Chicago Railway Special Agents and Police Association, and the Special Agents Association of Chicago. I am a charter member of the American Society for Industrial Security.

At the present time, there is federal legislation making it a criminal offense to steal from an interstate shipment. There is also federal legislation making it a crime to maliciously destroy property involving interstate train movements. Further, it is a federal offense to derail or attempt to derail trains in interstate movement as well as to embezzle funds from an interstate carrier or to falsify records involving interstate movements of trains.

To my knowledge, there is no federal legislation making it a criminal offense to injure a person, either a passenger or crew members, on an interstate train movement.

It would appear to me logical and necessary to have such legislation inasmuch as life is the most valuable commodity in existence.

The problem of shooting or stoning of trains is one which has confronted the railroads for many years. In recent years, this problem has become more acute because of the increase in population and the increase in urban communities developing along railroads. The seriousness of stoning or shooting trains cannot be over-emphasized. The potential dangers of injury are terrific. The possibility of flying glass may be fatal or injurious to the eyesight, which is of most serious consequence.

By way of statistics, on the Illinois Central Railroad in 1966, we had 251 incidents of stonings or shootings at trains. One hundred thirty-eight (138) of these incidents were of sufficient seriousness to cause lawsuits to be filed against the Illinois Central. Any one of these incidents might have been the cause of death or a more serious type injury.

The most serious of these incidents in 1966 occurred in Chicago on June 30. A fifty-year-old woman was riding one of our trains when the train window was struck by a rock. A piece of flying glass entered her right eye and resulted in the complete loss of sight in that eye. Other passengers on the train were injured, but not seriously. This accident has resulted in a lawsuit which is still pending against the railroad in the amount of $200,000.

In July 1964, also in Chicago, a woman was injured as the result of a train stoning. A piece of glass entered her eye, but fortunately the injury was not as serious as the one previously cited.

Approximately ten years ago, a woman was riding one of our trains in Chicago, and the train was shot by two youths. A pellet of the .22 rifle shot by one of the youths entered the woman's neck, and the pellet lodged so close to the spinal cord that the doctors were afraid to operate for fear of total paralysis. The woman still carries the pellet in her neck.

In 1967, for the first four months, we have had a total of 67 stonings or shootings at trains. Ten of these resulted in injuries of such a serious nature that suits have been filed against the railroad. In 1965, we had a total of 290 stonings or shootings, 106 of which resulted in lawsuits against the railroad. Attached to my statement is a record of incidents of stoning and shooting at suburban trains which was compiled during the period of August 1, 1965 to July 31, 1966.

The following is a list of some examples of stonings or shootings which have occurred involving trains of the Illinois Central Railroad in 1966 and 1967. It will be observed from the following examples that some of those responsible for such acts were apprehended and dealt with in one way or another. Unfortunately, not all offenders were caught, however. Even if all of the offenders were now being apprehended, in my opinion enactment of S. 552 would be helpful as a deterrent to the commission of such acts. The Illinois Central Railroad as well as other railroads conduct extensive educational and other campaigns in an attempt to prevent the occurrence of acts of vandalism. The existence of a law making such acts a federal crime could effectively be used in this program and would constitute an impressive additional factor in demonstrating the importance of the matter.

On January 2, 1966, a juvenile shot at our passenger train "The City of New Orleans" near Frenier, Louisiana. He broke a window in the observation car,

but there were no personal injuries. He also shot and damaged several signal control wires in the area. The juvenile was identified and later appeared in court, at which time he was placed on indefinite probation.

On February 8, 1966, a college student threw a soft drink bottle at a passenger coach of a Missouri Pacific train operating on Illinois Central lines near Baton Rouge, Louisiana. There were no personal injuries. The student was apprehended and handled on a local basis.

On February 14, 1966, three juveniles threw stones at Illinois Central passenger train "The Panama Limited" at New Orleans. They broke several windows in one of the coaches and due to the coach being equipped with safety glass there were no personal injuries. As a result of our investigation, we were reasonably sure of the identity of the juveniles who caused this damage, but since they denied throwing the stones, we were unable to take any positive action.

On March 6, 1966, an engineer of one of our freight trains reported that juveniles had shot at his train with a 22 rifle and had broken a window in engine #443. This occurred near our freight yard at New Orleans. It was determined that this damage was caused by one of a group of juveniles who were handled in juvenile court and placed on one year's probation by the judge.

On March 18, 1966, at Rosine, Kentucky, an unknown person or persons shot at our freight train, narrowly missing the train engineer.

On June 2, 1966, two juveniles shot at our passenger train #3 near New Orleans, Louisiana. The pellets from the gun struck the side of the engine cab but fortunately no one was injured. The two juveniles unfortunately were not identified and as a result were not apprehended.

On June 7, 1966, a juvenile shot and damaged the windshield of an Illinois Central engine at Reserve, Louisiana. There were no personal injuries. The juvenile was handled on a local basis, and the parents made restitution for the damage.

On November 28, 1966, a juvenile threw a stone at our freight train at Hopkinsville, Kentucky, striking the train engineer. Fortunately, he was not injured. This was handled with the local juvenile officer.

On June 5, 1967, a freight train was shot at near Dubuque, Iowa, resulting in a broken caboose window. One of the pellets from the gun or a piece of glass struck the head of the brakeman, but fortunately he was not injured. In this instance, it was almost miraculous that the brakeman was not seriously injured. Unfortunately, the guilty party or parties were not apprehended.

These are just a few. It will be noted that I have included some incidents where the offenders were caught. Unfortunately not all of them are apprehended. In my opinion, even though some of the offenders are now being caught, enactment of S. 552 would be of significant benefit as a deterrent to the commission of such acts.

The Illinois Central Railroad has attempted to not only patrol its property to prevent injury to its patrons, but has also carried on an educational program for many years attempting to depict the dangers of being on railroad property. These programs have had two thoughts in mind: one, if we educate the juvenile to stay away from our property, the juvenile will not be injured; two, since approximately 90% of all shootings or stonings of trains are performed by juveniles, if we can keep the juveniles away from our property, we stand a good chance of protecting our patrons.

In 1966, various members of the Special Agents Department contacted schools and other youth organizations located near our right of way. This was for the purpose of showing juvenile safety films. During 1966, 417 film showings were made with an attendance of 59,175. During our patrol of the right of way, we removed 2,813 juveniles. It has been the policy of this department that whenever possible the juveniles are taken home and the dangers of their trespassing explained to the parent or guardian. When it is not possible to take the juvenile home, he is warned and released providing he has not done any damage. A letter is then mailed to his parents with a copy sent to the school which he attends. This letter points out the date, time, and location where the juvenile was found on our right of way. It is our intention to pursue this policy to even a greater extent in an effort to reduce the number of depredations against the railroad, especially those which cause heavy damage, injury, and death.

During 1966, as well as in years past, we have sought and have been given public service time on local television and radio stations. We have made slides for showing on TV and have recorded spot announcements for radio programs. In the time allotted in these lines of communication, we have attempted to depict

the danger to the juvenile by his trespassing on railroad property. On the Illinois Central Railroad, we have a coined phrase—"The World's Most Dangerous Playground". We use this phrase in an effort to "drive home" the danger to the juvenile by his being on the railroad. We have also had many articles published in local newspapers all along our line. A sample of this which recently appeared in the Delta Democrat Times at Greenville, Mississippi, is attached. In an effort to "bring home" the danger of trespassing on railroads to the juvenile, we have conducted tours of Boy Scouts, other youth organizations, as well as school classes, through railroad facilities as well as having them on board our passenger trains to see how a railroad is operated. We are of the opinion that if we can educate the child to the dangers of trespassing on a railroad, we can do much to minimize depredations also.

In addition to the above, because of the many depredations which occur in the city of Chicago, we have furnished a monthly report to Superintendent O. W. Wilson of the Chicago Police Department and others, indicating the date, time, location, and type of depredation. It is agreed that most of our depredations occur in the highly congested areas. However, we can show to the other extreme that depredations often occur where there are no dwellings near the right of way. We have had obstructions and damage to signals and communication wires where there are no homes for one or two miles.

The Illinois Central Railroad has received wholehearted cooperation from the various law enforcement agencies along our right of way in attempting to combat this serious danger of stoning or shooting at trains. From the above, you can see that the combined efforts of local law enforcement and railroad police have been unsuccessful in controlling this ever-present danger. The passage of Senate Bill S. 552, in my opinion, would be of benefit in controlling this ever-present menace by bringing the federal law enforcement agencies into this situation.

[The Delta Democrat Times, Greenville, Miss., Apr. 28, 1967]

PUBLIC FORUM: THE WORLD'S WORST PLAYGROUNDS FOR KIDS ARE AROUND RAILROADS

(By T. W. Wilkinson)

EDITOR'S NOTE: Today's contributor to the Public Forum is T. W. Wilkinson, of the special agent department of the Illinois Central Railroad. The Public Forum is open to all Delta Democrat-Times readers. Contributions should not exceed three double-spaced typewritten pages, be libelous or a personal attack on an individual.

With the approaching end of another school year, vacation time soon at hand, we would like to convey some thoughts to parents and children in the interest of safety. We all look forward to vacation as a time of fun and relaxation and lets take advantage of our well supervised playgrounds, swimming pools, and baseball fields. Railroad trains fascinate many youngsters, especially boys, although many adults pause to watch trains go by.

Through the assistance of the Boy Scout organization, school and juvenile authorities and Police, we are trying to teach youngsters to think for themselves about safety, but some children still get hurt. There is the boy who must always be doing something, perhaps restless at home, and unless his parents check on his play habits, he, and a couple of pals, may drift to the railroad tracks and become possible accident victims. It could happen this way on unsupervised playgrounds. We would like to mention a few safety rules that could possibly save the loss of an arm, leg or life.

Keep away from railroad cars, no matter how safe they look. It is always dangerous to crawl under or play on railroad cars, if the cars moved, which could happen, you might be hurt. Don't climb on a freight car or hop on a moving train. Climbing on a railroad car doesn't seem dangerous, but you can miss a step or lose your grip on the ladder and have a bad fall. Keep off tracks and bridges, do not try to test your balance by walking the rail, one slip could result in serious injury. One misstep crossing a railroad bridge could cause serious injury if a leg slipped between the ties, and you could be killed if you are trapped on a bridge or trestle.

Never place objects on the rails to see what will happen. Do not be the cause of others being hurt or killed. Some thoughtless children place objects on rails to watch a train mash them. A rock, bolt, spike, or other larger objects placed

on rails, could wreck a train or a track Motor car. Never deliberately dare to stand on the track in front of an on-coming train, nor try to beat it to the crossing. It is the show-off who stays on the track until the train is dangerously close. A slip or fall then could be fatal.

When you must cross railroad tracks, use designated public crossing places, look in both directions and only cross when the way is clear. Never throw rocks or shoot at passing trains and track cars, nor break signal and switch lights. Some youngsters show ugly habits when the willfully damage railroad property.

Throwing rocks or shooting a rifle at a train may break windows and cause cuts from broken glass, or even loss of eyesight, to helpless travelers or railroad people on the train. It shouldn't be considered fun to deliberately hurt people on the train. Never be the cause of an accident by unlocking or unlatching a railroad switch. Leave switches alone, any tampering with locks or latches of switches could cause serious trouble. Do not take chances—stay away from freight trains, moving or standing still. Don't play "Hide-and-Seek" in empty freight cars. A railroad man might close the car door and the train could go a long way before you could summon help to get out. You can be seriously injured by a shifting load if the train suddenly started. Remember you are playing your safest when you don't play on the railroad.

Never touch a railroad flare or attempt to light one—nor try to explode a torpedo. They are dangerous playthings. Railroad men use brilliantly burning flares and powerful torpedoes to warn locomotives engineers to stop their trains. A railroad man is taught the right way to use these so he won't burn himself, or have an eye put out.

These are only a few of many rules of safety parents can teach their children, remembering a child learns by observation. So after explaining to them the dangers of trespassing on railroad property, let's set them an example.

May we again state the railroad tracks and property are "The World's Most Dangerous Playgrounds." Stay alive, stay alert, the life you save may be your own. May all have an accident free vacation. Members of the Illinois Central Railroad Special Agent Department are ever alert for juvenile trespassers, standing ready to assist and explain the dangers. We feel, through the cooperation of parents, school authorities and local authorities, many a limb and life can be saved.

Stoning and shooting at suburban trains, Aug. 1, 1965 to July 31, 1966

Date	Location	Incident
Aug. 3, 1965	91st St., South Chicago	Boys throwing stones.
Aug. 6, 1965	59th to 63d	Train 483 stoned.
Aug. 7, 1965	79th St., main line	Train 801 stoned.
Do	103d St	Boys throwing stones.
Do	59th to 63d	Train 596 stoned.
Aug. 10, 1965	80th St., South Chicago Br	Train 1204 stoned.
Do	69th to 70th St	Juveniles throwing stones.
Aug. 16, 1965	71st St	Train 737 hit by stones.
Aug. 17, 1965	44th St	Suburban train stoned.
Aug. 18, 1965	Stony Island	Train 847 stoned.
Do	Riverdale	Hole in window, train 881.
Aug. 19, 1965	43d to 47th	Train stoned.
Do	39th to 43d	Object on track or train stoned.
Do	41st St	Train 599 stoned.
Aug. 20, 1965	Riverdale	Train stoned.
Aug. 21, 1965	83d St., South Chicago	Train 857 stoned.
Aug. 22, 1965	35th St	Train 613 stoned.
Aug 23, 1965	47th to 49th St	Train 823–825 stoned.
Do	41st St	Train 867 stoned.
Aug. 24, 1965	87th St., Dauphin	Train 704 hit by rock.
Aug. 27, 1965	43d St	Youths stoning trains.
Aug. 28, 1965	92d St , main line	Juveniles rocking trains.
Aug. 29, 1965	39th St	Train 515 stoned.
Sept. 3, 1965	Flossmoor	Train 802 stoned.
Sept. 4, 1965	do	Boys stoning train.
Sept. 6, 1965	72d to 79th St., main line	C.S.S. & S.B. RR. train stoned.
Sept. 7, 1965	63d St	Train 802 stoned.
Do	62d Pl	Train 834 stoned.
Sept. 8, 1965	147th St., Ivanhoe	Train 859 stoned.
Do	79th St., main line	Train 525 stoned.
Do	68th St	Boys stoning train.
Sept. 10, 1965	75th St., main line	C.S.S. & S.B. RR. train stoned.
Sept. 11, 1965	47th St., main line	C.S.S. & S.B. RR. train 9203 stoned.
Sept. 13, 1965	35th St., main line	Train 830 stoned.
Sept. 14, 1965	do	Train 493 stoned.

Stoning and shooting at suburban trains, Aug. 1, 1965 to July 31, 1966—Continued

Date	Location	Incident
Sept. 15, 1965	43d to 47th St	Train 863 stoned.
Sept. 21, 1965	46th St	Trained stoned.
Sept. 23, 1965	63d St	Train 786 stoned.
Do	60th to 63d St	Train 788 stoned.
Do	73d St., main line	Trains stoned.
Do	43d St	Train 833 stoned.
Do	85th St., main line	Train 835 stoned.
Do	47th St	Train 829 stoned.
Do	95th St	Train 817 stoned.
Do	71st St., South Chicago Br	Train 609 stoned.
Sept. 24, 1965	63d St	Train 792 stoned.
Sept. 27, 1965	87th St., main line	Train 843 stoned.
Sept. 28, 1965	59th St	Train 738 stoned.
Do	44th St	Train 841 stoned.
Oct. 2, 1965	60th St	Train 494 stoned.
Oct. 4, 1965	88th St., South Chicago	Equipment train stoned.
Oct. 5, 1965	Bryn Mawr	Train 869, BB shot in window.
Oct. 6, 1965	47th St	Train stoned.
Oct. 8, 1965	70th and Kimbark	Train 519 stoned.
Oct. 9, 1965	75th to 79th St., main line	Train 801 stoned.
Do	51st St., main line	Train 805 stoned.
Oct. 11, 1965	43d St	Train 723 stoned.
Do	62d St	Train 817 stoned.
Do	----do	Train 615 stoned.
Oct. 12, 1965	63d to 64th St	Train 607 stoned.
Oct. 15, 1965	47th St	Trains stoned.
Oct. 16, 1965	----do	Train 885 stoned.
Oct. 25, 1965	211th St	Train 572 stoned.
Oct. 18, 1965	91st and 92d St., South Chicago Br	Train 566 stones.
Do	71st and Dorchester	Train 869 stoned.
Oct. 19, 1965	43d St	Train 857 stoned.
Oct. 25, 1965	42d St., main line	Traih 819 stoned.
Do	76th St., South Chicago Br	Train 534 stoned.
Do	87th St., South Chicago Br	Train 833 stoned.
Oct. 26, 1965	40th St	Train 819 stoned.
Oct. 29, 1965	79th and 83d St	Stoning.
Nov. 3, 1965	43d St	Train 812 stoned.
Do	93d St	Train 813 stoned.
Do	87th to 90th St., main line	Train 815 stoned.
Do	47th St	Train 825 stoned.
Nov. 4, 1965	43d to 47th St	Train 829 stoned.
Do	50th St	Train 817 stoned.
Nov. 6, 1965	89th St. South Chicago Br	Train 462 stoned.
Do	70th St	Train 494 stoned.
Nov. 8, 1965	Wood St	Train 430 stoned.
Do	80th St., main line	Train 809 stoned.
Nov. 10, 1965	41st St	Juveniles throwing stones.
Nov. 11, 1965	67th St	Train 527 stoned.
Do	66th St	Train 817 stoned.
Do	67th St	Train 536 stoned.
Do	66th St	Train 821 stoned.
Do	71st and Chappel	Train 865 stoned.
Nov. 12, 1965	63d St	Train 570 stoned.
Nov. 16, 1965	45th St	Train 479 stoned.
Nov. 17, 1965	61st St	Train 881 stoned.
Do	61st and 78th St., South Chicago Br	Train 607 stoned.
Nov. 18, 1965	60th St	Train 609 stoned.
Nov. 20, 1965	79th St	Train 506 stoned.
Nov. 23, 1965	71st and Dante	Trains stoned.
Do	49th St	Do.
Do	57th to 59th St	Train 817 stoned.
Do	Ivanhoe	Train 809 stoned.
Dec. 21, 1965	59th St	Train 519 stoned.
Dec. 23, 1965	59th to 63d St	Train 593 stoned.
Dec. 26, 1965	West Pullman	Windows shot out.
Dec. 29, 1965	62d St	Train 622 stoned.
Dec. 30, 1965	87th St., South Chicago Br	Train 472 stoned.
Jan. 3, 1966	47th St	Train 817 stoned.
Jan. 4, 1966	79th St., main line	Train 3599 stoned.
Do	62d St., main line	Suburban train stoned.
Jan. 6, 1966	46th St	Train 517 stoned.
Jan. 18, 1966	70th St., main line	Train 513, shot.
Jan. 19, 1966	Homewood	Train 808 stoned.
Jan. 24, 1966	67th St	Train 483, shot (BB's).
Feb. 5, 1966	Bryn Mawr	Train 599 stoned.
Feb. 8, 1966	70th St., main line	Train 3494 stoned.
Do	Stony Island	Train 593 stoned.
Do	62d St	Train 825 stoned.
Feb. 9, 1966	90th St., South Chicago Br	Train 465 stoned.
Feb. 14, 1966	75th St., main line	Train 3965 stoned.
Feb. 15, 1966	68th St	Train 835 stoned.
Feb. 18, 1966	Monroe St	Stored equipment stoned.
Feb. 21, 1966	64th St	Train 3488 stoned.
Feb. 26, 1966	47th St	Train 485 stoned.

Stoning and shooting at suburban trains, Aug. 1, 1965 to July 31, 1966—Continued

Date	Location	Incident
Mar. 3, 1966	42d St	Train 1224 stoned.
Mar. 4, 1966	83d, Commercial	Train 807 stoned.
Do	80th, Commercial	Train 408 stoned.
Mar. 5, 1966	67th, Dorchester	Train 2402 stoned.
Mar. 8, 1966	44th St	Train 489 stoned.
Do	88th, Baltimore	Equipment train stoned
Mar. 10, 1966	Stewart Ridge	Train 511 stoned.
Do	86th St., South Chicago Br	Train 819 stoned.
Mar. 12, 1966	62d St	Train 577 stoned.
Mar. 14, 1966	115th St	Train 817 stoned.
Do	87th St., South Chicago Br	Train 519 stoned.
Mar. 15, 1966	90th St., South Chicago Br	Train 317 stoned.
Mar. 16, 1966	89th St., South Chicago Br	Train 833 stoned.
Mar. 22, 1966	95th St., main line	Train 811 stoned.
Mar. 30, 1966	103th St	Trains stoned.
Apr. 7, 1966	88th St., South Chicago Br	Train 425 stoned.
Do	89th St., South Chicago Br	Train stoned.
Apr. 8, 1966	59th St	Train 781 stoned.
Apr. 9, 1966	Hazel Crest	Train shot at.
Apr. 12, 1966	Stewart Ridge	Train 3669 stoned.
Apr. 15, 1966	62d St	I.C. 702 stoned.
Apr. 17, 1966	43d St	Train 486 stoned.
Apr. 20, 1966	61st to 62d St	Train 917 stoned.
Apr. 22, 1966	40th St	Shot fired through window train 62.
Apr. 25, 1966	84th St	Train 887 stoned.
Apr. 26, 1966	66th St	Trains 520 and 513 stoned.
Do	91st St	Train 807 stoned.
Apr. 28, 1966	82d St	Train 835 stoned.
Apr. 29, 1966	74th St	Train 829 stoned.
May 5, 1966	61st St	Stoning trains.
May 3, 1966	West Pullman	Train 823 stoned.
May 4, 1966	62d St	Train 766 stoned.
May 6, 1966	43d St	Missile fired from west side of right-of-way.
May 8, 1966	67th St	Suburban train stoned.
May 9, 1966	Richton	Complaint of shooting.
May 11, 1966	59th St	Train stoned.
May 12, 1966	47th St	Train 839 stoned.
May 16, 1966	59th to 63d St	Train 485 stoned.
Do	62d St	Train 939 stoned.
Do	71st, Jeffery	Train 593 stoned.
Do	35th St	Train 511 stoned.
May 21, 1966	121st Union	Train 347 stoned.
May 22, 1966	Calumet	Train 407 stoned.
May 24, 1966	46th St	Train 555 stoned.
May 29, 1966	West Pullman	Train 1497 stoned.
June 1, 1966	31st St	Train 593 stoned.
June 2, 1966	do	Train 499 stoned.
Do	do	Train 593 stoned.
Do	67th St	Juveniles stoning trains.
June 3, 1966	71st, Bennett	Train 533 stoned.
June 4, 1966	32d St	Train 801 stoned.
June 6, 1966	43d St	Train 885 stoned.
Do	31st St	Train 851 stoned.
Do	75th St	Train 511 stoned.
June 8, 1966	59th to 62d St	Stoning trains.
June 13, 1966	67th St	Do.
June 15, 1966	87th St, South Chicago Br	Do.
June 19, 1966	94th St	Do.
Do	71st, Dante	Do.
June 21, 1966	23d St	Train 485 stoned.
June 23, 1966	Flossmoor	Train stoned.
June 24, 1966	35th St	Spike thrown through coach window, South Chicago Br. train.
June 25, 1966	49th St	Train 573 stoned.
June 30, 1966	71st St	Train 823 stoned.
July 1, 1966	90th St	Train allegedly shot.
July 2, 1966	70th St	Juveniles throwing stones.
July 6, 1966	35th St	Train 875 stoned.
July 8, 1966	70th St	Train 519 stoned.
July 12, 1966	39th St	Train 615 stoned.
July 13, 1966	40th St	Juvenile stoner apprehended.
July 15, 1966	Ivanhoe	Train 791 struck tie.
July 16, 1966	63d St	Train 609 stoned.
July 18, 1966	40th St	Train 843 stoned.
July 19, 1966	90th St., South Chicago Br	Train 887 stoned.
July 23, 1966	72d St	Train 9316 stoned.
Do	63d St	Train 737 stoned.
Do	39th St	Train 625 stoned.
July 25, 1966	40th St	Train 829 stoned.
July 28, 1966	31st St	Train 795 stoned.
Do	82d St	Train 850 stoned.
Do	73d St	Train 839 stoned.
July 29, 1966	95th St	Bottles thrown into train.

Mr. HASTINGS. Mr. Chairman, I will try to be as brief as I can because I want to leave, too.

Over the years we have had numerous problems with the breaking out of windows on our passenger trains and shooting out of windows on our passenger trains.

Senator MCCLELLAN. They shoot them out while the train is in motion?

Mr. HASTINGS. That is correct.

Senator MCCLELLAN. With passengers in them?

Mr. HASTINGS. Yes.

Senator MCCLELLAN. Anybody killed?

Mr. HASTINGS. On the American railroads, we have had passengers killed and passengers seriously injured and employees who have sustained injuries and even met death.

Senator MCCLELLAN. It is just promiscuous without any design to kill any given person.

Mr. HASTINGS. That's correct.

At the present there is no Federal law to cover this.

May I state briefly, and point out that there is a Federal law that covers the movement of freight in interstate traffic. The shooting or damage of this freight is a Federal offense, but the shooting of passengers is not.

Senator MCCLELLAN. The shooting is not a Federal offense, but it is, of course, a local crime.

Mr. HASTINGS. It is a local crime.

Senator MCCLELLAN. What would be the advantage in passing this bill?

Mr. HASTINGS. It would be a deterrent, Mr. Chairman, the same as the law that covers theft of interstate shipments. Prior to that time, when that law was passed, the railroads were sustaining approximately $12 million a year from loss from boxcars, and last year it amounted to $745,000.

Senator MCCLELLAN. You think the fact that it is a Federal law will be a deterrent?

Mr. HASTINGS. That is correct.

Senator MCCLELLAN. I note we have a letter from the Attorney General who states that the Department of Justice does not recommend the enactment of this bill because the nature of the acts to be proscribed can be handled satisfactorily by the States. Would you care to comment on that?

Mr. HASTINGS. Well, in many instances they can, but throughout the territories that our railroads travel, some of the counties have very few deputy sheriffs or law enforcement officials to handle the cases for us, and I do not think it is adequate enough. I believe through the enactment of this law the deterrent factor alone will help us, rather than what we can get through prosecution.

Senator MCCLELLAN. Under this bill it, would be the responsibility of the FBI and the U.S. marshals to make the investigation.

Mr. HASTINGS. Well, down through the years, Mr. Chairman, we have always worked with them.

Senator MCCLELLAN. I understand, but this bill would give them the jurisdiction and responsibility.

Mr. HASTINGS. That's correct.

Senator MCCLELLAN. There would be dual responsibility, the State and Federal.

Mr. HASTINGS. Yes, sir.

Senator MCCLELLAN. The Attorney General further stated that if the bill was given favorable consideration by this committee that a section should be added to provide, and I quote, "A judgment if conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts." In other words, what he has in mind, I am sure, is that if State authorities happen to take over the case and get an indictment or presentation and then try it, and the defendant is acquitted, they do not want you running to them and saying, well, try him in the Federal courts, too.

Mr. HASTINGS. We understand this in the railroads, Senator, because we have it with the other crimes that we deal with.

Senator MCCLELLAN. So you expect this provision to be attached to the bill?

Mr. HASTINGS. Yes, I do.

Senator MCCLELLAN. Very well. Now, Mr. Wood, do you have any comments?

Mr. WOOD. I would like to back up what Mr. Hastings has said by saying simply this: that we have had excellent cooperation from the local law enforcement people. They do not have the time or the manpower to take care of the situation.

Senator MCCLELLAN. They expect the railroads to take care of themselves. I represented railroads at one time, and I have been a prosecuting attorney.

Mr. WOOD. We are concerned with the seriousness of shooting and stoning of trains. At the present time we have a lady in Chicago who was hit by a piece of flying glass from one of our suburban trains. She has lost the sight of one eye and she is suing the railroad for $200,000.

Senator MCCLELLAN. How are they going to establish any negligence for failure to meet your responsibilities if somebody shoots at the train?

Mr. WOOD. This is a difficult question, Senator, and it has to go before a jury.

Senator MCCLELLAN. Being a lawyer, if I had her as a client, I am wondering if I could figure out the premise upon which I would allege negligence.

Mr. WOOD. This becomes a fact for the jury, of course.

Senator MCCLELLAN. At least substantiate it.

Mr. WOOD. What I am trying to point out is the great seriousness of the possibility of real serious eye injuries. A few years ago we had a woman who was on one of our trains, the train was shot at by a couple of boys with a .22 rifle, and the pellet struck her in the neck. The doctors were afraid to operate for fear of total paralysis. This woman today still carries this pellet in her neck. What we are trying to do is to see if we can now do anything to safeguard our patrons.

Senator MCCLELLAN. In other words, you are seeking every deterrent that you can find.

Mr. WOOD. Yes, sir.

Senator MCCLELLAN. It does not cost much to pass a law.

Mr. HASTINGS. May I say one thing more, Senator? In connection with the law in connection with damage to freight, on my railroad we have posted this over the entire system and if such a law protecting our passengers was put into effect and made a Federal offense, I would do the same thing over the entire railroad system of 14,000 miles.

Senator MCCLELLAN. You would do what?

Mr. HASTINGS. I would post a sign over the railroads showing this and it would become the deterrent we expect.

Senator MCCLELLAN. You will be authorized then and you will be within your rights to post it?

Mr. HASTINGS. That's correct. In this connection, I took it up with Mr. J. Edgar Hoover and he authorized my going ahead with it, with putting up the posters with regard to freight.

Senator MCCLELLAN. Anything else, gentlemen?

Mr. WOOD. No, sir.

Senator MCCLELLAN. Thank you very much. I am confident the committee will give your bill serious attention.

Senator Burdick, who introduced S. 552, the bill you have been discussing, has sent over two newspaper articles describing incidents of vandalism. I will place these in the record at this point.

(The articles follow:)

[The Philadelphia Inquirer, July 10, 1967]

PRR FREIGHT TRAIN DERAILS IN N. PHILA.

The 95-car Pennsylvania railroad freight train bound for Harrisburg was derailed early Sunday morning a few hundred yards east of the Broad St. and Glenwood Ave. overpass in North Philadelphia.

No one was injured, but four tracks were blocked and train traffic was tied up for hours. No cause was given for the accident, which occurred at 3:48 A.M.

The train was out of Camden and bound for the capital city and points west.

Eastbound trains from Chicago, St. Louis and Cincinnati, O., were detoured on a freight cutoff to Trenton, bypassing Philadelphia.

The tracks were cleared by 7:15 a.m. in time for the Broadway Limited passenger train from Chicago.

The derailment occurred 21 minutes after another Pennsylvania train jumped the tracks in Edison, N.J.

A railroad spokesman said that accident apparently was caused by vandals who placed a six-foot crosstie along the tracks.

Five crewmen of the five-car mail train were slightly injured.

[Pittsburgh Post-Gazette, July 10, 1967]

TWO PRR TRAINS DERAIL IN EAST

PHILADELPHIA, July 9 (AP)—Two Pennyslvania Railroad trains derailed within 21 minutes of each other early today, ripping up track, tearing down high tension wires, and fouling the line's schedule. No one was seriously injured.

The derailments came just east of the North Philadelphia station, where part of a 95-car freight jumped the tracks, *and about 70 miles away in Edison, N.J., where a mail train overturned and spread across four main lines.*

George C. Vaughn, general manager for the railroad's eastern region, said the New Jersey derailment was caused by a tie which had been placed across the tracks, an apparent act of vandalism.

The mail train, made up of two locomotives and five cars, was about 28 miles out of New York City on its run from Harrisburg, Pa., when it left the rails at 3:27 a.m.

Edison police said five men from the train's crew, including the conductor, head brakeman and a flagman were taken to Middlesex Hospital for treatment. Their condition was not serious.

Senator McCLELLAN. Our next witness is Mr. Nickerson. We apologize for making you last. We are trying to be as accommodating as we know how.

STATEMENT OF EUGENE H. NICKERSON, COUNTY EXECUTIVE, NASSAU COUNTY; ACCOMPANIED BY FRANCIS B. LOONEY, POLICE COMMISSIONER, NASSAU COUNTY, N.Y.

Mr. NICKERSON. I am county executive of Nassau County, which is a county of about a million and a half in New York on Long Island.

I have with me my police commissioner, Commissioner Francis B. Looney, in case I cannot answer any of the questions you might ask. I won't read my statement but simply have it filed for the record and summarize it.

Senator McCLELLAN. Very well, your statement will be received and printed in the record in full at this point, Mr. Looney, would you identify yourself, please?

(The printed statement referred to follows:)

STATEMENT BY EUGENE H. NICKERSON, COUNTY EXECUTIVE, NASSAU COUNTY, N.Y.

Mr. Chairman and Members of the Committee, I am Eugene H. Nickerson, the elected County Executive of Nassau County, New York, which is the nation's most populous suburban county, now numbering nearly 1,500,000 citizens.

I appear today in support of S. 917, the "Safe Streets and Crime Control Act of 1967," to commend this new approach to Federal encouragement of effective local crime control, and to urge that in formulating final legislation, greater attention to be given to the urgent national problem of suburban crime.

The approach of this bill is excellent. The Safe Streets Act will encourage not only closer cooperation between different levels of government in law enforcement, but a broader attack on crime, with policemen, judges, probation officers, doctors, social workers, employers, labor leaders and others working together to prevent crime and to save first offenders from a lifetime of crime.

In response to the report of the National Crime Commission, and in anticipation of passage of the Safe Streets Act, we have begun formation in Nassau of a County Council on Crime Prevention, composed of public officials and private experts who are well-equipped to develop over-all crime control programs in the county.

Should S. 917 be enacted into law, it is this group which should be eligible to receive Federal aid for planning. No blueprint for combatting crime in Nassau County can be effective unless it is a county-wide plan.

I am concerned about allowing planning grants to units of population as small as 50,000 as provided in Title I, Section 102. Fifty thousand may indicate a meaningful comprehensive planning unit in a rural area; it does not in Nassau County.

This section is further weakened, in my judgment, in the House bill, H.R. 5037, which broadens eligibility even further.

If long-range crime control planning were carried out by a multitude of governments within a county, going off in different directions at the same time, the result would be diffusion and confusion.

The County should work with all the local communities to develop a comprehensive and cohesive plan before the communities themselves apply for project grants.

I believe that it would be a tragic waste of the taxpayers' money if the Federal Government should find itself in the position of supporting uncoordinated planning in crime control.

The necessity for County-wide action can be seen in the current *New York Times* articles on the influence of organized crime in areas of Westchester County. Westchester does not have a County Police Department. Nassau County does—a force of more than 3,000 policemen, the tenth largest in the nation, and second to none in quality.

We take *County* action in law enforcement, in police-community relations, in health, welfare, inmate rehabilitation, and other related fields.

I stongly urge that Title I ensure that effective comprehensive planning be done in our suburban areas on a county-wide basis.

Nassau County looks forward to participating in this program in partnership with Federal and municipal officials who share our desire to attack the severe problems of suburban crime on all fronts.

The question might well be asked by some—does a suburban County have to worry very much about Crime control? Do the suburbs need this Act? The answer, I believe, is yes. As you well know, the increase in major crimes in the suburbs during the first quarter of this year exceeded that of the cities, according to Mr. Hoover's report. Although Nassau County has done a good job in holding down its crime rate, we are not happy about *any* increase. We believe Nassau County is in an excellent position to establish, in cooperation with the national government, a *model* of the type of planning which must be done now to prevent crime in the area of its fastest growth—the suburbs. All too often we look back and lament past trends. Let us look ahead and learn how to combat suburban crime now.

The cost of fighting crime has increased astronomically. It is unfair to ask the small homeowner to pay through his property tax all the costs of our attack on a national problem, a problem that has no respect for county lines or State lines.

With all the modern improvements in crime prevention and detection, the fact remains that you cannot automate a policeman. Our police costs have risen steadily and if our population continues to increase those costs will continue to rise. The policeman must be there on the spot, on the job, risking his life to save the lives he has pledged to guard.

The Nassau County policeman carries out in our county all the functions of the State Police as well, and yet we receive virtually no State aid for our department.

With little financial help from either Washington or Albany, we have moved ahead with a first-rate police training program, a community relations program in every precinct, a modern rehabilitation program in our County Jail, a Juvenile Aid Bureau which we believe has prevented countless crimes and criminal careers, and many other innovations.

These activities are essentially local demonstration programs without benefit of Federal aid, and they are now being emulated by police departments in many parts of the country.

The reason that our programs have not qualified for Federal assistance is that we have already established them on our own. Washington apparently considers any new platform to be ancient history if it has been in effect five minutes before an application for Federal aid is submitted.

But I believe that Nassau County, because of its breakthroughs in new concepts and techniques to fight crime, is exactly the kind of local government which Washington should be most anxious to assist in carrying out programs of significance to the nation at large.

The other major point which I woud make relates to the whole fiscal problem of local government. It is a commonplace that the main plight of local government is that it has had the tremendous burden attendant upon the increase in population in this country thrust upon it, without having the fiscal resources which would enable local government to bear those burdens.

Well over 90% of all the tax revenues of local government consist of the property tax. Yet this is a notoriously unfair tax, and bears very heavily on the retired person, the widow, the person whose income has leveled off or is going down.

Yet Title II of S. 917 would require increasing amounts to be put up every year by the already hard pressed local property taxpayer. Perhaps we could stand this if some form of Federal tax sharing or general purpose grants come in effect. But the present tax structure of local government cannot absorb greatly increased costs without additional aid.

I am hopeful that this assistance will be forthcoming. Thus, I would urge that the legislation make grants available as a matter of Federal responsibility to a national problem, and in recognition of the critical fiscal plight of local government throughout America.

Help us to improve our crime control programs, to make new breakthroughs in research and planning. We are organizing for an all-out, county-wide attack

on all aspects of crime in Nassau County. If the Safe Streets Act recognizes county government as the most effective unit to plan the battle against suburban crime, and authorizes sufficient project aid in the future to give the local property taxpayer a fair break, it could be the turning point in bringing about a substantial reduction in crime.

May I call your attenton to certain changes which appear in H.R. 5037. The word "training" has been inserted in Title III, Section 301 to broaden the purposes of grants beyond research and development. I heartily approve that suggestion.

I believe that Title IV of H.R. 5037 is superior to the present version of S. 917 in its consideration of total project cost rather than merely improvement cost.

I am convinced, however, that it would be a shortsighted action for Federal project grants to be tied either to a specific annual increase in the local appropriation, as provided in S. 917, or to the vague wording in H.R. 5037.

Federal aid obviously will not assist local government, nor, indeed, permit local government to survive, if we must continually raise property taxes in order to qualify for Federal aid.

I stand ready, Mr. Chairman, to furnish the Committee with more detailed comment on these and other provisions, should you so desire.

We value your leadership in recognizing the role of the Federal Government in assisting local crime control, and I appreciate this opportunity to appear before you today.

Mr. LOONEY. My name is Francis B. Looney, Commissioner of Police, Nassau County, New York.

Senator MCCLELLAN. Thank you very much.

Mr. NICKERSON. I appear, Mr. Chairman, in support of S. 917, the Safe Streets and Crime Control Act of 1967 and commend it and think the approach of the bill is excellent. I have indicated why in my full testimony.

There are two things that I would like to suggest to you. There are several things in my testimony of a minor nature which you might want to consider as to the specific provisions.

But there are two things I think that I would like to focus on, one is the provision of making planning grants to communities as small as 50,000 which seems to be undesirable because if you are going to have any meaningful planning, certainly in a place like Nassau County with a million and a half people where there are some instances of village and city police—we have only two small cities—you really are going to create a chaotic situation if you have planning grants on that small a basis. We are forming a crime council for the county as a whole and we think that it ought to be the kind of body to get the grants.

Senator MCCLELLAN. It strikes me that the Attorney General would not be compelled to approve a plan from a city of 50,000 people if he knew that a larger group, say your whole county, was going to submit a plan. He would have the discretion to reject the plan for the smaller entity.

Mr. NICKERSON. I understand that, Mr. Chairman. What I am suggesting is that 50,000 seems a very small planning unit which is authorized under the bill to make application to the Attorney General.

Senator MCCLELLAN. That may be true in your State. Let us take my State—there are only about three or four towns with that population in my State. A plan then would have to take in the whole county for the smaller units to be able to benefit. Of course this is a general statute and ought to be applicable to the whole Nation.

Mr. NICKERSON. I understand that. I speak from the standpoint of Nassau County and I would hope that grants would not be made other

than on a county-wide basis where you have a meaningful planning unit. Maybe in other areas of the country different situations obtain.

Senator McCLELLAN. There would be enough discretion left for the Attorney General in a situation like yours to make a determination as to the best approach. If you have a million and a half people in a county the whole county might well have a coordinated plan. I think the Attorney General would be justified in requiring a coordinated plan. The purpose of this is to get as much coordination as possible in areas where they can work out a plan and execute it together.

Mr. NICKERSON. I think one of the distinctions between Nassau County and Westchester, which is our neighbor across the Sound, is that we have a county police system and Westchester does not. You have perhaps read in the newspapers of the problems that they have had. Our system has been successful because we have had county police.

Mr. Chairman, the other major point which I would like to make relates to the whole fiscal problem of local government. I guess it is commonplace in the Congress and elsewhere that the main plight of local government has come about because of the tremendous burdens thrust on it due to the increase in population. Basically the services of local government are not services you can automate. You need a policeman and it is difficult to automate him. You can automate clerical work, so the costs of it has gone up. We think that title II of 917 would require increasing amounts to be put up every year by the already hardpressed property taxpayer. More than 90 percent of all of the tax revenues, local tax revenues of local governments come from property taxes which is an extremely unfair and inequitable tax as the economists recognize now and bears heavily on widows, retired people, and the like. We have to sustain these increasing burdens and yet the act would require us to put up more and more and more as we get Federal aid in order to qualify, so-called qualifying expenditures. Maybe we could stand this if the Congress were to pass some kind of tax-sharing legislation so that it affords some relief down to the local level.

I testified before Senator Muskie's committee and he had me draw that inference. We would hope that the Congress could authorize grants to be made available to local governments on this kind of thing as a matter of Federal responsibility to a national problem. You have been discussing all day the whole problem of crime as a national problem. We have it in Nassau County. We are a great big county with all the problems that a metropolitan area has. We would be the sixth largest city in the United States if we were a city.

Mr. McCLELLAN. As I recall, I interrogated the Attorney General about this provision when he testified before us with the idea that it is going to make it difficult for a plan to take in four or five towns or take in a whole county with four or five towns in it. In my State, for example, you may have a county that has 50,000 people in it with four or five towns of 5,000 or 10,000 each in the county. Maybe one could raise their share and others could not. It gets complicated. I would like to find a more direct approach to this problem. I think we may have to say we will give you so much if you will match it. If you match it out of what you have this year or what you had last year it

would be sufficient. I do not think you can require them to raise taxes in order to get this benefit. I think that would be a hindrance. It may be an obstruction to the best results that could be achieved.

Mr. NICKERSON. I think local government is in a very serious fiscal situation. Nassau County is thought of as a rich county. It is from the total income. It is the unfairness of the tax structure which we are allowed, namely, the unfairness of the property tax which burdens so heavily. People just cannot stand that burden, particularly those whose income has leveled off or is going down. So that is my other major point.

I make suggested language substitution for some provisions of the bill in the rest of my testimony, which I won't burden you with now.

Senator MCCLELLAN. Very good. Do you think this proposal for the Federal Government to step in and share a responsibility in this field by helping finance the training of officers, acquiring equipment, helping pay the salaries of the local police, and other things that are set forth in the bill, is justified and needed under conditions that prevail in this country?

Mr. NICKERSON. Absolutely. I think we have an excellent police department—one of the reasons we have is because we have an excellent commissioner. But also we place great emphasis on training and as I have gone around our State I can see how important training is for police.

Senator MCCLELLAN. Are you apprehensive? Senator Tydings testified here yesterday morning and he expressed some apprehension over the prospect of the Federal Government participating in the payment of salaries of policemen. In other words, the local establishment might get hooked on that money and thus the Federal Government would gain control or domination over the local police force.

Mr. NICKERSON. That wouldn't bother us at all, Senator.

Senator MCCLELLAN. If it did get that control?

Mr. NICKERSON. We wouldn't worry about their getting control of it.

Senator MCCLELLAN. Let me give you an illustration. I used to be for Federal aid for education. I do not mind putting this on the record. I believe that in many of our States there was an imbalance of wealth in the country, geographically speaking. Some children in the poorer States did not have an equal opportunity for education. I thought the Federal Government should step in and give some assistance. I wanted to support legislation for Federal aid to education. But there was a specter that if you let the Federal Government contribute, that it then can exercise a control. Many of my friends who were strong for Federal aid to education said, "Oh, the Federal Government would never do that." Now, look what has happened to education. I voted for Federal aid to education after the Civil Rights Act passed. But look what has happened to Federal aid. They can absolutely tell you what you have to do or cut it off. Now they require that you bus children from one side of town to the other to get what they call a balance, a racial balance. Do not tell me the Government cannot do it. It is doing it in other fields. Right in front of our eyes. You say you are not afraid. Maybe they will never undertake it in this field. But if it undertakes it, it can do it.

Mr. NICKERSON. That is certainly true.

Senator McCLELLAN. The administering agency can cut off funds.

Mr. NICKERSON. They can condition that aid on your meeting certain standards. We are not concerned about that. I think when you are talking in terms of training standards and excellence of police, maybe they will eventually say you have to meet certain standards of training. But we are certainly prepared to meet those standards in Nassau County.

Senator McCLELLAN. I am arguing about a power—and I was illustrating a power. You say you are afraid they will require that a certain number of Negroes be put on a police force. Incidentally, I want them on it in towns where they have Negroes. I think they ought to be on the force. I think they ought to be trained and highly trained as well as anyone else. I do not oppose that. I favor it. But I do not want the Attorney General or anyone else in the Federal Governent to get the power to say that you have to import from another town over here some whites to put in this Negro community or vice versa. I do not want to give them that power, and I do not think they should have such power.

Mr. NICKERSON. Doesn't that depend on the Congress? The Congress can put such conditions in the legislation as it chooses to put in.

Senator McCLELLAN. I would like to. But how are you going to spell it out? I am talking about control. When you lodge a responsibility or power in the Federal Government to make plans, approve plans, and so forth, it is a little difficult to define every detail.

Mr. NICKERSON. If the Congress thinks that it is being inappropriately done, it can pass legislation.

Senator McCLELLAN. I may very well be in the minority, as I am so often, but that d es not change my mind because the majority happens to disagree with me. I am talking about the things that I believe in. These are the things I want to prevent. Senator Tydings expressed the apprehension, not in the specific terms that I have used here to demonstrate a case, but he expressed the apprehension in testifying here yesterday that if the Federal Government participated in paying salaries for personnel—that it might seek a domination or control over the administration of law enforcement locally. I share his apprehension. But I just used my illustration at the moment here for discussion on the record to point out what can and has happened when the Federal Government contributes to local programs. I want the record to reflect what I think.

Mr. NICKERSON. Again, as you have been saying earlier in the day, it is a question of weighing the various interests, one against the other, and obviously the local governments would like to be free to enforce the laws they see fit. The local governments are in a desperate fiscal plight by and large.

Senator McCLELLAN. We do not want a national police state, none of us. No one foresees one. But these things come about step by step—a little more, a little more, and finally, the scales are tipped and the balance goes the other way. I do not know if it will ever happen. But in weighing these provisions, you must take these potentialities and these possibilities into account.

Mr. NICKERSON. If you are talking about serious aid to law enforcement, really serious aid, you are talking about aid for salaries, because this is the major portion of every budget.

Senator McCLELLAN. I do not say I am opposing it. I am only engaging in a discussion. Perhaps others are more liberal than I am. The point that I am making is, when power is reposed in any authority there is a measure of control associated with it, and you cannot deny it. We should exercise a great measure of caution to try and guard against any possible abuse of that power. I do not mean any particular person. I am talking about legislating for the conditions of today and what could happen in the future.

Well, gentlemen, I appreciate very much your presence.

Mr. McCulloch, Mr. Sloan, and Mr. Meeker, come around, please.

Will each of you identify yourselves for the record?

Mr. SLOAN. I am E. C. Sloan. I am district claim agent of the Pennsylvania Railroad Co.

Mr. MEEKER. I am W. F. Meeker. I am inspector of police of the Pennsylvania Railroad Co. at Philadelphia.

Mr. McCULLOCH. I am Edward L. McCulloch. I am national legislative representative of the Brotherhood of Locomotive Engineers.

Senator McCLELLAN. You want to testify regarding S. 552? Do you have prepared statements? We will receive your prepared statements and place them in the record at this point.

(The prepared statements of E. C. Sloan, W. F. Meeker, and Edward L. McCulloch, follow:)

STATEMENT OF EDWARD L. McCULLOCH, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, IN SUPPORT OF S. 552

My name is Edward L. McCulloch. I am National Legislative Representative of the Brotherhood of Locomotive Engineers, 400 First St. N.W., Washington, D.C. My appearance here is in support of S. 552 "to amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

The Brotherhood of Locomotive Engineers includes in its membership 37,000 railroad employees who operate the nation's railroads. Engineers are stationed at the farmost position (in the power unit) at the head end of freight, passenger and commuter trains, usually behind large glass windshields and are greatly concerned about the frequency and seriousness of acts of vandalism, particularly the throwing of stone at trains and shooting at trains, with which they are regularly confronted.

It is my understanding that previous witnesses have submitted to the committee a number of examples and illustrations indicating the magnitude of the problem. I shall not attempt to catalogue any additional information of this kind nor repeat theirs, but shall simply confirm that such acts are serious and that they occur regularly and all too frequently.

Locomotive engineers are often the prime target of those who shoot or throw at trains. The records will show that engineers have been hit and injured, sometimes seriously, by stones, bottles, buckshot, .22 caliber rifle pellets and BB's. Other operating employees who also ride the train engines or cabooses have, likewise, been subjected to such dangers. Our men, of course, carry out their assignments as directed but they are becoming increasingly more apprehensive about certain runs which traverse areas where such vandalism is commonplace.

While I am speaking primarily as a representative of the employees whose safety is endangered it should be stated also that we are concerned about the safety of rail passengers who are also subject to the hazards of the rock throwers and train shooters. We must take every precaution and adopt every reasonable means at our disposal to combat this problem.

Congress has enacted a statute which makes it a federal criminal offense to destroy or injure *property* moving in interstate or foreign commerce (15 U.S.C. section 1281). But it is not now a criminal offense under federal law to injure or kill a railroad passenger or employee by throwing stones or shooting at trains.

We believe that the public interest and the national interest with respect to the safety of passengers and employees far exceeds that for the safe transportation of property. We, therefore, strongly urge that S. 552 be approved and enacted into law, thus filling this void. Even though, as we recognize, the provisions of S. 552 do not represent a cure-all, we are convinced that enactment of such legislation will materially assist the railroads in combatting the problem that has been described by the various witnesses before this committee. It will, in our opinion, have significant value as a deterrent to acts of vandalism. Once it becomes known that certain conduct constitutes a federal offense there is a tendency to be somewhat more respectful of the law. S. 552 will also make it possible to call on the Federal Bureau of Investigation in such matters and this could be of considerable benefit where criminal acts of particular seriousness have been perpetrated.

It is understood that there may be some question whether the provisions of S. 552, if enacted, would apply with respect to some commuter or urban train service. It would be exceedingly unfortunate if such an important segment of the problem were to be left out of the bill's coverage. This is where many of the criminal acts occur. We agree that any such uncertainty should be eliminated and accordingly adopt and approve the amendment to S. 552 suggested in this regard by Mr. J. L. Hastings in behalf of the Association of American Railroads. Such amendment would change lines 2 through 5 on page 2 of S. 552 to read as follows:

". . . engine, motor unit, or car used, operated, or employed *on the line of any common carrier engaged* in interstate or foreign commerce [by any railroad] shall be fined not more than $5,000 or imprisoned not more than ten years, or both." [Added language italicized, deleted language in black brackets.]

In summary, a serious problem exists which is resulting in injury and danger to railroad employees and passengers. The protection of lives justifies federal legislation to greater extent than the protection of property and the existing void as to passengers and employees should be corrected by enactment of S. 552.

STATEMENT OF W. F. MEEKER, INSPECTOR OF POLICE, THE PENNSYLVANIA RAILROAD COMPANY, IN SUPPORT OF S. 552 ON BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS

My name is W. F. Meeker, and I am Inspector of Police in the system offices of The Pennsylvania Railroad Company, 30th Street Station, Philadelphia, Pennsylvania. I appear on behalf of the Association of American Railroads in support of S. 552 "to amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

At present my duties are primarily administrative in connection with the Police Department of The Pennsylvania Railroad Company. After nearly five years in the U.S. Army during World War II, I entered the service of the Pennsylvania Railroad January 14, 1946, as a patrolman in the Police Department in Chicago. I have served in the capacities of Sergeant, Lieutenant and Captain of Railroad Police. I was appointed Inspector on December 1, 1960. I am familiar with the general problems of policing railroad property and with the problems involving vandalism of various types, both from the point of view of personal investigation and handling of these matters and from the point of view of the overall problem presented on the Pennsylvania Railroad system.

From joint endeavors with other railroad police and my activities and association relationships it is my opinion that the problems of the Pennsylvania Railroad are reasonably illustrative of problems that are faced by other railroad security officers. We do have some special problems in that we render an unusual proportion of passenger service, both long haul and commuter compared to some of the other large railroads. However, we do operate in a fairly large geographic territory, serving the northeast corridor, some of the country's largest cities, and a vast number of small towns, and operating both in densely populated areas and in relatively rural country. I can say that vandalism and such acts as throwing stones or shooting at trains is a matter of concern on our entire system.

On our railroad we have found that despite our best efforts we are making little or no headway in eliminating or even reducing the many dangerous acts of vandalism and recklessness. While there has been an increase in the number of persons apprehended for stoning trains, the number of trains stoned, the number of windows broken and the number of persons injured has also increased as outlined below.

	1964	1965	1966	Average per month for 3 years	4 months 1967	Average per month, 1967
Trains struck by stones or other missiles	1,399	1,278	1,542	117.6	674	168.5
Windows broken by stones or other missiles	1,168	1,200	1,526	108.2	613	153.2
Persons injured by such acts	180	123	223	14.6	63	15.7
Persons apprehended for committing such acts	699	641	740	57.8	311	77.8

The constant attention of the railroad police in connection with these acts is indicated by the relatively high proportion of apprehensions shown in the above table.

In addition to the persons apprehended for actual stoning of trains as outlined above, during the period 1966 through the first four months of 1967, over 97,000 trespassers were ejected from railroad property by our patrolmen, and a total of 5,163 persons were actually arrested for trespassing. Unfortunately, many of the stonings of trains are carried out by persons who, themselves, physically do not trespass on the railroad property.

Our activities are not concerned solely with enforcement and direct police investigation. The Pennsylvania Railroad has produced a safety film entitled "Tracks, Trains, and Safety Facts." This film is used as a part of the educational activity conducted by my department. Our officers go to schools in uniform, make a talk, and show the film. The film has the approval of national associations concerned with education. The film has been shown in more than 7,000 schools and has been viewed by over 1,685,000 students. In addition, it has been shown to 660 adult groups and to an actual attendance of about 117,000 adults. In relation to the value of the proposed legislation as a deterrent, we feel that the enactment of the legislation would serve a useful function in our educational program, because the seriousness of the vandalism of the kind being considered would then be emphasized as a federal offense.

Although the injuries caused by these dangerous acts are often of a minor nature, the possibility of serious injury or death and extensive property damage exists. For example, at 9:15 P.M., August 22, 1966, P.R.R. Engine 5970 was stoned by a group of juveniles as it passed through Maryland. Engineman Henry Yedinak was struck by a rock and sustained a compound fracture of the right frontal sinus. On May 13, 1967, Mr. Yedinak returned to duty with our company as a fireman—due to the injury he could not qualify as an engineman. Three boys, two age 14 and one age 15, were apprehended. One was sentenced to the Maryland Training School for Boys for in indeterminate period, the other two were sent to Boys Village for an indeterminate period.

On November 2, 1966, the engine of P.R.R. Freight Train BP–2 was pelted with stones. A number of stones entered the cab of the engine and the engineman in ducking away from barrage accidentally released the dead-man control causing an emergency brake application. As a result, six cars in the train were derailed. Twelve juveniles who were apprehended appeared in Juvenile Court on January 9, 1967, were found to be delinquent and were placed on probation.

Our files contain many such examples of reckless acts, including the case of a passenger on our "Congressional Limited" who was shot in the head and seriously injured on January 29, 1960. The results of this action will be described by Mr. Sloan.

Our railroad is also plagued with track obstructions and tampering with switches, signals and other safety devices which create an extremely dangerous situation and jeopardize the safety of persons on board trains. During the year 1966 an average of 47.0 track obstructions were reported per month. During the period January 1, 1967, to April 30, 1967, an average of 62.7 such obstructions per month have been reported. In 1966, instances of switches or signals having been tampered with averaged 33.8 per month, while the average for the first four months of 1967 stands at 38.0.

Fortunately, only a small percentage of these acts cause any serious damage. Many of them, however, are not covered by the existing train wreck statute (18 U.S.C., Section 1992) because they do not involve the criminal intent necessary to constitute a violation of 18 U.S.C., Section 1992. We believe that the provisions of S. 552 would be effective in this regard since they would make such acts a federal criminal offense if committed with reckless disregard for the safety of persons on trains.

Following are three cases which illustrate the serious consequences of placing obstructions on the tracks or tampering with switches.

At 12:10 A.M., May 9, 1962, a P.R.R. freight train in Pennsylvania ran in on a siding and struck a draft of 48 cars. It was found that the switch was lined and latched for the siding. The switch lock could not be found. The fireman was killed instantly and the engineman seriously injured. Investigation resulted in the apprehension of two boys, ages 11 and 14, who were tried, but the Court of Quarter Sessions ruled that the boys did not realize the gravity of their acts and the petition was dismissed.

About 7:55 P.M., December 4, 1960, in Indiana, P.R.R. freight train GR–19 derailed four engine units and ten cars due to a switch for a siding having been lined against main track movement. Two youths, ages 17 and 19, responsible for reversing the switch were apprehended and convicted in U.S. District Court, on charges of violation of Section 1992, Title 18, U.S. Code.

At 11:00 P.M., September 9, 1966, in Pennsylvania, P.R.R. freight train LA–1, operating on No. 4 track, and ore extra, operating on the parallel track, No. 3, were wrecked as a result of a large metal tank having been placed on No. 4 track. A 19-year-old youth was arrested and is presently awaiting trial on a charge of violation of Section 1992, Title 18, U.S. Code.

From the last two examples, it is apparent that the Federal law penalizing the wrecking of trains (18 U.S.C. 1992) is actively enforced by the prosecution of persons responsible for the wrecking of trains. We feel this is a valuable deterrent. Prosecution cannot be had under Section 1992 for certain other dangerous acts such as the throwing or shooting of missiles at trains. We realize that enactment of S. 552 will not solve all of these problems, but we do believe that it would serve as a strong deterrent and coupled with the provisions of Section 1992 would greatly assist the railroads in protecting persons on board trains from such reckless and dangerous acts.

We respectfully request that the Committee approve and report S. 552 and that it be enacted.

STATEMENT OF E. C. SLOAN, DISTRICT CLAIM AGENT, THE PENNSYLVANIA RAILROAD COMPANY, IN SUPPORT OF S. 552 ON BEHALF OF ASSOCIATION OF AMERICAN RAILROADS

My name is E. C. Sloan and I am District Claim Agent of The Pennsylvania Railroad Company, 30th Street Station, Philadelphia, Pennsylvania. I appear here on behalf of the Association of American Railroads in support of S. 552 "to amend title 18 of the United States Code in order to provide that committing acts dangerous to persons on board trains shall be a criminal offense."

While my specific duties involve the supervision of The Pennsylvania Railroad Company's Claim Department in Philadelphia and in a considerable area of Pennsylvania Railroad territory south, west and north of Philadelphia, I have served in other districts on the Pennsylvania Railroad, having this month completed 27 years service on the Pennsylvania Railroad.

I am familiar with the general claims problems of the Pennsylvania Railroad and have access to the central files of the Claim Department and other departments relating to claim work.

My testimony is intended to illustrate by specific experience of the Pennsylvania Railroad the problems that the railroads have in dealing with vandalism committed against railroad equipment and especially vandalism endangering railroad passengers and railrod personnel.

Our primary concern, both the Railroad's in general and the Claim Department's in particular, of course, is for the safety of our passengers and personnel. The specific work of the Claim Department, as distinguished from the Police Department, involves people who have suffered injury as a result of vandalism, and our data concern primarily the injuries and cost and suffering that result from vandalism. The primary importance of the proposed legislation to the

Pennsylvania Railroad of preventing injuries by deterring or preventing vandalism should not prevent consideration of other factors in which the railroads have also a direct interest in the passage of the proposed Bill. Among such direct interests are extra burdens of cost imposed by vandalism, primarily in passenger service, in our Operating, Police, and Claims Departments—in passenger service which in general is operated at a deficit already.

The operating costs involved in replacing broken windows are very considerable. Not only is the cost of replacing the glass as such surprisingly high, but the burden to the Railroad is even more important in the necessity to shop cars for replacement of mindows. Especially in commuter service, the problem of equipment utilization is severe. Such commuter equipment is productive only during the rush hours on week days—in other words, only about 4 hours a day, 5 days a week—and the necessity to shop these cars for the replacement of windows adds to an already severe burden of operating costs. In addition, of course, there is the large amount of time and cost involved in the necessity for the Police Department to devote itself to minimizing and investigating these totally useless and dangerous acts such as stonings and shooting at trains.

In the claims work of my own department, we are faced not only with the cost of the actual settlement of claims in payments to injured persons but to the cost of Claim Department personnel in investigating and negotiating the cases, medical services in connection with medical examinations and care (especially of injured employees), and the cost of legal services in litigated claims. For example, 2 of our lawyers in Philadelphia alone in the last 4 or 5 years have handled 11 suits resulting from stonings of trains, 3 of which are still pending. Among these, the settled suits have been disposed of by payments to the claimants of figures ranging from minimal nuisance value to as high as $4,500. The case settled for $4,500 involved a claim by a member of the Philadelphia Orchestra who was travelling on a special orchestra train which was stoned. He suffered, from flying glass, cuts of his eye lids and eye balls. It is easy to imagine the extent of social loss and personal suffering that might have resulted from this senseless stoning. Fortunately, the musician in this case had a relatively good recovery.

One of our more serious recent cases in Philadelphia (not included among those mentioned above) was finally disposed of last year, in March 1966. A 28-year-old salesman from Baltimore, married and with a 1½-year-old son, was shot on a passenger train passing through Pennsylvania. Two boys were apprehended who admitted shooting the train with a stolen rifle. The bullet, after passing through a safety glass window, entered the salesman's head in the area of his left temple, flattened against his skull, and caused an oblique fracture of the posterior left parietal calvarium with a depression of a small bone fragment at the point of impact. The salesman was taken to the St. Francis Hospital at Trenton, New Jersey, from the train on January 30, 1960, and was discharged from the hospital on February 8. He suffered serious concussion, but also brain injury as shown by later electroencephalograms and interference with his faculty of speech. He was examined by a neuropsychiatrist on behalf of the Railroad as late as December 22, 1965, at which time it was found that as a result of the contusion of his brain he still had and will continue to have a partial sensory aphasia (a speech difficulty) which becomes acute especially when he is fatigued or under extreme pressure, and also sharp shooting pains from the region of the injury into his forehead accompanied by numbness on the left side of his face resulting from neuralgia caused by the injury. Our neuropsychiatrist concluded that he would continue to have these pains and difficulty with certain words, especially long ones, and certain types of phrases that bother him repeatedly.

The injuries sustained by passengers are not limited to the cuts, glass damage to eyes, or the impact of missiles or bullets directly upon their bodies. Our psychiatric experts in personal injury cases recognize that emotional disturbances and even permanent neuroses tend more specifically to follow injuries sustained by people who are caught totally unawares by the accident. In other words, a person who is entirely relaxed and unsuspecting of the onset of an injury is more susceptible to emotional and nervous damage. This, the psychiatric experts testify in our cases, is so even though the usual injuries as in automobile collisions occur with some rapidity. Even within the flash of time before the impact in such collision cases, the psychiatrists say, the person is able to set himself emotionally for the oncoming impact and the result is much less disastrous from

the point of view of nervous damage. This is no small matter in personal injury cases, as the problem of emotional damage is coming more and more to the fore in claims work. For example, among the three still unsettled cases in Philadelphia in the group mentioned above, there are two that involve claims of damages for post-traumatic anxiety. In one of these, the individual was actually struck by the missile, and serious injuries are claimed, including not only post-concussion syndrome (which is thought to be primarily the result of the physical impact) but traumatic neurosis.

When railroad employees are hurt by stones or wounded by guns their claims are covered by the Federal Employers' Liability Act (45 U.S.C. 51–60). The Congressional mandate of the Federal Employers' Liability Act, as interpreted by the Supreme Court, extends the benefits of the FELA to all of our employees. I do not remember a case in recent years in which we could interpose the defense of the non-applicability of the FELA on the basis of an effort to demonstrate that the employee was not engaged in interstate commerce—a defense so far as the Act was concerned which was available in earlier years. Even office employees are now considered to be covered by the Act solely on the basis that they occasionally handle papers that involve interstate shipments. Some of our commuter trains move only intrastate; the crews of these trains are covered by the FELA, however, because these trains are used by passengers who reach the main stations and travel on the interstate trains. Thus, Congress has already demonstrated its interest and constitutional power to regulate important aspects of railroad operations that are not directly involved in interstate movement. We understand that Mr. Hastings has proposed an amendment to S. 552 to make certain that it applies to all our operations, and we believe this is a worthy suggestion.

The hazards of vandalism to the personal safety of our employees and the losses from vandalism incurred by the railroad are not necessarily limited to the direct injury occasioned by the missile. Our witness, Mr. J. L. Hastings, has, for example, described a recent episode in which a stoning caused a Pennsylvania Railroad engineman to remove his foot from the dead-man control so that the emergency application of the brakes resulted in a derailment. This event illustrates the fact that employees whose duties are concerned with the movement of trains and the safety of our passengers and freight may be so interfered with in their duties that serious consequences could result. In that particular case, the primary loss to the Railroad was the operating problems arising from the derailment and the loss and damage claims to the freight involved.

In the last full year for which statistics are available (1966), 89 persons filed claims against the Pennsylvania Railroad for personal injuries sustained as a result of fire arms discharged or missiles thrown at our trains. Settlements have been paid on 74 of these claims, and 15 claims are outstanding. This is about 1 injury of this kind every 4 days. It must be borne in mind that these are persons sufficiently injured to file claims, and the total does not include all persons who were hurt by acts of this kind. From the public point of view and the point of view of these injured people, it should be considered that in almost every case of injury the head and eyes are involved in this type of accident. This, of course, means that nearly every injury could result in loss of vision or death.

Train speeds are increasing, and so is our concern with respect to tampering with and throwing things at trains. The faster the train the more tempting the target to the puerile interests of the juveniles who are mostly responsible for stonings and shootings. Also on fast trains the impact of missiles is increased as a result of the increased train speed.

For all of these reasons, the passage of S. 552 is urged. The very difficulty of controlling vandalism suggests the necessity to bring every possible pressure to bear, both to apprehend individuals who have committed such acts and to deter, to the extent possible, the commission of vandalism against trains. It must be admitted that the most strenuous effort on the part of police a all levels, railroad, local, state, and federal, will not in all probability serve to eradicate the unpredictable and senseless behavior of some of our citizens and juveniles. However, just because this is so, we believe that the best interests of the public and of the carriers requires that every effort be brought to bear on this increasingly serious problem.

Mr. SLOAN. Sir, my testimony pertains mainly to the severity of the injuries sustained by our passengers and employees and the costs to

the railroad company as far as settlement of claims, cost of investigation, cost of litigation.

Senator McCLELLAN. Let me ask you, do they get judgments against you on the part of the passengers?

Mr. SLOAN. Yes, they do. To give an example, two of our lawyers in Philadelphia alone in the past 4 or 5 years have handled 11 suits resulting from stoning of trains. Settlements and judgments range from minimum nuisance value to as high as $4,500. The $4,500 involved a member of the Philadelphia Orchestra who sustained eye injuries. We recently had a passenger, 28 years of age, married, with a son who was riding a train passing through Pennsylvania and the train was shot at by two youngsters who later admitted that they had done it—the bullet was fired from a stolen rifle—and he sustained a severe fracture of the skull, brain injury which resulted in a permanent impairment to his speech.

Senator McCLELLAN. What did that cost you?

Mr. SLOAN. In that particular case, plaintiff and counsel envisioned a rather substantial verdict and we were forced to trial and the result was in favor of the railroad company.

Senator McCLELLAN. You did have a trial?

Mr. SLOAN. Yes, sir.

Senator McCLELLAN. What happens to the culprits, the perpetrators of these acts? Are any of them ever prosecuted?

Mr. SLOAN. That is more in the field of Mr. Meeker, who can cover that.

Senator McCLELLAN. Mr. Meeker, will you tell us?

Mr. MEEKER. Yes, sir. For example, I have some figures here on apprehension of persons responsible for stoning of trains.

As an example, during the period 1964 through 1966 our police apprehended an average of 57.8 such persons per month. During the first 4 months of 1967 such apprehensions averaged 77.8.

Senator McCLELLAN. Why do you need a Federal law if you are apprehending them?

Mr. MEEKER. It is our thought, Mr. Chairman, that due to the past record, that despite our best efforts, our railroad security forces with the assistance of the State and local authorities are actually losing the battle to control this.

Senator McCLELLAN. If you apprehend them, what happens with respect to punishment? Are they punished?

Mr. MEEKER. They are taken to the various juvenile courts and hearings are set up across the country. But I would say that almost without exception the penalty is probation.

Senator McCLELLAN. Are most of them juveniles?

Mr. MEEKER. In excess of 90 percent would be juveniles.

Senator McCLELLAN. What age range?

Mr. MEEKER. They would range at—we have had them as young as 4 and 5 years old, all the way up to 18.

Senator McCLELLAN. What good would Federal statutes do to deal with cases like that?

Mr. MEEKER. My only thought on that is, it is my feeling that fortunately I think the public today still has considerably more respect for Federal laws than they do our local ordinances or State laws.

Senator McCLELLAN. One time they had a great deal more because apprehension was quick and swift disposition of the case was made. It was far more probable than in State and local jurisdictions. But I am not sure but what the prestige of the Federal Government in that area is losing ground.

Mr. MEEKER. I would have to agree, and I think it is very unfortunate.

Senator McCLELLAN. I think so, too.

Mr. MEEKER. The only thing I can add to that, hopefully, is that Federal law might serve as a deterrent by causing parents to maintain a little closer watch over the activities of their children.

Senator McCLELLAN. I am not sure it will.

Mr. MEEKER. Not only in this field but all others.

Senator McCLELLAN. Mr. McCulloch, do you want to make any comment?

Mr. McCULLOCH. While I speak primarily as a representative of the Brotherhood of Locomotive Engineers who are employed on the railroads and who are oftentimes victims of the rock throwing——

Senator McCLELLAN. Many times it is the employee who gets hurt as well as the passenger.

Mr. McCULLOCH. Our employees run the front end of the trains and usually behind windshields that can be broken. We are mainly here in support of this bill and we would ask that it be made a Federal act. Anything the Brotherhood of Locomotive Engineers can do to further protect our employees and to protect also the passenger public who ride these trains, naturally we will support. That is my purpose in being here and I would encourage this committee to recommend this bill and endeavor to get it passed. This is a serious problem on the railroads and it is becoming more serious, and we feel that Federal legislation would definitely help.

Senator McCLELLAN. Are these cases of vandalism increasing?

Mr. McCULLOCH. Yes.

Senator McCLELLAN. Any faster than the general crime rate?

Mr. McCULLOCH. I don't know, but certainly equal to it. There are many places, Senator, on the railroads where locomotive engineers are very reluctant, especially in urban areas and on commuter trains—they are actually reluctant to go out on the job because these incidents happen two or three times in the process of a day, and it is becoming increasingly alarming. Therefore we are here in support of it.

Senator McCLELLAN. That is what we are trying to do here, to find some way to counteract, to combat, the debilitating effect of some court decisions on crime. I make that statement on my own judgment, on my own feeling about it, and also to weigh the whole general situation. There are many other factors than court decisions—many other sources of cause—and we have a serious condition in this country. This cannot go on.

Mr. McCULLOCH. We couldn't more agree.

Senator McCLELLAN. We have to clamp down. I want to legislate within the Constitution if we can, and we will proceed in that way. But ultimately there has to be, in my judgment sound interpretation of the Constitution as to what was intended and what was meant when the words were written, otherwise the court is just going to find loop-

holes and declare everything unconstitutional, and thus invite catastrophe in this society. Something has to be done. We are going to try.

Any further comment, gentlemen?

Mr. SLOAN. I would only point out, Senator, in nearly all of this type of accidents the injuries involved are to the head and to the eyes, and this could mean in every one of them loss of vision or death.

Mr. MCCULLOCH. I am one of your boys from Arkansas and I voted for you many times.

Senator MCCLELLAN. A lot of us good people are from Arkansas. Where is your home?

Mr. MCCULLOCH. North Little Rock.

Senator MCCLELLAN. Without objection, a communication from Robert W. Crown, chairman of the Assembly Committee on Ways and Means of the California Legislature, dated July 7, 1967, and its enclosure, a prepared statement of Assemblyman Robert W. Crown and Assemblyman John T. Knox, chairman, Assembly Committee on Municipal and County Government, California Legislature, on S. 917, the Safe Streets and Crime Control Act of 1967, will be inserted in the record at this point and will be printed.

(The communication above referred to follows:)

CALIFORNIA LEGISLATURE,
ASSEMBLY COMMITTEE ON WAYS AND MEANS,
Sacramento, Calif., July 7, 1967.

Hon. JOHN MCCLELLAN,
Chairman, Subcommittee on Criminal Law and Procedure, Senate Committee on Judiciary, Washington, D.C.

DEAR SENATOR MCCLELLAN: Assemblyman Knox and I are extremely grateful for your kind invitation to appear before your subcommittee and present testimony on your S. 917, the Safe Streets and Crime Control Act of 1967.

Regretfully, important legislative duties in Sacramento prevent our coming to Washington to present testimony in person; however, we respectfully request that the enclosed statement be entered in your official record of the testimony on S. 917 and be printed with any report or transcript that is issued by your subcommittee.

Your kindness in this matter is greatly appreciated.

Sincerely,

ROBERT W. CROWN, *Chairman.*

PREPARED REMARKS OF ASSEMBLYMAN ROBERT W. CROWN, CHAIRMAN, ASSEMBLY WAYS AND MEANS COMMITTEE, AND JOHN T. KNOX, CHAIRMAN, ASSEMBLY COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT, CALIFORNIA LEGISLATURE, ON S. 917 (MCCLELLAN), THE SAFE STREETS AND CRIME CONTROL ACT OF 1967

INTRODUCTION

Chairman McClellan, Members of the Subcommittee. We deeply appreciate the Subcommittee's invitation to appear and present testimony on S. 917. We regret that important legislative duties in California prevent our personal appearance. We respectfully request that the following statement be entered in your official record of testimony.

S. 917 A VITAL BILL

S. 917 is a vital bill and is of great importance for a number of reasons and we commend Senator McClellan and the Senate co-authors on their foresight in sponsoring this legislation. First, crime has become a major problem in California as it has throughout our country. For many years, we have relied on the Uniform Crime Reports, published by the Federal Bureau of Investigation, as an index of our crime problem. However, recent reports by the Federal Crime Commission, under the direction of Ottorney General Katzenbach, indicate that the

number of crimes across our nation may be twice as high as indicated by the Uniform Crime Reports.

In the Commission's survey (as recently published in the magazine *Trans-Action*) the Commission discovered that *as high as 20% of the households in* the country may have been criminally victimized. Forcible rape, a particular vicious crime, is believed to be *four times as high* as originally reported.

Unfortunately from the standpont of crime, we must admit that we come from a part of our nation referred to as the "Wild West." Indications are that this area has a higher crime rate than any other in the nation. In California in the last year, crimes of violence have increased *13%*. Crimes against property have *increased a staggering 30%*. The need to do something more than enact stiffer penalties and longer jail terms has never been more apparent. Your S. 917 recognizes that need.

PUBLIC CONFIDENCE

S. 917 is important, secondly, because of the problem that the police face as a public institution in our society. Recent public opinion polls indicate that, next to concern for our war in Viet Nam, the public is most concerned about safety in their streets. Yet much of the public lacks faith in their law enforcement officials. Fifty-five percent of those persons interviewed by the staff of the Federal Crime Commission felt that the police are ineffective.

Thirdly, law enforcement is being called upon increasingly to combat sophisticated and complex criminal and social problems. Even though I have great respect for our law enforcement officials, I am nevertheless forced to believe that many do not have the ability, the knowledge, or the technical skills to cope with these increasingly complex problems.

TECHNOLOGY AND CRIME

The problems are mulitple. We are liivng today in an age of technological sophistication, and crime and the criminal are not expected from this condition. For the most part, the ability of our law enforcement agencies to deal with organized crime is completely inadequate. Furthermore, the advances in science and technology, as reflected by our aerospace industry, have not been lost upon our criminal population. The police are simply not able as yet to cope with this condition.

As you are undoubtedly aware, California has one of the best developed systems of crime reporting in the nation. At the same time, according to the Bureau of Criminal Statistics of our Attorney General's office, the abiltiy of the police to solve the increasing number of crimes has dropped astonishingly. Crimes solved by the police—referred to as clearance rates—are as follows, when you compare the rates for 1964–65 with the rates for 1960–61:

Crime	*Rate of clearance (percent down)*
Homicide	7
Robbery	28.3
Aggravated assault	10.6
Forcible rape	14.8
Burglary	31.4
Grand theft	27.3
Auto theft	22.1

In addition, there is an ever increasing problem of adequate police personnel and its training. The police are encountering increasing difficulty in maintaining their authorized strength. This is due principally to an inability to attract qualified applicants. It is our understanding that in Los Angeles, *only 2.8% of the applicants to the Los Angeles Police Department were found acceptable.*

ADEQUATE PAY

A basic problem in police officer recruitment is the problem of salaries, an issue we have been attempting to meet in California. While for the most part law enforcement agencies in California have reasonably good starting salaries, few allow salary increments commensurate with the police officer's growth in experience and years of service.

It appears that only a few police agencies have been able to increase the maximum salary to the point where qualified and intelligent officers are able to remain on the force without penalizing their families. The police cannot be expected to recruit competent personnel until communities are willing to pay the price for improved police performance. Until salaries are increased to competitive levels, law enforcement services will fight a losing battle in their efforts to upgrade the quality of their personnel.

In many instances, the police task is complicated by a hostile and antagonistic public. Of 90 possible occupations, public preference for law enforcement work ranked 54th. A positive public image is vital if law enforcement is to be successful.

COURT RULINGS

Recent Supreme Court rulings dramatize the need for peace officers of *exceptional skill and training*.

I must point out that considerable conflict exists between the police and our court system over the use of probation. It is possible that this problem represents a lack of understanding on the part of both the courts and law enforcement. The police must recognize not only the reformative disadvantage as well as prohibitive expenses of extensive use of incarceration. At the same time, the courts must take note of the law enforcement attitude that they expend a great deal of effort and at times are involved in considerable personal danger, only to have the offender returned to the community where additional offenses may be committed. It is my belief that *S. 917 will provide ways* in which this problem of communication, as well as the others that we have mentioned, may be brought to solution.

NEW WEAPONS FOR LAW ENFORCEMENT

To cope with these problems, law enforcement needs new weapons. Innovation *must* become a key word in our efforts to deter and control crime. By innovation, I mean such programs as the Community Service Officer concept, as proposed in the *Federal Crime Commission Report*. If the police are to be effective, they must have a positive relationship with the public. The use of individuals who are familiar with an area and its subcultures should be a great assist in establishing better police-community relations. At the same time—with adequate financial support—such persons could receive the education necessary to become competent law enforcement officials.

We might also allude to that innovation program referred to as the *work furlough*. This program of returning selected offenders to the community so that they might maintain their employment and at the same time be contributing members of the community, is an exciting program.

BRAINS FIGHT CRIME

Richard A. McGee, Administrator for California's Youth and Adult Corrections Agency, recently placed the problem of innovation and experimentation in proper perspective when he said, "*We need to fight crime with our brains, not our emotions.*" *S. 917 presents the embodiment of this statement.* Modernization of law enforcement is essential; we must experiment, research, and study, to find solutions to our problems. If law enforcement is to grow and meet its many challenges, it needs bills like S. 917, which stimulate and encourage law enforcement. I am aware that we must develop and use the techniques of scientific analysis in expanding our knowledge of crime prevention and deterrence. Someone has recently said, somewhat facetiously, no doubt, that the major research breakthrough towards better law enforcement has been the discovery of money. While humorous, it does represent some truth: Substantial sums of money will be necessary to cope with our crime and law enforcement problem. S. 917 must therefore be considered vital.

A.B. 901

Mr. Chairman and Members of the Committee, what we have said here is based upon deep conviction. We have personally attempted through the introduction of legislation in the California Assembly, to come to grips with this problem of adequate police support in salaries, standards and training.

Our major crime bill A.B. 901, contains two basic provisions, each of which will assist cities and counties in fighting crime and maintaining law and order. The first provision will insure adequate compensation of all peace officers in the State by matching local funds with State subsidies, making it possible for law enforcement to compete for the best brains and talent available. The California Commission on Peace Officer Standards and Training would be required to establish minimum standards of compensation,[1] retirement allowances, and other fringe benefits for local peace officers, as well as minimum standards for the recruitment and training of peace officers. The local jurisdictions meeting these standards would receive subventions from the State.

UPGRADE TRAINING LEVELS

The second provision will allow local police agencies to upgrade dramatically the levels of training available to their peace officers. Up to five regional training centers would be established in the major population centers of the State. Peace officers would be assigned to these training centers for intensive training in the most advanced techniques of law enforcement and management training, thereby providing a level of training which most local jurisdictions are now unable to afford. We believe that the lack of this type of training in California is one of our major shortcomings, and I would like to point out that the provisions of S. 917 are ideally suited to stimulating centers for this type of training throughout the nation.

AREAS NEEDING FINANCIAL SUPPORT

If the police and other law enforcement agencies are to increase their capabilities, we will need to do much research and experimentation, properly financed. Some of these areas that demand attention are first, the fractionalized state of our present law enforcement effort, multiple jurisdictions, limitations on authority, and arbitrary boundaries. Regional governmental organizations of law enforcement should be attempted in order to erase these disabilities.

We also need greatly increased *coordination in the assignment of responsibility* among the many agencies and services that seek to solve criminal problems in our complex society: city police; county sheriff; human rights organizations courts; fair employment agencies; public and private welfare assistance agencies; urban renewal agencies and the others dealing with the "war on poverty."

STANDARDS OF ENFORCEMENT

Secondly, we must develop and implement adequate standards of law enforcement. While we are fortunate in California to have the Commission on Peace Officer Standards and Training, its efforts are nevertheless directed only to minimum standards. Programs of adequate career development and training are lacking.

Crime is "big business" and cannot be effectively fought with inadequate and old-fashioned techniques. We have much to learn from the aerospace industry and our national Defense Department as to methods of properly allocating limited funds for maximum effectiveness.

Another vital issue is the training and retaining of good law enforcement personnel. Also related is the need for providing improved management policies and services in law enforcement.

Finally, the police must be assisted in developing better methods of crime deterrence.

CONCLUSION

In conclusion, Mr. Chairman and Members, we believe that S. 917 is a crucial and invaluable first step toward assuring all Americans security of person and property. At present, there are severe deficiencies in our systems of law enforcement and S. 917 would correct many of these deficiences. It is our firm conviction that unless we are able to recruit intelligent and educated police personnel, to provide them with high quality basic and advanced training, and then to retain

[1] We would prefer to make these mandatory but our Charter City and County provisions preclude this.

them for the purposes for which they have been trained, we will certainly lack the proper personnel to successfully fight crime and control social disturbances. It is because of these convictions that we are appearing before you today to ask that you support and approve this very important bill. Thank you.

Senator McCLELLAN. The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:20 p.m., the subcommittee recessed until 10 a.m., July 12, 1967.)

CONTROLLING CRIME THROUGH MORE EFFECTIVE LAW ENFORCEMENT

WEDNESDAY, JULY 12, 1967

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 o'clock a.m., in room 3302, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senators McClellan and Edward M. Kennedy.

Also present: William A. Paisley, chief counsel; Joseph D. Bell, assistant counsel; W. Arnold Smith, assistant counsel; James C. Wood, assistant counsel; Richard W. Velde, minority counsel, and Mrs. Mabel A. Downey, clerk.

Senator MCCLELLAN. The committee will come to order.

Senator Yarborough, the committee is very glad to have you this morning.

Senator YARBOROUGH. Thank you, Mr. Chairman.

Senator MCCLELLAN. You may proceed and tell us how to get a good start today.

Senator YARBOROUGH. Thank you. You are very generous.

STATEMENT OF HON. RALPH YARBOROUGH, U.S. SENATOR FROM THE STATE OF TEXAS

Senator YARBOROUGH. You have given me a good start by giving me the privilege and honor of cosponsoring with you as the principal author of S. 917, a bill to give protection to people, the Safe Streets and Crime Control Act. I consider it an honor to appear before your subcommittee and to say it is an honor to cosponsor this bill with you at your invitation.

Our crime problems are growing in size and complexity. Crime reaches across the face of our Nation. Long-term, comprehensive, and innovative planning is required if we wish to arrest the growth of crime and return offenders to society as productive citizens.

The President's Crime Commission has given us abundant evidence of the fact that crime has become a national crisis and this Nation's shame. In a few years our citizens who will be able to point with pride to our men on the moon might be unable to walk safely on any of our Nation's streets. Equally clear then is the fact if we wish to prevent the arrival of some kind of Dark Ages in our Nation's law enforcement history, we must do a great deal and quickly.

The Safe Streets and Crime Control Act is a well-considered and far-reaching proposal. Its provisions will encourage our States to increase their expenditures for crime prevention, detection, and criminal rehabilitation. This bill provides an essential inducement for State initiative and innovation.

One of the most promising parts of this proposal is its emphasis on innovation. The enormity of our crime problem requires new ideas and approaches, new institutional arrangements and developments. As a result of this bill, I see in the future in our States new crime detection laboratories, rehabilitation centers, and halfway houses. I also anticipate new imaginative cooperative groupings of towns, counties, and perhaps even States for pooling resources for a collective assault on similar problems or in some situations in groups of neighboring communities with related problems.

I believe that the 90th Congress has an opportunity to produce this Nation's first massive assault on crime. The safe streets and crime control bill is an important part of this historic effort.

I further believe that our efforts are incomplete if we do not take the lead in providing legislation whose purpose would be the compensation of innocent victims of crime. The innocent victims compensation bill, S. 646, which I reintroduced in the Senate on January 25, focuses on the victim's loss as a result of the criminal act. It is not enough just to talk of new innovations in crime prevention and criminal rehabilitation, while leaving the innocent victim of a violent crime as the forgotten man in our society. I believe that this innocent victims compensation bill shows a recognition of society's obligation to victims and survivors of victims of murders, rapes, and assaults. As important as reducing crime is meliorating its effects on its victims.

If society assumes the responsibility for the welfare of criminals and protection of their rights to counsel and to a fair trial, then it is inconceivable to me, that it could neglect, as it has done, the victims injured when society fails to provide adequate protection for its law-abiding citizens. While the elimination of crime is our goal, the innocent victims of violent crimes certainly deserve to have their suffering alleviated by monetary compensation in an amount assessed by an impartial tribunal.

The Violent Crime Compensation Commission established under this bill would individually judge compensation for all legitimate victims of crime, whether or not the perpetrator had been caught or the presence of criminal intent had been proven. This three-man tribunal, appointed by the President, would have the power to set an appropriate amount of compensation up to $25,000, after considering such relevant factors as the nature of the crime, the financial needs of the victim, and evidence of any possible encouragement by the victim to the commission of the crime. The provisions of this bill would apply only to the District of Columbia and the other limited areas under the police power of the Federal Government. A compensatory award would neither bar further civil action by the victim against the criminal, nor bias the subsequent prosecution of the criminal.

The historic precedents behind the idea of compensation for innocent crime victims dates back to the ancient penal codes of Babylon, Israel, Greece, and Rome, where the punitive fines collected from crim-

inals were paid directly to the injured victims. In form and concept, S. 646, the current bill, is similar to recent legislation enacted in New Zealand, Britain, and New York, and along the same lines as that of a California law.

I believe that this bill will prove a great step toward the goal of socially responsible and humane treatment of victims of crime concomitant to that now extended to the criminals themselves. This is especially necessary as the victims of violent crimes are usually those who can least afford this expense and suffering so unfairly imposed upon them. State records reveal countless individuals who have been reduced to the welfare roles merely because of the unfortunate coincidence of their being present at the scene of a crime. By the provisions of S. 646, innocent citizens brutalized by criminal violence would be aided in paying for hospital expenses and loss of income. Under the proposed legislation this compensation would also indemnify victims who had acted as "good Samaritans" and were injured while attempting to prevent a crime. This latter provision would benefit law enforcement officials by encouraging citizens to aid personally in stopping crimes that they witness with the knowledge that, should they incur injury, they would be reimbursed by the Government.

All of this, it seems to me, is a response to a growing awareness of the plight and needs of the innocent victim. Judging from the results of a 1965 Gallup poll, which showed that 62 percent of the people polled were in favor of compensation of victims, support for legislation to remedy this problem is nationwide. I believe that this increasing recognition of society's obligation to protect its citizens from criminal attack and its responsibility to compensate them if it fails to do so, makes the passage of S. 646 of vital importance to a truly comprehensive national crime control program.

Mr. Chairman, I submit this statement along with the brief statement on 917 because 917 is the chairman's bill and he is familiar with all of its terms.

Senator YARBOROUGH. I want to say to the chairman that when I first introduced this bill in 1965 no State had such a law, though New Zealand and Great Britain did have and I had hoped that the Congress would pass such a law as an encouragement to the States. Governor Rockefeller appointed a commission in New York to study this. They wrote us, we sent them the bill, all of the material we had been accumulating for 2 or 3 years and New York State has passed a very similar bill to this one pending in Congress. California passed one but it is tied into social welfare. It is very inadequate compared to the New York, New Zealand, and Great Britain laws. Maryland was considering it at their session of the legislature. I do not believe they finally passed it. It made considerable progress in the Maryland Legislature.

I thank the chairman and members of the committee.

Senator MCCLELLAN. Thank you, Senator.

The compensation of victims bill is before the full committee. It has not been referred to the subcommittee. I do not know whether it will be referred.

I am in full sympathy with the objectives of the bill. The only thing that I am still not satisfied about, and am deeply concerned about with

this bill, is the anomalous situation we would have, especially in the District of Columbia with its excessive crime rate, of compensating victims of crime and then having the culprit, the criminal, turned loose by the courts, unpunished, notwithstanding his guilt, on some dubious technicality.

Senator YARBOROUGH. I agree.

Senator MCCLELLAN. I think it would be tragic to impose such an obligation on the taxpayer—of course, that would probably happen in some instances in any event if such a bill were passed.

Senator YARBOROUGH. That will happen in some instances.

Senator MCCLELLAN. There is no perfection in government. But in view of the trends today, I can well envision that there would be victims compensated by the Government—the taxpayers—only to see the perpetrator of the crime go free without any punishment.

That would be a tragic situation. So I think if we do this we've got to concentrate, too, on tightening up our laws and our procedures and our effective police operations to the end that we can be a little more sure of certain detection, speedy trials, conviction, and punishment.

I appreciate your appearance here this morning, Senator.

Senator Kennedy?

Senator KENNEDY. I want to express my appreciation for the testimony of Senator Yarborough. I think this is certainly an area of criminal justice which many people have thought about and are interested in, and Senator Yarborough's statement on it is illuminating and is helpful to all of us. I think one of the real troubles in the area as mentioned by the chairman is what would be the results of such a law, what would be the implications not only for the individuals that would be compensated, but how would this really work, and how would it affect criminal justice? This is something we can all speculate on. I do not feel it is a legitimate reason to say we should not move in this area. But I do think we certainly ought at the present time to be doing a great deal more research and study on it. I think the goal is sound, and I am sure we are going to do something in this area before too long. I think Senator Yarborough's statement on it is really helpful and I commend him for it.

Senator YARBOROUGH. The genesis and theory of the bill is that the Government has taken over the duty formerly performed by citizens—that of protecting himself and his family. In my State in the frontier days and I know in the chairman's State, and even when I was a small boy, many people carried pistols. They were supposed to protect themselves and their families. It was about the only law enforcement we had. Twenty-five miles from the county seat there was a locally elected constable who would not always be around. People still had to protect themselves. Those days are gone. It is illegal to bear arms.

If the Government fails in that duty to so control crime as to protect people having taken over the collective duty of furnishing the police power and protection it ought to have some mode of compensation and in Washington, of all cities. This is the Nation's Capital, our constituents come here from all the 50 States. If they get shot down in the streets, assaulted, murdered, raped, there ought to be some compensation for their physical loss. This bill does not apply to property loss. It has worked well in New Zealand, England, and I predict it is

going to work well in New York State. It is not dependent upon the criminal. He may be insane. The law was not strong enough. We are not willing to tax ourselves heavily enough to put a policeman on every corner to protect the folks, so it would be not dependent upon whether he had the capacity to have a criminal intent. The crime is committed, the victim is lying there, murdered, stabbed, and the loss is just the same.

The fact that this happened to a person without their fault or failure would be enough to entitle them to compensation. This was debated for years and years in the House of Lords in England. Finally New Zealand, in 1963, was the first English-speaking jurisdiction to adopt such a plan. They read all the debates in the House of Lords and in the House of Commons in England and adopted it. England followed suit in 1964. I introduced my bill in 1965, the first in Congress, and in the meantime New York and California have acted, the two most populous States in the Union with a total of nearly 40 million in population, and I think we ought to act in the Federal jurisdiction, particularly in this great National Capital where our citizens will come from all the States and in view of the rate of crime we have here.

I am coauthor of this bill with the chairman. This would not weaken law enforcement. I want to see law enforcement and control. What good is it for the widow to have a little money if the breadwinner, her husband, is not around. The $25,000 limit would not compensate people, but we realize if you do not keep a limit you've got pragmatic difficulties.

Senator McCLELLAN. I have great sympathy for the objectives of this bill and its objective. As Senator Kennedy said, however, it is an area that needs study. The bill is on the theory that the Government has a duty to protect the citizen, is it not?

Senator YARBOROUGH. Yes, sir.

Senator McCLELLAN. An illustration given to us yesterday in testimony points up the problem in this area.

Two policemen on duty in a squad car in the early morning hours observed on the street corner three or four hoodlums, known to be law violators or suspects. They would like to stop them and determine whether they are carrying a gun or not. But they've got no right to stop them. They cannot stop them unless they have reasonable grounds to think they are up to mischief. They have no right to search them and take any guns away from them. The citizen says, "Protect us." But the policemen have to drive on down the street, cannot do anything about it and 30 minutes later these hoodlums break in somewhere and they murder somebody. How are you going to stop crime? The policemen in that situation have every reason to believe these people are up to mischief, yet they can do nothing about it, yet we expect them to stop crime. So on one hand we find we cannot stop crime then we propose to enact legislation on the other hand to pay the victim. How are we going to solve that problem?

Senator YARBOROUGH. Mr. Chairman, the civilization that lacks the courage and the will to protect life and property will collapse.

Senator McCLELLAN. I agree with you. Is it our duty to let the policeman have the authority under those circumstances, to arrest such people and put them in jail? That is the crux of the situation which

we face in this country today. We are telling the policeman to protect the citizens. Then we are telling him you cannot stop or search a suspect and you cannot question him. Should the policeman take a suspect in and question him, the suspect has a right to refuse and say, "I won't answer any questions until you get me a lawyer." How are you going to enforce the law under these conditions? I think it is something that must be the concern of all of us. There is a crime wave sweeping the country, it is increasing every day, yet the policeman cannot go out there and take a suspect in and question him; cannot apprehend him and take him in and see if he's got a gun, even though he is a known criminal. I do not know how you are going to protect the citizen if you do not give the police a little authority to take action necessary to protect society. That is the crux of this thing, in my mind.

Senator YARBOROUGH. That is manifest: that our officers have to have power to enforce the laws.

Senator MCCLELLAN. I agree with you. Compensating the victim afterward may be a matter of justice and something that we ought to do, but I do not think that is going to get at the problem of stopping crime.

Senator YARBOROUGH. Oh, no, I do not think it will stop crime.

Senator MCCLELLAN. I am trying to get at the prevention of crime so we will not have a victim and have to pay a victim. That is our real problem today.

Senator YARBOROUGH. I think, Mr. Chairman, the Good Samaritan provision of the compensation of innocent victims of crime will be of some help. It will not stop crime. It will not reach the major problem.

Senator MCCLELLAN. Again, I will tell you I am in sympathy with the general objectives of the bill.

Senator YARBOROUGH. And I have the honor of being the coauthor of the main bill, S. 917, under your leadership.

Senator MCCLELLAN. Thank you very much, Senator.

Congressman Scheuer, will you come forward please?

Senator KENNEDY. Just before the Congressman comes up, we have a number of other people on our witness list this morning, including Congressman Scheuer, Dr. Alfred Blumstein, Dr. Donald Hornig, and William Walsh, president-elect of the American Bar Association Section of Criminal Law. These gentlemen will be commenting on the bill that I introduced and Congressman Scheuer introduced in the House, S. 992, and I would appreciate it if we perhaps could have them as a panel, and thus expedite the workings of the committee.

Prior to calling them, I would like to, if I could, make a statement with regard to the bill which we will take testimony on.

Senator MCCLELLAN. Senator, let me get them all at the witness table.

It will help to expedite it and I am very glad to do it.

Congressman Scheuer, Dr. Blumstein, Dr. Hornig, and Mr. Walsh.

We will proceed in this manner:

Congressman Scheuer, you may make your statement. Then each of you please give your background and then proceed.

Senator KENNEDY. Prior to the start of Mr. Scheurer's statement, would the Chair indulge me for just a few minutes for a statement on this?

Senator MCCLELLAN. Go right ahead.

STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. This is an occasion to which I have looked forward ever since at least 1964, when I first became interested in the problem of how to organize our efforts in research, development, and training in criminal justice fields. And I must say the timing could not have been better. Perhaps to our surprise the great public interest and concern regarding crime in 1964 has grown steadily and is right now perhaps at its peak.

And it is precisely this peak of concern about crime which gives us in the 90th Congress not only a unique opportunity, but also a solemn responsibility to leave to future Americans a permanent legacy of tools to deal with crime. It is within our power to fashion the current momentum and support for anticrime measures into a lasting framework of legislation and institutions capable of continuing the struggle against crime even when public concern again wanes, as history tells us it will.

If we let this opportunity escape, it may be generations before we have it again. But we have a duty to ourselves, and the American people, and our children, and our grandchildren, not to miss this chance. We must build a structure which captures today's energies and excitement and carries them into the future, so that we may have an unremitting, broadscale effort to seek solutions in every dimension of the crime problem, at every level of government, in every part of the Nation.

President Johnson has taken initiatives which have laid a firm foundation for the work Congress needs to do. His Crime Commission, under the able chairmanship of Nicholas Katzenbach, provided a fertile source of ideas, recommendations, questions, and above all, challenges to our ingenuity and our dedication to a tranquil and just society. And President Johnson has also, in his package of crime legislation, suggested the key elements of a permanent path to progress. At its heart lies the Safe Streets and Crime Control Act, a bill which in its comprehensiveness and balance reflects the President's own attitudes and actions concerning crime.

The Crime Commission put its finger on a central element of our future planning when it opened its chapter on "Research—Instrument for Reform." It said:

> The Commission has found and discussed throughout this report many needs of law enforcement and the administration of criminal justice. But what it has found to be the greatest need is the need to know.

Expressed another way, what this passage means is that the Commission discovered that there are more questions about crime for which we have no answers yet, than there are questions for which we have answers. And in many areas the Commission not only could not find, during its limited life, the answers to questions, it couldn't even find the right questions to ask.

In the year 1967, a time of space exploration, of incredible sophisticated weaponry, of computers and automation and cybernetics, it is hardly necessary to make the case for research and development and experimentation as the key to progress. Yet, in the field of crime, this Nation has utterly failed to meet its responsibilities to think about

what it is doing and to apply its best brains and imagination to doing it better. Until 1965 there was almost no Federal support for broad-scale research, development, and experimentation in criminal justice fields, and even today we are letting the Law Enforcement Assistance program limp along, with this and other responsibilities, with what—in relation to need—must be considered a paltry sum of $7 million.

I believe that the President and Attorney General Ramsey Clark and the 90th Congress are determined to do something about this shameful situation. I believe that we do want to leave a legacy of authority and structure which guarantees that the Federal Government will focus its best efforts on solving the crime problem, and that those assigned this task will have the resources and staff and status they need to do the job. The only question is how. What institutional framework will best serve the national need in this area?

It seems to me that there is wide agreement on the answer. The President referred to it in his 1967 message on crime. The Crime Commission went into it in some detail in its report. The very distinguished witnesses we will hear today and many of their colleagues and organizations subscribe to it. The answer is the establishment of a National Institute of Criminal Justice, a concept which is embodied in S. 992, a bill I introduced early this session. It is cosponsored by Senators Burdick, Dodd, Kennedy of New York, Magnuson, Nelson, Prouty, and Randolph.

Let me emphasize right from the start that S. 992 is wholly consistent with S. 917, the Safe Streets and Crime Control Act. While the President and Attorney General have not asked for a specific congressional mandate for a National Institute, they have expressed their expectation that such an Institute would be established under Safe Streets, and they certainly do not oppose the concept or the idea of a congressional mandate. The one thing the Attorney General has asked for is flexibility. He wants as many options as possible in building an institute so that it can be efficient, effective, and adaptable. S. 992 is designed to have such flexibility, and would, I am confident, allow for a structure which best addresses the needs it is designed to meet.

But the one thing S. 992 would do is provide assurances that we *will* have a National Institute—no matter who the future President and Attorney General may be—and that it will have the resources to do the job. Let me briefly state, as I did when I introduced it, the job which a National Institute under S. 992 would do.

As I envision the Institute, it would be analogous to the National Institute of Mental Health. It would be headed by a Director, appointed by the President, with the advice and consent of the Senate, holding a rank equivalent to an Assistant Attorney General. The Institute would conduct research and development projects in crime prevention and control, the administration of justice, and the rehabilitation of offenders. It would seek new ways to strengthen and implement the Federal-State partnership in these areas. It would look into the causes of crime, the means of preventing it, and the theories and techniques for correction and rehabilitation. Working very closely with the Office of Law Enforcement and Criminal Justice Assistance, it would administer the Federal funds available for research and demonstration projects in educational institutions and in State and local agencies.

The Institute would undertake a program of fellowships through which professionals in field relating to criminal justice would be able to spend time at the Institute, working on research projects and employing their experience and their insights. The Institute would also conduct workshops at which experts from different backgrounds and different parts of the country would meet and gain experience from the experiences of others. It would provide field assistance to police departments, courts, correctional agencies, universities, and other agencies through an extension service. It would gather information and results from efforts touching on criminal justice which are being carried on in the Federal Government and elsewhere throughout the Nation, and would synthesize this information and disseminate it both for professional use and for use in schools and by the general public.

It would also establish a program evaluation and assessment capability now lacking in the executive branch. Any agency of the Federal Government issuing grants or contracts relating to law enforcement and the administration of justice would be able to call upon the institute to assess and evaluate the programs the agency was conducting, as well as to correlate and disseminate the results.

The Director of the Institute and his staff would be assisted and guided by a national advisory committee appointed by the Attorney General. This committee would consist of leading experts from all the disciplines relating to the administration of justice, as well as respected national figures and civic leaders.

In short it would be a well-staffed, highly competent, neutral, nonpolitical institution which could serve as a marketplace of ideas and a repository and disseminator of information, a seeker of truth and a stimulator of progress, without responsibility for governmental functions, or for day to day administering of large grant-in-aid programs. Such questions as the mix between in-house and contracted-out research, the extensiveness of physical facilities, the relationship between the institute and the Regional Academies of Criminal Justice, which are proposed under my bill, S. 993, and so forth, would be left to the Attorney General and the director, as long as they fulfilled the primary tasks of stimulation, coordination, evaluation, correlation, and dissemination.

I do think it would be a mistake not to begin immediately to provide the funds and direction to design and start the Institute, even on a pilot basis, at the same time as the mechanism for implementing the Safe Streets Act is being developed. The two units will have to work closely together, and neither can be designed without full attention being given to the design of the other. Thus not only is there no good reason not to develop them simultaneously, but commonsense demands this course. Many of the personnel hired at the initial stages will, of course, necessarily be working on developing both the Institute and the assistance program. But this should be an advantage, not a barrier, both in terms of sensible design and future coordination.

On the question of the location of the Institute within the Government, there is certainly something to be said for the Commission's view that in the long run it might be desirable to have the Institute independent of any department. But in the short and medium run,

it is clear that considerations of practicality and of optimum effectiveness require that the Institute be established within the Department of Justice.

We are very fortunate today to have four highly qualified witnesses to testify on S. 992. Congressman Scheuer of New York has sponsored an equivalent bill in the House. He has gained support for it through hard work and persistence, and gave his colleagues a taste of what the Institute might do by sponsoring an exhibit on crime research in the Rayburn Building not long ago. Dr. Donald Hornig, President Johnson's Science Adviser has, of course, an overview of the Federal Government's entire research and technological development effort. He and his assistant, Dr. David Robinson, who is also here today, worked very closely with the Crime Commission's Science and Technology Task Force.

Mr. William F. Walsh is a leading lawyer in Houston, Tex., and is chairman-elect of the American Bar Association's section of criminal law. The officers of that section have worked very hard reviewing many of the bills before this subcommittee, and we will look forward to having the benefit of their views. Mr. Walsh has been particularly interested in the National Institute as evidenced by his piece in the winter edition of the American Criminal Law Quarterly, in which he said:

> In spite of the burgeoning interest in criminal law, there is still a dearth of hard data and empirical knowledge about the operation of the criminal law. This complex subject requires study in depth, not only by commissions and committees, which are necessarily temporary in their character, but by a permanent research agency. The Congress should, I believe, establish a National Institute of Law to conduct research itself and by grants to private individuals and organizations. I believe that such an agency could do for the law what the National Institutes of Health are doing for medicine.

The final witness today on S. 992 will be Dr. Alfred Blumstein, who was Director of Science and Technology for the Crime Commission, and who is with the Institute for Defense Analyses, a leading Defense Department research contractor.

Mr. Chairman, again let me thank you for your cooperation in letting the subcommittee have a chance to consider this legislation. I believe it is one of the most vital and promising bills we will consider this year.

Senator McCLELLAN. Thank you, Senator.

Congressman you may proceed—I will place you in charge of the panel.

STATEMENT OF HON. JAMES H. SCHEUER, A MEMBER OF CONGRESS FROM THE 21ST DISTRICT OF NEW YORK

Mr. SCHEUER. I am afraid you honor me too much, Senator. I am not among peers. I am definitely among my superiors.

I will just speak very briefly. I assume my prepared testimony will be printed in the record.

Senator McCLELLAN. You have a prepared statement? It may be printed in the record.

(The statement referred to follows:)

TESTIMONY OF JAMES H. SCHEUER, MEMBER OF CONGRESS, 21ST DISTRICT, NEW YORK

Mr. Chairman: I appreciate the opportunity to testify in favor of S. 992.

In considering the new policy area of Federal assistance to local law enforcement, we have an unusual advantage. We can rely upon one of the most innovative, thorough, and well-written reports ever issued by a government agency. I refer to the President's Crime Commission Report, *Crime in a Free Society*, and the accompanying task force reports, particularly the task force report on science and technology which outlines a National program of research. In large measure, this bill creates the administrative structure and assures the funding to carry forth the program outlined in this report.

I first became deeply interested in the problem of crime several years ago as a result of the concern of my constituents.

Every survey I have made of my own Congressional District in the South Bronx has shown that neighborhood security is the most critical concern of the residents in this area. This anxiety is not unique. People in our major cities across the country as well as in rural areas live in fear of becoming the targets of unrestrained criminal activity on the streets and in their homes.

Accordingly, I have given a large part of my legislative time and energies to the problem of crime. While doing so, I have become convinced that the problem of crime is not our number-one domestic concern, but also represents our most dramatic gap in the application of science and technology to public problems.

Forty years ago the police were pioneers in applying science and technology to government. But unfortunately, the innovations of the 1920's—the radio patrol car, tear gas, and finger-print identification—still represent the highpoint in police technology. Today's policeman must still rely on the same basic equipment as he did forty years ago—the truncheon, the lethal sidearm, and the patrol car.

This lack of innovation in equipment serves as a dramatic example of the widespread need to bring law enforcement up to date.

This need, however, goes far beyond the availability of new weapons and technology, for many of the key questions in the area of crime are interdisciplinary questions—the type of question answered by cooperating teams of physical scientists, psychologists, sociologists, political scientists, engineers, and lawyers, as well as criminal justice officials. The National Institute of Criminal Justice proposed in this bill could make the long-needed start in answering such questions as:

How to Select and Train Police Officers

How can we select and train police officers who will "keep their cool" and remain calm under the wide variety of present urban crises including:

The apprehension of the youth in a "borrowed car."

The apprehension of a mentally disturbed person or a threatened suicide.

The dealing with an obstreperous or reluctant drunk on the street, in a barroom, or in an automobile.

The protection and control of crowds assembled for marches, demonstrations or political rallies.

The apprehension of a suspect cornered in a building such as a bank or a warehouse.

The apprehension of a criminal suspect, particularly one fleeing on foot at night or in a congested district.

The single officer attempting to discharge his duty or make an arrest in the presence of a hostile assembly.

The showdown with the armed criminal, often at night, in a poorly illuminated area.

Dealing with the dangerous criminal holed up in a hideout, perhaps with one or more hostages.

Rioting bands or mobs.

How to Prevent Crime

How can street lighting be better used to prevent crime?

Can cars, places of businesses, apartment houses and public housing units be designed to make crime less likely by *reducing* opportunity and *increasing* the risk of apprehension?

Is closed-circuit TV surveillance of high crime public areas practical?

How can we encourage a closer relationship between the criminal justice system and other government agencies?

How can we make police patrol more crime-inhibiting?

Can we identify likely delinquents in time to alter their behavior?

How can we use former criminals to help prevent young people from becoming future offenders?

How Can We Improve the Apprehension of Criminals?

How can we best allocate scarce police resources?

Do delays in our court system encourage more crime by discouraging citizen participation in the law enforcement process?

How can citizens be encouraged to report crimes to the police? Why don't they want to "get involved" in the law enforcement process?

How can we make it less costly for citizens to serve as witnesses?

How to Increase Deterence and Rehabilitation

What causes our high rate of recidivism?

How can we individualize our rehabilitation programs?

How can we reconcile the conflicting mechanisms of deterence, incarceration and rehabilitation?

Do police patrols act uniformly over the population to deter crime?

It is remarkable, but we have not even begun to answer the most rudimentary questions in the area of crime prevention. Every three months the FBI issues its *Uniform Crime Statistics* and generally the Director reports a shocking increase in the general crime rate: contained in these quarterly reports are fundamental and fruitful areas of investigation which, to the best of my knowledge, no one in our Federal establishment is yet investigating. Perhaps the following differences are in minor degrees due to various types of reporting, but to my knowledge, no one is investigating the cause and significance of these differences. The last FBI quarterly report indicated that:

In Omaha, Nebraska, assaults increased spectacularly by 1,380% while the national average increased only 14%.

In Albuquerque, New Mexico, larcenies increased 312% while the national average increased 18%.

In Cleveland, Ohio, larcenies increased 180% while the national average rose only 18%.

In Savannah, Georgia, instances of aggravated assault decreased 78% while the national average rose 15%.

In Rochester, New York, auto thefts decreased 36% while the national average was up 20%.

In each of these cases, there has been a remarkable deviation from the norm. But, according to Quinn Tamm, of the International Association of Chiefs of Police, no one in our government is asking which of these cities which have had successful experiences what they are doing that other cities might emulate.

In other cities, certain categories of crime have risen atypically, but again, no one is trying to find out what unusual conditions in these cities might have caused this rise and what these cities with spectacularly poor records could do to improve their experience.

The fact that we are not yet even trying to answer these rudimentary questions reveals the primitive state of anti-crime research.

This committee is now considering a number of measures which represent Congressional responses to the problem of crime. Most of these bills have some type of research component.

S. 992 differs from most of the other proposed anti-crime measures in that its prime purpose is basic and applied anti-crime research with a fully developed framework for a successful program of research and development.

Since the end of World War II, the Federal government has had considerable experience in large-scale research and development. This bill has been designed to take advantage of our experience of the last two decades in order to insure the right combinatiton of flexibility and innovation on the one hand, and coordination and administrative control on the other.

Responsibility and Innovation

The Federal government will soon be sponsoring some type of anti-crime research program. The success of that program is heavily dependent upon that caliber of the people running it. Our best assurance of attracting first-rate scientists at the operational level is to attract a scientist of national reputation to head the program.

Men equipped with a solid scientific background and the judgment and wisdom needed to apply scientific findings to a sensitive policy area, are hard to find, and they are eagerly sought by private industry and other government research and development programs. We cannot attract this caliber of professional unless we make the position comparable to the top research and development officials in similar Federal government programs and private industry.

As a case in point, one of our large cities is now having difficulty finding a first-rate scientist to head their anti-crime research program even though they are offering a salary of $25 thousand a year—a salary almost equivalent to a Level V Cabinet officer.

S. 992 will help to solve the problem by providing that the Director of Research shall be equivalent to the rank of Level IV or Assistant Attorney General. This is equivalent to:

The Assistant Secretary of Commerce for Science and Technology in the Department of Commerce;

The Principal Deputy Directors of Defense Research and Engineering in the Department of Defense; and

The Assistant Secretaries of Research and Development in the Army, Navy, and Air Force.

It is even one step below the Grade III Level Director of Defense Research and Engineering in the Department of Defense.

The creation of the position would bring about a long-needed change, for the Department of Justice is now one of the few Cabinet-level Departments without an individual in a level grade position responsible for research and development.

Funding

Equally important to the recruitment of personnel is assured funding for a meaningful research and development program.

S. 992 is similar to the now-amended House version of the Administration Crime Control Act, H.R. 5037, in that it provides for earmarked funds for research. It is desirable to earmark research funds because the research function lacks the political appeal of other operating programs.

The products of research are not immediately dramatic—they are long-range, sometimes negative, and generally hidden from the public eye. There may be no immediate practical, visible application to justify the expense. Research has to be carefully evaluated for its long-range potential and for its long-range yield.

Politics, on the other hand, to most practitioners of the art, is a short-run way of life with a short-run methods, and short-run goals. Generally priority is given to programs with large public visibility. The Administration and most of the Members of Congress predictably will be more interested in programs that are calculated to produce an immediate and visible local impact.

If we are to start on the difficult long-term questions posed by the President's Crime Commission, the research function must be assured by specific legislation, and earmarked funds.

This bill approaches its maximum expenditures in manageable stages to insure adequate build-up of funding as research design and management capability develop. The first year the bill calls for $10 million, to fund the recruitment of scientists and the build-up of critical research and development machinery. It then authorizes $30 million the second year and $60 million the third year as capability develops.

The President's Crime Commission report states that we now spend over $4 billion a year on our criminal justice system. Were we to spend the entire $100 million in one year instead of three, we would still only be spending 3½% of our budget on research, as compared to the 15% and the 7% spent annually on research and development in the Departments of Defense and Commerce, respectively.

National Institute of Criminal Justice

Once we have provided for adequate personnel and funding, we must then locate the operation in the optimum organizational structure: one that provides an opportunity for broad-gauged, creative thinking and at the same time, insures a responsiveness to crime prevention and control problems at the precinct station house level.

S. 992 provides for a National Institute of Criminal Justice to be located in the Department of Justice. This is almost the identical organizational structure as the National Institute of Health, which has been so spectacularly successful in combatting basic problems of disease.

Much of the research in this bill will be conducted on a local grant basis. There are two good reasons for this. First, problems to be researched are uniquely related to local conditions and are best suggested and analyzed within local areas by local personnel. Secondly, the quite essential research resources, qualified scientists, are located throughout the country in state and local governments, universities, research institutes, and private corporations, many of which already have several decades of experience in building research and development capability through work on our highly sophisticated military and space age systems and technology.

Consortiums of local law enforcement officials, and experienced scientists in universities and private corporations will provide the best combination to tackle the difficult problems of anti-crime research. But, locally based research also raises significant problems.

If a large portion of our research is conducted on a local grant basis:

How will it be coordinated?

How shall we select the best institution for carrying out a particular project?

How will we coordinate demonstration projects?

How will the research be evaluated?

S. 992 establishes the machinery to help answer these questions and to assure the effectiveness of our local grant operation, for it establishes an in-house research institute with an independent capacity for research and evaluation. It also provides the umbrella under which we can bring together enough research people to provide the intellectual stimulation necessary to attract today's best scientists.

An Institute located in the Department of Justice also provides the organizational structure needed to encourage good two-way communication between those who perform the research and those who must apply research fundings. The Institute should be located within the Department of Justice to encourage operating law enforcement officials at every level—city, county and state—to communicate their needs to researchers and to insure ready access to research findings.

Two-way communication with state, county and local law enforcement agencies would also be assured by the development of an extension service similar to the highly successful county agent extension service operating within the Department of Agriculture. In this proposed service, Federally trained anti-crime consultants would work with state and local law enforcement officials to acquaint them with research findings and communicate their needs to the central research institute.

The Promise of Research and Demonstration Programs

Given the right personnel, funding and organization, it would be possible for us to conduct a research and demonstration program which will change the quality, nature, scope and scale of our entire criminal justice system.

The possible benefits from such a research program range from sophisticated new hardware to complete re-evaluation of the three traditional mechanisms of law enforcement: incarceration, deterence, and rehabilitation.

The number of devices nearly developed or developed but not yet applied to law enforcement is already considerable. Imagine the results if we could provide local law enforcement agencies with:

Devices to give patrolmen vastly improved night vision.

Odor-sensory devices to detect the pressnce of explosives, narcotics, or humans, where their presence was suggestive of illegal activity.

Light armor for law enforcement agents.

A gun that stuns or otherwise temporarily disables but does not kill.

Closed-circuit television for observing high crime areas.

Secrecy in police radio communication.

A police lapel radio or wrist radio for two-way instantaneous communication

A police radio vehicle locater combined with a computer for instant dispatch

Better street lighting research

A multi-purpose specially designed standard police vehicle

The list is far from complete, but the scope of possible devices raises the even more important problem of selection.

Were a city to adopt these devices in random fashion the cost would be prohibitive. The problem is not a lack of possible alternatives, but rather an abundance of potential devices as against limited resources and a lack of cost-benefit criteria for effective decision-making among the available alternatives.

Would a police patrol car at $100,000 a year be as effective as a patrol vehicle locater and dispatcher at the same price? Or would a combination of heat, odor and sound detection devices and street lighting at the same $100,000 be more effective than both suggested alternatives?

No city can afford to experiment on its own to answer all of these questions. The price is too high both in dollars and in public safety. Our local law enforcement people need to pool their knowledge and experiments to develop basic guidelines to apply to their local situations. A good example would be a specially designed police patrol vehicle; an obvious need which no manufacturer to our knowledge has been asked to design.

There is, in addition, a special need to develop a more complete science of identification. The recent *Escobedo* and *Miranda* decisions have curtailed the traditional use of interrogation and confession to establish identity and guilt. Unfortunately we are making almost no progress in finding a substitute for these now-judicially proscribed methods. The forensic sciences of physical and organic evidence hold great promise of filling this gap.

Only a small percentage of crimes committed are crimes of physical violence, but it is these crimes—rape, murder, robbery, aggravated assault—which threaten the pattern of life in our great urban centers. It is precisely in these crimes of physical violence that the aggressors leave physical evidence, which would leave them susceptible to apprehension and conviction through an improved science of identification.

A national institute would encourage those in forensics, the science of evidence, to keep more closely in touch with chemists, biologists, and physicists, so that current discoveries and advances could then be applied to the identification and apprehension of criminals.

In many areas the dramatic potential in the forensic sciences alone justifies a national research effort. For example: traces of blood are found at the scene of a violent crime almost as often as fingerprints. If the blood has not dried, we can approach individually identification of the person on the basis of the protein distribution in his wet blood, his antibodies and his hemoglobin types. There are enough unique groupings in fresh blood to divide everyone on earth into millions of sub-groups so that in effect we would have a unique "bloodprint" for every human being. But once the blood dries, we must almost go back to the basic typing set up by Landsteiner in 1902. This means that instead of millions of groups we have only four.

Particles of hair are also left at the scene of violent crimes such as rape. In practice we must still depend upon the subjective judgment of one man visually examining a hair particle under a microscope, using as his criteria, length, breadth, color and scales.

Some leading scientists believe that each human's hair is organically unique, that each hair stores evidence of an individual's recent diet, medicine, and drug intake. Imagine the benefit to law enforcement if we could develop a unique "hairprint" for each individual similar to a fingerprint, and in addition have some clue as to that individual's recent activity.

Out methods of handwriting analysis are also primitive when compared to their potential. Today's handwriting experts still use the basic system described by the French in 1609, two years after the founding of Jamestown. It is a useful system, but it leaves a good many areas untouched. It is within our existing technology to develop a computer language of handwriting characteristics and then feed this information into an instantaneous retrieval system. We should be able to compare handwriting characteristics instantaneously by objective criteria instead of merely taking the word of one expert against another.

Other tremendously important areas of identification are virtually untouched. For example, whenever two individuals touch, there is an exchange of microorganisms. So far we do not know how long they will live after transfer, and how they can be identified on a victim and on a suspect. Can we continue to ignore these possibilities?

With all these promising avenues of exploration we need a cost-benefit analysis to identify the areas of greatest promise. We must put our effort into developing

first those areas which will have the maximum payoff. And we must coordinate this expensive nation-wide effort. Unfortunately, at this time, there is no sustained effort to identify even the important research areas.

A National Institute of Criminal Justice, located in the Department of Justice, is the logical organization to encourage and organize all of these promising areas of research.

Conclusion

Two years ago Congress embarked upon a massive new program of Federal aid to elementary and secondary education. At that time we wisely decided that the Federal involvement should not simply be more of the same: the use of the Federal tax base to support on-going local school programs. Our program was designed to encourage innovation and creativity; to help local schools attack their problems in new and more effective ways.

Federal assistance to local law enforcement must be no less innovative. The key to a new approach and the most suitable role for the Federal government is research and development.

This is the crucial year in which we will probably embark on a new program of substantial Federal involvement. The philosophy we adopt will set the pattern for decades to come. We must provide the personnel, the funding and the organization to reshape completely our whole criminal justice system.

I submit that S. 992 is the proper vehicle for this program.

Mr. SCHEUER. In the interest of brevity I will not read my statement. I will comment on a few aspects of the problem as I see it.

First of all, I would like to thank you, sir, for the opportunity of appearing here and I want to express my gratitude and my deep admiration to Senator Kennedy for the marvelous leadership that he has shown in this important area for his insight, for his hard work, and for his continuing contribution to the development of this legislation. He has really played a major leadership role in the development of this enormously important field of crime in the streets and the Federal Government's responsibility to protect its citizens, and I want to express my great admiration for the splendid contribution he has made.

I support S. 992 enthusiastically and wholeheartedly and I have introduced a companion measure in the House of Representatives. I think if any documentation were needed for the necessity of having a really high-powered research and development program, the President's Crime Commission report, "Crime in a Free Society," would be one of the most magnificent pieces of government writing I have ever seen and would be eloquent testimony to that need. And particularly the Task Force Report on Science and Technology which is headed by Dr. Alfred Blumstein, the gentleman on my left, which is a magnificent piece of writing and testifies far more eloquently than I to the need for effective harnessing of the best brains in our country to a full-scale research and development program in the field of crime.

I believe in States rights and I believe in the vitality and intelligence that we have in this country on the city and State and county levels. But I believe we are dealing with a problem of such complexity here, that from the design and organizing point of view, cities, States, an counties simply do not have the capability to do the job. When we wanted to do research and development on the atomic bomb or on space transport we did not ask a State or city or county to do it. The Federal Government took upon itself the challenge of designing the research and development program and administering it.

The advances that we have made in our space age technology, our military technology as Senator Kennedy so eloquently put it, the fan-

tastically sophisticated devices and application of cybernetics and sophisticated systems of all kinds almost defies the comprehension of the average lay person. And it is this kind of management know-how, this kind of scientific design and administration know-how that brought these unbelievable breakthroughs in the field of military technology, our space technology. It is that kind of excellence and sophisticated know-how that we must apply to the field of crime.

The police three, four, or five decades ago were innovative in developing the patrol car, fingerprinting identification, but unfortunately in the last three or four decades our burgeoning scientific technological know-how has not been applied to the field of crime. The average police officer is equipped today as he was half a century ago—with a radio patrol car, his sidearm, police truncheon, night stick, and that is about it.

The number of questions to which we have not only not produced answers to, but the questions we have not even formulated as the Senator has stated, are numerous.

How do we select police officers who are to keep their cool under the enormous varieties of situations which they meet? Think of the varieties of situations, ranging all the way from the apprehension of a kid in a so-called borrowed car, the apprehension of a mentally disturbed person or a threatened suicide, the dealing with an obstreperous or reluctant drunk on the street. Also, the protection and control of crowds assembled for marches, and so forth, dealing with the dangerous criminal holed up in a hideout and riding bands or mobs, an infinite variety of situations the police officer faces. How do we select police officers who will keep calm, who will exercise prudent judgment? And how do we equip him? How do we train him to have a deeper insight and understanding into these extraordinarily complicated and sensitive and potentially explosive urban situations? And after we have selected him and trained him, how do we equip him with systems and weapons, hopefully non-lethal weapons, someday, that will not require him to make the choice between doing nothing or involving himself in a tragic case of overkill? How do we give him the variety of options that are appropriate to the variety of situations which he meets?

In the whole field of the prevention of crime an overwhelming proportion of crime is involved in breaking and entering homes and businesses and in car thefts—500,000 car thefts annually. How do we organize our society so the people take prudent means to reduce opportunity of crime, to lock their cars—how do we get car owners or auto manufacturers to install a device so that you cannot leave a key in a car while you park? Eighty percent of the stolen cars are left with doors open and 50 percent of stolen cars have the keys left in the locks. This is an open invitation to car theft and it is the first step that frequently takes the young teenager down the road to more serious criminal involvement.

How can we make police patrol more crime inhibiting? How do we make our systems of police and also court systems more effective and involving the public so we can improve the success with which we apprehend criminals? At the present time only about 24 percent of the cases of serious crime result in an apprehension. Why is it that citizens

don't want to get involved? Why is it they do not want to get involved in the criminal justice system? Is it the fact that our police system treats them perhaps almost as badly as the police would treat a suspect? Is it that our court systems cause them tremendous wastage of time, loss of salary, and perhaps even loss of jobs? What are the changes in the system that could induce the average citizen to participate in law enforcement, in the law enforcement process as a good samaritan, as a volunteer?

Once the individual gets involved in a law enforcement process we must find out why our rate of recidivism is so high—why is it when we get a youth involved in our law enforcement process and he goes to trial and incarceration, rehabilitation and correction, and the like and in the overwhelming number of cases we get him back as a customer in 1 or 2 years? Why has our system of criminal justice failed to deter crime? When a crime is committed why do we apprehend a quarter of the cases and when we finally do apprehend, why are we so unsuccessful in leading him out of a life of crime?

As the Senator pointed out, these are the questions that have not even been formulated.

In the latest quarterly report of the FBI we have dramatic proof of the fact that there are great differences between the rates of crime in our various cities, and that these differences are not being investigated. For example, in Omaha, Nebr., assaults increased by 1,380 percent while the national average increased only 14 percent.

In Albuquerque, N. Mex., larcenies increased 312 percent while the national average increased 18 percent.

In Cleveland, Ohio, larcenies increased 180 per cent while the national average rose only 18 percent.

In Savannah, Ga., instances of aggravated assault decreased 78 percent while the national average rose 15 percent.

In Rochester, N.Y., auto thefts decreased 36 percent while the national average was up 20 percent.

What have we done to investigate what some of these cities are doing where their record is far better than the national average? They must be doing something right but we do not know what that something is. We have no machinery for finding out what is the something so we can apply it to other cities. Have we even asked in the cities where their experience is far worse than the national average—what are they doing that other successful cities are not doing or what are they omitting to do that successful cities are doing? As far as I know, and I have made an extensive effort to find out, nobody in Government has even attempted to analyze these spectacular differences in crime rates in our various cities as against the national average and come up with some explanation.

Well, these are some of the questions that it is high time we address ourselves to.

I strongly endorse Senator Kennedy's bill. I hope that we will come up with an outstanding scientific professional to head up this program. The Justice Department is one of the few Cabinet-level departments without an individual in a position responsible for research and development.

S. 992 will provide for a Director of Research who shall be equivalent to the rank of level IV or Assistant Attorney General. This is

equivalent to the Assistant Secretary of Commerce for Science and Technology, the principal Deputy Directors of Defense Research and Engineering in the Department of Defense, and the Assistant Secretaries of Research and Development in the Army, Navy, and Air Force.

It is actually a step below the grade level III Director of Defense Research and Engineering in the Department of Defense.

One of the principal reasons why I feel Senator Kennedy's bill is so much overdue is that we must by legislation nail down a chief executive science administrator of the highest capability, and his budget, if criminal research and development is ever going to get a fair shake at funds and talent. Most practicing politicians operate from year to year. We look to them here and now for a program of dramatic and visible impact at the local level and we tend to find long-range projects less attractive. We discount projects where there must be many failures in order to make a short step forward. For this reason research programs generally do not generate a great deal of support as far as the practitioners of the political arts are concerned. I will wholeheartedly agree with Senator Kennedy's approach of nailing down the administrative apparatus, nailing down a high caliber of excellence in the scientific leadership of the Institute and of assuring funds at least for the first several years.

Mr. Chairman, I hope that we will have some informal conversation later on.

Senator KENNEDY. Dr. Hornig will speak next.

STATEMENT OF DR. DONALD F. HORNIG, DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY

Dr. HORNIG. Mr. Chairman, members of the subcommittee, I am pleased to have an opportunity to comment on S. 992, the bill to establish a National Institute of Criminal Justice, and on those provisions of S. 917, the Safe Streets and Crime Control Act of 1967, which deals with grants for research and development.

The problem of crime control has assumed increasing dimensions and it requires of us the application of the best tools available. The need for systematic research and development into the causes of crime, the detection of crime, and the prevention of crime is great, and properly carried out, offers important possibilities for progress.

THE PRESIDENT'S CRIME COMMISSION TASK FORCE

The President's Crime Commission took a step that I believe to be a landmark in the study of crime. It set up a Task Force on Science and Technology to study the utility of systematic efforts in this area which my office was pleased to be able to help establish.

A special advisory group met regularly with the task force to review its findings and recommendations. Dr. Robinson, of my staff, met with the group and kept in close touch with the work of the task force. Finally, the President's Science Advisory Committee reviewed the recommendations of the task force and endorsed them. One major point that comes out of the task force report is that there is much more to be done. The task force was able to examine a few

problems in detail, but spent most of its effort laying out further efforts in many more areas.

Although our lack of knowledge of what causes crime, and how crime can be reduced, is appalling, it became clear from their work that systematic analysis and modern scientific techniques can improve our knowledge and with it our ability to deal with crime. We are confident that research and development can be as successful in improving the operation of the anticriminal system as it has been in improving industrial and military operations.

Some of the examples described in the task force report—a locator for patrol cars, engineering of metropolitan communications systems, new command and control equipment, design of police cars for more effective operations—certainly should be followed up but they only begin to recognize the opportunties available.

THE NEED FOR NATIONAL EFFORT

A very good case can be made that research and development can improve the operation of our criminal justice system and the benefits will greatly exceed the cost. Why, then, have not the local agencies which deal with criminal justice been able to justify these programs?

Of course, there have been extremely effective efforts in communities, particularly in larger States and cities, and the Federal Bureau of Investigation has done a great deal in the limited areas of its jurisdiction. But the costs of good research here—as in other areas—are very heavy, and purely local benefit can seldom justify them. For example, it might cost $500,000 to develop a better police patrol car whose use might be worth $50,000 per year to a force of the size needed by the city of Milwaukee.

This benefit, spread to 50 cities, would make the development worthwhile, but a single community cannot be expected to meet the costs.

Furthermore, even when local research is carried out, it may be unreasonable to expect the local community to assume the cost of publication and dissemination of the results nationally.

Given the sound expectations for substantial benefits from research and development in criminal justice, and the difficulties of undertaking it in piecemeal fashion, a national effort in this area is important and overdue.

Major questions, however, remain to be worked out as the program proceeds:

1. How should such research be carried out?
2. Who should do the research?
3. How can we insure that the results will help local law enforcements?
4. What is the appropriate Federal role?
5. What is appropriate level of investment?

S. 917 AND 992

I would like to compare the two bills. It is in this context that I would like to say a few words about Senate bill 917, the Safe Streets and Crime Control Act of 1967 and Senate bill 992, to establish a National Institute of Criminal Justice. There are differences in em-

phasis in these bills, but the purpose of both is to devise the best possible program for managing research and development in criminal justice.

While both bills have goals which I most emphatically endorse, I believe that S. 917 has advantages in several respects:

First. S. 917 includes grants both for research and improvement of law enforcement, and places authority for both functions under one man. S. 992 is concerned only with the research program.

There is a slight difference between these two approaches. S. 992 insures more independence of the research program and keeps it away from pressures for day-to-day activities. S. 917 may insure a closer connection between the research and the actual field operations. If Congress makes clear that it wants a well-developed research program, I am sure that it could be achieved in either framework. On balance, I prefer the more flexible approach.

Second. S. 917 calls primarily for grants to outside nonprofit agencies for research, although it provides that certain studies may be done in-house. S. 992 sets up an institute which could both establish laboratories and contracts with outside sources in order to carry out its program. Experience has shown that setting up Federal laboratories is an arduous and time-consuming job, and it has often been difficult to get the best people to commit themselves to them. I think it would be easier in the beginning to get a competent in-house group that would be able to evaluate the programs carried on by others. Although after the program is established we might wish to reexamine whether a new laboratory should be set up, at present it would probably be more prudent to follow the approach of S. 917.

Third. Finally, S. 992 in essence authorizes funds specifically for research; S. 917 lumps together the total program of grants for improvement of law enforcement and for research purposes. Many scientists who are concerned that pressures for immediate results will reduce the emphasis on a well-managed, long-range research program would welcome the approach of S. 992.

However, the administration bill would allow more or less money to be used for this purpose according to the utility of the proposals and the quality of the programs. Again, if the Congress makes clear that it desires a good research program, I am certain that the Director would carry one out. On balance, the decision in the administration was that the more flexible and coordinated approach was advantageous.

In summary, Mr. Chairman, S. 917 and S. 992 are slightly different ways of going about getting a worthwhile and effective research program. I believe that the Safe Streets and Crime Control Act can meet our goals somewhat more effectively. However, I believe above all that whichever approach is taken the time has come to apply the full force of scientific analysis, of research, and the development of new tools and techniques to the reduction of crime without further delay.

Thank you, Mr. Chairman.

Senator McCLELLAN. Thank you very much, Dr. Hornig.

Senator KENNEDY. Thank you, Dr. Hornig. I am glad to have your support in principle for the goals and concept of S. 992. I do of course appreciate the constraints under which you are testifying, and thus I especially commend you for your frankness in discussing some of the

issues here. I want to stress again that I do not envision S. 992 as an alternative to S. 917, but rather as a supplement to it. S. 992 will give the President a firm congressional mandate to do what it is he has said he wants to do, and it will give the Attorney General the flexibility he has said he wants to do, and it will give the Attorney General the flexibility he has said he wants. I think that some of the questions you raise, and which I have thought through in designing S. 992, would best be answered by the passage of both S. 917 and S. 992. This is certainly the result I have always had in mind.

I would like to ask Mr. Walsh if he would be kind enough to be the next speaker.

Mr. Welsh, as I mentioned, is the chairman-elect of the criminal law section of the American Bar Association and has been deeply interested in all the problems of crime and law enforcement. He has come all the way from Houston, Tex., to be with us this morning.

STATEMENT OF WILLIAM WALSH, HOUSTON, TEX.

Mr. WALSH. As Senator Kennedy has indicated, this is a subject in which I have a great interest. I cannot speak for the American Bar Association, of course. The section council has endorsed the principle of S. 992 and we will present that to the house of delegates in Hawaii nevt month. But, of course, until action by the house of delegates, no action of any subsidiary of the American Bar is in an official position.

I do think it is safe to say, however, and proper to say, that nothing that came before us at our last council meeting met with such unanimity as our wholehearted approval of S. 992. Our section council is composed of experienced lawyers, defense lawyers, prosecutors, FBI agents, professors, judges, and I don't think that there was anything that was presented to us in our last meeting which was in February, which received such quick and ready acceptance by everyone, as the principle of S. 992.

I find myself in disagreement with the distinguished witness who just preceded me, although I recognize the considerations which he has in mind in advising you and in testifying here.

I do not think that it is desirable to couple the research function with the operational function. I think to the contrary, it is wrong to do so, and the thing that I like about 992 is that which this gentleman does not like, is that it separates the two functions.

Senator, I have been practicing law for 15 years now, and of course, compared to your experience at the bar that is very little. But I do know that when I went to law school—and this is just, as I say, 15 years ago—those who were thought to be interested in criminal law were thought to be way out—there must be something wrong with a fellow who wants to do that sort of work. The best graduates didn't go into the criminal law. They were more interested in the more lucrative and profitable aspects of practice. Today, almost suddenly, almost overnight, and I mean by that in terms of the law, within 3 or 4 years, criminal law has suddenly become fashionable. A lot of people are getting interested in it. There is a growing, burgeoning focus, if you please. on the criminal law. I think that's fine.

Unfortunately, a lot of the folks are looking at it for the first time and do not have your experience, for instance, do not know what they

are talking about. I consider it absolutely vital that we establish some kind of research agency within the Federal Government which can be properly staffed—in Senator Kennedy's words earlier—well staffed, neutral, nonpolitical, which can administer the kind of research program which needs to be done.

I am concerned that if we adopt the approach of 917 we will overwhelm the decisional basis of the individual who occupies such a position. There is, in the operating agencies, a need to show results *now*, Senator, the one thing of which I am convinced is that we need somebody who doesn't have to show results *now*. We need someone who can sit back, someone with experience, competence, with staff, with funds available, who can sit back and look at the thing from a long view.

For the last 3 years I have been engaged in the American Bar Association project to establish national minimum standards for the administration of criminal justice and it has been one of the most thrilling profesional experiences that I have had. On the particular committee which I serve is Luther Youngdahl, former Governor of Minnesota and a recently retired district judge in the district court here. In talking to Judge Youngdahl he used an expression on a couple of occasions describing his political philosophy—his phrase means something to me—he says that as Governor of Minnesota he used to prefer to think of the next generation rather than the next election. I think what we need is a research agency which will think in terms of the next generation—someone we are not calling upon to produce immediate results. I do not have a prepared statement and the reason that I don't is that I didn't know until just last week that I was going to be able to be here, and I wanted to come myself—I feel so strongly about Senator Kennedy's approach to this thing that I wanted to be here, if it was at all possible to do so.

I hope that the concept of S. 992 will be recognized, whether or not the safe streets and crime control bill is passed. I see no inconsistency. I see nothing wrong with having a separate agency in addition to whatever the Justice Department needs for its day-to-day operations.

In concluding I can only say that I feel that I have had a cahnce to discuss that with a lot of people who are much more experienced than I, particularly with our section council, and I have not found anyone who is really familiar, who has had his hands wet in the criminal law field who doesn't recognize the essential need for the kind of institution which is proposed by 992.

Now, I personally might quarrel with some of the concepts. I prefer not to have it in the Department of Justice. If it is to be in the Department of Justice I prefer to have it the way the Court of Military Appeals is in the Defense Department, that is "for administrative purposes only." But these are small points. These are things that perhaps later, if the thing is established and if the Congress really realizes its utility and recognizes its accomplishments, things that can perhaps be polished and improved.

I am very much in favor of the concept of S. 992 as it is and I hope, Senator, that you give it every consideration.

Thank you, sir.

Senator McCLELLAN. Thank you very much, Mr. Walsh.

Senator KENNEDY. Thank you very much, Mr. Walsh.

STATEMENT OF DR. ALFRED BLUMSTEIN, INSTITUTE OF DEFENSE ANALYSES

Dr. BLUMSTEIN. Mr. Chairman and members of the subcommittee, I am honored by the opportunity to present my views on the need for a Federal research and development program for the prevention and control of crime, a program such as the one embodied in S. 992.

Although I speak only as a private individual, I should introduce myself by indicating that I am a member of the research staff of the Institute for Defense Analyses. For the past 15 months, I have directed the work of the Science and Technology Task Force of the President's Commission on Law Enforcement and Administration of Justice.

It was during that period that I became impressed with both the urgent need for a properly structured research and development program and the important contribution it could make in creating a criminal justice system that is both more fair and more effective.

In my testimony I would like first to demonstrate the urgent need for such a research and development program and the potential improvements that could result. I would then like to show why this is a proper and necessary function for the Federal Government to undertake.

NEED FOR RESEARCH AND DEVELOPMENT

Our Task Force on Science and Technology was composed largely of scientists and engineers experienced in modern technology, much of it derived from work with military weapon systems. We were all amazed at the primitive level of technology with which the criminal justice system is forced to do its job:

In general, we were surprised to learn how undercapitalized is the criminal justice system: a $3,000 investment in a police car supports a $100,000 annual patrol operation; over 85 percent of most police budgets are used to pay salaries.

Some policemen are forced to stand idle on a street corner even though there may be an emergency nearby simply because they have no portable radios by which headquarters could reach them.

Motorized policemen who leave their radio-equipped cars cannot call for help if they are attacked because they now have no link to the car's radio. In contrast, many appliance repair companies now maintain continuous radio contact with their repairmen out in the field.

The car sent to an emergency is often other than the closest one because the dispatcher does not now know its correct position and availability, a capability that can be provided automatically.

In confronting a crime suspect or an unruly citizen, a policeman is forced to choose between a billy and a pistol—the same choice he was offered a century ago. Nonlethal weapons with a longer range than the billy but without a pistol's disabling characteristics are needed.

Senator MCCLELLAN. Would you mind a brief interruption at that point?

I do not know whether there is a philosophy developing to disarm the police of this country or not.

Dr. BLUMSTEIN. Not at all.

Senator MCCLELLAN. At times I get the impression from some material we read and things we hear. Would we be charged with inhumane

treatment if we armed the police with something to knock out a dangerous or unruly suspect or put them to sleep? I am just wondering—he should not use the club unless he has to and, of course, should not use the gun unless he has to. Is that your idea, that we can get something in between, flash them in the face and put them to sleep, stop them in their tracks?

Dr. BLUMSTEIN. We might provide a third choice—not to use when he has to use a pistol—there is no thought of disarming the police officer but merely to provide him an option when he doesn't have to use the pistol.

But not where he has no choice but to use it.

Senator MCCLELLAN. That is what I am getting at. Is there something, or is it your idea that in research we can develop something that will take the place of the pistol so that instead of shooting him and possibly killing him, that an officer could immobilize him, so to speak?

Dr. BLUMSTEIN. One of the problems in completely disarming a policeman is that if a criminal knew that the policeman's only weapon was a nonlethal weapon, then he might be emboldened to take actions that would be hazardous to the policeman. So we don't want to completely disarm him.

Senator MCCLELLAN. Not completely?

Dr. BLUMSTEIN. We don't want to disarm the policeman. I think we want to provide him with greater flexibility in meeting situations as they occur with whatever means is appropriate.

Senator MCCLELLAN. I want to get the record straight here at this point.

We keep talking about these new instruments that may be developed, and bear in mind, I am a thousand percent for research—every bit of it. I am committed to a bill that will provide the best way—I assume under 917 that adequate research authority is there. The administration, I believe, had in mind to institute a system or an operation of research and development of techniques. I want to support the bill on the basis that that will be done. But I would hate for the inference to ever appear or get abroad that what we have in mind is to ultimately disarm the police. I do not think that is very good psychology to go out to the underworld. I hope we will keep a little emphasis on the police being able to protect themselves along with doing more to protect society.

Dr. BLUMSTEIN. I think that point is very much implicit in the suggestion.

Sentaor MCCLELLAN. Very well.

Dr. BLUMSTEIN. Although most of a patrolman's activities center about his vehicle, most police cars differ only slightly from the car a suburban housewife uses for her grocery shopping. Cars designed specifically for police use would include convenient radio controls, teleprinters, nonlethal weapons, photography, and other evidence collection kits, audio or video recording equipment, and specifically designed rear compartments for the transport of prisoners.

Fingerprints left at the scene of a crime cannot normally be traced to an unknown suspect, partly because the systems used are little different from those first introduced at the beginning of this century.

Senator McCLELLAN. That is an intriguing statement. Why is this so?

Dr. BLUMSTEIN. Because the structure of our fingerprint files—our normal fingerprint files are based on 10 fingers.

Mr. WALSH. They don't have a single print file except for peculiar kinds of crimes, Senator. The FBI does maintain some as far as jewel thieves and a few special categories of that sort. But as far as the single fingerprint or anything less than the full fingerprint card, they just can't match them. They don't have the mechanics to do it. It can't be done.

Senator McCLELLAN. Cannot that be done without a lot of research? Seems if they take one print they can take another.

Dr. BLUMSTEIN. Most major police departments have files, single-print files of a small number, a thousand or 2,000, repetitive criminals. But the process of searching is extremely tedious. Computer technology, pattern recognition technology, perhaps used in conjunction with an operator, could permit much more rapid searching of much larger files so that these so-called latent prints left at the scene of the crime could be traced to owners, even though their cards may be in the full 10-print file.

Senator McCLELLAN. Would you favor a law of compulsory fingerprinting?

Dr. BLUMSTEIN. I have not considered such law, sir.

Senator McCLELLAN. That would be one way to get a file for everybody.

Dr. BLUMSTEIN. Right now, I believe, the FBI has in its fingerprint files 180 million sets of fingerprints, and in its criminal file about 16 to 17 million sets of fingerprints.

Senator McCLELLAN. Go ahead.

Dr. BLUMSTEIN. New instrumentation techniques, permitting identification by voice, hair, blood, or clothing, are becoming increasingly effective. Unfortunately, their high cost and technical complexity have prevented most police departments from using them more widely.

Senator McCLELLAN. That is the area where the Federal Government can step in and perform a great service and be of great assistance in the field of law enforcement. They can make such techniques available to all local agencies throughout the country. That is what we have in mind in this research, is it not? Not just for the use of the Federal agencies, but to make the fruits of it available to all law enforcement agencies throughout the country.

Dr. BLUMSTEIN. That is precisely the idea of providing Federal support to local law enforcement rather than only for Federal enforcement.

Senator McCLELLAN. Go ahead.

Dr. BLUMSTEIN. Court records are written and rewritten by hand even though many small businessmen use central computers to help maintain their inventories.

More generally, computers can be used throughout the system to help in providing immediate access to information needed for solution of specific crimes, for help in making sentencing and correctional decisions regarding the roughly 2 million convicted persons each year, and for more efficiency of the more than half million persons employed by the criminal justice system.

Even more important than all these technological needs and opportunities, however, is the fundamental need to discover the impact on crime of the many actions taken to control it. Very little is known to even a rough approximation about how much any prevention, apprehension, and rehabilitation program will reduce crime. And without such knowledge, how can we intelligently choose among them?

Patrol by marked police cars which demonstrate a visible threat to a potential criminal is widely accepted as good police practice, being known as "preventive control." But it is not clear what kinds of crime such patrol prevents, and how much of each. Nor is it clear under what circumstances patrol in marked police vehicles is more effective than patrol in unmarked vehicles, or whether using police resources in this way is more effective than assigning these same police officers to detailed followup investigation on specific crimes or to other kinds of preventive activity.

I don't presume to have answers to such questions. However, neither do the most vehement advocates of either side. Only through a carefully developed research program will we be able to identify the factors that give rise to various kinds of criminal behavior and the consequences of each of the many kinds of posisble actions that might be taken to control them.

The work of our Science and Technology Task Force identified some of the basic question in a form that now makes them amenable to research.

In some of our early discussions, we wondered about the consequences of actions by the criminal justice system on the people who pass through it. To address this problem, we developed a computer simulation model which calculated typical criminal careers of 1,000 persons arrested for index crimes for the first time. We calculated, for instance, that murder, rape, and robbery accounted for only 4 percent of the initial arrests but for 19 percent of the later arrests. Auto theft and larceny of $50 or over, on the other hand, accounted for 68 percent of the initial arrests but for only 35 percent of the subsequent arrests. These results, although they are still tentative because of poor data, raise questions about why successive arrests appear to be for more serious crimes. This phenomenon may be due to the aging of the individuals, to the development of antisocial attitudes, or possibly even to reactions to treatment by the criminal justice system. It suggests the seriousness, in terms of escalating criminal conduct, of the problem of recidivism. A question to be explored is whether the rearrest probabilities and the crime-type distribution become worse for those who are processed further through the system. If that is the case, it may result either from differences among individuals who reach the various stages or from the treatment itself. Unfortunately, data to examine such basic questions do not now exist.

As another example, early in our investigations we wondered what portion of our society is ever arrested. By analysis of various data on arrests and on arrest records we calculated that approximately one-half of the boys in the United States today will be arrested some time in their lives for a nontraffic offense. This estimate may not be exactly correct, and in any event, is not a literal prediction of the future. Rather, it is a projection based on current trends—changes in the fu-

ture could well reverse these trends. Perhaps even more shocking than the figure itself, however, is the fact that so fundamental a question had not been explored previously. Furthermore, when the answer to so basic a question is surprising to so many, we can only conclude that much too little is known about what is going on in the criminal justice system.

We also need such analysis techniques to decide where to invest technological resources so that they can be effectively applied to our basic objective of reducing crime. To illustrate this, we collected data from Los Angeles on the factors that give rise to apprehension of criminals. We found, as we expected, that rapid police response to a crime call gave rise to more apprehensions. But we were surprised to find that unless the suspect is caught at the scene of the crime, or is identified by a victim or witness, that the chances of ever catching him may be less than 12 percent. We then compared alternative technological means for getting to the crime scene faster: more patrol cars, more telephone clerks answering citizens' calls, car-locater devices to find the closest patrol cars, and computer-assisted command and control systems in the command center. For the conditions of the hypothetical city we examined, we found that delay could be reduced most inexpensively by the most expensive investment: computer automation of the command center.

This was the best investment to reduce delay, which is correlated with apprehension by the police, which by the theory of deterrence is presumed to reduce crime. Such a chain of reasoning is necessary to make optimum technological choices, and all the links in any such chain need considerable strengthening.

Another place such analysis techniques can be beneficial is in the management of the courts. Through a computer simulation of the processing of persons arrested for felonies through the District of Columbia court system, we were able to show that the processing through the grand jury was the critical bottleneck, as to experiment with various possible changes in the operation of that court system—all without disrupting the critical ongoing operations of the court.

These very preliminary steps we have taken in only a few areas has convinced us that there is a significant contribution to come from a major research and development program. And we have not even touched on such areas as identifying basic causes of crime, treating drug addiction, planning a strategic attack on organized crime enterprises, selection and training of criminal justice officials, and many other areas that properly belong in a research and development program. In view of this potential, it is surprising that until the Office of Law Enforcement Assistance was established in 1965 the Justice Department was the only Cabinet department with no research and development program.

NEED FOR A FEDERAL ROLE

It may very well be that the application of science and technology to criminal justice has been retarded so long as a result of the fragmentation of the criminal justice system. We have over 40,000 separate police agencies, and several thousand court systems and correctional systems. Only a handful of these are large enough and rich enough

to undertake major research or equipment development projects on their own. There is little incentive for them to do so, since that would probably be an inefficient investment of resources for any one of them. Although the results would benefit all, the innovator alone would have to bear the high cost. Even if the individual agencies independently conducted their own projects, we would probably see many of them pursuing identical questions not knowing of the work and results of the other. Furthermore, there would be little incentive for an individual agency to disseminate the results of its work to other agencies that might be able to use them.

This is a typical situation in which it is appropriate for the Federal Government to take a leading and coordinating role. The Federal Government could provide the risk capital to conduct the research or to develop the new technology at a cost that would be small by Federal standards but would swamp the budget of any individual criminal justice agency.

It could also assure that a coordinated and mutually supporting program is developed, and it could foster the implementation of the results. Without such a major Federal involvement, it appears unlikely that there can be significant innovation in the operation of the criminal justice system. And all recent trends in crime rates, arrest rates, and recidivism rates indicate that what we are doing today is inadequate to cope with the crime problem. It was considerations such as these which led the National Crime Commission to recommend:

The Federal Government should sponsor a science and technology RTD&E program.

Such a program would:

Undertake basic research into the causes of crime and into the consequences of actions taken to control it.

Provide for the development of equipment that could be widely used by criminal justice agencies throughout the country.

Create a coordinated program whose parts would complement and build upon each other.

Assure that the results of the program are made available in a form that would be usable by criminal justice agencies throughout the Nation.

Provide technical assistance and guidance to State and local agencies in planning and implementing their programs and to the Federal Government in administering its subsidy program.

In order for such a program to become effective, there must be demonstrated a clear Federal commitment to it. Experience in industry, in the Department of Defense, and in other government departments has demonstrated that, unless a research and development program is separately supported, its resources are likely to be diverted to other needs. The program's dollars and staff are the most likely candidates to be used to fight the current fires that are always blazing. Since research and development is investment for the future, it is very difficult for the future users to defend themselves against current demands. National policy, as established by Congress, however, must protect the future. One way to do that is by creating a separate and identified funding and organizational structure for the research and development program.

Regardless of its funding, a research and development program cannot be effective unless it attracts competent scientists, and engineers. In today's economy the demand for research and development talent far exceeds the available supply. Private industry, universities, and all levels of government are competing for this same pool of manpower.

If we are to attract into criminal justice the competence the program needs, then there must be demonstrated a major commitment to an effective program over an extended period into the future. This commitment should take the form of a specifically authorized research and development program, with long-term funding. The program should be headed by a scientist of the caliber of the research and development directors in the other Cabinet departments. His organizational position would thus also have to be comparable.

Only with such commitments, a philosophy embodied in S. 992, can a criminal justice research and development program bear the fruits of which it is certainly capable.

Thank you, Mr. Chairman.

Senator McCLELLAN. Thank you very much.

Senator KENNEDY. Thank you very much, Dr. Blumstein.

I just want to say, Mr. Chairman, that we have had extremely important and eloquent testimony about the importance of research efforts from individuals who have had a long background of experience and concern about criminal justice. I think that one of the matters which is of great concern to me is that in 917 we do not have this specified to the degree that 992 would do so. We do have testimony of the distinguished Attorney General, that some $20 million will be used for title III of 917. I believe that the Attorney General would certainly carry through, because I believe he also recognizes the importance and significance of research.

But I think that we have certainly seen this morning among those whose experience reaches far back in the fields of criminology and criminal justice the importance and significance of having an independent and specific mandate for this kind of agency. I thought the testimony was extremely compelling with regard to institutionalizing the research and development program, which 992 does, and I am extremely hopeful that we can have full consideration of this legislation when this committee is considering the crime legislation in its markup.

I do not want to infringe on the committee's time any more. I want to express my appreciation to all of these gentlemen, particularly to Mr. Walsh who has come such a long way and because of own deep interest, for appearing here on this question; and also to express my appreciation to the understanding and patience of Mr. Hogan, who I see outside in the audience; Mr. Broderick, who has been extremely kind, and Mr. Rector. I know they are busy men as well.

With the permission of the Chair I would like to read just one very short paragraph which is taken from the National Municipal Policy, the National League of Cities. 1967. chapter 7, paragraph 10, which is "Crime Research and Prevention." This is the position of the National League of Cities.

It says:

Crime is a nationwide problem common to all of the Nation's 18,000 cities, each of the 50 states as well as the rural areas. Loss of life and property from criminal activity cost the Nation untold billions of dollars annually despite

the expenditures of additional billions of dollars to maintain expensive law enforcement activities and penal institutions and only limited success has been achieved in the war against crime.

Significant reduction in criminal activities can be achieved only if the root forces of crime are isolated and attacked and if new crime-fighting techniques are developed. Because crime constitutes a nationwide threat to society the United States Government should undertake basic research into the causes and prevention of crime and the development and innovation of new crime-fighting techniques.

I want to have that in the record and I also have some other material which I will not take the subcommittee's time to read, but which I would like to have put in the record at this point. These are statements in support of S. 992 by Mr. Quinn Tamm, executive director of the International Association of Chiefs of Police, and Mr. Milton Rector, executive director of the National Council on Crime and Delinquency; and an extremely relevant statement on the role of the Federal Government in developing the technology of criminal justice by Mr. Daniel L. Skoler, Associate Director of the Office of Law Enforcement Assistance of the Department of Justice.

(The matter referred to follows:)

NATIONAL COUNCIL ON CRIME AND DELINQUENCY,
New York, July 28, 1967.

HON. EDWARD M. KENNEDY,
United States Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: It is encouraging to us that the Congress, recognizing the urgent need for action in crime control, is moving with such speed on a number of law enforcement and criminal justice bills. We are concerned, however, that in the rush to develop action programs, the equally urgent need for careful research, evaluation, and planning will be overlooked.

It is for this reason and because, as the summer progresses, the dangers of speed increase, that the NCCD wishes you to know of its strong support for the concepts embodied in S. 992. We endorse the development of a systematic grant program for research on new approaches, methods, techniques and devices in prevention and control of crime. We are enthusiastic about a program of behavioral research into causes and prevention of crime and on police and correctional methods. We endorse a survey of Federal programs and needs for further assistance. We support the placement of this program in the Department of Justice so that its work will be integrated with other criminal justice programs and the day-to-day problems of those who administer them. And we hope that a national research institute would assume central responsibility for designing and assessing the research, evaluation, and planning of the Federal crime control program, and examining and approving these components of state and local plans.

We are, however, concerned that many of the duties projected for the National Institute of Criminal Justice are identical to some aspects of the Crime Control bill. This bill, and particularly H.R. 5037 as reported, would deal with broad planning and action programs for police, prosecution, courts, and corrections. Like S. 992 it would support projects in recruitment, education, and training of personnel, demonstration projects, and information programs and technical consultation. These are duties which we believe could be handled better by the administrators of the crime control program; and we think that giving identical duties to a semi-autonomous National Institute would weaken the research of both. It would encourage the crime control administrators to concentrate their resources on "action programs"; the demands that they do so are already great. And it would encourage the National Institute to emphasize training and consultation in its program. Neither would attend to the vital, but far less glamorous function of research.

Therefore, while we strongly support S. 992, we hope that you and the Senate Committee will consider reducing its scope of action to research of all kinds, surveys of current activity and need, development and scrutiny of evaluative

procedures, and collection and dissemination of research information. We think that grants to State and local law enforcement agencies, fellowship programs, and extension work should be the responsibility of the crime control administrators.

Sincerely,

MILTON G. RECTOR, *Director.*

STATEMENT OF QUINN TAMM, EXECUTIVE DIRECTOR OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ON S. 992, A BILL TO ESTABLISH A NATIONAL INSTITUTE OF CRIMINAL JUSTICE

The genesis of official police organizations occurred in this country as the result of citizens desiring to pay other individuals to perform their duties of safeguarding our communities. In Colonial times, of course, each man had to stand a watch as part of the unorganized constabulary.

In the intervening 300 years since this practice first began to exert itself, the citizens of this country and their governments have continued to leave protection and law enforcement in the hands of individuals hired and paid as police officers. Unfortunately, as the individual citizen became less involved in the protection process, so has his interest in his police forces diminished. As a result, the police have been largely ignored by their constituents and by their governments in the development of protective and law enforcement techniques.

Police agencies and their functions have been left to grow and develop something like Topsy. The result is a hodgepodge of unstandardized operations, some of which are outstanding and some of which are mere jerry-built structures of errors.

The term research is almost completely foreign to police operations. Let me emphasize this, however: The police in my estimation have done a magnificent job of bringing themselves to the level of enforcement techniques which exists today. This did not come about, however, through research as it has been applied to most other endeavors in this Nation; it came about through trial and error on the part of dedicated men attempting to raise the level of their professions without adequate funds, adequate equipment, adequate public and political interest, adequate time and adequate technical knowledge.

S. 992, introduced by Senator Edward M. Kennedy of Massachusetts, and its counterpart in the House of Representatives, introduced by Representative James H. Scheuer of New York, certainly constitute a step toward alleviating the lack of the vital resources to which I have referred. Should the National Institute of Criminal Justice become a reality, I predict that the police of this Nation will, for the first time in history, be able to determine more specifically why they exist, what their function is, the nature of the beast with which they are grappling and, most importantly, how they may break through the mysterious barriers which are preventing a reduction in crime.

The police today are operating much as they did in Frontier days. The equipment is virtually the same. But, the crimes, the demands of a higher civilization for more attention to individual rights and the crushing problems caused by the urbanization of our society have made their tasks the more complicated. Technique and technology in almost every endeavor affecting the well-being of our citizens have kept pace in practically every field but law enforcement.

Even the most basic police tools are archaic. For instance, when one considers the field of communications, a policeman operating alone on his beat is in some instances completely isolated and on his own. Today, through communications, this Nation can control the movements of a satellite millions of miles from the Earth, change its direction and make it function much like a human. At the same time, however, a police communications center frequently cannot contract a police officer a mile from headquarters. When a policeman leaves his vehicle, he is out of touch completely with headquarters in most of our communities. It seems that some of this communications technology could be applied to the police, and the research envisioned by S. 992 could certainly bring this about.

Take the police car as another example. The automobiles used by police today are nothing more than souped-up versions of the standard passenger car. Is this correct? Is this the best that can be provided in a society which requires the highest mobility for its police? Why isn't there some research conducted to design a prototype police vehicle which may not even resemble today's pas-

senger vehicle? Should the officer manning the vehicle be seated in a higher vantage point than he has in today's common automobile? Should the steering apparatus be on the right rather than the left so that he can observe buildings, sidewalks and those places where the action is? Should some thought be given to designing astronaut-type contour seats in police vehicles in order that on an 8-hour stint the police officer will not become fatigued and will be alert? Should there be some means for him to activate the car radio in order to contact headquarters when he is not in the vehicle? Should the car be narrower in order to ply through today's congested traffic? Should he not have infrared devices to magnify his vision during the night-time hours when crime is more prevalent?

These are but a few questions which are applicable on two of the most basic pieces of police equipment.

It cannot be hoped that automobile manufacturers would devote the necessary funds and effort to engineering such a prototype vehicle with the limited market which exists for police cars. No city, county or state has the wherewithal to conduct such research and design.

The answer then lies with the establishment of a resource organization such as the National Institute of Criminal Justice, and I urge its creation.

While I have devoted my thinking to the hardware aspects of what the National Institute of Criminal Justice could improve, I do not want to overlook the research which would come about aimed at the human problems in crime. We must learn why our judicial processes have no apparent deterrent effect on crime. We must solve the enigma of recidivism. We must delve into why our young people are so isolated from society and why they so often resent and violate those restrictions which we call the law.

The problems are many and the resources are sparse. Should S. 992 become a reality, I believe we can begin to dissipate the fog which has obscured these problems for so long.

Federal Assistance in Developing the Technology of Criminal Justice

By Daniel L. Skoler, Office of Law Enforcement Assistance, U.S. Department of Justice

A variety of events, most centered within the past two years, have combined to produce a recognition of the seriousness of the nation's crime and public safety problems, a commitment of national energy and resources to their alleviation, and a consensus that modern science and technology can play a major role in this effort.

In March 1965, for the first time in history, a President of the United States saw fit to present to the Congress a special message on crime.[1] In this message, he drew attention to mounting crime statistics, described the detrimental effect of crime on individual and national well-being, and outlined a program of federal assistance to the state and local governments which bear major responsibility in our governmental system for the preservation of law and order. This program included (i) the establishment of two Presidential crime commissions—one to conduct a searching study of crime, law enforcement, and criminal justice in America and the other to perform a similar function for the nation's capital area, (ii) the launching of the nation's first federal aid program exclusively devoted to improvement of state and local law enforcement and crime control capabilities—an effort of demonstration and experimental proportions, (iii) the advancement of a number of federal legislative proposals directed to specific crime control problems—gun usage, treatment of narcotics offenders, unification of federal correctional services, recodification of the federal criminal law, etc.

This theme has continued for two successive years, reinforced and reaffirmed by substantially similar Presidential declarations in 1966[2] and 1967,[3] a record of vigorous and, we believe, productive activity in implementation of the original White House mandate and culminating in two major developments—one a conclusion and the other a prelude. These refer, first, to the completion and release of the report and findings of the President's Commission on Law Enforcement

[1] President's Message to the Congress—*Crime, Its Prevalence and Measures of Prevention*, March 8, 1965.
[2] President's Message to the Congress—*Crime and Law Enforcement in the United States*, March 9, 1966.
[3] President's Message to the Congress—*Crime in America*, February 6, 1967.

and Administration of Justice and, second, to the advancement of a new and massive legislative program for financial subsidies to the agencies of criminal justice and for continuing research and development to upgrade the effectiveness of the nation's law enforcement response.[4]

It is interesting to note that from the beginning of this sequence of events, both the Administration and the Congress saw in the nation's remarkable space age and systems technology a source of untapped and substantial help. As the nation viewed what appeared to be a rising tide of violent crime, an apparent inability of our correctional institutions to effectively redirect criminal behavior and motivations, and an institutional apparatus which seemed unable to cope with its law enforcement and criminal justice workloads, the successes of science elsewhere stood out as promising models. Thus, the President stated in his 1966 message:

"If we knew today of better measures to deal more effectively with crime, we would seek to adopt them. But we do not yet have the answers.

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"The computer has revolutionized record-keeping in modern industry. Surely it can do as much for criminal records. Modern electronics has made it possibl(to summon a doctor from his seat at the opera. Surely it can do as much to make police instantly responsive to public needs. And there may well be yet unimagined contributions which science can bring to the field of law enforcement." [5]

And the Attorney General reported to the Congress as it considered the Law Enforcement Assistance Act of 1965:

"The same sophisticated and intensive method of attack that has successfully developed rockets must be used in analyzing law enforcement techniques. . . . Many ideas need to be developed. Among them are: computer identification of fingerprints; personalized radio transmitters for patrolmen; better police weapons; faster transmission of citizens' complaints of crime; electronic apprehension aids in business. More sophisticated equipment for the collection and dissemination of information is also required." [6]

And Congressional leaders took the floor in both House and Senate to advance such propositions as:

"This country, which will spend $21 billion [sic] on research and development this year, could well apply much of the benefits of this massive research effort to the protection of its own citizens and to the maintenance of law and order in our great urban centers, given the requisite effort. The $10 million to be appropriated equals less than one-twentieth of one per cent of the annual expenditures for scientific research carried on in this country—truly a modest beginning.[7]

"The crime problem demands the same kind of research techniques and priorities which we have assigned to our defense effort, the space programs, and the battle against disease and illness . . . [it] lends itself to solution by modern research techniques, including operations research, systems analysis, and electronic computers. This belief has been fortified in the past two weeks by conversations with skilled professionals in the scientific and law enforcement communities. Surely a government which spends on the order of $15 billion a year on research projects ranging from putting a man on the moon to a search for a cure for the common cold, can place some part of its efforts in the battle against the growing menace of lawlessness." [8]

And the President's Crime Commission departed from traditional analytical and jurisdictional lines to establish, in addition to its four major study groups on assessment of crime, police, courts, and corrections, an additional "task force" on science and technology.

And now the Crime Commission has passed its legacy to the nation, strongly affirming the value of "science and technology" in the struggle against crime and proposing a major niche for a scientific and technological research program in

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[4] S. 917 and H.R. 6162—*The Safe Streets and Crime Contral Act of 1967*, 90th Cong., 1st Session (1967).

[5] Lyndon B. Johnson, Message to the Congress—*Crime and Law Enforcement in the United States*, March 9, 1966.

[6] Nicholas deB. Katzenbach—*Statement before Ad Hoc Subcommittee of the Judiciary on the Law Enforcement Assistance Act of 1965* (July 22, 1965).

[7] Remarks of Representative James H. Scheuer, New York, to the Congress on the Law Enforcement Assistance Act of 1965, *Congressional Record—House*, p. 18259 (August 2, 1965).

[8] Remarks of Senator Roman L. Hruska, Nebraska, to the Congress on the Law Enforcement Assistance Act of 1965, *Congressional Record—Senate*, p. 22258 (September 8, 1965).

its 8-point program of recommended federal support.[9] As summarized in the Commission's outline of proposed "national strategy":

"Chapter 11 of this report has shown that the skills and techniques of science and technology, which have so radically altered much of modern life, have been largely untapped by the criminal justice program. One extremely useful approach to innovation is the questioning, analytical, experimental approach of science. Systems analysis, which has contributed significantly to such large-scale government programs as national defense and mass transportation, can be used to study criminal justice operations and to help agency officials choose promising courses of action.

"Modern technology can make many specific contributions to criminal administration. The most significant will come from the use of computers to collect and analyze the masses of data the system needs to understand the crime control process. Other important contributions may come, for example, from: flexible radio networks and portable two-way radios for patrol officers; computer assisted command-and-control systems for rapid and efficient dispatching of patrol forces; advanced fingerprint recognition systems; innovations for the police patrol car such as mobile teletypewriters, tape recorders for recording questioning, and automatic car position locators; alarms and surveillance systems for homes, businesses and prisons; criminalistics techniques such as voice prints, neutron activation analysis and other modern laboratory instrumentation.

"The Federal Government must take the lead in the effort to focus the capabilities of science and technology on the criminal justice system. It can sponsor and support a continuing research and development program on a scale greater than any individual agency could undertake alone. Such a program will benefit all agencies. It should stimulate the industrial development, at reasonable prices, of the kinds of equipment all agencies need. A useful technique might be to guarantee the sale of first production runs. It should provide funds that will enable criminal justice agencies to hire technically trained people and to establish internal operations research units. It should support scientific research into criminal administration that uses the agencies as real-life laboratories." [10]

As indicated, this "science and technology" thrust is to be exhibited in many contexts and modes of participation—systems analysis, field experimentation, equipment and facilities development, definition of equipment and system standards, consulting and technical services, industry stimulation, and well-financed research centers. Primary initial "payoff" is expected in the areas of the information and communications sciences and in operations research and systems analysis which probes beyond hardware needs to organizational and operational problems confronting law enforcement and criminal justice agencies. Greatest immediate impact should be felt in the police field which shoulders the heaviest dollar and manpower burdens in crime control and, in all program components, federal aid will be an important element.

It is the purpose of this paper to explore and offer observations concerning the federal role in implementing this facet of the national strategy—scope, size, models, characteristics and anticipated problems of a science and technology program in the law enforcement area.[11] In so doing, reference will be made to other federal experience and more questions will be posed than answered—most with less certainty and thoroughness than the topic warrants—but hopefully with sufficient particularity to lay bare relevant issues.

Federal Capacity for Stimulation of Scientific Research and Development

To suggest that federal assistance has a significant role to play in developing the science and technology of criminal justice—or, for that matter, of any field of social endeavor—borders on understatement. Today, with more than $15 billion for its annual research and development budget, the Federal Government supports almost two-thirds of the research and development work of the nation.[12]

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[9] The elements of this program are: (1) state and local planning efforts; (2) education and training of criminal justice personnel; (3) surveys and advisory services concerning organization and operation of criminal justice agencies; (4) development of coordinated national information systems; (5) development of demonstration programs in agencies of criminal justice; (6) scientific and technological research and development; (7) institutes for research and training personnel; and (8) grants-in-aid for operational innovation.

[10] *The Challenge of Crime in a Free Society,* Report by the President's Commission on Law Enforcement and Administration of Justice, ch. 13 at p. 287 (February 1967).

[11] These views reflect the writer's personal thoughts and experience and not the policies, plans, or judgments of his agency.

[12] *Report to the President on Government Contracting for Research and Development,* Bureau of the Budget, Senate Document No. 94, 8th Congress, 2nd Session, at pp. 34, 45 (Government Printing Office, 1962). Also, NSF Document 66-25 (1966).

This is a far cry from the special Congressional appropriation in 1832 that authorized what was probably the first federal grant for experimental research—a $1,500 allocation to the Franklin Institute at the University of Pennsylvania to investigate the reasons for explosions of steamboat boilers.[13] The current federal research picture is almost equally remote from that prevailing just prior to World War II when the government's total R&D budget, an effort focusing primarily on support of the agricultural sciences, is estimated to have aggregated less than $100 million annually.[14]

Whatever these antecedents, the technological demands of World War II established a clear federal initiative and expertise in research program support which has grown steadily in both volume and scope and continues to grow today. Fifty-five years ago annual expenditures for research and development were in the range of $10 million. By the end of World War II they had swollen to a billion dollars; thereafter, outlays increased to $3 billion by 1955, $8 billion by 1960, $12 billion by 1963, and over $15 billion today.[15] Throughout this period, considerable experience has accumulated in patterns and techniques of funding, advisory and technical review, accommodation of political responsibility with scientific independence, support for the facilities and manpower development necessary for effective research, formulation of research policy, and the creation of new aggregations and instrumentalities to serve special needs.[16] Roles have been fashioned for universities,[17] profit-making corporations, special-purpose laboratories and research groups, aggregations of the foregoing, and "in-house" (i.e., within the Federal Government) research facilities. While this has been accomplished primarily within the context of the national defense effort, science and technology has shouldered major responsibility in other federal programs—non-military space exploration, non-military atomic energy applications, conservation of natural resources, agricultural engineering and production, health and medicine, development of general scientific capabilities, economic development and analysis, etc. And, while most R&D investiment has been in the applied science area and closely related to the specific purposes of the sponsoring federal agency, even the most "mission-oriented" programs have found it desirable to make some funds available for basic research to advance fundamental knowledge in fields relevant to their interests.[18]

While it may be—undoubtedly is—unrealistic to regard this aggregation of federal experimentation, variation, and experience as residing in any single, properly evaluated data bank or pool of experience, the fact is that extensive and perhaps unique expertise is harnessing research to serve national policy lies within the federal ambit for "science and technology" efforts to study and draw upon.

Past Federal Participation in Development of Law Enforcement and Criminal Justice Technology

Despite the impressive record of federally-supported research since World War II in many areas of social concern, such efforts in law enforcement, criminal justice, correction of offenders, and crime prevention have been modest. This, in part, reflects the recency of federal recognition of crime control as an appropriate area for extensive grant-in-aid investment. It was recently estimated that total federal assistance of any kind—research, training, facilities, technical

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[13] Don L. Price, *Government and Science,* pp. 10–11, New York University Press, New York, New York, 1954. With largesse (and a sense of responsibility), perhaps characteristic of researchers in interpreting their mandates, it is interesting to note the investigators went beyond examination of scientific issues relevant to boiler explosion to recommend a draft bill, later enacted, which became the nation's first regulatory legislation affecting business enterprise (Steamboat Inspection Service).

[14] *Report on Government Contracting for Research and Development,* supra f.n. 10, at p. 1 and *Science and Government,* supra f.n. 11, at p. 14.

[15] 15.9 billion for fiscal years 1966 and 1967 (estimated), exclusive of R & D plant.

[16] See *Science and Government,* supra f.n. 11, at chapters II and II for general discussion of issues, organizational formats, professional response, and historical experience *re* scientific research under federal aegis.

[17] See *Administration of Government Supported Research at Universities,* Bureau of the Budget, 141 pp. (Government Printing Office, 1966) for discussion of special policy issues related to support of university-based research.

[18] *Report on Government Contracting for Research and Development,* supra f.n. 10, at p. 7.

assistance, demonstration projects, etc.—having some relevance to local law enforcement, criminal justice, and crime control activities aggregated less than $20 million annually. At best, a minority part of this could be classified as R & D support within the context of this analysis.[19]

For several years (nearly a decade) the National Institute of Mental Health has sponsored a program of behavioral and sociological research in crime and delinquency (nature and causes, personnel and agencies, treatment and rehabilitation of offenders), which currently runs about $8 million per year. Subsequently a training and demonstration program focusing directly on delinquency and youth crime was authorized under the Juvenile Delinquency and Youth Offenses Control Act of 1961. This, too, has involved a substantial social science research component and stabilized at aid levels in the order of $8 million annually. Both of these efforts have operated within the Department of Health, Education and Welfare primarily as grant programs with a significant intramural research component in the National Institute of Mental Health program. Despite many positive features and research successes, neither has involved a "hardware" emphasis, nor any substantial investment in systems analysis or operations research outside of traditional criminological and sociological analyses.

In terms of hard technology, one can point only to the continuing refinement of applied police laboratory techniques by the Federal Bureau of Investigation crime lab and a significant interest and investment by the Atomic Energy Commission in development of neutron activation trace analysis for identification of criminal evidence in investigative and prospective efforts. Over a period of 5 years, AEC has invested approximately $200,000 in development research in this area, largely incident to its program of encouragement for non-military applications of nuclear energy technology. In the very recent past, NASA and NSF have brushed the field in a few exploratory efforts—one related also to neutron activation analysis, another to human factors research and program budgeting approaches to metropolitan police patrol vehicle and manpower operations, and still others to social organization of police and prison systems.

This activity—or lack of it—is not only understandable in the context of lack of federal impetus and direction for R & D in aid of criminal justice but also reflects a void characteristic of the local and private sector as well. One scientist has described the situation as follows:

"Physical and social sciences have been applied to crime prevention at a relatively low level of effort for perhaps three quarters of a century . . . We spend about $3.5 to $5 billion a year on law enforcement and crime prevention activities. Corresponding to almost any industrial effort, 3 percent of this [100 to 150 million] to improve the effectiveness of the effort would be so reasonable as not to require great justification." [20]

And the President's Crime Commission has pointed out:

"The scientific and technological revolution has so radically changed most of American society during the past few decades has had surprisingly little impact on the criminal justice system . . . The police, with crime laboratories and radio

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[19] As described in the Justice Department *Hearings on the 1966 Supplemental Appropriation Bill*, 89th Cong., 1st Session, part 3 at p. 184 (GPO 1965):

"Our estimate of the total current level of annual expenditures for State and local assistance in crime-related areas by Federal grant and related service programs is approximately $20 million. The bulk of this amount (at least 75 percent) is for youth crime and delinquency programs and only a small fraction (probably less than 10 percent) relates to the law enforcement area of the criminal process (as opposed to correction or rehabilitation of offenders, research on the nature of crime and criminal behavior, or the courts and related agencies of criminal justice).

	Millions
"National Institute of Mental Health	$8.0
Office of Juvenile Delinquency and Youth Development	8.0
Office of Economic Opportunity	2.0
Vocational Rehabilitation Administration	.7
Office of Manpower, Automation, and Training, Labor	.5
Children's Bureau, HEW	.4
FBI National Academy on local assistance	.5
Miscellaneous	.1
Total	20.2"

[20] Donald F. Hornig, Address at *National Symposium on Science and Criminal Justice*, 6/22–6/23/67, Proceedings p. 7 (Government Printing Office, 1967).

networks, made early use of technology, but most police departments could have been equipped 30 or 40 years ago as well as they are today." [21]

Until the advent of the Law Enforcement Assistance Act of 1965, there was in fact no general federal commitment to assistance in local law enforcement and crime control problems. As indicated, that statute was a major element in the "war on crime" launched with President Johnson's 1965 crime mesage and a companion to the Crime Commission studies. The Act was proposed and has operated as a modest demonstration and experimental effort ($7.25 million per year) aimed at stimulating activity and improvement in all segments of the criminal justice process—police, courts, corrections, and prevention—and at all levels of endeavor—training, operational techniques, studies and research, agency planning, citizen action efforts, management and organizational improvement, scientific and technological development.

The "science and technology" program under the Law Enforcement Assistance Act has been a modest one, beset by the same money constraints confronting all other LEAA program focuses. Nevertheless, it has moved forward in these first 15 months of operation and, hopefully, in a rational way. Basically, the program has consisted of:

(a) A comprehensive survey of potential applications of science and technology to the agencies, methods, and problems of crime control [22] (the largest single LEAA project award to date).

(b) Two national symposia bringing the scientific and law enforcement communities in dialogue on, first, general problem definition; second, exploratory excursion into specific problem areas.[23]

(c) Approximately a dozen individual "R&D" projects divided among (1) general information system design and development—national state, and metropolitan models, (2) application of computer, operations research and ADP technology to specific operational and management problems and (3) development of laboratory techniques and capabilities (neutron activation analysis, residue research in arson, and national survey study of lab facilities and personnel).[24]

The initial focus on $.5 million worth of "science and technology" feasibility study, formulated with cooperation from and monitoring by the President's Crime Commission, has obviously adhered to concepts of good scientific practice in approaching a new target area. The symposia would likewise seem to qualify as manifestations of "good scientific form" at this stage of program activity. The scattered and concurrent selection of individual science and technology projects might, however, raise some question.

These, too, have had their purpose (apart from immediate technical goals) and a not insignificant one. Given the action mandate of the Law Enforcement Assistance Act (Lyndon Johnson—Our efforts against crime must not be limited to long range programs. . . The Law Enforcement Assistance Act will give us the means to accelerate the fight against crime now) and the need to begin de-

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[21] *The Challenge of Crime in a Free Society*, supra f.n. 9, at p. 245.

[22] LEAA Contract No. 66-7, Institute for Defense Analyses (Department of Defense).

[23] *National Symposium on Science and Criminal Justice*, June 22-23, 1967, Washington, D.C. (financed under LEAA Contract No. 66-7, Institute for Defense Analyses) and *First National Symposium on Law Enforcement Science and Technology*, March 7-9, 1967, Chicago, Illinois (financed under LEAA Contract No. 66-9).

[24] General information system design and development includes LEA Grants 015 (Washington, D.C.), 050 (Phoenix, Arizona), for metropolitan systems; Grants 038 (Ohio) and 051 (California) for state systems and 66-0 and 67-21 for national systems (FBI with Department of Commerce and cooperating state and local agencies); specific computer applications or operations research efforts include Grants 039 (St. Louis); 049 (Philadelphia) and 030 (New York City). Laboratory techniques and capabilities efforts include Grants 013 (national survey), 015 (arson research), and Contract 67-13 (neutron activation analysis). To the foregoing might be added the communications systems design project under Grant 071 (Washington, D.C.). A number of additional projects are being readied for final award action in fiscal 1967.

velopment to credible models and formats, we look with satisfaction at these projects.[25] Our six law enforcement information system projects all emphasize careful pre-study and design, involve competent consultant help, and thus introduce a needed deliberative factor in the race for on-line computer capability attracting more and more law enforcement agencies. It is hoped that these will set healthy standards for the many systems that are bound to follow. Additionally, the national crime information system development effort offers potential benefit to all state and local agencies. Our three projects seeking to utilize information, ADP and operations research capabilities for development of specific new operational techniques (e.g., patrol allocation, resource allocation, crime prevention) will help multiply hardware effectiveness for all potential users. Here, too, innovative and technical competence have been guiding criteria. Our three laboratory-focused projects all offer promise appropriate to their goals and dimensions. Taken together—survey, symposia, and individual projects—this has involved an LEAA investment of more than $2.2 million or approximately 20 percent of all project monies awarded to date.[26] The remaining months of fiscal year 1967 will add roughly 50 percent to this investment (dollars and number of projects) to provide, we believe, a credible impact for the resources allocated.

Special Considerations Relevant to a Criminal Justice R&D Effort

There are several constraints which would seem to warrant consideration in blueprinting any "science and technology" program in crime control. Their articulation should help distill viable approaches from the wide range of alternatives available from other federal experience.

(a) *Size of Effort.* The most frequently drawn analogies in support of the R&D potential for criminal justice improvement are those of the defense establishment and our national space exploration, nuclear energy, and health research programs. However, the vast contrast in dollar outlay for these programs as against our most optimistic hopes for a law enforcement effort should be closely examined. Using even 5-year-old figures (fiscal 1963), these R&D precedents emerge as many times larger than what can reasonably be expected for the war on crime.[27]

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[25] The majority of LEAA "science and technology" projects referred to above and other LEAA supported research (14 projects in all) have been the subject of paper, panel, or work-group presentations at the Illinois Institute of Technology's First National Symposium on Law Enforcement Science and Technology (also supported by LEAA funds) and thereby disseminated to the more than 1,000 representatives of the scientific and law enforcement communities in attendance (March 7–9, 1967). These include LEAA grants #010 (study of accelerant residues in fire remains at Washington State University); #013 (national survey of crime laboratory facilities, manpower and training at N.Y.C. College of Police Science); #015 (metropolitan information system design in D.C.); #030 (computer simulation for police resource allocation and organizational improvement in N.Y.C.); #044 (measurement devices for community tension and violence potential in Houston); #039 (computer mapping and related patrol resource allocation experimentation in St. Louis); #049 (data banking, crime prediction and development of suppressive and action strategies in Philadelphia); #051 (integrated criminal justice information system design in California); #021 (public survey crime victimization measurement by the National Opinion Research Corporation); #071 (model police communications system design in D.C.); and contracts 66–0 (national crime information system telecommunications requirements and code standardization by FBI which Institute of Telecommunications Sciences and Aeronomy); 66–10 (analytical study and models *re* narcotics and dangerous drug traffic and enforcement by Arthur D. Little, Inc.); 66–7 (comprehensive survey of applications of science and technology to law enforcement and criminal justice needs by Institute for Defense Analyses); 67–21 (on-line pilot test effort for national crime information systems by FBI and 15-state and local police agencies); and 67–13 (development work in neutron activation by AEC with General Dynamics Corporation).

[26] This figure is exclusive of such hardware test and demonstration efforts supported by LEAA as helicopter patrol in Los Angeles County (grant #022) and video-tape suspect identification in Miami (grant #064).

[27] *Report to the President on Government Contracting for Research and Development*, supra f.n. 10 at p. 33.

Agency	R&D expenditures [1] (billions)
Department of Defense	$7.1
National Aeronautics & Space Administration	2.4
Atomic Energy Commission	1.4
Health, Education, and Welfare	.7

[1] Estimated R&D expenditures (i.e., obligations, inclusive of plant) for the current fiscal year (1967) are $7.4 billion for DOD, $5.0 billion for NASA, $1.5 billion for AEC, and $1.2 billion for HEW. National Science Foundation expenditures, which were $160 million in 1963, will surpass $300 million. See *Federal Funds for Research, Development and Other Scientific Activities,* National Science Foundation, 195 pp. (Pub. 66–25, Govt. Printing Office 1966).

Assuming a foreseeable R&D buildup in criminal justice to $50 to $80 million annually (a reasonable but probably optimistic forecast) the quantitative difference may carry qualitative implications. Fifteen times smaller than the most modest of the above programs (health and medical research at over $1 billion annually in 1966 [28]), the criminal justice effort may have to watch its figurative step: (i) First, it will probably not be able to command the industry attention that the more affluent defense, space, and atomic energy programs have been able to attract. Constraints on support for contractor and grantee facilities, for investment in competing approaches and investigations, and for proceeding with a generally lavish hand in funding research will necessitate more careful and deliberate action; (ii) As an "economy size" program, the National Crime Commission recommendation for substantial investment in major scientific and technological research programs within one or a few research institutes would seem to make particular sense. Only by this method may it be possible to achieve the "critical mass" necessary to attract top talent, facilities, and aggregations of the foregoing to criminal justice research; and (iii) Since the Justice Department may never be a prime R&D market, development of the necessary expertise, discrimination and, indeed, agency aggressiveness in research contracting may be hard to come by. Utilization of the know-how of other major contracting agencies for procurement and proposal work may result in quicker and more efficient dollar deployment. There is no reason, for example, why a defined requirement for a light-weight portable radio receiver for patrolmen could not be farmed out to the Army Procurement Agency with its extensive experience in communications contracting—and, in the process, spare the Justice Department the complex administrative and audit structure required for wide-scale procurement of this character.

(b) *Nature of Effort.* Whereas the bulk of federal research support (over 85%) already goes to applied research and development as opposed to basic research, the criminal justice science and technology effort should probably do so in even greater degree. With the latter's anticipated modest resources, basic research can better be left to the National Science Foundation (which has a major mandate in this area) plus the basic research components—and they are substantial—of the defense, space, and nuclear energy programs. This need not be detrimental even from a non-budgetary standpoint since so much of the basic research conducted by other agencies (information and communications technology, trace analysis, etc.) should be transferrable or adaptable for law enforcement use.

One "basic resource" investment, however, should perhaps not be ignored That is the development of trained manpower to work with the technology of criminal justice. The extensive scientific manpower development programs administered by the National Science Foundation (and other major R&D agencies) may not be able to adequately feed the manpower pool required for criminal jus-

[28] Compare also the smaller R&D efforts of the Departments of Commerce, Interior, and Agriculture—105, 155, and 270 million dollars, respectively, in fiscal 1966 (estimated)—still 2 to 4 times larger than the criminal justice projections offered here. It is interesting to note also that basic and applied research in the social and psychological sciences, so pertinent to the fields of criminal justice and crime control, absorbs only 6% of the total federal research budget (development excluded—fiscal 1966 figures) and that industry remains the nation's prime R&D performer today (69% of national total—65% of federally-supported R&D) with intramural, university, and other non-profit performers at substantially lower levels of participation (20%, 12%, and 4% respectively). See *Federal Funds for Research Development and Other Scientific Activities,* National Science Foundation (Government Printing Office, 1966).

tice R&D unless graduate study opportunities directly in the field are provided. NASA experience indicates a high retention rate for its graduate fellowship recipients, i.e., their continuance in space-related research work whether in government, universities, or private industry (over 50%). Although criminal justice needs will be modest, there may be a natural reluctance for the well-trained physical scientist to move in this career direction and a program of graduate and post-graduate fellowships (not very costly—less than 1 million for 150 candidates annually) may help insure an adequate supply of scientific talent.

(c) *Character of the Market.* In the defense, space and even atomic energy programs, the Federal Government remains the chief consumer of the products of sponsored research. The criminal justice situation will more closely resemble that confronting HEW in its medical and educational research programs where ultimate users will be state and local communities. This raises, in addition to problems of technology development, problems of technology utilization which may prove as complex and tenacious as the former. It suggests that a number of supporting services may have to be developed, including:

(i) an effective program for dissemination and demonstration of R&D knowledge and results;

(ii) special techniques for "spread" such as guaranteeing markets or production output for needed hardware innovations as inducements to industry;

(iii) initiative in establishing standards for equipment and equipment systems to permit wide and flexible utilization of technology.

These are emphases which might be less critical to a defense procurement agency seeking to meet a new weapons requirement. Each presents serious complexities, perhaps heightened by political obstacles to change that may be encountered in local law enforcement agencies and structures.

(d) *Independent Versus Departmental R&D Effort.* It has been suggested that the national research effort would be better served if administered by an independent agency outside the Department of Justice.[29] The National Science Foundation can be cited as a model for this approach—or perhaps the large R&D programs conducted by such independent agencies as the National Aeronautics and Space Administration or the Atomic Energy Commission. It is interesting to note, however, that each of these structures was developed in response to new and large problems (national science capabilities, space exploration, nuclear energy utilization) not at the time covered within existing jurisdictional bounds of established departments. On the other hand, problems of health and medicine, manpower, education, and other areas of federal-local interest have been accommodated—and reasonably well—within departments which have traditionally concerned themselves with these matters.

In view of (i) the Justice Department's traditional concern with and expertise in crime, law enforcement, and corrections, (ii) growing technical assistance and service components within its bureaus and divisions for support of state and local endeavor,[30] (iii) likely assumption of responsibility in the near future for massive "formula grant" programs to help subsidize state and local criminal justice operations, and (iv) what would seem to be a desirable trend in government organization to reverse the proliferation of independent agencies directly responsible to the chief executive—the same type of umbrella that engrosses the Public Health Service within the Department of Health, Education and Welfare may prove desirable in the criminal justice area. This does not mean that an R&D structure within the Department of Justice should not be accorded the attributes and substantial independence of a "national foundation." Indeed, this format may be desirable. The important issue is whether, with the natural and growing ties between federal and local law enforcement and criminal justice administration, a complete bifurcation of federal policy direction between R&D and general grant-in-aid and operational collaboration is desirable.

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[29] *The Challenge of Crime in a Free Society,* President's Crime Commission, supra n. 9, ch. 12 at p. 277 (National Foundation for Criminal Research).

[30] The Federal Bureau of Investigation has developed a wide variety of such services, highlighted by training, laboratory, and now computerized information retrieval services. Both the Bureau of Prisons and Criminal Division have intensified their service activities to local agencies and will be committing greater resources to such efforts in the future (e.g., Prison's New Communities Services Division, on-going jail inspection service, and national prisoner statistics program and Criminal Division's national auto theft and burglary prevention campaign and prosecutor training materials and guidelines).

(e) *Complexity of the Problem.* One final caution should be introduced in assessing the contribution of space age technology to achievement of more effective crime control capabilities and criminal justice apparatus. This is the possibility that the task may be a more difficult one than that presented by the challenges of defense weaponry, space conquest, or even mass transportation. Such analogies, articulated frequently by "science and technology" advocates and echoed in the National Crime Commission report, do not seem to involve in comparable degree either the behavioral complexities or delicate political and social values which inhere in our crime control problems and institutions. The types of "social engineering" now inventoried among the areas of active involvement of the systems analysts still have a quantitative and physical ring (city planning, traffic control, economic allocation, etc.) which seems to fall short of the range of difficulties presented by the phenomenon of crime. It may also prove to be the case that this field offers less potential for gain through operations research and systems analysis than others. Further, with the expection of police activity and possibly metropolitan misdemeanor courts, the number of transactions and subjects dealt with by our criminal justice systems may be sufficiently modest as to preclude the realization in some situations of optimal cost or organizational benefits to be derived from information, communication, or other system sophistication. Finally, the basic validity of the proposition that poverty, ignorance, and social injustice lie at the roots of crime may serve to confound or arrest the "science and technology" contribution as it has the social science and behavioral research "know-how" thus far devoted to the crime problem.

When sophisticated scientists approach this field, and perhaps in recognition of the foregoing complexities, many seem to exhibit a tempering of initial optimism. As one research administrator stated:

"We, as technologists, are bound to be very surprised and may I say challenged when we walk into a field where the very basic definitions are open to question . . . Some people, and I was one, walked into this field thinking that there was a great similarity between this and counter-insurgency. I would like to tell you that I was wrong. The methods are different, the devices are different and the similarities can be extremely misleading." [31]

Whatever the case, the "case has not yet been made" and without minimizing the value of pursuing all avenues offered by modern knowledge, we should nevertheless be prepared for the possibility that science and technology may fall short of expectations in many undertakings. This, of course, need not derogate from what successes can be achieved nor in our general determination to exploit this tool to the utmost in dealing with crime.

Toward an R&D Budget

Some observations as to size of the federal R&D investment in criminal justice were previously made—i.e., $50 to $80 million annually—as a projection of buildup in the near future within the context of the total law enforcement assistance program contemplated by currently pending legislation.* Because of the importance of dialogue on both the extent and contours of such a budget, a breakdown has been ventured based largely on an interpretation of the findings and needs identified by the criminal justice "science and technology" survey commissioned in 1966 by the Department of Justice in cooperation with the President's Crime Commission.[32] The projection, completely unofficial, assumes an "R&D" investment commencing at $20 million per year and increasing within three to four years to the $50 to $80 million dollar level. Within this framework, a $75 million budget might be allocated as follows:

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[31] Eugene Fubini, address at *National Symposium on Science and Criminal Justice,* June 1967. Proceedings p. 14 (Government Printing Office 1967).

[32] LEAA Contract No. 66–7, supra f.n. 18.

* Under the proposed Safe Streets and Crime Control Act, it has been estimated that $300 million will be required for fiscal year 1969 for the total program contemplated by such legislation (Attorney General's Statement before Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee, March 7, 1967) and the Attorney General has further indicated the possibility that aid could grow to $1 billion annually during the 5-year operational period initially contemplated (testimony before House Subcommittee No. 5, March 15, 1967). The projected "R&D" investment of $50 to $80 million would represent a 5% to 8% allocation against a billion dollar base—if anything, on the modest side for a federal developmental effort of these proportions. The budget breakdown presented in this paper is illustrative only. It does not reflect and has not had the benefit of extensive study, both as to total amounts and individual allocations, required for sound programming.

	Annual cost (millions)
1. Research Institutes (four-support for basic operating expenses & variety of projects)	14
2. Total Systems Analysis (8–10 jurisdictions—State & metropolitan—plus national study; includes data collection)	9
3. Operations Research & Field Experimentation (40–60 projects—police, courts, corrections, crime prevention)	11
4. Demonstration Information Systems (Approx. 10–15 info. systems projects)	5
5. Simulation Centers (2–3—primarily police operations)	2
6. Equipment-System Development:	
Fingerprint automation	3
Command and control centers	2
Crime laboratories	5
Radio systems and car locators	2
Miscellaneous (weaponry, car design, alarm technology, etc.)	5
7. National Criminal Statistics Center (primarily intramural effort)	4
8. Individual Research & Study Projects (40–60—behavioral research, legal analysis, study of nature of crime and specific offenses, analysis of agency organization and management, personnel and human resources development, etc.)	10
9. Standards & Standardization Projects	2
10. Science & Technology Graduate Fellowship Program (150 students annually)	1
Total	75

The foregoing assumes (i) a competent in-house federal staff to administer the program with appropriate technical expertise but functioning primarily at the program administration level; (ii) substanial "farming out" of specific hardware development; (iii) several advisory groups to develop funding priorities and assess projects; and (iv) one research and analysis organization among the proposed centers with particularly close ties to the federal program and a role in the latter's own evaluation, organizational analysis, and operations review. The budget is, of course, independent of the equipment, construction, and other subsidies possible under the proposed Safe Streets and Crime Control Act of 1967, some of which will quite likely be allocated by local agencies for computers and ADP facilities, crime lab equipment, etc.

Conclusion

The topic of this discussion has been federal assistance in developing the technology of criminal justice. Perhaps the most important point to be made is that without federal aid, such development, if it comes at all, will be hard and slow. The investments necessary are obviously beyond the means of individual states and cities and the opportunities for gain which might attract substantial investment by industry are sufficiently uncertain as to preclude reliance on this factor. Because the order and type of "science and technology" effort blueprinted by the President's Crime Commission and discussed in this paper requires only the most modest of priorities (—probably one of the lowest federal R&D investments among major "social problem" programs) and because the nation seems aware and determined to deal with its crime problem, there is good reason to believe that resources will be matched to needs, and as part of the total response, an age-old problem will be brought under the surgical, and hopefully, remedial eye of modern science and technology. This paper has attempted to highlight some of the salient issues and considerations in any such effort, and, in so doing, help contribute to a proper launching.

I want again to express my appreciation to Dr. Hornig, Dr. Blumstein, my colleague, Mr. Scheuer, who is carrying the battle in the House of Representatives and has, I think, made a very useful comment and testimony here today and has been the real leader in the House of Representatives in this endeavor.

I want to thank the Chair.

Senator McCLELLAN. Thank you, Senator.

I am wholeheartedly in support of the very best research program we can devise. I not only support the authorizing legislation but will support the necessary appropriations. I think it can be of great help and I think that there is a need for it.

I would like to ask a question or two about the use of these devices once they are developed. But first I would like to get your definition, your interpretation, of "criminal justice"? We hear this phrase over and over. I think it ought to be defined somewhere. We may have different ideas about it. What is your idea? What is "criminal justice," Doctor?

Dr. BLUMSTEIN. I have spoken about the criminal justice system which I define to be the system of police, criminal courts and correction and the collection of activities engaged in by that collection of agencies.

Senator MCCLELLAN. You could also call it the system of law and order, could you not? What would be the difference?

Dr. BLUMSTEIN. The system of law and order provides essentially the background, the basis for the operation of the criminal justice system.

I am operationally oriented, Senator, toward the things that work to bring about law and order through the criminal justice systems. It is very clear that crime is controlled by many agencies, many actions outside the criminal justice system. But we are concerned in a major part of our work with the operation of this criminal justice system.

Senator MCCLELLAN. In many places where the term is used there could be substituted more appropriately the term "social justice." I do not think it is criminal justice of any kind for a guilty person to escape punishment because the law is not being enforced, do you?

Dr. BLUMSTEIN. That is certainly true.

Senator MCCLELLAN. So, I think social justice is involved here, whether we protect society or not. It is a social justice, is it not?

Dr. BLUMSTEIN. I agree entirely where society is unprotected.

Senator MCCLELLAN. You cannot use the term "criminal justice" unless you give it a rather strained construction because criminal justice might very well fail to include social justice, do you not think?

Dr. BLUMSTEIN. To the extent that it fails is an inadequacy of the criminal justice system.

Senator MCCLELLAN. One other question. You talk about the development of techniques. Is it your belief that these techniques can be and should be used against the criminal to detect and apprehend him, and to develop proof of his guilt as evidence?

Mr. SCHEUER. Yes, very definitely. I come from a district where crime in the street is far and away the major cause of concern of my constituents.

Senator MCCLELLAN. So you feel they ought to be used.

Mr. SCHEUER. Absolutely. And let me particularly zero in on a point you made, Senator. There is widespread concren, and I am not going into the validity of the concern, but that concern is based upon the results of the *Miranda* and *Escobedo* cases and the capability of our criminal justice system to apprehend criminals and prove their guilt. It seems to me we are more conscious than ever before of the rights of individuals in our society than to pursue the even tenor of their lives

without fear of the violent attack on the streets and without the diminution of the quality of their lives. It seems to me that we might quote Grover Cleveland when he said we are faced with a condition and not a theory. The theory is that the *Escobedo* and *Miranda* cases are there. We cannot use interrogation and confessions in the fashion in which they were formerly employed. So perhaps we have a vacuum. What more constructive result can we look for in shoring up the capability of our criminal justice system than to improve it for science that Dr. Blumstein was adverting to and to bringing out of their rather primitive state of development, the science of blood identification, fingerprint identification, hair identification, handwriting identification, voice identification? We have the scientific capability to do far more in terms of identifying a suspect as the perpetrator of a crime than we used to if we would only apply our existing science and technology capability.

And it seems to me when a suspect is brought before the bar, if we cannot use his confession and if we cannot interrogtae the way we used to, well perhaps we ought to put more resources into other ways of identifying that suspect as the actual criminal.

Senator McClellan. If we cannot use a suspect's confession, if we cannot require him to answer questions—and I don't mean that he should be compelled to testify against himself at trial—but if he is protected and shielded from any interrogation by officers who are undertaking to enforce the law, then how much would new techniques help this situation? As you know, in certain crimes the only leads possible are those developed from the suspect's own statement.

If we carry this theory very far in protecting the rights of the suspects, I doubt that officers would have the right to fingerprint him. What chance have officers to get that possible evidence against a suspect when they are not permitted to interrogate him without a lawyer present, and without certain warnings? Do you have an answer for that?

Mr. Scheuer. Until some court of law says we do not have the right to do that, I assume we do have a right to getting fingerprints, to get a blood sample.

Senator McClellan. Do you think it violates the individual's rights, his personal rights, to make him do that, to give evidence against himself? Do you agree with that position?

Mr. Scheuer. I would not be prepared to take that position, Senator. And to this I don't believe the Court has taken that position. I would like to bring to your attention a recent U.S. Supreme Court decision, *Schmerber* v. *California*, 384 U.S. 757 (1966), where a blood sample was taken over the defendant's objection and the evidence of a chemical analysis of the blood was introduced at his trial.

In considering whether or not such evidence could be admitted, the Court said that:

> We hold that the privilege (against self-incrimination) protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends. . . . (384 U.S. at p. 761)

* * * * * * *

"Not even a shadow of testimonial compulsion upon or enforced communication by the accused was involved either in the extraction or in the chemical analysis. Petitioner's testimonial capacities were in on way implicated; indeed, his participation, except as a donor was irrelevant to the results of the test, which depend on chemical analysis and on that alone. Since the blood test evidence, although an incriminating product of compulsion, was neither petitioner's testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on privilege grounds. (348 U.S., at p. 765)

I feel that it should be noted here that this was a 5-to-4 decision and that, therefore notice should be given to the reasoning set forth by the dissenting Justices. In their dissent, the Justices seemed to be more concerned with the fact that the test involved an involuntary taking of blood than in admitting the results of the test per se. Chief Justice Warren, in his dissent in *Schmerber*, referred to his dissent in *Breithaup* v. *Abram*, 352 U.S. 432. In *Breithaup*, which considered the same question as *Schmerber*, the Chief Justice said:

We should, in my opinion, hold that due process means at least that law enforcement officers in their efforts to obtain evidence from persons suspected of crime must stop short of bruising the body, breaking skin, puncturing tissue or extracting body fluids....

Justice Douglas and Justice Fortas adhered to the views set forth by the Chief Justice in *Breithaup*.

So it would appear that the Supreme Court would certainly allow the results of various forensic tests to be used as evidence in criminal trials, particularly if these tests did not involve doing any violence to the accused or were left at the scene of the crime.

In the case of handwriting, the Court made a similar ruling in *Gilbert* v. *California*, 35, Law Week 4614, the Court ruled as admissible samples of handwriting taken without the suspect's consent.

Senator McCLELLAN. Neither am I prepared to take such a position, nor am I prepared to take the position of the majority of the Supreme Court that you have no right to interrogate a suspect.

Mr. WALSH. All they have said is that they can't take you down to the police station in the dead of night and interrogate him alone.

Senator McCLELLAN. No; it says you cannot interrogate him about the crime if he is a suspect, unless you tell him he is entitled to a lawyer and give him other warnings set out in *Miranda*. Am I right?

Mr. WALSH. No, sir; I don't think you are.

Senator McCLELLAN. Well, I disagree with you.

Mr. WALSH. The police are free to go out and do all the interrogation they want without warning of any kind if they will do it out in the field instead of taking the person down to the police station.

Senator McCLELLAN. Can they do it in his automobile?

Mr. WALSH. In the policeman's automobile? Probably not. If a policeman at once put him under arrest then all these rights begin to flow. But the FBI, for instance—I hate to think how many Federal cases I have tried where they have had all kinds of admissible statements, statements that would be admissible under any late current tests.

If they want to go up and interrogate a fellow in his own surroundings, that is one thing. I had a case last year where a young man was thought to have committed a crime. I have known his family for 15 years or so and I am absolutely satisfied that the fellow was innocent. As a matter of fact, he wanted to help the police as much as they wanted his help. He had made, on the evening of the offense, a detailed

statement to police; he cooperated with them in every way. The police in turn, from all other likely evidence, from all other likely avenues of approach, decided that he was the likely suspect and, therefore, he was the one that they wanted to try and convict. My advice to him, as his lawyer, was: As long as they want to question you about this and they want to do it at your school or place of employment, cooperate with them in every way and tell them anything they want. But if they decide that they are going to arrest you and take you down to their steel concrete jail, and they want to interrogate you there, at that point, tell them you want me there."

Senator McCLELLAN. That is advice you gave as his lawyer. But he did not have to answer out there before you were present or even when you told him to answer. Some other lawyer might have told him something different.

All lawyers are not going to cooperate as well as you did in that instance.

Mr. WALSH. We were just as interested in solving the crime as the police were, Senator.

Senator McCLELLAN. You were; but not everybody is.

Mr. WALSH. The point that I make is, the police would have been entitled to ask him questions out there, in my opinion.

Senator McCLELLAN. Not if he had become a suspect.

Mr. WALSH. Even if he is a suspect, as long as he is not in custody and not under arrest. That was the thrust of Judge Lumbard's testimony before this committee.

Senator McCLELLAN. If the officer says walk out here, I want to ask you some questions, and he answers in effect, "the devil, I want to walk off," how is the officer going to question him unless he takes him in custody?

Mr. WALSH. He has the right under the fifth amendment. The police don't have to advise him of all those rights unless they first arrest him and place him in custody.

Senator McCLELLAN. One other question.

If we ever use these devices, these techniques, what is your suggestion about the use of wiretapping, electronic devices in serious criminal cases? We have a technique there we could use. I am talking about using it under strict court order, comparable to issuing a search warrant. What is your comment about that?

Mr. WALSH. Senator, if you are asking me, I will say there is no way you could tap a telephone under a court order that would satisfy the fourth amendment. If somebody wants to tap my telephone they are not only listening to me; they are listening to every individual who may choose to call my law office and that is the essential difference between the search warrant contemplated by the fourth amendment. That gives a named place, a named individual, a named offense which the individual, which the policeman can go out and in good faith, execute. He can search my office, assuming he has a valid warrant.

Senator McCLELLAN. In searching your office would he not see many things you would not want him to see besides what he is looking for?

Mr. WALSH. That may be, but he is not listening to every conversation with every client who would call me. If I got a search

warrant to search Senator McClellan's telephone I would be listening to every constituent, every Federal employee who might have an occasional call to you. There would be no way to limit it. That I think is the ultimate vice in the wiretapping situation.

Senator McCLELLAN. Are we to permit organized crime, the hoodlums, the underworld, to continue to use this technique but not combat it with the same effort, the same instrumentalities?

Mr. WALSH. Senator, organized crime is basically a police problem. You do not have organized crime without the consent and toleration of the police. We do not have organized crime in Houston.

Senator McCLELLAN. They have the court on their side. They are still operating effectively with this instrumentality. What difference does it make if they have the police or court or both? It is still a crime and still doing great damage in this country.

Mr. WALSH. I don't think you have an organized crime situation in the community where the police will not tolerate it. I do not think you have an organized crime situation in the community unless the police will tolerate it. We do not have organized crime in Houston, Tex. It doesn't exist and our local law enforcement people wouldn't permit it.

Senator McCLELLAN. Why not use it to catch the corrupt policeman and hoodlum and the underworld character? Why not use it to catch both? If it is going on I think the end justifies the means because of conditions we have in this country today with organized crime increasing. It is definitely entrenched in many localities and wiretapping is one of the most effective ways to get to the top. You say we ought not wiretap, that law enforcement must be denied this instrumentality that gives the criminal the opportunity to flourish. I do not agree. We must go out and fight crime with weapons that are as effective as those used by the criminal or we are going to mollycoddle around and just talk a great deal and proceed on a lot of theories while crime continues to increase. We are going to have to hit at the source of it, where we can, and hit hard.

I believe we have testimony that out in the street, in the open, only about one out of 12 perpetrators of crime is apprehended; is that right?

Dr. BLUMSTEIN. Twelve percent, one out of eight.

Senator McCLELLAN. One out of eight. That is where it is out in the open. It is high where there are no witnesses.

Dr. BLUMSTEIN. It is about one out of four of index crimes and 12 percent where there was no one at the scene—12 percent.

Senator McCLELLAN. I had some statistics on this recently, I think I got them from the Crime Commission report. If I am not mistaken there is only about 12 out of 100 that were actually apprehended and punished for serious crimes. That left 88 out of a hundred that absolutely escaped any punishment. I do not think you can have effective law enforcement with the odds that heavy against society's protection. I just do not think you can have it until we get instilled in the minds of the criminal and would-be criminals that he is running a very grave risk when he goes out to commit these serious crimes. As long as he feels like the odds are one out of a dozen, or something, of that order, he is not going to be too apprehensive about punishment. These

are things that concern me. This is the time for all of us to speak out against such an intolerable condition.

Mr. WALSH. That is why we supported the kind of research program that we are hoping this committee will approve.

Senator MCCLELLAN. Research is all right. You can research from here to the moon, but if you do not punish these criminals, they are going to continue to commit crimes. If they are going to get by with it, they are going to continue with their life of crime.

Mr. WALSH. We are trying to reduce the odds.

Senator MCCLELLAN. I am also for punishing those who are guilty. You talk about reforming. Some of these people you can never reform. The beginner—certainly. Give him every chance, and I am for that. Establish these halfway houses and everything else and give them every opportunity for rehabilitation. But when they continue to repeat these heinous crimes they forfeit their rights and I am for putting them away, out of society.

Mr. WALSH. I don't disagree with you. I think there are some people who are absolutely incapable of any kind of reform and these people need to be locked up and put away for society's protection. There is no question about it.

Senator MCCLELLAN. We have them now on the streets, they are being turned loose. You can talk about improving the system of justice. This is one of the critical areas, in my view, that needs improvement. These habitual criminals, continually repeating crimes—are just turned loose on society. I do not know all the answers. But I think I am right about this. The trends of today cannot continue beyond another decade. You can talk about the enemy from without—the aggressor who might attempt conflict with this country and the free world. Meantime, we fall apart from within. the internal security of this country is in danger as well from internal sources operating today, the criminal forces in this country, the lawlessness. I think we have an equal or greater danger to our survivals as a nation from these internal enemies than from any external danger.

Congressman Scheuer said something about how to recruit policemen to keep cool. Well, when science can determine who is going to keep cool under given circumstances—when someone can do that they will make a great contribution. You cannot get policemen of any kind today. We have got a shortage of 11 percent in the District of Columbia. That is why I favor not only training, but I favor in the administration bill the possibility of higher salaries. I am not concerned about the Federal Government paying them directly, but I would rather see the Federal Government help bear other expenses like facilities, training, equipment, and so forth, and let the local governments determine the measure of pay. Salaries must be increased, otherwise you are not going to recruit or keep policemen. Organized crime will corrupt the police and that is maybe where it is generally conceded. I am no expert in that field. But what incentive is there to a policeman today, anybody to become a policeman? No wonder recruitment is difficult. Not only are they underpaid, poorly equipped, undertrained, but they become, more or less, the accused in a criminal trial in a good many instances today. Too many cases are tried against the police on the theory that every crime involves police brutality. I

do not agree. I am not one of those who think all the policemen in the country or law enforcement people are corrupt. I think we have some wonderful dedicated men and sometimes I wonder why any of them, those that are dedicated, remain on the police forces and try to protect society under the conditions that exist today. I am with you 100 percent on the research. I do not know the best way between the two bills. But when we go to mark up this legislation I am going to support research and very generously so.

I want to see it get in operation and get moving so we may realize results from it.

Gentlemen, thank you. Thank you very much.

Mr. Hogan, will you come around, please?

Senator KENNEDY. I am sorry to interrupt. I will be unable to be here at the testimony of Mr. Hogan. I am going to take it with me. I will read it, for I have great respect for him. He is a very close friend of Mr. Garrett Byrne who is the district attorney of Suffolk County, and in whose office I worked as an assistant district attorney, so I know him both professionally and privately.

I regret I will not be here but I will look forward to studying his testimony in some detail.

Senator MCCLELLAN. Mr. Hogan, would you prefer a recess and come back at 1:30? I may want to ask you a lot of questions but I want to do whatever is most convenient to you.

Mr. HOGAN. You are very gracious. Whatever is most convenient for you will be all right with me. I am hoping to go back to New York at 4 o'clock.

Senator MCCLELLAN. You will be able to do that, I am sure, if we start at 1:30.

Let us proceed for a while.

Mr. HOGAN. If this is the customary time for recess——

Senator MCCLELLAN. I just happened to look at the clock and saw it was 12 o'clock. Yesterday or the day before we ran until 1 o'clock or 1:30 before recess.

Mr. HOGAN. I am happy to accommodate you.

Senator MCCLELLAN. Why not let us go ahead and start with you. If you wish to read all of your statement or just put it in the record——

Mr. HOGAN. It is long. I am perfectly willing to follow your suggestion.

Senator MCCLELLAN. I suggest this, then. I do not want to deprive you of anything. I suggest you read what you want to and comment on it, and I will ask the reporter to follow you in any part that you maybe omit in your prepared statement and it will be printed in the record at the point where you skipped.

Mr. HOGAN. I have two different statements here and if they can be put in the record, since I will skip about, that will be satisfactory.

STATEMENT OF FRANK S. HOGAN, NEW YORK COUNTY DISTRICT ATTORNEY, NEW YORK, N.Y.

Mr. HOGAN. Senate bill 675 would make it unlawful for any person to wiretap other than duly authorized law enforcement officers acting under court supervision.

I note among the findings in section 2 of the bill the following:

(c) Modern criminals make extensive use of the telephone and telegraph as a direct instrumentality of crime and as means of conducting criminal business. In some circumstances, interception of wire communications in order to obtain evidence of the commission of crime is a necessary aid to effective law enforcement.

I wholeheartedly concur in that finding. It sums up, in a few words, everything that has been said about the importance and the necessity of legalized wiretapping.

I have served in the office of the district attorney of New York County for 32 years, the last 25 of them as district attorney.

On the basis of that experience, I believe, as repeatedly I have stated, that telephonic interception, pursuant to court order and under proper safeguards, is the single most valuable and effective weapon in the arsenal of law enforcement, particularly in the battle against organized crime.

In my judgment, it is an irreplaceable tool and, lacking it, we would find it infinitely more difficult, and in many instances impossible, to penetrate the wall behind which major criminal enterprises flourish.

THE NEW YORK EXPERIENCE

In New York, as you are aware, by vote of the electorate in 1938, our State constitution was amended to authorize court-ordered wiretapping, where it could be shown that there was "reasonable ground to believe that evidence of crime may be thus obtained." In 1942, implementing legislation placed the entire procedure under judicial control. Statutory requirements were enacted to restrict the use of this privilege to intercept and to make certain that civil liberties were not abused in the utilization of the privilege. In 1958, similar laws were passed to bring eavesdropping by electronic device, commonly known as "bugging" under judicial control with correspondingly strict safeguards on the use of this technique and severe penalties for its unlawful use.

The judicially supervised system under which we operated has worked. It has served efficiently to protect the rights, liberties, property, and general welfare of the law-abiding members of our community. It has permitted law enforcement to undertake major investigations of organized crime.

In my statement I have listed a number of them going back 30 years.

Senator McCLELLAN. I see a number of them. Could you state with reasonable assurance to this subcommittee that these top hoodlums whom you name as members of the crime syndicate would not have been convicted or could not have been convicted except for the fact that you were permitted to use wiretapping or electronic detection devices to get evidence against them?

Mr. HOGAN. I state so emphatically, and the records of our investigations will bear out that statement in each case.

Senator McCLELLAN. If we can enact a law to meet the test laid down by the *Berger* decision, and I think we can, we are still confronted with the argument that you might hear me talking to my girl friend; or you might hear me talking about a business deal and I would not want anybody to know about it.

Well, of course, we all have private conversations we would not want anybody to know about. But there must be some sacrifice. We cannot have everything and give nothing. Freedom cannot be maintained without giving. We pay a price for it. We, in my judgment, will have to pay a price for law enforcement. It gets down to that point. Is the risk of having an occasional conversation overheard where something is said that you would not want anybody else to hear going to deter our law enforcement officials from combating organized crime, or is that presumed right of privacy more precious to us than using this instrumentality to effectively combat organized crime? I think that is the issue before us.

Mr. HOGAN. I think it is a very small price that we pay for the protection of society.

In the first place, this privilege is sparingly used. In my statement I point out that every year we have some 62,000 criminal matters in New York County. We have averaged 70 court orders for interceptions for the past 25 years.

Senator MCCLELLAN. Some 70 per year?

Mr. HOGAN. 70 per year. Last year it was 66, as I recall it, with something like 20 renewals or extensions. This is in a county which has approximately 2 million telephones. Moreover, I don't think people realize the number of policemen, the number of detectives, that are required to man one of these plants. You must have no less than four and very often six, because if a conversation comes over indicating a meeting between Criminal A and Criminal B, you have got to have an automobile and you have got to have detectives there to cover that meeting. So that this is sparingly used.

In my office almost exclusively it is used in the field of organized crime. Now, moreover, a detective has a recording machine—used to take it down in inadequate shorthand, but now he has a machine, and if there is a personal conversation he is more than likely to turn the machine off. He is not interested in that, just as if he were maintaining surveillance of a criminal, he wouldn't be a good detective if he were watching other people in a restaurant or making observations with respect to innocuous incidents for which he wasn't being paid. His mind is on his job, his eye is on the ball and he is putting it down, he is recording only those things that relate to the crime that he is investigating. So that in any police work, by the very nature of police work, the police are going to see many things, overhear many things that are innocent, but that is an exceptionally small price to pay. There must be some invasion of our liberties if we are to offer any protection to members of society. And as you pointed out earlier, in a typical search warrant, the persons knocking at the door and going in, they observe everything in that room. If they are looking for stolen bonds, they may go through everything in your files, but they aren't making notes for purposes of blackmailing or anything of that kind.

Senator MCCLELLAN. It was brought out here that you can subpena letters that have been written in the greatest confidence, and bring them into court—subpena a document or any number of documents.

There is one other thing that we ought to get established here. As you point out, only in 60, 70, less than 100 instances was it used in 66,000 criminal proceedings, is that correct?

Mr. HOGAN. 62,000.

Senator MCCLELLAN. So the possibility that it would be used against any citizen at any time is almost completely remote, is it not? I am talking about a law-abiding citizen.

Mr. HOGAN. It would be a fraction of a tenth of 1 percent. Moreover, Senator, I should say my own experience is—I see every application that is submitted—that is an office rule—no application is submitted to a judge unless I have read it—and my conclusion over the years is that at least 80 percent of those persons whose telephone conversations are intercepted have criminal records and often very long criminal records.

Senator MCCLELLAN. That is what I point out. The law-abiding citizen has nothing to fear, does he?

Mr. HOGAN. Of course not.

Senator MCCLELLAN. Does a law-abiding citizen have anything to fear from the policeman being armed?

Mr. HOGAN. He certainly does not.

Senator MCCLELLAN. That is the point. There has to be a presentation to a court of competent jurisdiction under oath, alleging and swearing to the information you have that gives you reasonable cause to believe that the planting of a detection device or the tapping of a telephone will secure evidence of a crime. Is that not true?

Mr. HOGAN. That is true.

Senator MCCLELLAN. Now, it would be pretty hard to meet those requirements against a law-abiding citizen, would it not?

Mr. HOGAN. If the police officer, Senator, or the District Attorney negligently or through prejudice went in with an inadequate affidavit, it would be the judge's province to examine and decline him the right to do it. That is why there is so much virtue in the bill which introduces the court as the responsible agency for issuing the order. For years, in the Federal system they haven't required any court authorization, which I think is wrong. I don't think even the Attorney General of the United States should be permitted to do this without court authorization. But where you have court authorization, as Senate bill 75 provides, there is ample protection for the law-abiding members of the community and indeed for criminals who are not presently engaged in any crime.

Senator MCCLELLAN. I think the law-abiding citizens have got to make up their minds whether or not they are willing to take such a minor risk as may be involved in order to better guarantee a free and safe society in which to raise our families. If we are unwilling to take this small risk, then organized crime will continue to flourish until we have no safe society.

Mr. HOGAN. Senator, I think law-abiding citizens are willing, eager to accord this privilege to law-enforcement personnel, and I would be perfectly willing to abide by a vote. But, unfortunately, legislators are not willing to take the risk. They sense that this is not regarded as a nice thing to do, to listen in while somebody is planning a murder. The Attorney General of the United States refers to electronic equipment as abhorrent devices. This, in my opinion, is ridiculous. If you are going to make an out-and-out attack on organized crime and then say this isn't cricket, you mustn't do this, then it is just asinine.

Senator McCLELLAN. We have witnesses who just preceded you who want to go into a great program of research. I agree.

Mr. HOGAN. I do, too.

Senator McCLELLAN. But the Attorney General says we do ourselves a disservice in the use of statistics on crime. I believe he said, if I am quoting him correctly, or substantially so, we do ourselves a great disservice by the use of these statistics. Are not statistics a part of research?

Mr. HOGAN. I think he said—and I have included it in my statement—that wiretapping and eavesdropping were not essential and they were not productive. And he said they had cases to prove it. I know nothing about his cases, but I know about our cases, and my statement is long because I have been specific. I have described a number of cases, a number of investigations where this privilege was accorded to us, where arrests took place, and that is the best answer I can give to the Attorney General. And I may say that within my experience, going back to 1935, this is the first time an Attorney General has reflected such thinking. I have included in my statement also, Senator, a letter sent to you by every living former U.S. attorney from the southern district of New York.[1] Now, this is the busiest U.S. attorney's office in the country. It is in the center of the organized crime area where narcotics is a great problem, and gambling, and where there is a concentration of these top gangsters, and where, former U.S. attorneys like Chief Justice Lombard of the Circuit Court of Appeals, Supreme Court Justice Saypol, Justice McNally of our appellate division in New York, Myles Lane, the chairman of the State investigation commission—every last one of them agreed that electronic eavesdropping was essential. And I can't believe that those U.S. attorneys, serving from 1929 on, didn't reflect faithfully the convictions of the attorney generals serving from 1929 until very recently.

Senator McCLELLAN. Do you not think that their experience over this long period of time would qualify them as well if not better than the Attorney General to speak with authority on the subject?

Mr. HOGAN. With great respect to the Attorney General, a fine person and a fine lawyer, I don't think he has had any experience in this particular field.

His predecessor, who was counsel to your committee, Senator, did have that—Senator Kennedy did have that experience when he was serving as your counsel. I think he had a particular interest in this and I was pleased only a month ago when I was in Washington talking to you, and I went around to speak to Senator Robert Kennedy and I found that he is still of the same conviction that this is a most valuable weapon for law enforcement and he approves heartily, enthusiastically, of Senate bill 675.

I spoke to Senator Javits at the same time and he pledged support for the enactment of this bill which as you say will have to be altered to correspond with the standards proclaimed by Justice Clark speaking for the majority of the Court.

I have included in my statement, Senator, some suggestions for changes which I think meet the Court's criticism.

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[1] Letters referred to appears at page 511.

I may say also that our office in New York is busy at the present time drafting a substitute statute for the Code of Criminal Procedure Statute which was found inadequate by Justice Clark. I anticipate the final draft of that statute will be ready in about a week, and I will be very pleased to send your counsel copies of that for such use as you may wish to make of it.

Senator McCLELLAN. We will be very glad to have that.

May I just ask you one other question and we will recess for lunch?

I think you have had about 30 years' experience with wiretapping, have you not?

Mr. HOGAN. Yes, sir.

Senator McCLELLAN. At the rate of 50, 60 applications per year—70—you have had somewhere between 1,500 and 2,000 applications for a wiretap or electronic surveillance during that 30-year period of time. Would that be about correct?

Mr. HOGAN. 2,000, 2,100 for 30 years, yes.

Senator McCLELLAN. Out of all of those wiretaps or electronic surveillances—and you cite the number of convictions of top hoodlums or underworld characters which were secured by reason of your use of this device to detect crime—Mr. Hogan, have you ever had one case in New York where there was an abuse of the authority to conduct such a surveillance?

Mr. HOGAN. I think of no case in New York County where this privilege was abused. Moreover, the New York State Legislature appointed a committee some years ago and spent better than 3 years investigating the utilization of the privilege over a period since 1942. It dug into the files in my office, of the police department, of other district attorneys throughout the State. There was a great hue and cry about possible abuse of the privilege at that time, and I think the chairman of the committee and others thought they were going to find evidence of abuses. But after 3 years they acknowledged in the report that they found not a single abuse of this privilege.

Senator McCLELLAN. When was that report made?

Mr. HOGAN. I made reference to it—I do not want to depend on my memory—it is in my statement.

Senator McCLELLAN. Counsel tells me the study began in 1955.

Mr. HOGAN. Assemblyman Savarese was the chairman of the committee.

Senator McCLELLAN. It has not been established or demonstrated that there has been one instance of abuse in 30 years of experience with court controlled wiretapping in New York State.

Mr. HOGAN. If I may just read briefly the conclusions which I stated: This conclusion, moreover, is supported by investigations of legalized wiretapping.

Beginning in 1955, a joint legislative committee conducted a 5-year study in the State of New York inquiring particularly into possible abuses by law enforcement officers. This investigation had come into being as a result of the hue and cry being raised at the time about supposed wholesale invasions of privacy.

In its report, the committee explicitly declared that no abuses whatever by any district attorney had been found in the use of the wiretapping privilege. Quite the contrary. The committee concluded that

the system of legalized telephonic interception had worked well in New York for over 20 years, that it had popular approval, and that it enjoyed the overwhelming support of our highest State offices, executive, legislative, and judicial. There was unanimous agreement that law enforcement in New York had used this investigative weapon fairly, sparingly, and with the most selective discrimination.

Senator McCLELLAN. Thank you very much.

We will stand in recess until 1:45.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:45 p.m., this same day.)

AFTERNOON SESSION

Senator McCLELLAN. Proceed. I hope not to interrupt you as I did. I will let you resume with your prepared statement.

Mr. HOGAN. With your permission, since you have been kind enough to incorporate both statements in the record and since I have to be a clockwatcher and you have other witnesses, I am just going to make some brief references to the wiretap statement and then, if you will indulge me, we will talk a few minutes about the second statement that I have on confessions.

Senator McCLELLAN. We are going to have the wiretap statement printed in full at this point.

(The complete statement of Mr. Hogan follows:)

STATEMENT OF FRANK S. HOGAN, NEW YORK COUNTY DISTRICT ATTORNEY, ON S. 675

Senate Bill 675 would make it unlawful for any person to wiretrap other than duly authorized law enforcement officers acting under court supervision.

I note among the findings in Section 2 of the bill the following:

"(c) Modern criminals make extensive use of the telephone and telegraph as a direct instrumentality of crime and as means of conducting criminal business. In some circumstances, interception of wire communications in order to obtain evidence of the commission of crime is a necessary aid to effective law enforcement."

I wholeheartedly concur in that finding. It sums up, in a few words, everything that has been said about the importance and the necessity of legalized wiretapping.

I have served in the office of the District Attorney of New York County for thirty-two years, the last twenty-five of them as District Attorney.

On the basis of that experience, I believe, as repeatedly I have stated, that telephonic interception, pursuant to court order and under proper safeguards, is the single most valuable and effective weapon in the arsenal of law enforcement, particularly in the battle against organized crime.

In my judgment, it is an irreplaceable tool and, lacking it, we would find it infinitely more difficult, and in many instances impossible, to penetrate the wall behind which major criminal enterprises flourish.

THE NEW YORK EXPERIENCE

In New York, as you are aware, by vote of the electorate in 1938, our State Constitution was amended to authorize court-ordered wiretapping, where it could be shown that there was "reasonable ground to believe that evidence of crime may be thus obtained." In 1942, implementing legislation placed the entire procedure under judicial control. Statutory requirements were enacted to restrict the use of this privilege to intercept and to make certain that civil liberties were not abused in the utilization of the privilege. In 1958, similar laws were passed to bring eavesdropping by electronic device, commonly known as "bugging," under judicial control with correspondingly strict safeguards on the use of this technique and severe penalties for its unlawful use.

The judicially supervised system under which we operate has worked. It has served efficiently to protect the rights, liberties, property and general welfare of the law-abiding members of our community. It has permitted law enforcement to undertake major investigations of organized crime. Without it, and I confine myself to top figures in the underworld, the New York County District Attorney's Office, under the leadership of my distinguished predecessor, Thomas E. Dewey, and during my own tenure, could not have convicted Charles "Lucky" Luciano, Jimmy Hines, Louis "Lepke" Buchalter, Jacob "Gurrah" Shapiro, Joseph "Socks" Lanza, George Scalise, Frank Erickson, John "Dio" Dioguardi and Frank Carbo. Joseph "Adonis" Doto, tried in New Jersey, was convicted and deported on evidence supplied by our office and obtained by assiduously following leads secured through wiretapping.

In December, 1957, the United States Supreme Court, in the Benanti case, held that Section 605 of the Federal Communications Act forbade the interception and divulgence of telephonic communications by State as well as Federal officials.

It was news to us that we, together with judges, police officials and other prosecutors in New York State, had been committing Federal crimes for twenty-odd years. In our defense, let it be noted that we became lawbreakers under most respectable auspices. Our State Constitution and our Code of Criminal Procedure authorize us to intercept and to divulge telephone conversations which constitute evidence of crime. But Federal statutory law had now been interpreted in such a way as to bar us from using such wiretap evidence in a court of law.

Someone had said that the Supreme Court has erected a vast superstructure of opinion law on a "sleeper" of thirty-one obscure words in the Federal Communications Act which were never intended to interfere with the police powers of the several States. The words in question were never debated nor even mentioned in the Congressional deliberations prior to the enactment of the law in 1934, nor in the entire act is there any reference to wiretapping as an instrument of law enforcement.

Indeed, both prior to and since 1934, there have been efforts in the Congress to enact a ban on telephonic interception that would apply to State law enforcement officers. These efforts failed, but they certainly would never have been attempted, if the legislators had any notion that they had made law in passing the Communications Act, as the Supreme Court in the Benanti case insisted they did.

On numerous occasions, prior to the Benanti ruling, our office supplied information and evidence obtained from wiretaps to many other jurisdictions throughout the United States which resulted in the apprehension and conviction of notorious criminals.

Over the years, also, our office has been able, with court approval, to provide Committees of the United States Senate and the House of Representatives with transcripts of telephone conversations which proved of great value to them in important Congressional investigations.

The late Senator Estes Kefauver wrote to me in 1951 endorsing a statement of a magazine writer that material from the New York County District Attorney's Office—brought to public attention at the hearings of the Special Committee to Investigate Organized Crime in Interstate Commerce—"helped make the Senate crime investigation a smashing success." Virtually all of that material had been uncovered by court-authorized wiretaps.

Telephonic interception enabled us to give similar assistance to the Select Senate Committee investigating organized crime's infiltration of labor and business. In letters to our office and in the Congressional Record, Senator John McClellan, the Chairman of the Committee, expressed appreciation for our cooperation. Senator Robert Kennedy, then counsel to the Committee, made constant use of our information and knows how valuable electronic surveillance is to the preservation of law and order.

No member of Congress ever raised the slightest objection to the receipt or use of the valuable information which my office had obtained by legal wiretapping and was enabled by court direction to make available to them.

Surely these facts shed some light on the question of Congressional intent in the enactment of the Federal Communications Act of 1934.

Yet the Supreme Court tells us that it is a crime under the act for us to intercept and divulge telephone conversations. And that is the law of the land.

The result, obviously, has been to place the prosecutor in a dilemma. He is sworn to investigate and prosecute crime and to use all legal weapons available to him. One of the most important of these weapons certainly is legal wiretapping. But if that key weapon is used, he may find that by so doing he violates Federal law.

This is completely repugnant to all prosecutors. We are not only obliged to uphold the law; we must do all possible to maintain respect for law. When it comes to observing the law, we want to and should set the example.

Our State's highest court, the Court of Appeals, has held that evidence obtained by legal wiretapping is still admissible despite the Federal Court rulings.

But we cannot, in good conscience, direct a police officer to take the stand and commit what the Federal Courts have denominated a Federal crime. And if we should do so, as the Court of Appeals says we may, what of the Federal prosecutor? In one of the Federal decisions he is called upon to take due notice of violations of Section 605 by State officials. Is he to blink the eye and connive at our wrongdoing, or prosecute us for introducing evidence obtained by means of the investigative powers accorded us by our State Constitution and statutory law?

Section 605, which the Supreme Court has made applicable to State law enforcement, makes it a Federal crime to intercept, but it adds the words "and divulge such intercepted communications." We interpret that to mean that no Federal crime exists unless both elements are present, that is, interception and divulgence. That was the position taken by Attorney General Robert H. Jackson and, until recently, has long been the policy of the Department of Justice.

We, therefore, continue to utilize wiretapping, pursuant to court order, for purposes of surveillance and for obtaining leads. But we are inhibited from exploiting our findings to the fullest. No matter how incriminating the evidence we uncover nor how essential to successful prosecution, we may not introduce it on trial or before Grand Juries. We cannot confront recalcitrant witnesses with recordings of their own conversations and thus persuade them to testify truthfully or face possible indictment for perjury or contempt. We cannot induce the reluctant or frightened victims of extortion and of other crimes to cooperate in the furtherance of law enforcement and justice.

Worse, we have found ourselves constrained by the Federal rulings to dismiss important cases and to abandon important investigations.

Senate Bill 675 sets the record straight with respect to Congressional intent. It removes State law enforcement from the limbo of uncertainty in which we have been confined as a result of the Benanti decision. It restores to the States the right which they possessed without dispute prior to that decision—the right to intercept telephonic communications, when done pursuant to a court's order based on a judge's determination that probable cause exists for belief that such interception may disclose evidence of the commission of a crime. This is a right which in New York State we have utilized in the public interest since 1938 and which I believe we have utilized with fairness and discretion.

THE USE OF LEGAL EAVESDROPPING IN NEW YORK

Eavesdropping has been the subject of many popular misconceptions. There is much confusion, so it seems, in the minds of good people between lawful interceptions, pursuant to court order, and illegal interception of oral communications by private persons.

Our appraisal of the subject should be a reasonable and objective one and our approach should be based on facts and experience, not on preconceptions. We must keep a sharp eye out for the hysterical alarmist with a flair for the dramatic. This is a field that produces the most extravagant accusations of abusive practices, as ill-founded and unsupported as they are shocking, and as irresponsible as they are inaccurate.

A notable example of loose talk was the assertion some years ago by a distinguished jurist that in the year 1952 alone there were 58,000 court orders permitting wiretapping in New York City.

Now this was unadulterated fiction. The researcher, who came up with this figure for the Justice, at first sought to explain it away by declaring that he had included illegal wiretaps as well as those authorized by the courts, and then, by way of amplification, he indicated that he was unable to recollect the name of a single one of the informants who allegedly supplied the factual quicksand upon which his calculation was unfounded.

We were able to demonstrate that the Justice's figure was off by at least 10,000 per cent. As a matter of fact, legal wiretapping is rare. Its danger to the privacy we all cherish is minimal. It is used almost exclusively in the area of organized crime, and, for the most part, only when other avenues of investigation are closed.

But we still hear tales of the fabulous number of telephone booths and private lines which have been wired for sound by the police. Most of today's horror stories seem to be concerned with the companion investigative technique, that of eavesdropping by electronic device. These fantastic stories serve to generate an emotional reaction hostile to wiretapping, a fear of the wholesale and indiscriminate invasion of the privacy of the individual, and a dread that Big Brother may be watching over our every home and office.

Because of these irrational fears, the very terms, eavesdropping and wiretapping, have become frightening words. Just so, in Eighteenth Century England, when crime was rife on the highways and was sweeping over London in tidal waves, efforts to establish a constabulary met with fierce resistance. Freeborn Englishmen feared the very name "police." It was a French word and, therefore, conjured up the spectre of foreign tyranny.

Some have seized upon two words from the dissenting opinion of Justice Holmes in the Olmstead case in 1928—the famous phrase, "dirty business." But they have not bothered to read the rest of the opinion. What they overlook is that Justice Holmes expressly disavowed the position that wiretapping was a violation of our Federal Bill of Rights. And, when he used the term, "dirty business," he was not describing legal wiretapping so much as he was characterizing the conduct of the Federal officers who, in gathering evidence, committed a crime by tapping wires illegally in defiance of the laws of the State of Washington.

Lest we fall victims to a catch phrase, let us ask if there is any business more dirty than the illicit traffic in narcotics. Let us remember, too, that bribery, extortion, the syndicated gambling, which provides the financial life blood of the underworld, and all organized crime are dirty businesses.

And, let us not forget that it was the same Justice Holmes who said on another occasion: "At the present time, in this country, there is more danger that criminals will escape justice than that they will be subjected to tyranny."

The Framers of the Bill of Rights, who were not unacquainted with tyranny, did not hold the privacy of the individual in his person and effects to be an absolute right nor his home to be an impenetrable sanctuary. They guaranteed his safety against only "unreasonable" search and seizure, and accorded to law enforcement the privilege of invasion, under court authorization upon a showing of probable cause, supported by oath or affirmation, describing the place to be searched and the persons or things to be seized.

The Founding Fathers did not, of course, anticipate the invention of the telephone nor the wonders of our present electronic age. It is clear, however, that they did not intend the Fourth Amendment to provide a citadel of refuge for the criminal. There was a point, they knew, where individual privacy must yield to the public good.

A court order for wiretapping is in the nature of a warrant for search and seizure and the one raises no more a problem of privacy or a violation of civil rights than the other.

Indeed, our New York State Constitutional provision empowering law enforcement officials to intercept telephone messages uses almost the exact language of the Fourth Amendment, and our implementing legislation holds us to the same restrictions as for any other search warrant.

The quest for evidence, whether by search of the premises of a suspect or by interception of telephonic communications must be based upon "reasonable" grounds. That is the key word.

The sworn affidavit which we submit to the court in connection with a wiretap application must set forth our reasons for believing that evidence of crime will be obtained. It must specify the specific telephone line or lines which it is proposed to tap and must identify the individual in whose name the telephone is listed.

There are, also, some very practical considerations which rule out the arbitrary and capricious use of this important investigative weapon and which necessarily reduce invasions of privacy to a minimum.

At least two detectives, usually four, and sometimes six, are required to man each installation, depending upon the activity of the line and the number of hours

of the day it is being used. It is not simply a matter of monitoring the conversations. The listeners may overhear arrangements for a meeting of two or more of the conspirators. One of the officers must be prepared to cover that "meet," as it is called in police parlance. The rendezvous may well disclose the existence of hitherto unknown participants in the criminal activity under investigation and the surveillance by the detective at the scene may bring to light new clues worth developing.

Since we must necessarily be selective, we confine our attention to major targets and the most serious crimes, especially of the organized variety. Specifically, we are most likely to use wiretapping in investigations of the drug traffic, of extortion and coercion, of bribery, corruption and murder.

Now just how great is the threat to personal privacy posed by legalized wiretapping Let us examine some facts and figures. Every year, in New York County, we dispose of upwards of 4,000 felony indictments in our Supreme Court. As a result of consolidation of the lower courts in September, 1962, our prosecuting burden there has increased tremendously. We now handle some 50,000 misdemeanor and lesser offenses, a caseload double that which we had formerly carried. In addition, there are some 12,000 other items—complaints, investigations, and the like—and thus a total in all of well over 65,000 criminal matters a year.

That was the picture last year. During that year, 1966, in the face of the huge volume of criminal business I have described, we obtained court orders for 73 wiretap interceptions, and 36 renewals.

Surely that figure is not unreasonable and does not represent a wholesale intrusion on the privacy of our citizenry.

There was nothing unusual about last year's total. Our average over the past quarter century has been less than 66 court orders for wiretap interceptions a year. If we include the renewals, the average comes to 87 a year. This remember, in a city of approximately 8,000,000 people, with 1,167,987 telephone lines in New York County, and 3,367,422 in the entire city.

The number of court orders for eavesdropping by electronic device has been even less than the total of wiretap authorizations. Last year, we obtained 23 such orders. Since 1958, when the law permitting such eavesdropping by law enforcement authorities under court order was enacted, our average has been less than 19 orders a year.

The record indicates, I submit, that we have been most careful and prudent in our utilization of the power accorded us by our State Constitution and law. I think, too, the figures suggest that the danger that law enforcement officials may listen in on conversations that do not concern some criminal enterprise is exceedingly remote.

This conclusion, moreover, is supported by investigations of legalized wiretapping. Beginning in 1955, a Joint Legislative Committee conducted a five-year study in the State of New York inquiring particularly into possible abuses by law enforcement officers. This investigation had come into being as a result of the hue and cry being raised at the time about supposed wholesale invasions of privacy.

In its report, the committee explicitly declared that no abuses whatver by any District Attorney had been found in the use of the wiretapping privilege. Quite the contrary! The Committee concluded that the system of legalized telephonic interception had worked well in New York for over twenty years, that it had popular approval, and that it enjoyed the overwhelming support of our highest State officers, executive, legislative and judicial. There was unanimous agreement that law enforcement in New York had used this investigative weapon fairly, sparingly, and with the most selective discrimination.

INVASION OF PRIVACY

Law enforcement asks for and welcomes judicial examination of the need for eavesdropping in every proposed investigation, and judicial authorization, supervision and review of its use. Indiscriminate and promiscuous use of the legal privilege to intercept conversations is as offensive to police and prosecutors as it is to society as a whole. We believe that the individual must be protected against any unnecessary invasion of his privacy. None of us wants other people to be poking into his personal affairs. Everyone cherishes his right to be left alone.

But there is no civil right which is absolute. All of us have a right to expect security and protection from the depredations of the criminal. Police investiga-

tion, by its very nature, must intrude, to some extent on the privacy of the individual. A court ordered warrant to seize a ransom note in a kidnapping case necessarily will bring before the searcher's eye a number of personal documents that the court never intended to be seized and that the searcher never desired to see. The fact is that perception is not seizure. And it makes no difference whether the searcher perceives aurally or visually.

What we must focus on is unwarranted intrusion. It is not the law enforcement officer, intercepting communications pursuant to court order on a showing of probable cause under oath, who is to be feared. Rather we should be alarmed at the activities of the private operative. It is he who is seeking evidence on the suspected spouse, or attempting to discover the plans and programs of a commercial enterprise, or trying to gain some secret information for purposes of blackmail. Are we to assume, because the privilege of wiretapping in criminal investigations is denied to law enforcement, that there will be no illegal interceptions by these snoopers for hire?

Let us fix our attention on the heart of the problem. Let us make a clear distinction between the burgeoning unregulated eavesdropping and the statistically rare court-ordered incidents of wiretapping.

Most of the illegal operators specialize in planting electronic listening devices, but there are wiretappers among them, too. All types of eavesdropping devices are nationally advertised and presumably are widely sold to any Paul Pry who wishes to buy them.

Surely every state should impose severe penalties for activity of this sort. Yet only seven states, including New York, impose sanctions for eavesdropping by electronic devices.

Some measure of the effectiveness of our State law is provided by the record of prosecutions conducted over the past twelve years in New York County.

Since 1955, and prior to December, 1966, a total of thirteen defendants were arrested as a result of investigations by my office on charges of unlawful eavesdropping and two others were accused of a somewhat related crime, illegal use of Telephone Company equipment. These last two were not involved in interference with personal privacy, but in a scheme to defraud the Telephone Company of toll charges. Of the unlawful eavesdroppers, seven were accused of illegal wiretapping, five of illegal "bugging," and one of a combination of the two. One defendant died before trial. All the others were convicted.

In December of last year, after an investigation spanning twenty-seven months, we presented evidence to a Grand Jury which resulted in the indictment and arrest of twenty-eight individuals and the indictment of three corporate defendants on charges having to do with unlawful eavesdropping, either by wiretapping or electronic "bugging."

These defendants are at present awaiting trial. They include private investigators, employees of private detective agencies, electronics experts, as well as three business executives and two attorneys, who are alleged to have utilized the unlawful services of the "private eyes."

Our New York law, also, outlaws possession of electronic eavesdropping devices but only if it can be shown that there was an intent to use it illegally. A Bill, recently introduced in Congress, would make it a crime, punishable by five years in prison, for any person, except an agent of a common carrier or an officer of government, to distribute, manufacture or advertise wire or oral communication equipment.

Legislation of this nature, and vigorous prosecution such as I have described, would quickly and effectively eliminate the apprehension in the minds of law-abiding citizens that their privacy was being invaded.

NEED FOR AND EFFECTIVENESS OF EAVESDROPPING

Why is eavesdropping so essential in combatting organized crime? In this area, we are confronted by two serious problems: first, the persistent unwillingness of complainants, victims, or witnesses of any sort, to come forward, because of apathy, fear or self-interest; and, secondly, the inaccessibility of the top figures in the rackets.

The street corner bookmaker, the policy runner, the dope pusher, often an addict himself; these are the expendables of organized crime. They are arrested by the scores and are readily replaced. From time to time, there may be a raid on some minor, or major, outpost: a seizure of narcotics, the "knocking over" of a policy bank, or of a horse wire room. But these casualties are the occupa-

tional hazards of the rackets. Annoyances, yes. Inconveniences, but they hardly discourage the bosses of the illicit traffic in heroin or the high command of a gambling empire.

As the President's Commission repeatedly demonstrates in its Report, the criminal organization is dedicated to protecting its masters. The reluctance, or fear, of witnesses as well as lower level functionaries to assist law enforcement agencies oftentimes creates insurmountable barriers to the obtaining of information. *Omerta*, the code of silence, is more than just a word. Often, when the organization has pervaded legitimate businesses and, on occasion, corrupted local officials, law-abiding citizens, who are the real sufferers, remain unaware that they have been victimized.

The professional racketeer of today is not a common hoodlum. He is an astute businessman, dealing in and with the most up-to-date business institutions, but scrupling at nothing to achieve his objectives.

In his illicit enterprises, there are no tell-tale records or books of account to be seized and examined. There are no files of inter-office memoranda. There is no documentary trail of evidence. All communication is by word of mouth.

His interests are scattered across the nation as are his associates. He must have at hand the means of ready contact with them. It is the telephone that thus becomes the vital and essential instrument of communication.

That is why, despite extraordinary expenditures of effort and the most diligent investigation, without wiretapping, law enforcement can hardly advance beyond the street level.

Wiretapping is not a substitute for police legwork. It is frequently the preliminary to a great deal of it.

When the mobster resorts to the telephone, as he must, he is most cautious, of course, in his conversation. His language is guarded and cryptic. But we have found that, from time to time, there are fortunate lapses which, if they don't provide direct evidence of crime, do give us valuable leads. We gain, too, new insights into matters under investigation in the light of information already in hand. We develop, also, a reservoir of useful background material about key underworld figures. That last is what the President's Commission had in mind when it stated that "information regarding the capabilities, intentions, and vulnerabilities of organized crime groups is ser ısly lacking." The Commission recognizes, and places great stress on, the need what it describes as "strategic intelligence."

There are some kinds of crime—extortion, for example—in which the telephone itself often becomes the very instrument of the crime.

In an investigation of this type, recordings of telephone conversations have enabled us to induce the frightened and close-mouthed victims to tell us the truth.

Businessmen who have bribed labor officials or public officers have no choice but to admit their complicity when confronted with their taped conversations. The bribe giver is, of course, an accomplice to the crime. The wire recordings provide the independent corroboration of his accomplice testimony, which is required under New York State law.

The Attorney General of the United States has questioned the effectiveness of wiretapping as a police technique. He was quoted recently as stating that Federal prosecutions in the field of organized crime had risen 30 per cent in the last year, following the Presidential ban on all electronic eavesdropping.

I know nothing about the Attorney General's prosecutions. I don't know what cases he has in mind nor how difficult or easy the evidence was to come by. But from the vantage point of a somewhat longer period of service in law enforcement, I respectfully disagree with his premise that wiretapping is neither effective nor productive.

We have some cases, too.

Let us take one in the field of narcotics. The drug traffic is perhaps the worst scourge that law enforcement must battle in New York City. We have 40 per cent of the nation's addicts, who commit many assaults, robberies and burglaries to finance their desperate needs.

In January, 1960, after an intensive investigation lasting many months, we indicated eight defendants for conspiracy as a felony, for felonious possession and sale of heroin, and for other crimes. It was one of the most important roundups in years. The heads of this ring were engaged in the importation and distribution of heroin on a major scale. They operated extensively throughout the East and did a narcotics business running into millions of dollars annually.

Caught in the net were Joseph Russo, who had previously served a State prison term of two to five years; his brother Anthony, also a notorious wholesaler and no stranger to police lineups; Aniello Carillo, whose police record covers a page and a half and who faces a life sentence if convicted on this indictment; his son, Frank, also sporting a diversified criminal record; as well as John "Baps" Ross, who was considered to be the largest narcotics distributor on the retail level in the country.

The transaction, which resulted in the arrest of the eight, was the sale to Ross of one kilo of pure heroin, worth from a quarter to half a million dollars to the underworld when cut and sold in decks at the street level.

The case well illustrates the insulation of the key figures in this vicious traffic. Here the top men made all arrangements for the importation of heroin and its sale and delivery to major distributors, but they never touched the drug. Only these top figures knew the details of the entire operation. They dealt only with trusted lieutenants. The heroin was handle was handled by at most two of the conspirators and they were on the courier level. Some of the conspirators had never met and not one man in the operation knew all his confederates.

Thus, even if there were a break in one of the links of the chain, those at the top would be secure from apprehension.

But, while the chief figures in the ring never came in contact with the heroin, it was essential that they communicate with one another as to the amount, place, and type of each transaction.

The actual transfer which led to these arrests took place in an automobile. This vehicle was moved from location to location by one or two men at a time, men who received their orders by telephone and who, upon completing their assignment, would temporarily abandon the car for fellow conspirators to pick up. After a series of such devious maneuvers, designed to shake off possible pursuers, the heroin would be concealed in the empty car which would be left at a location designated at the last moment. The purchaser would then be instructed by telephone as to the whereabouts of the contraband which he was to pick up at an appointed time.

As a result of outstanding work on the part of detectives of the Police Narcotics Bureau, it had been learned that the communications center for the conspiracy was the telephone of the younger Carillo.

On a showing of probable cause an order was obtained to tap this telephone line. Listening in on the ring's command post, the detectives monitored conversations caried on in laconic and wary language, indeed in code. The detectives, however, were able to crack the code and trace step by step the circuitous route followed by the conspirators in the course of completing the transaction.

The detectives struck when the contraband, a kilo of pure heroin, was picked up by its purchaser, John "Baps" Ross. It was a stroke of luck that the officers nabbed Ross. He usually avoided handling the narcotics himself and had an associate make the "pickup," but his aide was attending a funeral that night.

But for the wiretaps we would never have been led to Ross. We did not need the evidence they provided, however, in order to convict him. He had been caught red-handed in possession of the heroin. He was found guilty and was sentenced to serve seven and a half to fifteen years in State prison.

But the wiretap evidence was essential to prove the guilt of the other seven conspirators. It demonstrated conclusively the key role which each of them played in this major underworld operation and would clearly have established the guilt of each of them beyond a reasonable doubt.

But under the rulings of the Federal Courts, it would have been necessary for us to commit a Federal crime to convict these major figures in a traffic whose commodity is slow death.

We delayed proceeding to trial for almost two years in the hope that Congress would enact legislation permitting the use of court-authorized wiretap evidence. But these hopes were disappointed and, most reluctantly, we moved for the dismissal of the defendants. All seven of these vicious criminals went scot-free.

In June of 1964, we began an investigation into suspected payments of graft to police officers to overlook violations of the gambling laws by a mob operating a thriving numbers racket in the East Harlem section of Manhattan.

At the very outset, fourteen police officers, including a lieutenant, were called before the Grand Jury and were asked to sign waivers of immunity before testifying. All refused. They were thoroughly within their rights, of course, in invok-

ing their Constitutional privilege against self-incrimination, but their action could fairly be interpreted to mean that these officers could not truthfully answer questions about the performance of their duties without involving themselves in crimes. The consequence of their refusal to sign the waiver was the forfeiture of their jobs.

Later, five of the officers were recalled before the Grand Jury and offered immunity. They still refused to testify and all were cited for contempt.

In the course of this investigation, we had succeeded in infiltrating the policy racket with an undercover investigator. But he could not get beyond the lower echelons. He did, incidentally, observe the passage of money to a police officer. But his conclusion about what he had seen, while quite obvious, did not constitute legal evidence. With his help, however, we did manage to indict and convict the three operators of one policy bank on felony charges and we proved perjury charges against a police officer.

But we never did get to the heart of the matter. Had we been able to introduce the court-authorized wiretap evidence in our possession, we could have proceeded against the top underworld figure who dominated the numbers racket in East Harlem and we could have exposed the corruption of all too many police officers who had been assigned to enforcement of the gambling laws in the area.

We have not always been so frustrated. Before the Supreme Court rulings inhibiting us in our use of wiretap evidence, we had most effectively used such evidence, obtained pursuant to court orders, in many important trials and investigations.

Checking on information, in 1953, that gangsters had taken control of the Distillery Workers' Union and were siphoning off moneys from its welfare fund—as it turned out, $3,000,000 in less than three years—we obtained a court order for telephonic interception.

The conversations we overheard led us to Louis Saperstein, a Newark insurance broker, who was paying kickbacks to his underworld associates for the union business they were steering in his direction.

Saperstein was called before the Grand Jury and granted immunity. Although confronted with recordings of his incriminating conversations, he refused to cooperate. He was cited for and convicted of five counts of criminal contempt. Five weeks behind bars served to refresh his recollection and to loosen his tongue. He became the People's witness against the notorious labor racketeer, George Scalise, a henchman of the late gang boss, "Little Augie" Pisano, and against Sol Cilento, the corrupted secretary-treasurer of the union.

The recorded telephone conversations provided the necessary corroboration of the testimony of Saperstein who, as a matter of law, was an accomplice. Scalise and Cilento elected to plead guilty to the charges.

This, incidentally, was the pioneer prosecution for racketeering in union welfare funds and had an impact on both State and National legislation.

Information developed in the course of a loan-sharking investigation in the late '40's resulted in a court order for a wiretap at a check-cashing agency, operated by a brother of the notorious gangster, Tony Bender, and known to be a hangout of criminals.

One dividend accruing from this tapped wire was an intercepted communication which led directly to the capture of Sam Granito, who was wanted by the Boston police for his part in a $107,000 payroll robbery.

But of much greater interest was the fact that through seemingly innocent messages heard over this wire—and through these intercepted messages alone—we came upon evidence of a crooked and flourishing policy racket which had sunk its roots in three States and compromised the integrity of a midwestern financial institution.

This crooked game was operated by a Newark mob and its victimized players were mostly residents of New Jersey and Pennsylvania. Its swollen profits were due to the rigging of the winning number each day by the respected secretary of the Cincinnati Clearing House. It was his assignment to falsify the daily clearance figure to provide the number wanted by his gangster accomplices, the number that had been least played that day.

A lengthy investigation in New York, New Jersey and Ohio was required to piece together all the fragments of this fabulous jigsaw puzzle. It resulted in the conviction of eight members of the tri-State ring, including such underworld notables as Daniel Zwillman and Irving Bitz, and Dennison Duble, the Cincinnati Clearing House Secretary and a pillar of his community, who was corrupted

by payments of $1,000 weekly, a pittance in the light of the mob's take from this fraudulent scheme.

It was the seemingly innocuous telephone messages, essential to the operation of the conspiracy, relayed through New York each day and the only overt acts committed in New York County, which made it possible for us to assume jurisdiction and uproot the racket at its key centers in other States.

Wiretap evidence was of tremendous advantage in the successful prosecution of a half-million-dollar stolen bond ring, led by one Irving Mishel, who acted as a broker for burglars specializing in the theft of securities. His system of negotiating these securities was quite devious and required constant use of the telephone.

Mishel operated with forgers and underworld characters, including Irving Nitzberg, an alumnus of Murder, Inc. A wiretap on his home telephone was the prime factor in bringing about his indictment, conviction and a ten to twenty-year prison sentence. In addition, Nitzberg and eight others were indicted. All pleaded guilty to charges of grand larceny and forgery.

In 1957 and 1958, my office conducted an investigation of corruption in the sport of professional boxing. It had long been an open secret in sporting circles that Frank Carbo, a notorious hoodlum, was the underworld czar of boxing. Through court-ordered wiretaps we were able to establish that he was acting as an undercover manager of fighters in violation of law, that the licensed managers of record were his fronts and that the officers of the International Boxing Club, the official matchmakers for Madison Square Garden, were his flunkeys.

What better proof could we have had that he was the actual manager than his own voice issuing commands to his underlings over the telephone? The wiretap interceptions served also to loosen the tongues of his helpers. Carbo pleaded guilty and went to jail for two years.

In an investigation lasting nearly two and a half years in the early '50's, we were able to unearth a shocking state of corruption in college basketball on a nationwide scale. The scandal involved fifteen professional "fixers," thirty-three players in six colleges, and forty-nine intercollegiate games in which score-rigging deals for the benefit of gamblers were negotiated in New York and in twenty-two other cities in seventeen States.

I am certain that we could never have made a dent in this criminal enterprise, which was polluting college sport all over the country, without the benefit of court-authorized wiretaps.

The information obtained over the wires enabled us to piece together an accurate picture of the workings of this bribery ring. The recordings of incriminating conversations persuaded recalcitrant players to cooperate. The fifteen "fixers" were indicted. With the exception of one, who died before final disposition of his case, all were convicted and imprisoned.

Without wiretaps we never would have convicted Mike Clemente, president of Local 856 of the International Longshoremen's Union, the underworld boss of the lower East Side piers in New York, and a key figure in waterfront crime.

We began a lengthy investigation in 1950 on the basis of information that he was using his union as an instrument of extortion. We expected to be able to prove that Clemente was demanding money from shippers, under threats of strikes and work stoppages, for permitting them to unload paper at the piers he controlled.

The evidence, which we had developed as a result of a court-ordered wiretap, did not establish the necessary proof of the crime of extortion, but it did bring about Clemente's downfall. It made it possible for the Grand Jury to indict him and for my office to prove him guilty of the crime of perjury in the first degree as a result of his false testimony at hearings before the State Crime Commission in 1953.

Meanwhile, the taps had provided us with direct leads which resulted in the conviction of two of Clemente's henchmen, Saro Mogavero, vice-president of Local 856, and Louis Giaccone, its business agent, for the crime of extortion. By this prosecution, stemming directly from the tap on Clemente's wire, we were able to establish that the so-called public loading system on the city piers was outright coercion and extortion and we were thus instrumental in bringing about the abolition of this racket by the State Legislature.

The uncovering of criminal activity in the field of labor-management relations is all but impossible without the utilization of legal wiretapping. Industrial racketeering we have found, takes two forms. On the one hand, there is the

faithlessness of labor leaders who betray the trust reposed in them by the rank and file of their unions. On the other, there is the more disturbing development—the infiltration of the labor movement by underworld hoodlums who seek to pervert the machinery of unionism into an instrument of extortion and coercion.

My office has maintained a continuing interest in John Dioguardi, better known as Johnny Dio, since he was first sent to prison for racketeering in the garment area of New York back in 1937. When he returned to his old haunts, we kept an eye on him and, in the fall of 1950, discovered that, among other things, he had begun to blossom out as a power in a number of labor unions.

Dio managed to get himself a charter from the United Auto Workers' Union of the American Federation of Labor, not to be confused with the United Automobile Workers of America. He succeeded in becoming regional director of the union and set up two paper locals in New York for the sole purpose of systematically shaking down small businessmen who did not want their employees organized by legitimate unions.

At the very outset, we convicted two of his lieutenants in one of the unions, Anthony Topazio, and an ex-burglar, Joseph Cohen, for attempting to extort money from the owners of a flower bulb concern. They were sentenced to prison.

Another of Dio's associates, Samuel Zackman, tried the same extortion racket in the messenger service business. He and his partner, Nicholas Leone, were convicted and sentenced to prison.

We also discovered that Dio had acquired a dominating influence in Local 405 of the Retail Clerks Union and in Local 239 of the International Brotherhood of Teamsters. Court-authorized wiretaps revealed the predatory activities of the officers of these locals. The intercepted conversations clearly spelled out the extorsive demands of these conspirators made in the name of labor organization.

Marginal businessmen, who cannot afford the loss of a single day's deliveries which a picket line would cost them, are sitting ducks for criminals of this stripe. Payments of tribute are demanded under threats of picketing, or as the price of a so-called "sweetheart" contract which confers little or no benefits on the workers but shields the boss against the organizing efforts of genuine unionism.

Chiseling employers, who would thus cut corners and get the unions off their backs, have no disposition to complain about the extortionate demands made upon them or to cooperate with the authorities. But when confronted with wiretap evidence, they have no alternative but to tell the truth or risk prosecution for perjury or contempt.

Two officers of Local 405 of the Retail Clerks' Union, Max Chester, secretary-treasurer, and Max Fink, business representative, pleaded guilty to attempted extortion; while two others, Irving Slutsky, vice-president, and Philip Brody, organizer, pleaded guilty to conspiracy.

Similarly, court-ordered wiretaps led to the plea of guilty to attempted extortion by Samuel Goldstein, president of Local 239 of the Teamsters' Union.

This same Goldstein, together with Max Chester and Dio himself—who, in the meanwhile, had the effrontery to open an office as a labor relations consultant—were convicted in July, 1957 of conspiracy to commit the crime of bribery of a labor representative.

The scheme was for officials of a platting company to pay a $30,000 bribe to Max Chester for a soft contract in order to head off and frustrate the genuine collective bargaining activities of the United Electrical Radio Workers of America.

In the course of our continuing surveillance we uncovered, in 1956, an ambitious scheme of Dio, in league with another underworld character, Anthony Corallo, better known as "Tony Ducks," to capture control of Joint Council 16 of the Teamsters' Union, the governing body of the union in the New York area. The evidence of this conspiracy was made available to the Senate Committee on Improper Activities in the Labor or Management Field, as were the telephone conversations of this gangster Dio with Mr. James Hoffa, then vice-president and later the president of the International Brotherhood of Teamsters.

Corallo, we discovered, had acquired a dominant role in the affairs of Local 875 of the Teamsters' Union, and this local, court-authorized wiretaps disclosed, was being used as an instrument of extortion. All of its officers and representatives were indicted in 1956: Jack Berger, president; Nathan Carmel, vice-president; Aaron Kleinman, secretary-treasurer; and Jack Priore, Milton Levine,

and Sam Zakor, organizers. All pleaded guilty to charges of conspiracy or extortion.

In sum, during the four years from 1954 to 1958, we were able, thanks to legal wiretapping, to indict and arrest some twenty-five officials of labor union locals, either corrupted officers who had sold out their members, or hardened criminals who owed their jobs to the underworld.

I have given but a sampling of our cases which have been dependent for their success upon our wiretapping privilege, but this sampling will demonstrate, I hope, why we attach such importance to this technique of criminal investigation.

The contention that wiretapping is unproductive is rebutted by the figures. Because we no longer divulge evidence so acquired in court or before Grand Juries, I cannot offer any current records of arrests and convictions that could be attributed directly to wiretapping.

But let us look at the record for some prior years. Take, for example, the ten-year period from January, 1948 through December, 1957, when the Supreme Court rendered its decision in the Benanti case.

In those ten years, my office obtained 733 court orders for wiretap installations in 233 investigations. The evidence obtained resulted in a total of 465 arrests. Of those arrested, 364 were convicted, while 87 were acquitted or discharged. Nine more were turned over to authorities in other jurisdictions, while five cases were abated because of death.

This would mean that during the average year of that decade, we installed less than 74 wiretaps in fewer than 24 investigations. As a result, disregarding fractions, we made each year 46 arrests and convicted 36 of those arrested, while less than nine of them were acquitted or discharged.

Since 1958, when electronic surveillance was brought under judicial control, our office has made limited use of this form of search for evidence in criminal conspiracies. A representative selection of cases demonstrates the powerful effectiveness of this investigative activity.

The infiltration of organized crime into legitimate business has reduced the ethics of affected enterprises drastically. In the Merkel Meat scandal, it resulted in an extremely grave health hazard. Investigation of this prominent meat processing concern in connection with suspected commercial bribery revealed that certain products were adulterated. Further investigation suggested that accident did not account for the presence of the impurities. Little positive proof could be obtained, however, until an eavesdrop was authorized by the court. Once installed the device revealed a flourishing conspiracy to supply the consumer with inedible and diseased meats.

Conversations between Norman Lokietz, the president of Merkel Meats, Inc., and a meat broker and noted loan sharker, Charles Anselmo, revealed that the Merkel management had conspired to adulterate its product not only with horsemeat, but with the flesh of diseased cows and carrion. Called before the Grand Jury, the president and vice-president, Samuel Goldman, both perjured themselves, and were indicted for that crime as well as conspiracy to sell inedible meats. The recordings convincingly contradicting their Grand Jury statements, both officers decided to cooperate with the authorities. Additionally, subpoenas, based upon leads obtained from the eavesdrop, were sent to other individuals and corporations, eliciting corroboration and evidence showing the method and extent of the conspiracy. For the proof demonstrated that Anselmo had purchased his supplies from animal food suppliers and packaged it as fit for human consumption. By bribing a federal inspector, he had placed counterfeit inspection stamps on the cartons and sold them to Merkel, who knowingly passed the contents on to the consumer. Indicted for selling adulterated and mislabeled foods, Anselmo interrupted his trial to plead guilty to that charge and to conspiring with Lokietz. The president of Merkel also pleaded guilty to the same conspiracy count, and the vice-president Goldman pleaded guilty to perjury.

Organized crime has also gone into business for itself. In another New York case, Anthony Lombardozzi, the defendant, and nine others contrived a "bust-out" operation. Under such a scheme, a store is opened and builds credit with suppliers by promptly paying for goods for several months. Then, stocking a large inventory on credit, ostensibly to meet a consumer demand, the store is suddenly closed, the owners disappear, and the goods are spirited away to be sold at a clear profit. Naturally, proof of such a larceny by false pretense depends entirely upon establishing that the storeowners have no intention of paying for articles ordered. In this case, the ten defendants combined to open a store named Co-op Discount Stores, Inc.

To all appearances a legitimate business, the company paid for purchases religiously and on time for a six-month period. An eavesdrop device, installed upon information as to the real nature of the business, disclosed that the owners were not intending to pay for merchandise delivered after December 8, 1963. By that time, the store would have received a quarter of a million dollars of goods on the pretext that a large inventory was needed for the Cristmas season. Actually, the defendants intended to shut the premises and melt away with the merchandise. The conspirators were arrested on December 9th as they were carting off the merchandise; all ten pleaded guilty.

Another operation of organized crime is illustrated in a case featuring John Lombardozzi and Michael Scandifia. Falsely claiming to be a Teamster Union official, Scandifia, together with Lombardozzi, obtained $88,000 worth of diamonds on memorandum from Kaplan Jewelers in Manhattan by representing that other union officials were interested in purchasing the jewels. After complaint was made to the authorities some weeks later, investigation disclosed that the stones had been sold for $56,000 to a jewelry concern across the street from Kaplan's two or three days after the consignment. Although the owner of this jewelry store told the police that the $56,000 was just a deposit, other information suggested that it was not.

The culprits being identified as Scandifia and Lombardozzi, a court-ordered eavesdrop was installed on Scandifia's garage in Brooklyn. The installation overheard the two men and others discuss the jewelry fraud case, indicating the intent to defraud. Beyond this, evidence was obtained relating to other crimes which would not otherwise have been unearthed. Scandifia was overheard plotting with one Leonard Grossman, a neighborhood police officer, to murder a man who had given information to the federal authorities. Scandifia asked Grossman to obtain dum-dum bullets for two pistols, and gave the policeman the guns. A search warrant issued on the basis of this information produced the weapons from Grossman's car. Other conversations overheard in that garage resulted in eighty arrests for such crimes as murder of a gang member, conspiracy to commit murder, hijacking, extortion, assault, racial discrimination in the construction industry, criminally receiving stolen goods, and larceny by false pretenses by "bust-out" operations. Several convictions have been obtained to date; many indictments are still pending in New York and Kings Counties.

Labor racketeering provides another fertile field for gangland tactics. In one case five defendants were charged with conspiring to assault and threaten others, to destroy key telephone company installations, and to wiretap illegally. This case arose from an attempt by the Teamsters Union to oust the Communications Workers of America as the labor representative of the New York Telephone Company employees. Unknown to the members of the Communications Workers Union, Henry Habel and other officers of the C.W.A. were in league with the Teamsters, conspiring together to accomplish the change in representation. Expecting rank and file opposition to their betrayal, the defendants planned to strengthen their arguments by intimidating the opposition with threats and physical beatings. The telephone company's compliance was to be assured by dynamiting key telephone installations.

Kenneth Burkhard, a C.W.A. shop steward, was therefore employed as a "front man," and directed to hire the "strong arm" men who would brutalize the opposition leaders and blow up the telephone installations. Fortunately, Burkhard's activities came to the attention of the District Attorney's Office, and undercover detectives worked themselves into his confidence. They were given the "contracts" to assault designated victims, and supplied Burkhard with the dynamite. Although paid for, the beatings were, of course, faked, and the explosive was specially designed to react like a wet firecracker when ignited.

The undercover agents, however, were never able to approach the persons directing the conspiracy, nor to obtain much more than hearsay evidence implicating them. Eavesdropping warrants were therefore issued by the court, authorizing electronic probes into Habel's office and Teamster Union headquarters. The plans conceived in furtherance of the conspiracy were thereby detected, resulting in the indictment and conviction of the key men in the operation, whose acts were confined to plotting in the privacy of their offices and issuing orders to subordinates.

Electronic eavesdropping pursuant to court order was of invaluable assistance in an investigation, beginning in 1962, which exposed wholesale corruption in

the administration of the New York State Liquor Authority. It led directly to the indictment of Martin C. Epstein, who was ousted as Chairman of the Authority because of his refusal to waive immunity before the Grand Jury. Because of serious illness his trial on charges of accepting unlawful fees has been delayed.

Electronic eavesdropping also made possible some of the charges brought against former Judge Melvin H. Osterman of the State Court of Claims. He pleaded guilty during trial to three counts of conspiracy to bribe Epstein.

Electronic eavesdropping led also to the accusations against several other defendants who were among the seventeen indicated in the course of the investigation. Seven of them have been convicted so far.

Many others with long experience in law enforcement support my contention that wiretapping and electronic eavesdropping are indispensable tools in combating organized crime.

Every former United States Attorney for the Southern District of New York, now living, advocates court supervised eavesdropping. In a letter, dated March 7, 1967, addressed to Senator McClellan, they emphatically give expression to their conviction that it is needed for the protection of society. The signers of that letter, in order of their service, were Charles H. Tuttle, Appellate Division Justice James B. McNally, Federal District Judge John F. X. McGohey, Supreme Court Justice Irving H. Saypol, Chairman of the State Commission of Investigation Myles J. Lane, Chief Judge of the Second Circuit Court of Appeals J. Edward Lumbard, Paul W. Williams and S. Hazard Gillespie. A copy of their letter to Senator McClellan accompanies this statement. (The letter referred to was previously made a part of the record and appears on page 511.)

The National District Attorneys' Association strongly argues for federal and state laws comparable to New York's and, by formal resolution, has urged Congressional action to remedy the situation in which law enforcement authorities find themselves as a result of adverse Federal Court rulings.

The District Attorneys' Association of the State of New York, representing the 62 counties of our State, unanimously supports my position.

The President's Commission points to the need for "strategic intelligence." It concludes that "organized crime continues to grow because of defects in the evidence-gathering process."

After an extended exposition of the problem in the Commission's report, a majority of its members follow through to what seems to me to be the only logical conclusion—the necessity of legal wiretapping and eavesdropping under carefully circumscribed judicial authority. The minority members seem to adhere to a policy of wait and see.

Curiously, inconsistently, ironically, no minority member, not one responsible critic of wiretapping, not even the Attorney General of the United States, urges that it should be abandoned in situations involving the national security. The unanimous acquiescences to its use in this field of investigative activity is tantamount to a concession that wire interception and eavesdropping are essential weapons of detection against elaborate, organized criminal conspiracies.

How can it be claimed that electronic searches are ineffective in the fight against organized crime in the face of the unchallenged assumption that they are needed and that they are effective in matters of national security!

That concession sums up the whole argument for legalized wiretapping. It is an admission, first, that its utilization by law enforcement is necessary, and, second, it is an admission that it produces results. And it produces results in a problem area of vital importance to the internal security of our nation.

People v. *Berger*

By way of concluding my testimony, I should like to offer a few observations on the decision of the Supreme Court in *People* v. *Berger*.

Berger was a New York County prosecution. The deep wound we suffered at the hands of a majority of the Supreme Court is still painful to the touch. It may be a long time healing! Putting aside the ache and agony of it all, we concern ourselves with questions left unanswered by the majority opinion of Justice Clark. For present purposes, the most serious question is the impact of the decision on telephonic interceptions by wiretapping.

In holding that the New York statute (Section 813(a) of the Code of Criminal Procedure), which authorized electronic eavesdropping in the *Berger* case, was "too broad in its sweep resulting in a trespassory intrusion into a constitutionally

protected area and is, therefore, violative of the Fourth and Fourteenth Amendments," the majority opinion failed to make clear whether Section 813(a) was declared unconstitutional only insofar as it specifies the procedure for obtaining ex parte orders for eavesdropping which requires a physical intrusion into a constitutionally protected area.

There is a great deal in the majority opinion to suggest that the restrictive commands of the Fourth Amendment are felt only where a physical entry must be made to accomplish the surveillance. For one thing, as I quoted a moment ago, Justice Clark's opinion uses the term "trespassory". The word recurs in several crucial passages, as for example, in the concluding sentences of the opinion: "Our concern with the statute here is whether its language permits a *trespassory* invasion of the home, by general warrant, contrary to the command of the Fourth Amendment. As it is written, we believe that it does."

The question remains: would a wiretapping statute, limited to the use of external devices installed without physical trespass, be exempt from the Fourth Amendment? There are still other indications that the *Berger* rule applies only where physical boundaries have been penetrated. The *Goldman* case was cited approvingly by the majority, describing the holding of that case thus: "There the Court found that the use of a detectaphone placed against an office wall in order to hear private conversations in the office next door did not violate the Fourth Amendment because there was no physical trespass in connection with the relevant interception".

Perhaps of paramount significance to this question of whether a federal wiretapping statute must follow *Berger's* construction of Fourth Amendment demands is the Court's treatment of the *Olmstead* decision. *Olmstead*, it will be recalled, flatly held wiretapping outside Fourth Amendment control. Justice *Douglas*, for one, thought the *Berger* majority overruled *Olmstead*, albeit *sub silentio*. But did it?

The *Olmstead* case cited two bases for its holding exempting wiretapping from the Fourth Amendment: first, it deemed conversations to be intangible and hence outside the security offered by the Constitution to "persons, houses, papers, effects," all of which are "things;" secondly, Chief Justice Taft wrote that wiretaps were not intrusions because the telephonic communications were intended to be projected outside the confines of the home or office, and were carried along wires which were no more a part of the building "than are the highways along which they are stretched." The only part of this holding which was specifically "negated" was that conversations, as such, were outside the reach of the Fourth Amendment. What the majority *held*, then, was that conversations were within the Fouth Amendment and the use of electronic devices to "capture" them was a "search". But the Court did not reject Chief Justice Taft's alternatice ground, that the Constitution has no effect on the acquisiion of oral evidence by elecronic devices which do not physically penetrate the protected area. Specifically, and rather remarkably, wiretapping continues to be outside Fourth Amendment control.

It follows from this conclusion that in drafting a wiretapping statute, as distinguished from an eavesdropping law, the strictures announced by the *Berger* decision may be disregarded. And that is the point relevant to this committee's present labors.

And yet we can agree, I think, that it would be unwise to ignore the views of the Court if an enduring statute is to be enacted. We have learned all too frequently, and often to our dismay, the ease with which the Court overturns long accepted procedures of criminal investigation, ever limiting access to relevant and probative evidence of guilt. Indeed, as in *Berger* the Court goes unhesitatingly to the statute, if it regards it as the weakest link, and strikes it down notwithstanding the fact that the affidavits and orders submitted and issued thereunder may have fully complied with controlling notions of specificity. Chastened and wary, we must keep one eye on the future and attempt to furnish ourselves with laws which will withstand inevitable judicial onslaught. For it is one thing to say that the Court did not apply Fourth Amendment restrictions to wiretapping in *Berger* and quite another to predict that, when the issue comes before them, they will approve a wiretapping statute that does not measure up to the eavesdropping law they indicate they would approve. I cannot believe that the Court will long adhere to the surviving remnant of *Olmstead* and accord wiretapping unchecked scope.

In the light of this disbelief, our office is participating in efforts of draftsmen in New York to replace our 813(a) with a statute which conforms to the recently proclaimed constitutional standards. Such a measure, I expect, will be a comprehensive and explicit provision applying with similar restrictions to both eavesdropping and wiretapping.

With regard to Senate Bill 675—a fair, sensible, well-drawn and critically important bill as it stands—I would suggest revision to incorporate the four specific points called for by Justice Clark in *Berger*. Of these, the first three are not particularly troublesome and could quite easily be inserted in the measure. Section 8(a), in one of its subdivisions, should require the statement of belief that a *particular* offense is being or has been committed, as 8(c) (1) presently requires. Section 8(a) should also require a description of the particular conversations sought. While, of course it is impossible to describe a future conservation by specifying the words to be used, this I feel is unnecessary. As with conventional search warrants, sufficient particularity is supplied by description in terms of the subject matter. For example, as a search warrant may issue to seize materials used in illegal gambling, so conversations may be described as the placing and receipt of bets on horseracing.

Section 8(e) too would require revision. I do not know whether forty-five days is in itself too long for a tap, authorizing the equivalent of a series of intrusions as the *Berger* majority puts it. Perhaps it should be reduced to fifteen or thirty days. It should also have a self-termination clause calling for the shutting down of the "plant" when the sought evidence has been acquired, unless a specific showing is made of a continuing criminal enterprise requiring further maintenance of surveillance. A requirement of prompt execution should be inserted. And it should be provided that extensions may be granted only on a showing of "present probable cause for the continuance."

Finally, a section should be drawn dealing with notice. This would seem to be the sticking point. Obviously, as recognized even by Justice Clark, secrecy is the essence of this mode of search. In all but the rarest cases, advance notice to anyone connected with the facility or premises under surveillance would utterly destroy the value of the tap. So the majority allows that what they deem a "defect" can be overcome by what they term "a showing of exigent circumstances." I interpret that phrase to mean that the secret surveillance is necessary because other conventional access to evidence has proven fruitless or is patently unavailing, that the conversations are expected to provide material evidence otherwise inaccessible, and that secrecy is an imperative condition of effectiveness. On such a showing of exigency, the law should allow the Court expressly to order that the giving of notice may be delayed to a point in time after the order has terminated or, where appropriate, after the investigation has been concluded.

Although not specifically called for by *Berger*, I would favor also the inclusion of a requirement for a sort of "return" on the warrant wherein the executing officer reports to the issuing court the results of the interceptions.

These adjustments I believe would effectively insulate the statute from future attack and accord to officials, federal and state, the long awaited authority fairly to utilize this essential and effective weapon of law enforcement. The prevalence of organized crime and the serious threat posed by it to the welfare of the nation demand no less.

Senator MCCLELLAN. I have not had the opportunity to read your statement but I know it contains some very pertinent comments and information.

Mr. HOGAN. As I stated this morning, I attempt to answer the Attorney General of the United States who doesn't think that this privilege accorded to us in law enforcement is necessary or is effective. And my answer to him is not composed of generalities.

We have conducted dozens of investigations over the years. We have prosecuted hundreds of cases which I think prove that Mr. Clark is wrong, and I give specific evidence—not general statements or opinions. I describe a case in the field of narcotics where we caught redhanded a man who was selling a kilo of heroin. There were seven others all with criminal records involved with him.

Unfortunately we could prosecute only the man who was caught with the heroin because the other evidence depended upon our wiretaps and section 605 prevented us from introducing that evidence in court. Indeed, we delayed proceeding to trial for almost 2 years in the hope that Congress would enact legislation permitting the use of court-authorized wiretap evidence, but these hopes were disappointing and most reluctantly we moved for dismissal of the defendants. All seven of these hardened criminals went scot free.

Senator McClellan. I think at this point you might state something with respect to how you have been handicapped since the Court ruled that a disclosure of any information you obtain in that manner could not be used as evidence.

Mr. Hogan. For the past 10 years, we have just been able to use this privilege for investigative purposes and so often we felt completely frustrated when we were unable to produce the evidence before a grand jury or before a court. Our own highest court said that we could do it, but a district attorney is in the position of asking a police officer to commit a Federal crime if he takes the stand and gives evidence of telephonic interception. So many cases have gone down the drain because section 605 has been so interpreted by the Supreme Court in the *Benanti* case. I am sure that Congress never intended to impair law-enforcement efforts when this section of the communications law was passed.

I had occasion to appear before the House Judiciary Committee and Congressman Celler told me there was no debate on it, there was never any intention of Congress to regulate law enforcement or to prevent law enforcement from obtaining a court order.

Indeed, as you recall, Senator, I made available to Senator Kefauver, during his investigation of crime, evidence obtained from wiretaps. He and his counsel knew where it came from, and I am sure that he wouldn't have availed himself of that evidence if he thought that Congress intended to prohibit law-enforcement officers from engaging in this type of investigative activity.

In the same way, we cooperated with your committee and with your counsel, Mr. Robert Kennedy. Mr. Kennedy came to our office on many occasions and looked over our interceptions. They were used with great effectiveness and they were the basis for laws regulating the conduct of officials of labor unions. Congress has made full use of our activity in this area. It is just most inconsistent to say Congress intended to forbid it.

Senator McClellan. Made use of it for legislative purposes.

Mr. Hogan. For legislative purposes.

But the Supreme Court in the *Benanti* case in 1957 ruled that Congress did so intend and made it a Federal crime for us to divulge this type of evidence, with the result that many cases have been dismissed. I described one.

Senator McClellan. You are saying that many of those cases that were not dismissed as compared to others that were airtight cases where you certainly would have expected to secure conviction?

Mr. Hogan. The one that I just described undoubtedly would have persuaded any jury beyond any conceivable reasonable doubt that the defendant was as quilty as could be. No evidence is more convincing

than that where the voice of the defendant can be identified and he is saying, "Let's go out and rob a bank"—it is pretty difficult to get around that sort of evidence. Much better than an eyewitness in many cases. Particularly when he was headed for the bank where they caught him with guns on him.

Another case in the field of official corruption—we were investigating a violation of gambling law by a mob operating a numbers racket in the East Harlem section of Manhattan. At least 14 police officers were called before the grand jury, asked to sign waivers, asked about their official duties in that area. Every last one of them refused to testify. They lost their jobs. After that we called five of them before the grand jury and said, "We are giving you immunity, now you testify." They still refused to testify and all were cited for contempt and sent to jail.

Senator McClellan. Is it an instrumentality that could be used effectively in detecting corruption in public circles by public officials?

Mr. Hogan. Most effective. Most effective. In this case we never did get to the heart of the matter. Had we been able to introduce court-authorized wiretap evidence we could have proceeded against the top underworld figures who dominated the numbers racket in East Harlem and we could have exposed the corruption of all too many police officers who had been assigned to enforcement of the gambling laws in this area.

But here was another case where we couldn't proceed because of what I think is a most inaccurate interpretation of what Congress intended to do in passing that law.

Well, I describe other cases here and I just have time briefly to allude to them.

There is one involving the Distillery Workers' Union which, incidentally, resulted in convictions of top people in the underworld. This was before *Benanti* when we could use wiretap as evidence. This was the pioneer prosecution for racketeering in union welfare funds and it had an impact on both State and National legislation.

Another case that I describe is an interstate gambling racket where the gambling was conducted in New Jersey, Pennsylvania, and New York. It was a rigged gambling racket. The secretary of the Cincinnati clearinghouse, a most respected citizen of Cincinnati, mentioned for mayor of the city, was on the payroll of the mob receiving $1,000 a week. His function was to provide the last number of the payoff number when he heard from New York to the effect that the smallest play was on 4, let us say. So then, even though the number which came from the clearinghouse was 7, he would switch it to 4, for which little, but very important, service he got $1,000 a week. This was all done by telephone. We couldn't have made a start on it without telephonic interception and the secretary of the Cincinnati clearinghouse and all the conspirators were convicted as a result of the wiretap interceptions.

I describe in my statement a forgery ring, involving a half million dollars in stolen bonds, which was broken up by wiretap testimony.

I describe our investigation of professional boxing where we proved that Frank Carbo, a notorious hoodlum, was the underworld czar of boxing. Through court-ordered wiretaps we were able to establish that he was acting as an undercover manager of fighters in violation

of law, that the licensed managers of record were his fronts, and that the officers of the International Boxing Club, the official matchmakers for Madison Square Garden were his flunkies.

In an investigation lasting nearly two and a half years, we were able to expose a shocking state of corruption in college basketball on a nationwide scale.

This scandal involved 15 professional fixers, 33 players in six colleges, and 49 intercollegiate games in which score-rigging deals for the benefit of gamblers were negotiated in New York and 22 other cities in 17 States. With the exception of one defendant who died before the final disposition of his case, all of the fixers were convicted and imprisoned.

I describe a long investigation of the waterfront in New York which resulted in many convictions as a result of wiretapping. By this prosecution, we were able to prove that the so-called public loading system on city piers was nothing more than outright coercion and extortion. We were thus able to bring about the abolition of public loading in New York State. This investigation contributed to the formulation of the waterfront commission and which did away with public loading.

I describe—and this may be familiar to you, Senator—the activities of one Johnny Dioguardi.

Senator McCLELLAN. I seem to recall.

Mr. HOGAN. We had a long, continuing interest in Dioguardi and our surveillance of him paid off. I describe how he managed to get himself a labor union charter even though he had a criminal record, how he succeeded in becoming a regional director of this same union and how he set up paper local unions in New York for the sole purpose of systematically shaking down small businessmen who did not want their employees organized by legitimate unions.

I state that, in the course of our continuing surveillance, we also uncovered in 1956 an ambitious scheme of Dioguardi, in league with another underworld character, Anthony Corello, better known as "Tony Ducks," to capture control of Joint Council 16 of the Teamsters Union, the governing body of the union in the New York area. The evidence of this conspiracy was made available to the Senate Committee on Improper Activities in the Labor or Management Field, as were the telephone conversations of this gangster Dioguardi with Mr. James Hoffa, then vice president and later president of the International Brotherhood of Teamsters.

In all, and I describe cases during the 4 years from 1954 to 1958—we were able, thanks to legal wiretapping, to indict, arrest, and convict 25 officials of labor unions, either corrupted officers who had sold out their members or hardened criminals who owed their jobs to the underworld.

This is just a sampling of our cases. I know that S. 675 has only to do with wiretapping, but eavesdropping is just as important. I have described many cases where, particularly since 1957 when the Supreme Court cut off our right to divulge wiretap interceptions, we have used eavesdropping. I am just going to read one.

Senator McCLELLAN. Were you able to use the information obtained by eavesdropping in the trial of cases?

Mr. HOGAN. Until 3 weeks ago when the Supreme Court in *Berger*——

Senator McCLELLAN. You intercepted?

Mr. HOGAN. We have had a statute since 1958, almost contemporaneous with the decision of the Supreme Court in *Benanti*, which permitted us to eavesdrop and we have made about 23 applications a year. Everybody talks about eavesdropping. Well, most of the eavesdropping is done by private detectives, where evidence is sought in matrimonial cases, or where one firm is trying to steal the secrets of another. But court-authorized eavesdropping is used just as sparingly, even more so, than wiretapping. As I say, our average in the 10 years we have been using—9 years—has been about 20 applications a year.

Senator McCLELLAN. Is there any law now against eavesdropping?

Mr. HOGAN. There is nothing but the Supreme Court's opinion to the effect that the New York statute was inartfully drawn, in that it didn't cross every T or dot every I. That is what we are doing now, trying to put together a statute which hopefully the New York Legislature will pass and which will permit not only wiretapping but eavesdropping in accordance with the rules laid down by Justice Clark and the majority of the Supreme Court.

Senator McCLELLAN. What I was driving at, is there any State or Federal law now to deprive private detectives from using these techniques to gather information for his client?

Mr. HOGAN. Yes, it is a felony in New York State.

Senator McCLELLAN. In New York State?

Mr. HOGAN. And six other States—in 43 States you can eavesdrop to your heart's content.

Senator McCLELLAN. So I think we need a Federal statute to prohibit it except under a court order issued upon the application of law-enforcement officials—the attorney general or the district attorney, who has the responsibility to actually try the case. One reason I think we ought to limit the policeman in asking for it—is that you get a second screening by having them go to the district attorney, lay all the facts before him and let him evaluate it before you present it to the court. Just like citizens would come in with a proposal and let the district attorney or prosecuting attorney make the application to the court, using possibly the policeman or whoever brings in the information as witnesses to substantiate probable cause of the lead.

Mr. HOGAN. I think our statute was too liberal in that it permitted a police officer above the rank of sergeant to make the application. I expect that the statute we will submit to the legislature will provide that the application must be made by a district attorney or the attorney general of the State. The police then will have to come to persuade us first, and then persuade the court.

Senator McCLELLAN. That is a lot of precaution, is it not, another safeguard?

Mr. HOGAN. Yes. But returning to your first point, Senator, we have long advocated a statute such as we have in New York which would make it a felony for anybody not authorized by a court to eavesdrop or wiretap. Indeed, my office has prosecuted many such private snoopers. There are 27 under indictment right now awaiting trial—private detectives, investigators, a couple of attorneys. And those cases will be tried under our New York law which makes it a felony for anybody, other than a properly authorized law-enforcement officer with court sanction, to intercept telephone conversations.

Senator McCLELLAN. We need a law with teeth in it prohibiting all wiretapping and all eavesdropping by electronic instruments except where ordered by a court under the procedures established by law for law-enforcement officials to install or to make use of the electronic devices. It seems to me that the ordinary citizen would feel safe in the knowledge that it is not going to be used against him if he is a law-abiding citizen.

Mr. HOGAN. It should, unless he is an incurable romanticist that imagines anything can happen.

Senator McCLELLAN. I want to keep it under absolute control of the court. I am willing to go further to strengthen the bill to see to it that they make interim reports to the court and permit the court to require them to make notes of the progress being made, and so forth. So that the court can determine whether it should be extended.

Mr. HOGAN. I agree with you.

Senator McCLELLAN. Because if we cannot trust our courts, the integrity of our courts, we are beyond redemption.

Mr. HOGAN. I think there should be reporting requirements to the court, the court in effect should be a monitor, as well as the instrument that authorizes the interception in the first place.

I am just going to read one example of the value of eavesdropping. I have a number of them here in this statement. But this is a classic, I think.

This has to do with a top operation of organized crime featuring two well-known criminal characters, John Lombardozzi and Michael Scandifia. Falsely claiming to be a Teamster Union official, Scandifia, together with Lombardozzi, obtained $88,000 worth of diamonds on memorandum from Kaplan Jewelers in Manhattan by representing that other union officials were interested in purchasing the jewels. After complaint was made to the authorities, some weeks later investigation disclosed that the stones had been sold for $56,000 to a jewelry concern across the street from Kaplan's 2 or 3 days after the consignment. Although the owner of this jewelry store told the police that the $56,000 was just a deposit, other information suggested that it was not. The culprits being identified as Scandifia and Lombardozzi, a court-ordered eavesdrop was installed in Scandifia's garage in Brooklyn.

The installation overheard the two men and others discuss the jewelry fraud case, indicating the intent to defraud. Beyond this, evidence was obtained relating to other crimes which would not otherwise have been unearthed.

Scandifia was overheard talking with one Leonard Grossman, a neighborhood police officer, to murder a man who had given information to the Federal authorities.

Scandifia asked Grossman to obtain dum-dum bullets for two pistols and gave the policemen the guns. A search warrant issued on the basis of this information produced the weapons from Grossman's car. Other conversations overheard in that garage resulted in 80 arrests for such crimes as murder of a gang member, conspiracy to commit murder, highjacking, extortion, racial discrimination in the construction industry, assault, criminally receiving stolen goods, and larceny by false pretenses for bustout operations.

Several convictions have been obtained to date, many indictments are still pending in New York and Kings Counties. Unfortunately,

they are going to have to be dismissed because of the *Berger* Supreme Court opinion. In my statement I give other illustrations in many fields of what I think is the value of eavesdropping.

Finally, before analyzing the *Berger* case which I will not go into at this time, I would point out that the majority of the members of the President's Commission reach the only logical conclusion—the necessity of legal wiretapping and eavesdropping under carefully circumscribed judicial authority. The minority members seem to adhere to a policy of wait and see. Curiously, inconsistently, ironically, no minority member, not one responsible critic of wiretapping, not even the Attorney General of the United States, urges that it should be abandoned in situations involving national security. The unanimous acquiescence to its use in this field of investigative activity is tantamount to a concession that wire interception and eavesdropping are essential weapons of detection against elaborate, organized criminal conspiracies.

How can it be claimed that electronic searches are ineffective in the fight against organized crime in the face of the unchallenged assumption that they are needed and that they are effective in the matters of national security?

That confession sums up the whole argument for legalized wiretapping. It is an admission, first, that its utilization by law enforcement is necessary, and, second, it is an admission that it produces results, and it produces results in a problem area of vital importance to the internal security of our Nation.

Senator McCLELLAN. In that connection, do you think that the mounting incidence of crime in this country today threatens the security of the country, the internal security of this country?

Mr. HOGAN. I do, indeed, and the welfare of everybody in the country. This may not be so evident in the agricultural sections of the country, but it is certainly plainly evident in every metropolitan center. It is a cancer in our society, and I think it is a much more serious threat to internal security and the welfare of the country than whether X is a member of the Communist Party, or something like that.

Senator McCLELLAN. I would ask you just one thing further: If it is a threat to our internal security as you believe it is, do not those who insist that individual rights transcend the importance and the urgency of stamping out crime incur the risk of losing all of their liberty and losing all of their rights by simply insisting upon this very minor concession they are asked to make with respect to yielding to the authority for electronic surveillance of known criminals who are engaged in crime, and who are known to be engaged in criminal activities, and against whom it is most difficult to secure evidence against except in this fashion?

Mr. HOGAN. I agree entirely. It is shortsighted. These people live in a different world, a world of unreality it seems to me, if they can not see the value of the system that has been so effective especially where every possible safeguard is incorporated in the law as this committee has been trying to do in Senate bill 675.

Concerning confessions, Senator, I am just going to limit myself to some figures which fortunately we have. There has been a great deal of discussion.

(Mr. Hogan submits the following:)

STATEMENT OF FRANK S. HOGAN, NEW YORK COUNTY DISTRICT ATTORNEY, ON S. 674

I am grateful for this opportunity to testify with respect to proposed legislation in the field of criminal law which has been introduced by the Chairman, Senator McClellan, and other members of the Senate.

Concerning confessions, I regret the demise of the fair and rational criteria which governed the use of this vital evidence prior to June 13, 1966. No one, I think, could dispute the traditional exclusion of evidence of questionable reliability. And to assure ourselves that a verdict will not be thereby tainted, sound rules of evidence should bar confessions which are truly the product of threats or improper inducements and promises. In addition, there is probably a salutary disciplinary function in a rule which tends to discourage the use of force by law enforcement officers seeking to acquire evidence. But I believe that the *Miranda* decision, for all its praiseworthy clarity and exactitude, is a fundamentally unsound edict with consequences inconsistent with justice.

The theoretical fallacy, as I see it, lies in the premise that all incriminatory statements obtained from a suspect in custody are necessarily contaminated by an intangible "atmosphere" of coercion. Even assuming that the custodial interrogation produces some pressure to confess, I can not take the long step with the Court from that assumption to the conclusion that such pressure amounts to unconstitutional compulsion. In addition, the notion that strict compliance with the unprecedented formula of warnings decreed by the majority dissipates the atmosphere of coercion seems highly illogical. The vapor of custodial compulsion is surely not so poisonous if a free choice can be made to waive the rights to silence and counsel. And the majority of the Court evidently believes it can be.

But beyond the weakness of the decision's rationale, I can attest that the consequences have been distressing to those who still regard a criminal trial as a search for the truth. I should, however, first insert this caveat. In reciting figures to you drawn from our files, I make no pretense at scientific precision. The multiplicity of factors operative in each case, motivating a man to confess, to lie, or to remain silent, have not been, and perhaps can never be isolated and analyzed. In a real sense, the unique features of each case caution against gross compilations.

Yet I think our experience has been dramatic enough so that some conclusions may be drawn. Among these are that the *Miranda* caution significantly inhibits the making of a statement by a suspect to a police officer. Also, at least in two important areas, homicide and forcible rape, successful prosecution of demonstrably guilty persons is seriously impaired by reduction in the use of confession evidence.

For the six month period preceding the *Miranda* decision we kept records of the number of admissions used in presenting cases to our grand jury. These figures include almost all felony cases in New York County except homicides. The grand jury presentation occurs, in most instances, after arrest and arraignment. At the preliminary arraignment a substantial number of cases are dismissed for the lack of a prima facie case, or reduced to a misdemeanor charge. Hence, those which reach the grand jury are the more solid and serious felony cases. During the period from December 1965 through May 1966, such cases against 2610 defendants were presented to the grand jury.

Evidence of a confession or admission of guilt by 1280 of these 2610 defendants was presented to the grand jury. Thus, in the six month period before *Miranda*, roughly 49% of the non-homicide felony defendants made incriminating statements.

From July 1966 through December 1966, the six months after *Miranda*, cases against 2448 non-homicide defendants were presented to the grand jury. Only 354 admissions or confessions could be presented during this post *Miranda* period. Only 15% confessed in the six months after the *Miranda* ruling and 49% confessed before.

This drop from 49% to 15%, I think, justifies the conclusion that in felony cases generally the *Miranda* rule caused a significant reduction in the number of defendants who give incriminating statements.

It is considerably more difficult to assess statistically the number of defendants acquitted, or never even arrested or indicted, for lack of the crucial confession. In the ordinary felony case, there is frequently other evidence upon which a prima facie case may be made. Most obviously, there is almost always

the testimony of the victim who is frequently able to identify the defendant as well as relate the facts of the crime. But how often this testimony is too weak to satisfy the burden of proof beyond a reasonable doubt, it is hard to say. Sometimes there is other evidence, such as eyewitnesses, scientific evidence like fingerprints, the recovery of stolen property, or weapons in the defendant's possession. This of course helps satisfy the burden. Yet often even the most diligent police work fails to unearth objective evidence pointing to the defendant's complicity. A voluntary confession may then provide essential corroboration of the complainant's testimony. Many time, also, the credibility of the complainant requires some corroboration. The jury and the prosecutor may hesitate to trust a vengeful or disreputable complainant on so serious a matter as a felony charge. In these circumstances the vital evidence of a reliable confession is a safeguard of justice.

Homicide and rape and special cases: in homicide there is no complaining witness and frequently no eyewitness; in rape, in our jurisdiction, the complaining witness must be corroborated by independent evidence in every element.

The Homicide Bureau of our office has found that the greatest difficulty arising from *Miranda* has occurred in cases where the arrest and interrogation occurred before the date of that decision, June 13, 1966, but the trial of the defendant had not yet occurred. *Miranda*, of course, applies to all cases not yet tried on that date, regardless of the date of arrest. In New York County, several homicide cases have been dismissed on the People's motion because statements of the defendants were barred from evidence under *Miranda*, and the remaining evidence was insufficient for conviction as a matter of law.

In one such case, the defendant was charged with two separate crimes of murder in the first degree, for stabbing two women to death after attempting to rape them. Apart from the killer, there was no living witness to either murder. The defendant, previously convicted of felonious assault for slashing a woman with a knife, was apprehended with the aid of a composite sketch drawn by a police artist from a description supplied by the victim of a recent rape with a similar pattern. The defendant gave detailed confessions of both murders to an Assistant District Attorney after he had been advised that he did not have to make a statement and that, if he did, it could be used against him.

These confessions were rendered inadmissible by the *Miranda* decision, because the defendant had not been advised of his right to have counsel present. Thorough investigation produced no other evidence to salvage the indictment.

In another case, a storekeeper on the Lower East Side of Manhattan was shot and killed during an attempted robbery. Of the three men indicted for the crime, two—the self-confessed lookouts, who admittedly had picked the store to be robbed—had to be released after *Miranda* because they had not been advised as to right to counsel. Incidentally, the case against them could not have been saved even if the third defendant had been available against them. Unlike most states and the federal jurisdiction, a defendant's guilt cannot be established in New York by the testimony of an accomplice alone.

In two other homicide cases, the People were left with sufficient evidence to proceed to trial without the defendants' pre-*Miranda* statements, but were inhibited from using the confessions to cross-examine them when they took the stand and denied their guilt. Acquittals resulted.

A distinguished colleague of mine in law enforcement, District Attorney Evelle Younger of Los Angeles County, has expressed the view that confessions are essential to successful prosecution in only "a relatively small percentage of criminal cases". Mr. Younger cites a sample of 648 California cases, of which 67 were deemed to require a confession or admission for conviction.

In our view, over ten per cent is a rather significant, not a "relatively small," percentage. Moreover, since the Los Angeles County figures do not indicate the nature of the crimes involved, their value is very limited. Not all crimes are equally difficult to prove without statements by the defendant. In homicide cases we believe that substantially more than 10% require a confesion or admission for conviction. A survey of the 91 homicide cases in our office awaiting trial or disposition in the fall of 1965 disclosed that 25 of the cases would have lacked legally sufficient evidence for trial without the defendant's statement.

Our Homicide Bureau has kept a case by case tabulation of all suspects questioned in homicide cases since *Miranda*. From June 13, 1966 to June 13, 1967, 216 homicide suspects were questions. Of these, 64 refused to make any

sort of statement to the Assistant District Attorney after receiving a *Miranda* warning. Of those who made a statement, 75 inculpated themselves. In sum, after receiving the required warning, about 30% of the 216 homicide suspects said nothing, 35% gave exculpatory statements, and 35% chose to incriminate themselves. This represents a marked change from pre-*Miranda* times when it was the Homicide Bureau experience that rarely did a suspect refuse to make any kind of statement, even if it was only to protest his innocence. In 1965, an Assistant District Attorney in my office conducted a survey of the last 100 capital cases in New York State. Of these 100 cases, confessions or admissions were obtained in 85. Of the 41 New York County cases on the list, confessions or admissions were received from the defendants in 31.

We also anticipate that the number of defendants choosing to go to trial will increase in direct proportion to the tendency of *Miranda* to reduce statements by suspects. Past experience indicates that the defendant who realizes that he has admitted his guilt to the authorities is more likely to plead guilty than go to trial. Of a random sample of 159 pre-*Miranda* felony prosecutions, including homicides, in which the defendants pleaded guilty *before* trial, there had been confessions or admissions in 96 cases or 60.4%. Of the 228 felony defendants who proceeded *to* trial in the same year, 118 pleaded guilty during trial; 43 of these, or 36%, had confessed or made admissions. By contrast, of the 110 felony defendants whose cases were decided by verdict after trial, only 23 or 24%, had made statements. Sixteen of these defendants were acquitted. Of these, none had made a statement.

To summarize these figures in the most tentative way, and taking account of our case-by-case experience in the investigation and prosecution of serious criminal charges, I would say that the stringent requirements of *Miranda* have significantly increased the chances that a criminal will escape judgment, where under previously prevailing fair standards he would have been convicted for his crime.

For this reason I welcome the efforts of this Committee to draw legislation seeking to return to the pre-existing and rational standards of exclusion: true involuntariness, I welcome it because such an enactment would provide a legislative finding of great weight, contrary to the assumption of fact underlying the Court's decision last year. Moreover, the proposed Bill, S. 674, clearly expresses an intelligently formulated policy, to be applicable in federal prosecutions, setting forth standards of due process. The bill provides a model for similarly directed state measures governing state trials. And it seems to me that policy for the conduct of police investigation and the admissibility of trial evidence is more appropriate to the legislative than the judicial responsibility.

In an article in the March 18, 1967 issue of The New Republic, Jon O. Newman, the United States Attorney for the District of Connecticut, makes a strong argument for the modification of the absolute rule of exclusion dictated by the *Miranda* decision. He suggests the adoption of a flexible rule and explains it thus:

"How would a flexible rule work? The decision to admit or exclude unlawfully obtained evidence would be left to the discretion of the trial judge, to be exercised with regard to certain specific criteria. Among these would be the kind of illegality, the good faith of the police, the seriousness of the crime, and the prosecution's need for the evidence."

"The trial judge should have discretion to admit or reject confessions even though the Mirada rules are not strictly followed. Of course if the evidence shows that the confession is not voluntary, it would automatically be excluded. The risk of unreliability is too high to be tolerated, and any form of coercion is too hostile to our concepts of fairness. But if the officer gave substantially the Miranda warning, or if he forgot to give any warning under the pressure of a midnight street arrest of an armed hoodlum, or if the crime is serious, or the prosecution must fail without the confession, a trial judge should be permitted to weigh all these factors and then decide whether to admit or exclude the confession."

The Newman suggestion seems eminently sensible to me, as does S. 674. Whether the enactment proposed will withstand attack in the United States Supreme Court is difficult to say. It does contradict the presently operative construction of the Fifth Amendment. But a closely divided Court does not in-

scribe immutable annotations to the language of the Constitution itself. The Court itself has clearly and dramatically taught us the ephemeral quality of their own rulings. I do not believe that lawyers or legislators are precluded from attempts to change the mind of the Court by conscientious and persuasive demonstration of error in a prior decision. Nor should we be discouraged from this effort where the margin is narrow, our resolve high. and our conviction urgent and sincere. Moreover, a fair and sensible alternative such as S. 674, drawn after careful study and the accumulation of solid evidence, is an effective and potent weapon for the persuasion of the practical, intelligent, and well-motivated Justices of our High Court. Anyway, such is my earnest hope. For I would hope too that no drastic avenue of relief from onerous decisions need be contemplated. While the path of Constitutional amendment may be open, I think we can all agree that it should be avoided unless and until it becomes more evident that it is an essential and inescapable last resort.

Mr. HOGAN. There has been a great deal of dispute as to whether the *Miranda* case actually made any difference insofar as admissions of guilt are concerned. For the 6 months, preceding the *Miranda* decision, our office kept records of the number of admissions used in presenting cases to our grand jury. These figures include almost all felony cases in New York County except homicides.

The grand jury presentation incurs in most instances after arrest and arraignment. After preliminary arraignment, a substantial number of cases are dismissed for the lack of a prima facie case, or are reduced to a misdemeanor charge. Hence, those which reach the grand jury are the most solid and serious felony cases. During the period from December 1965, through May 1966, such cases against 2,610 defendants were presented to the grand jury.

Evidence of a confession or admission of guilt by 1,280 of these 2,610 defendants was presented to the grand jury. Thus, in the 6 months period before *Miranda*, roughly 49 percent of the nonhomicide felony defendants made incriminating statements.

From July 1966, through December 1966, the 6 months after *Miranda*, cases against 2,448 nonhomicide defendants were presented to the grand jury. Only 354 admissions or confessions could be presented during this post-*Miranda* period. Only 15 percent confessed in the 6 months after the *Miranda* ruling, and 49 percent confessed before.

This drop from 49 percent to 15 percent, I think justifies the conclusion that in felony cases, generally, the *Miranda* rule caused a significant reduction in the number of defendants who give incriminating statements.

So, I regret the demise of the fair and rational criteria which governed the use of this vital evidence prior to June 13, 1966, I would hope that something could be done which would return the discretion to the trial judge. Where the evidence is voluntary, then whether or not the complete litany recommended by *Miranda* is recited by the police officer should be given weight but should not be conclusive with respect to excluding the confession or the admission.

Senator MCCLELLAN. Thank you very much. I think the bill, S. 674, is pretty well drawn. I want to study it further, and, of course, the committee will study it. I do thing that a trial judge who was there at the time and can examine the accused and inquire into all of the

circumstances attending any statement that he may have made can better determine the voluntariness of it than can the Supreme Court. And I do think that a jury who is impaneled to try guilt or innocence, who is vested with the authority to render a verdict that deprives a man of his liberty, maybe even his life, if they are competent to do that, they are competent to judge whether a confession was coerced or if it was voluntarily given. That is the way I look at that issue.

You may not have seen them, but the two afternoon papers in Washington have interesting editorials. One of them mentions you specifically and comments upon your testimony. They evidently had an advance copy of your statement. But, anyway, I think since they do refer very emphatically to this wiretapping issue, I think I will place these two editorials in the record at this point following your testimony. One is from the Evening Star of today, entitled "Phony War on Crime." And the other is in the Washington Daily News of today entitled "Ramsey Clark and Crime."

I think they are very illuminating editorials, and I would like to have them printed in the record at this point.

(The editorials referred to follow:)

[The Washington Daily News, July 12, 1967]

RAMSEY CLARK AND CRIME

In Seattle the Attorney General of the United States delivered a speech widely interpreted as a rebuttal to complaints that he is "soft" on crime.

The speech didn't rebut much of anything—or say much of anything. So it hardly can be interpreted as anything.

He said the world always has had crime but now "the renaissance has begun." President Johnson has proposed a "safe streets and crime control" law, the National Crime Commission has made its report and there is an "enlightened concern" among citizens.

But neither the President's proposed law nor the Crime Commission report in themselves will make much change. The "enlightened concern" among citizens, more accurately described as "high alarm," may—if people in the position of the Attorney General will listen.

Mr. Clark again complained of those who "divert attention from the real problems" by saying recent court decisions have "caused crime." Nobody says the decisions "caused" crime, but a long string of court decrees certainly has made it easier for criminals to get away with their depredations on society.

He talked about improving penal institutions, and nobody can quarrel with that, and he talked about "the relation of social reform to the control of crime," and nobody would quarrel about that.

But the Attorney General is the chief law enforcement officer of the nation. It is his job to set the pace in enforcing the law and in prosecuting those who violate it.

"What could be more meaningful to the public safety," he asked, "than upgrading law enforcement so that more crimes are discovered and solved and more violators assured firm, sure, speedy justice?"

Well, the answer to that is: Nothing could be more meaningful.

And if the Attorney General would dedicate himself to bringing those things about—while leaving social reforms and defense of far-out judicial decisions to others—he could turn out to be just what a crime-weary country ordered.

[The Evening Star, Washington, D.C., July 12, 1967]

PHONY WAR ON CRIME

There comes a time when a spade should be called a spade, and there also comes a time when a phony war should be called a phony war. That time has been reached in Lyndon Johnson's much-touted and loudly-heralded "war on crime."

The sweeping—and they are sweeping—regulations just put out by Attorney General Ramsey Clark restricting the use of wiretaps and electronic listening devices are the last straw. The attorney general surely would not have sounded this call for retreat without the approval of the President. So one is driven to the conclusion that the war on crime is a phony war, and that all of the President's high-flown speeches, not to mention the attorney general's rhetorical contributions, have been nothing more than wordy exercises designed to conceal the fact that this administration's heart is not in its so-called war.

The attorney general's new regulations go well beyond the restrictions on wiretaps and bugging imposed two years ago by the President. They forbid law-enforcement practices which the Supreme Court has not yet outlawed. A suspicious sould might think that they are an invitation to the court to go farther than it has up to this time—and this may not be lost upon the "liberal" judicial majority.

Ramsey Clark obviously has a thing about wiretaps and bugging. He thinks they are a waste of manpower. He has testified that they are "abhorrent" devices. He says that all of his experience shows that electronic surveillance (he has had very little experience in criminal law enforcement) is not necessary for the public safety, is not a desirable or effective investigative technique, and that these abhorrent devices should be used only in the national security field. He has never explained why wiretaps and bugs are essential in national security cases but useless against organized crime. Of course he cannot come up with any rational explanation.

Let's turn to another witness. Frank S. Hogan, New York County district attorney, has been in the front line of the war on crime for 27 years. He told the President's Crime Commission: Electronic surveillance is the single most valuable weapon in law enforcement's fight against organized crime. . . . It has permitted us to undertake major investigations of organized crime. Without it, and I confine myself to top figures in the underworld, my own office could not have convicted Charles "Lucky" Luciano, Jimmy Hines, Louis "Lepke" Buchalter, Jacob "Gurrah" Shapiro, Joseph "Socks" Lanza, George Scalise, Frank Erickson, John "Dio" Dioguardi, and Frank Carbo.

Well, there it is. Take your choice. Frank S. Hogan, who has sent scores of vicious hoodlums to jail, is quite willing to use the "abhorrent" eavesdropping weapon in his war on crime. He thinks it is an essential weapon. Ramsey Clark and Lyndon Johnson are not willing. They would prefer to conduct their war with speeches at twenty paces. And, in consequence, this war is one which organized crime will surely win and which the American people, the ultimate victims, will surely lose.

Senator McCLELLAN. We thank you very much, Mr. Hogan. I think I have some understanding of the problems that you are struggling with. I hope this committee, after carefully weighing and studying these bills and the problems in the field of crime and law enforcement today, will submit legislation that will commend itself to the Congress. We need more effective instruments in law enforcement, and we need to strengthen criminal justice, and that means putting more criminals behind the bars where they belong.

Mr. HOGAN. Thank you very much, Senator, and whenever we in law enforcement are discouraged, we think of your understanding of our problems and your long championship of measures which would make it possible for us to do a better job, and we are most grateful to you.

Mr. McCLELLAN. Thank you, sir.

Mr. Keating, come around, please, sir.

I understand, Mr. Keating, you want to make a brief statement and was anxious to get away to catch a train.

Mr. KEATING. That is correct.

Senator McCLELLAN. You were not on the list here, and I am taking you out of order to try to accommodate you.

Mr. KEATING. I appreciate it very much.

Senator McCLELLAN. You may identify yourself and proceed with your statement, Mr. Keating.

STATEMENT OF T. (TOM) W. KEATING, SENIOR VICE CHAIRMAN, PENNSYLVANIA LINES EAST OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, REPRESENTING THE PENNSYLVANIA SYSTEM GENERAL GRIEVANCE COMMITTEE AND THE PENNSYLVANIA READING SEASHORE LINES

Mr. KEATING. My name is Tom (T. W.) Keating, senior vice chairman of the Pennsylvania Lines East of the Brotherhood of the Locomotive Firemen & Enginemen. I am speaking for the Pennsylvania System General Grievance Committee and the Pennsylvania Reading Seashore Lines.

Because Senator Burdick, the sponsor of this legislation, is necessarily out of the country at this time, I would like to bring you up to date on some statistics which the Senator gave you when hearings on this bill were held earlier.

During 1966 Senator Burdick told you that in the short segment of the Pennsylvania Railroad between Washington and a point just north of Wilmington, Del., an incident of vandalism occurred on the average of more than once a day. I want to report that in the time since you have had this report until a recent date, these incidents have continued to average more than once a day. Of 187 incidents reported in 1967 up to June 19, there were eight people injured, and in only 25 reported incidents were there any people arrested. I submit the full list of reported incidents for inclusion at the end of my testimony.

In terms of the entire Pennsylvania Railroad, in 1966 there were 1,540 incidents of trains being stoned with a total of 222 passengers injured, but again the number of those arrested falls far short of the total number of incidents.

Occasionally, vandalism proves to be quite dramatic as happened early in the morning of May 22 when a Pennsylvania Reading Seashore Lines passenger train bound from Wildwood, N.J., plowed into a barricade of steel stakes and large oil drums. One hundred passengers were shaken up in this incident which happened at exactly the same spot as an incident 5 months earlier in which a steel drain pipe was rolled on the track as a barricade.

These statistics that I have brought to you have pertained to the Pennsylvania Railroad, the railroad with which I am most familiar. However, in my business with other offices of the Railroad Brotherhoods, it is my strong feeling that this is a nationwide problem because incidents of vandalism are not limited to any particular section of the country. They are found in places where the concentration of population is the heaviest. Naturally, it is in these areas of the heaviest

population where there is the greatest danger to public health and safety arising from the risk of a train put out of control by vandalism.

An example of what I am trying to say can be found in an excerpt from a statement made by Walter P. Dunn, an engineer on the Boston & Maine Railroad, when he testified before the Senate Commerce Committee on another bill. I submit it for inclusion at the end of my statement.

You gentlemen I am sure can visualize how you might feel driving down the highway and having a stone thrown through your windshield. This is exactly the same sensation that a man riding in a cab of a train would have if a stone were thrown through his window. Though the situation with an automobile is very serious, it is even more serious for a train because of the weight and momentum of the train and because there may be hundreds of passengers on this train.

In its report to you, the Department of Justice indicated that there were no specific statutes in this area, but they saw no need for any statutes because they were not aware of any great number of incidents of vandalism. I believe the magnitude of the problem has been very clearly pointed out, and I hope for the benefit of working railroad men as well as railroad passengers and all of the citizens, that you will act favorably toward S. 552.

(Supporting memorandums referred to by Mr. Keating follow:)

[The Evening Bulletin, Philadelphia, May 22, 1967]

TRAIN HITS BARRICADE, 100 ARE JOLTED AT SHORE

About 100 riders were jolted today when a Pennsylvania-Reading Seashore Lines passenger express bound from Wildwood to Philadelphia plowed into a barricade that had been erected across the tracks.

The barricade was made up of "seven or eight" 50-gallon oil drums and steel stakes that had been driven into the roadbed, a railroad spokesman said.

The incident occurred at 7:20 A.M. at Folsom, Atlantic County, on the railroad's Cape May spur, about three and a half miles south of Winslow Junction.

ANOTHER INCIDENT

It was the second such occurrence in five months. Last Dec. 8 a train crashed into a steel drain pipe that had been rolled across the tracks at the same place.

The train involved in today's crash left Wildwood at 6:27 A.M. and was due at 30th Street Station at 8:27 A.M. It was composed of two stainless steel cars.

It was proceeding at a fast pace over the single-track roadbed when the passengers were startled by the sudden application of brakes followed by the sound of a crash.

"It sounded like the whole bottom of the train was ripped up," one passenger related.

NO ONE IS HURT

No one was hurt, but the train was badly damaged. Its air hoses were ripped up, cutting off brake power.

The conductor had to hike down the tracks to reach a wayside telephone to call for help.

The passengers waited abroad the stalled train until another train which left Atlantic City for Philadelphia at 7:15 A.M. picked them up.

The train from Atlantic City switched to the Cape May spur at Winslow Junction, backed down the tracks, hooked on to the stalled train and then pulled into Philadephia.

The Wildwood passengers were an hour and 10 minutes late.

State police began an investigation.

Date	Time	Train No.	Location	Windows broken	Persons injured	Persons arrested
1967						
Jan. 1	2:25 p.m.	174	Fulton junction	2	0	
2	3:15 p.m.	106	Edmondson Ave	1	0	
2	3:40 p.m.	174	Edgemoor yard	0	0	2
12	10:45 a.m.	172	Catonsville branch	1	0	
13	3:31 p.m.	132	North Edmondson Ave	1	0	
16	5:15 p.m.	154	Landover	0	0	
16	6:50 p.m.	414	Halethorpe	0	0	
17	5:07 p.m.	149	Gunpow	2	0	
17	6:21 p.m.	105	Broadway	1	0	
19	4:30 p.m.	152	Edmondson Ave	3	0	
20	5:05 p.m.	171	South Landover (Smith junkyard).	1	0	
21	5:05 p.m.	105	Halethorpe	1	0	
21	6:14 p.m.	164	South of Seabrook	1	0	
22	(?)	175	South of Baltimore	1	0	
23	11:20 a.m.	111	Chester St	1	0	
23	12:37 p.m.	115	Just north of Biddle on curve.	1	0	
23	12:26 p.m.; reported, 1:35 p.m.	130	Canton junction (reported from Wilmington by conductor).	2	0	
23	3:40 p.m.	132	Gwynns Run	1	0	
23	4 p.m.	132	Stemmers Run	1	1	
23	6:12 p.m.	156	South of Seabrook Station	1	0	
24	4:35 p.m.	160	Edgemoor Station	1	0	
24	4:40 p.m.	554	Ridewood Station	2	0	
25	4:45 p.m.	554	do	2	0	
26	4:45 p.m.	554	Lutherville	2	0	--
29	1:45 p.m.	107	Between Gunpow and Middle River.	1	0	
30	3:42 p.m.	106	Edison Highway	1	0	
Feb. 1	10 p.m.	160	Fulton	3	0	
1	12:53 p.m.	115	Knecht Ave	1	0	
5	2:10 p.m.	107	B. & P. tunnel at Pennsylvania Ave.	1	0	
13	3:12 p.m.	MD-18	Jersey yard	0	0	
15	12:59 p.m.	115	Edmondson Ave	(?)	(?)	
19	4:40 p.m.	106	Edison Highway	2	0	
19	5 p.m.	554	Monkton, Md	0	0	
22	1:07 p.m.	127	Station (north side)	0	0	
22	2:26 p.m.	170	Bladensburg road crossing	0	0	
23	10:25 a.m.	131	Landover, Md	2	0	
26	5:10 p.m.	B-4	M St. (Virginia Ave. tunnel)	1	0	
27	4:10 p.m.	106	Fulton Ave	0	0	
27	4:47 p.m.	152	Edmondson Ave	0	0	
27	5 p.m.	152	Edison Highway	0	0	
27	5:05 p.m.	149	Biddle St	1	0	
28	1:10 p.m.	127	Broadway	1	0	
28	2:40 p.m.	128	Fulton	1	0	
Mar. 2	5:40 p.m.	154	Fulton, Edmondson	0	0	
5	2:06 p.m.	127	Bowie	1	0	
5	2:50 p.m.	106	Seabrook	1	0	
7	3:30 p.m.	MD-18	M St., Washington, D.C.	0	0	
7	3:45 p.m.	132	Fulton junction	1	0	
7	5:40 p.m.	152	Ruthby	3	0	
8	3:30 p.m.	128	Playground, Edmondson Ave	0	0	
10	6:10 p.m.	MU	Playground, Warwick Ave	3	0	
13	3:20 p.m.	106	Fulton	1	0	
14	6:10 p.m.	173	Biddle St	1	0	
19	4:34 p.m.	106	Ivy City yard	1	0	
22	5:20 p.m.	105	Broadway	1	0	
22	5:50 p.m.	921	Beach St. (Wilmington)	1	0	
23	3:30 p.m.	132	Atlas siding	1	0	
24	1:15 p.m.	115	Landover	0	0	7
24	2:20 p.m.	121	Loneys Lane	2	0	
24	2:40 p.m.	107	Middle River	2	0	
24	4:20 p.m.	171	Fulton junction	3	0	
25	1:19 p.m.	127	do	0	0	
27	12:58 p.m.	115	Louden Park	0	0	
27	2:44 p.m.	174	Milton Ave. (bus-car 7507) (Mr. Vaughn).	1	0	
27	3:10 p.m.	128	Bladensburg crossover	2	0	2
27	3:15 p.m.	MD-18	North Anacostia	0	0	2
27	3:45 p.m.	132	Fulton Junction	0	0	
27	5:30 p.m.	149	Patterson Park Ave	0	0	
27	5:37 p.m.	549	Biddle St	0	0	
28	2:03 p.m.	128	New York Ave	2	0	
28	2:05 p.m.	174	Northeast (maybe gun)	2	0	
28	3:22 p.m.	MD-18	Deenwood	1	0	
28	4:07 p.m.	(4)	St. Paul St	0	0	
28	5:40 p.m.	154	Atlas siding	0	0	

See footnotes at end of table.

Date	Time	Train No.	Location	Windows broken	Persons injured	Persons arrested
1967						
Mar. 28	5:55 p.m.	149	Acme warehouse	1	0	
29	2:25 p.m.	174	Edmondson Ave.	1	0	
29	3:58 p.m.	(2)	M St., Washington, D.C.	1	0	
29	4:30 p.m.	152	Playground, Warwick Ave.	1	0	
30	5:30 p.m.	8041	Frederick Rd.	1	0	
31	10:25 p.m.	B-4A	Havre de Grace	0	0	2
31	12:25 p.m.	130	Fulton junction	1		10
Apr. 1	6:10 p.m.	173	Fulton area	1	1	
1	7 p.m.	101	do	3	0	
1	7:40 p.m.	150	Halethorpe	1	0	
2	4:50 p.m.	152	River	1	0	
2	8:32 p.m.	AC-10	Chesaco Park	1	0	
5	10:40 a.m.	172	Lafayette Ave.	0	0	2
5	12:27 p.m.	130	Edmondson Ave.	1	0	2
5	1:05 p.m.	107	do	1	0	2
5	1:05 p.m.	121	Broadway	0	0	3
6	3:20 p.m.	127	Halethorpe	1	0	
6	3:20 p.m.	106	Edmondson	1	0	2
	1:45 p.m.	107	Biddle St.	1	0	
	8:35 p.m.	175	North of Bayview	1	0	
	11:55 p.m.	115	Ruthby road crossing	1	0	
	2 p.m.	174	Bowie	1	0	
10	6:11 p.m.	921	Beech St.	1	0	3
11	6:45 p.m.	113	South end Union tunnel	1	0	
13	2:27 p.m.	174	Edmondson Ave.	1	0	
13	3:15 p.m.	106	do	1	0	
16	11 p.m.	TT-5	Old Phoenix Station	1	0	
16	9:50 a.m.	114	Northeast Union tunnel	1	0	
18	9:30 a.m.	170	Broadway	1	0	
18	5:45 p.m.	154	Fulton junction	0	0	3
18	5:15 p.m.	149	Biddle St.	0	0	2
18	6:11 p.m.	113	do	0	0	2
18	8:36 p.m.	156	Wilmington, Del.	0	0	
19	12:45 p.m.	115	MP-73, Edgewood	4	0	4
20	4:35 p.m.	152	Warwick Ave.	2	0	
20	5:35 p.m.	932	Landlith	2	0	
22	10:45 a.m.	172	Edmondson Ave.	1	0	
22	2:55 p.m.	128	Fulton junction	3	1	
22	3:18 p.m.	132	Bowie overhead bridge	0	0	
23	5:02 p.m.	105	Edmondson Ave.	0	0	
28	12:40 p.m.	115	Biddle St.	1	0	
28	5:50 p.m.	156	Edmondson Ave.	1	0	3
29	11:25 a.m.	403	South Brandywine bridge	1	0	
29	11:25 a.m.	918	do	1	0	
29	11:45 a.m.	172	Madison St. (?)	0	0	
29	12:45 p.m.	115	Davis	1	0	
29	2:50 p.m.	121	Fulton	0	0	2
29	3:40 p.m.	132	Biddle St.	1	0	
30	7:15 p.m.	174	do	1	0	
May 1	9:15 a.m.	126	Broadway	1	0	0
1	4:51 p.m.	152	North Union junction	1	0	
1	11:40 p.m.	160	Passing Weiskettle's	1	0	0
2	7:12 p.m.	156	South of Biddle St.	1	0	
3	3:45 p.m.	132	Playground, Warwick Ave.	1	0	
4	6:40 p.m.	549	Monkton Station	1	0	
4	7:25 p.m.	105	Union tower	1	0	
5	4:40 p.m.	554	Bridge at lake	1	2	3
9	5:36 p.m.	400	Patterson Park Ave.	0	0	
9	8:20 p.m.	158	Broadway	0	0	
11	7:15 p.m.	TT-24	Southbound home signal, Gwynn	0	0	
12	11:10 a.m.	111	Biddle St. area	2	0	3
12	2:33 p.m.	174	do	1	0	
14	12:01 p.m.	172	Brandywine bridge	0	0	
14	1:18 p.m.	121	do	1	0	
15	2:20 p.m.	121	Biddle St. area	0	0	
15	2:25 p.m.	174	Fulton junction	2	0	
15	5:17 p.m.	400	Pennsylvania Ave.	0	0	
15	7:40 p.m.	575	Warwick Ave.	1	0	
17	9:08 a.m.	401	Edmondson Ave.	1	1	
17	5:35 p.m.	152	Near Newark, Del.	1	0	
18	5:50 p.m.	414	1st signal north of New York Ave.	1	0	
18	5:54 p.m.	154	North of Stemmers Run	1	0	
19	2:30 p.m.	174	Playground, Edmondson Ave.	1	0	
22	4:40 p.m.	152	Frederick Rd.	0	0	2
22	7:01 p.m.	173	Fulton junction	0	0	
23	3:58 p.m.	132	Biddle St.	1	0	
23	5:43 p.m.	554	do	0	0	2
23	6:25 p.m.	173	Gwynns Run yard	0	0	
23	6:37 p.m.	105	Patterson Park Ave.	0	0	2
24	9:40 a.m.	131	Broadway	1	0	
25	6:30 p.m.	(4)	Edmondson Ave.	1	0	

See footnotes at end of table.

Date	Time	Train No.	Location	Windows broken	Persons injured	Persons arrested
1967						
May 26	6:40 p.m.	105	Pennsylvania Ave. opening	1	0	
31	12:40 p.m.	115	Biddle St.	0	0	
31	4:30 p.m.	152	Mount St.	1	0	
31	5:05 p.m.	149	North of Broadway	1	1	
31	5:30 p.m.	154	Playground, Edmondson Ave.	6	0	
June 1	6:45 p.m.	105	South of Middle River	1	0	
1	6:48 p.m.	156	Playground at Franklintown Rd.	0	0	
2	6:35 p.m.	176	Edmondson Ave.	0	0	
3	8:25 p.m.	105	Lanham	1	1	
4	5:52 p.m.	152	North of river	1	0	
5	1:40 p.m.	111	Broadway	0	0	2
5	6:15 p.m.	113	do	0	0	
5	6:18 p.m.	173	do	1	0	
5	6:26 p.m.	113	Gwynns Run	0	0	
5	7:53 p.m.	PE-3	Jersey Ave.	0	0	
6	6:24 p.m.	173	Biddle St.	0	0	
6	9 p.m.	175	Fulton junction	0	0	
8	4:10 p.m.	171	Edison Highway	1	0	
8	5:26 p.m.	554	Lutherville	1	0	
8	7:25 p.m.	(4)	Broadway	0	0	
8	7:30 p.m.	153	do	1	0	
8	8:30 p.m.	(5)	Canton junction	0	0	3
8	6:45 p.m.	105	Broadway	1	0	
9	7:20 p.m.	TT-24	Pennsylvania Ave.	0	0	
9	7:55 p.m.	158	South of Odenton	1	0	
10	10:00 a.m.	104	Broadway	1	0	
13	9:55 a.m.	131	Edison Highway	1	0	
13	12:03 p.m.	B-05	West of Lake	0	0	
13	12:50 p.m.	115	Pennsylvania Ave.	0	0	
13	6:45 p.m.	156	do	0	0	
16	2:05 p.m.	174	1 mile south of Landover	1	0	
19	1:33 p.m.	121	Just south of Elkton, Md.	1	0	

[1] Shuttle.
[2] Baltimore & Ohio trip.
[3] Passenger extra.
[4] Mount Vernon trip.
[5] Tunnel helper.

Mr. KEATING. I am not too familiar with the application of the law, but primarily I think this:

That we have had occasions when reports of vandalism have been made to local authorities and because it is a juvenile matter, the State takes interest in it and nothing is done about it, and I see the Attorney General in a newspaper article says—and I can only speak from the article or rather from letters in the record here—that they say no reason for it because they had State statutes. Yet, in the newspaper article, we find that a judge tells them—

> Well, there will be nothing done to you, but we are going to give you a calling down for putting something in front of these trains.

As long as they keep letting them go and not do something to discipline them for it, we are going to have it, and it is increasing every day, Senator.

Senator MCCLELLAN. You probably share my philosophy that unpunished crime breeds more crime.

Mr. KEATING. Yes, sir. And if we let them start as youths and grow up we will have some more of what I have just been listening to. If there could be some way of punishing them by just showing them the seriousness of the nature of the violation they have committed, maybe that would be sufficient. I do not like to be callous.

I have here to submit to you a statement taken in testimony before the Senate Commerce Committee when they were holding hearing on Senate bill 2180 which I think is very enlightening. I will not read it.

Senator McCLELLAN It will be inserted in the record and will be printed in full.

(The statement referred to follows:)

(The following is an excerpt taken from the statement of Walter P. Dunn, locomotive engineer employed by the Boston & Maine Corp., Fitchburg Division, made before the Surface Transportation Sub-Committee of the Committee on Commerce, when they were holding hearings on Senate Bill S-2180, June 29, 1966, during the Second Session of the 89th Congress:)

I now wish to discuss the exact nature of the freight run on which I am presently employed as a locomotive engineer. My present assignment is best described as a combination of local freight and industrial switching duties. This assignment operates daily from Boston to Watertown, Massachusetts, and returns to Boston. The total miles traveled each day is 16 miles. This run, like hundreds of similar runs, has only one man assigned to the engine crew, namely the engineer. The train crew is composed of a conductor and two brakemen.

I report five days a week, Monday through Friday, at a regular starting time in the Boston Engine Terminal facilities of my employing carrier. After a thorough inspection of the locomotive assigned me each day, I am then required to run this locomotive single-manned, with nobody in the cab to accompany me on this leg of my assignment, to a point called West Cambridge, Massachusetts. This operation, nearly five miles in length, is made at maximum permissible road speeds on main-line trackage in signal territory, and I repeat, with nobody in the cab other than myself. At West Cambridge, I meet the train crew, make up or couple onto the outbound train, test the air brakes and then proceed to Watertown, Massachusetts, the turnaround point of this assignment each day. The distance from West Cambridge to Watertown is approximately two and seven-eighths miles in length.

As has been already stated, the first several miles of my run is made at road speeds with no one in the cab of the locomotive with me. In this span of miles, I am compelled to pass through what we railroaders refer to as the "combat zone." This is a slum area extending from Prospect St. Bridge, Somerville, Massachusetts, to the West Cambridge, Massachusetts Yard facilities. On days when the schools are on holiday or during summer vacation, it is the usual thing for the engine to be stoned almost continuously while passing through this area. The tracks are strewn with debris and rubbish, nearly rail-high in places, and cement blocks, logs, iron bars, barrels, supermarket carriages, and many other objects are forever being placed on the rails in hope of derailing an engine or train.

From Prospect St. Bridge to West Cambridge, there are about six overhead bridges of various types. The amount of stones and other objects hurled from these bridges at moving engines or trains defies adequate description here; such as the device of a large rock tied to a rope and suspended to the exact height of the window glass area of a fast moving locomotive.

I feel it readily evident that a locomotive engineer, especially when single-manned is a sitting duck in the situations described, and with no advance warning as a rule, is prone to serious injury or even worse as these objects come crashing through the cab windows, with the ever present possibility confronting him that he can become blinded for life, if he survives the incident.

The tension and anxiety which confronts an engineer every day of his life in normal road operations is certainly compounded when he must face these additional anxieties and hazards I have mentioned. It is my understanding that this condition is prevalent on all railroads operating in urban areas, and is not peculiar to the Boston & Maine Corporation alone.

I have personally been stoned so severely that it became necessary for me to place a board on the dead-man pedal, contort my leg around the throttle stand of the engine in order to place my foot on the board and thus attempt to operate the engine from the middle of the cab, in order to get away from the glass areas of the locomotive cab which were being stoned. The operation of the locomotive is interfered with to some extent by this means, but to stop the locomotive in the midst of a gang of hoodlums on the track, would be to invite serious injury at best.

On more than one occasion, I have stopped the locomotive, however, with the result that one or more intoxicated hoodlums have entered the cab of the locomotive brandishing knives. When locomotives were double-manned, this possibly served as somewhat of a deterrent to such acts of violence, but with single-manning, the engineer has lost the psychological advantage of two men being present, and is a prime target for the whims of the slum area hoodlums and others.

It is a matter of carrier record that on November 18, 1965, my engine was so severely stoned that the front windows of the engine were smashed out by a gang of vandals on a bridge at West Cambridge, and I was forced to leave the job at that point due to a head injury. The carrier's records are replete with similar incidents, which apparently are continuing unabated, providing a frustrating problem to any engineer.

An engineer, either single or double-manned, being exposed to the above hazards and the tension and anxiety which attends such lawless deeds, is most certainly entitled, in my view, to a reduction in the hours he can be required to work each day. I have personally found it to be a nerve wracking, exhausting experience to operate a locomotive each day under the conditions mentioned. Taking into account the routine problems of operation which I shall describe in the following, coupled with the few I have just described, certainly provides a valid case in behalf of the modest reduction in hours of service proposed.

In continuing my description of the run I presently operate, it is pointed out that while I have no one in the cab with me from Boston to West Cambridge, I do have the head brakeman with me in the cab from West Cambridge to Watertown, Massachusetts. This is by virtue of the fact that he must flag protect four grade crossings in this distance and is assigned to ride the engine. Speeds are slow on this portion of the run, due mainly to poor track conditions, but are also kept down because of the presence of objects often placed on the track in attempt to derail the train. On one occasion, the head brakeman and I were forced to break up and remove an entire cedar post fence which had been placed on the rails. Tampered switches are an ever present hazard where vandals break the switchlocks and then either line the switch for a side track or leave it half-lined in an attempt to derail the engine or train. Constant vigilance, with or without the head brakeman, is required of an engineer on this type of run.

Mr. KEATING. I have nothing further to say unless there was some questions.

Senator MCCLELLAN. Thank you very much. I do not have any questions. There is not but one issue before us, and that is are the State laws in this area effective?

Mr. KEATING. Thank you, Senator.

Senator MCCLELLAN. You have got State laws, and you normally say: "Let them enforce the law." But it is not just the State and the local community that have an interest. These are interstate passengers, interstate goods, interstate employees.

Mr. KEATING. That is correct, sir.

Senator MCCLELLAN. And it takes a Federal statute to give the protection needed. I have no hesitancy in voting for it.

Mr. KEATING. I am sure it will help us.

Senator MCCLELLAN. Very well.

Mr. McDermott?

Come around, please.

Congressman Eilberg, we welcome you before this subcommittee.

Will you introduce your constituent?

STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF THE STATE OF PENNSYLVANIA

Mr. EILBERG. Mr. Chairman, members of the committee. Through your courtesy I have the privilege of introducing to you a witness who is extremely well versed in the field and problems of law enforcement—Thomas F. McDermott.

My association with Mr. McDermott goes back some 15 years when I was a young assistant district attorney in Philadelphia and he was

already a police officer of considerable note. Since that time I have worked closely with him at times and have benefited from his advice at other times.

Tom McDermott first became a Philadelphia police officer in 1928. He has worked as a uniformed policeman, a detective, and commanding officer of such special units as narcotics squads and special investigation squads. He has received more than 100 official commendations from three Philadelphia mayors, various commissioners, civic associations and newspapers. Included among his personal momentos is an award of merit from the U.S. subcommittee investigating narcotic traffic in this country.

When Tom McDermott officially retired in 1960, he was chief of the Philadelphia County Detectives. Since then, retirement to him has meant the post of chief security officer for Food Fair Stores, Inc., one of the Nation's considerable largest food chains which happens to be headquartered in my district.

I know Mr. McDermott will have some interesting things to say to you. And I know you will extend to him the same kind courtesy you have shown me.

Thank you.

Senator McCLELLAN. Thank you, Congressman Eilberg. We appreciate your statement, and we welcome you and Mr. McDermott before the subcommittee.

Would you like to read all of your statement?

Mr. McDERMOTT. No, sir.

Senator McCLELLAN. Let it be inserted in the record in full at this point, and you will give us your background, please.

STATEMENT OF THOMAS F. McDERMOTT, FIRST VICE PRESIDENT, CHAIRMAN, PUBLIC RELATIONS, POLICE CHIEFS ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA

Mr. McDERMOTT. Senator, I appreciate the courtesy of your committee and the privilege of appearing before you.

Mr. Chairman and members of the committee. I am Thomas F. McDermott, and at the present time, I am the first vice president and chairman of public relations for the Police Chiefs Association of Southeastern Pennsylvania. This association has a membership of over 600 active police and security officials. The area covers the southeastern part of Pennsylvania, the southern part of New Jersey, and the entire State of Delaware.

It is in this capacity that I appear before you today, and may I say that I come before this committee with more than 30 years of law enforcement background. I have walked a beat as a policeman, operated a police patrol car, later promoted to the rank of detective, then to sergeant of detectives, lieutenant of detectives, and then to chief of Philadelphia County detectives.

I am giving you my background for no other reason than to show you that I have law enforcement experience and I qualify to testify before your committee today.

I know what it is to be under fire; I know what it is to be under attack by a group of people that have no knowledge of what the arrest

is, when you are making an arrest, and attempt to take prisoners away from you. I know what it is to be surrounded by a mob and have the prisoner attempted to be taken and freed without any knowledge of what actually took place prior to this occurrence.

Senator McCLELLAN. Sometimes indifferent as to what it is, anyhow.

Mr. McDERMOTT. I have made arrests for practically every crime on the books.

I have investigated practically every crime.

I have worked in a section of Philadelphia which was known as "the Crime Belt," which was later termed as the "Jungle."

I have spent the biggest part of my police career in that section of the city. I worked with the courts and have spent a good many of my police years in courts, and I know what it is to work with the courts and the district attorneys.

Our association, which takes in the entire Delaware Valley area, wishes you to know that we appreciate what you are doing on behalf of law enforcement.

We know that bill S. 674 and bill S. 917 are for the benefit of law enforcement in general. And we honestly consider that this legislation is one of the most important pieces of legislation to come before this Congress.

Mr. Chairman, as the first vice president of this association, it has been my pleasant duty to exchange views with police chiefs from all over the United States. I am a member of the International Association of Chiefs of Police and meet with them every year. They are dedicated police officials, conscientious-thinking men, and these men all work closely with the district attorney or prosecutor in their respective areas, and are guided by their directives.

But, like the police, the prosecutors are troubled and confused by decisions of our High Court, and many have expressed their views in the press.

The recent *Miranda* decision has been published, discussed, and projected for the future on many occasions. When this decision was recorded, it became the law of the land and we are dutybound to acknowledge it and its meaning. But this does not mean, however, that in the free flow of communication, well-intentioned and responsible persons who work in the field of law enforcement must remain silent when experience and practice dictate otherwise in the face of these far-reaching decisions.

Mr. Chairman, members of our association have designated me to relay to you their alarm over the many "far-out" decisions handed down to our High Court and that the *Mallory*, *Escobedo*, *Mapp*, *Massiah*, and the *Miranda* decisions representing American judges' rules reflect a deep-seated distrust of law-enforcement officers everywhere, totally unsupported by relevant data on current material based upon our experience. These words, Mr. Chairman, are not mine; they are words of Mr. Justice White who wrote a scathing minority opinion in the *Massiah* and the *Escobedo* decisions.

The Police Chiefs Association of Southeastern Pennsylvania, through its President William F. Riempp, chief of police of Bensalem Township, Pa., join Mr. Justice White and others in their fear of any

extension of the doctrines enunciated by the Supreme Court. We, the members of this policy body, take no backward step for any group when it comes to the zealous protection of the defendant's rights. We do not question the rights of defendants to have counsel; we encourage it, and we wish to go on record to hope the program to protect the indigent is increased. Under no circumstances would we take unfair advantage of a defendant prior to arrest and during the actual trial. We fail to see how anyone can thrill or take pride in an unfair advantage over any arrested person. We applaud any court for having the courage to set aside such convictions. But, from the corrective plateau of a given case, we feel their great and unwarranted intrusions on those charged with the enforcement of law have resulted and have, without any doubt, hampered seriously the police in their fight against crime.

Senator, I listened to District Attorney Hogan, and I worked with the district attorney in New York on many occasions, and I want at this time to state that I used wiretapping. I used wiretapping considerably prior to the time the law went into effect in Pennsylvania. I used it in connection with Mr. Dash, who was district attorney in Philadelphia, and who is the author of "The Eavesdroppers," and is now connected with Georgetown University who has taken a decided view against wiretapping or electronic equipment of any kind. But Mr. Dilworth, who was then district attorney of Philadelphia, proposed wiretapping almost similar to that which Mr. Hogan proposes today, and this goes way back. If you will read Mr. Dash's book on eavesdroppers, you will see where Mr. Dash pointed out to everyone the horrors of eavesdropping and the horrors of wiretapping, but it was not horrible when he, as district attorney, worked with me on uncovering many hundreds of drug peddlers. As Mr. Eilberg spoke, we worked with the Senate Committee Investigating Narcotics, and Mr. Dash testified before Mr. Welker and Senator Daniels as to what it meant to the law-enforcement officer and how essential it was to good law enforcement

Senator McCLELLAN. It was a good tool when he had the responsibility.

Mr. McDERMOTT. It was an occupational disease I believe at that time. That is what Mr. Dash called it, that he was suffering from an occupational disease, of district attorney. I believe it is the opposite. I think you have the occupational disease now from a civil libertarian's viewpoint.

We, in our wiretapping investigations, uncovered drug rings, and, as a result, we made 106 arrests, and out of the 106 arrests 105 were convicted, and we could not understand how we lost the other one as our cases were solid.

But, Mr. Dash participated in that investigation.

But I agree with District Attorney Hogan, it is essential.

Senator McCLELLAN. Is that not a scientific method?

Mr. McDERMOTT. The only scientific method that helps a police officer to help investigate a crime is being able to investigate and interrogate. There is very little scientific method. On the other hand, the people who are advocating scientific methods are now saying "Now, you can't use scientific methods."

The Attorney General of the United States stated that there was not much crime to get excited about. As a matter of fact, he said there was an increase in crime and at the same time the President appointed a committee to investigate crime, that it was so serious.

But, Senator, we work with it day in and day out. We know what it is to see a rape in an alley and to see a murdered in the backyard and have no evidence whatsoever to go on. The only thing that we can use, the only help we can get in a case like that would be from what is derived from information. Without information, you are licked.

Now, if you have the proper information, the information leads to interrogation. If the police cannot interrogate, then we have no place to go. All the scientific equipment in the world will be useless.

Senator McCLELLAN. I can hardly conceive that we tell the policemen to go out here and protect society. That is what police are for, to protect society as well as to detect and apprehend the criminal after the crime is committed. People look to them as a shield for protection. If you go off on a vacation, the fact that there are active policemen in the area on the block gives you a little sense of security. You feel like your property or goods are protected. If a policeman cannot inquire and expect to get answers I do not know how you can investigate very well.

It seems to me that every citizen who believes in freedom, liberty, all the rights they profess they want to keep, know that they cannot be kept in a land of lawlessness.

Now, you have got to make a choice. You either give up some minor right or privilege, yield it on some occasions in aid of law enforcement, or you yield to the superior power of the lawless element. You have got to do one of the two. You can talk about all civil liberties you want to; but they will all be lost if we lose this war on crime in the United States.

Mr. McDERMOTT. At the rate we are going, we are losing it, Senator.

Senator McCLELLAN. We are losing it—and faster than we think.

I have no further political ambitions. I sit here today doing my best to bring in here the testimony that will enlighten us, and up to this hour we have not refused to hear any witness who wanted to be heard before this committee on these bills.

If it is wrong, bring the facts in here that will establish that this principle is wrong and let us have it. I think the gravity of this situation is just now beginning to be felt. I do not know that it will be adequately felt so that public interest, public sentiment will demand that Congress act. I cannot say about that, but I do know, and I say this without any reservation, that among law-abiding decent citizens of this country there is less confidence today in the law-enforcement machinery in this land than before.

Mr. McDERMOTT. That is right, absolutely right, Senator.

Senator McCLELLAN. No question about it. The decent citizen says "Where is my protection?" This he sees: He sees known rapists and murderers, self-confessed turned loose by the highest court in the land, told to go their way. They do not even say "Sin no more." And those are the conditions. Some will smirk at it, I know that. But I have seen folks smirk at less important things. The time is here when the law-abiding and decent people of this Nation must awaken to the danger

that is imminent—not a quarter of a century from now, not a half century from now, but within the next decade.

Proceed.

Mr. McDERMOTT. Senator, may I just for a moment read an article that has been republished in the Evening Bulletin from one of our police magazines?

It was written by me. It is just a small article.

LIFE OF A HYPOTHETICAL POLICEMAN—TRIBULATIONS OF A POLICEMAN

In any ordinary day, this is the gamut I run. Who am I? Dr. Kildare or Dr. Casey?—No! I am your policeman, hired by you, paid by you and one who tries to give the kind of service you, the public, demand.

Is there any other endeavor that can compare with this type of activity? I think not. As a police officer, I may in daily functions be involved in the entire gamut of human problems, emotions and conflicts.

It may be necessary for me to assist in a birth of a child on the way to an emergency ward, and maybe before the end of my duty be at the side of a person breathing his last.

JACK OF ALL TRADES

I may assist a stranger lost in a big city, return a lost child to a distressed parent, arrest a holdup man, issue a ticket for a traffic violation or render first aid to a person injured in a traffic accident.

In general, I am charged with protecting persons and property from criminal attack and depredation. I am expected to be courteous, patient and kind under all circumstances and conditions.

I am expected to have the courage of an astronaut, the chivalry of Sir Walter Raleigh, the integrity of George Washington, the judgment of a Supreme Court justice, the patience and restraint of a Sunday school superintendent, and the sweetness and light of a saint, and I am expected to have more than a working knowledge of all the Federal, State and local laws that I am sworn to enforce.

I am called upon to make snap judgments as to whether to arrest or not in a specific case, even though this same decision might take a top lawyer days to ponder.

WHEN JUDGES SPLIT

When judges and legal minds have such a difficulty with a definition of due process, and when Justices of the United States Supreme Court split 5 to 4, and our own Pennsylvania Supreme Court, 4 to 3, as to a specific application of due process, how am I, the lonely policeman, to know what to do? How am I, patroling my beat on foot or in my police car three-quarters of the time at night, expected to know, or, if you will, to guess right and make a legally correct split-second decision as to what action to take; especially when I am suddenly confronted with a problem, perhaps in hot pursuit of a criminal or in the investigation of a crime, whether I should enter a building without a search warrant and, after entering, whether I should seize obvious evidence which would disappear or be contaminated if not immediately impounded?

I stand right in the arena of action—with all attention focused on me. These are not the only perplexing problems I face, for now I know that, should I make a mistake of judgment in one direction, it could cost me my life, and in another direction, I could find myself a defendant in a false arrest suit or other civil or disciplinary action.

And even if I choose the right course, there still remains the possibility that I will be viciously assaulted by irrational mobs of onlookers, who, even though not knowing the circumstances surrounding the arrest, will attempt to free the prisoner I have apprehended. This is happening more frequently than reported in the press.

THE FALSE LIBERAL

I must have the skin of a rhinoceros because the police profession is fast becoming the target for slander, libel and abuse from an assortment of tawdry characters, ranging from pathetic "crying nellies" on the one hand to outspoken enemies of society on the other.

Then in the middle between these two extremes are such habitual critics as the false liberal who labors under the misguided obession that law enforcement is inherently incompatible with the cause of civil liberties.

I act as an arbiter in family quarrels even though in most cases I come out second best. I am most likely to be on the receiving end of a bop on the head with a shoe or a slipper by the same woman who called me to protect her from her drunken husband. Of course I am supposed to act as a counselor in all personal problems and be a master in public relations and an expert in race relations.

Now, perhaps you will ask what inducemnets were offered me to become a policeman. I sometimes wonder myself, because my salary is much less than that of truck drivers, bricklayers, carpenters and many other trades in which none of the aforementioned talents are needed.

THE ROADBLOCKS

I receive no time and a half or double time for Sundays and holidays; they are just plain days to me. When I am in court testifying against some criminal that I have arrested, often the defense lawyer tries to convince, and sometimes succeeds in convincing, the judge and jury that I should be prosecuted for arresting such a poor innocent person.

These are the many roadblocks that are thrown in the path of doing efficient police work. I am admired by the public just as long as I do not inconvenience them personally. Believe me, it does not help my morale to be beaten, scorned or harrassed.

I came into police work because I had high ideals and a desire to be a good law enforcement officer. I thought I could pit my wits against any law violater and have a good chance to win, but unless you, the public, decide you are going to back me up, I shall fail.

Condemn me when I am wrong, but support me when I am right.

That article has been republished and reprinted by the Evening Bulletin, in Philadelphia, on many occasions. It is my personal opinion of what the police officer goes through today.

The rest of my statement I can forego, but I would like to offer it to you, with the exception of my last paragraph, which is as follows:

In conclusion, we believe that during this era of conflict between our Supreme Court and the entire structure of law enforcement, it is incumbent upon all of us to remain steadfast in our obedience to the mandates of statutory law and judicial decision. In that this is a government of laws, and not of men, these divergencies will be resolved through democratic processes. We firmly believe that the vast number of the citizens of our great nation desire a strengthening of the hand of law enforcement. The protection of individual rights demands the effective enforcement of our laws for, otherwise, just who is going to protect the weak from the strong? We are all confident that all this can be accomplished within the framework of the Constitution of the United States of America.

So, Mr. Chairman, let's unite in a spirit of confidence, courage, and determination as we await the dawn of new tomorrow. Let us ask those five ultraliberal justices of the Supreme Court to please join us.

Mr. Chairman, I am the editorial editor of the National Police magazine which carries an editorial in each issue. I ask that you put that in.

Senator McCellan. Do you have the editorial there?

Mr. McDermott. I would like to submit it for the record.

Senator McClellan. How many editorials have you?

Mr. McDermott. I brought four issues with just a small editorial in each.

Senator McClellan. Let the four editorials be published in the record at the conclusion of your testimony.

(The editorials referred to are as follows—NOTE: Only three received:)

[*Police*, May–June 1967, vol. II, No. 5]

CRIME IS EVERYBODY'S BUSINESS

(This editorial feature was prepared by Thomas F. McDermott, First Vice President of the Police Chiefs Association of Southeastern Pennsylvania)

There are many headlines giving the descriptions of atrocities and wanton attacks by primitive savages on the citizens of towns and cities throughout this country. They are becoming more and more frequent; more and more savage, and with more and more contempt on the part of the perpetrators for the forces of law and order.

At this hour, the more urgent and persistent call of patriotism in the United States demands the rehabilitation of justice, and requires that the nation take heed to the wide and spreading extent of vicious crimes.

A system of laws, together with the substantial enforcement of these laws, constitute the thing we call public justice. Without justice supreme in any country or place, life, person, and property are under a shadow of constant hazard.

This is the heart of the situation. The American people are confronted by a national peril which is growing graver every hour, and if public opinion is not so effectively aroused as to procure some prompt and heroic remedy, the day may soon come when the regularly constituted machinery for the maintenance of law and order may break down altogether, and the safety of life and property will depend on voluntary defenders.

Our sole hope of raising America to her former position of a law abiding country is the awakening of public opinion to the actual and terrifying facts.

Responsibility for the present menace cannot be shifted to mere agents. We may smugly say that it is the business of the judges, the prosecuting attorneys, and the policemen to suppress crime; but it will never be suppressed until we make it *everybody's* business. It is our business to know the facts and to effect any necessary changes. It is to make felt, courageously and immediately, the influence of public opinion upon the conduct of our legislators, courts, congressmen, and every authority having a duty with the enactment of criminal law.

There are those idealists and theorists who will, from their ivory towers, oppose the deterrent factor in law. Progress in social science is made through theory and ideals, but it should be recognized that a full and wholesome practice of these theories must be accomplished, particularly in affairs affecting society as a whole, to insure success. To have rights without safety of life, limb, and property is a meaningless thing. Individual rights considered apart from their relationship to public safety and security are like labels on empty cartons.

In truth, we cannot have unbridled liberties and at the same time have a safe, stable society. Let's find out where liberty ends and license begins, at which point does the individual criminal's liberties conflict with the nation's security; at what point does the rights of the individual infringe upon the collective rights of society.

There must be a mobilization in one form or another of the determined, law-abiding people of this country to affirmatively declare war on disruptive elements. Public opinion must be awakened to the alarming crime rate, and to the realization that crime is *everybody's* business.

[*Police*, July–August 1966, vol. 10, No. 6]

MUCH ADO ABOUT NOTHING

(This editorial feature was prepared by Thomas F. McDermott, Second Vice President of the Police Chiefs Association of Southeastern Pennsylvania

The constant furor generated by writers regarding wire tapping, the placing of microphones, and the use of various electronic instruments is very amusing. Every time such articles appear, the public runs around like ants in a hill checking to see if they are being spied upon.

There does exist the possibility that some governmental and private organizations have utilized listening equipment at times, but I feel very safe in saying that

outside of the larger police departments, such as Philadelphia and Pittsburgh in Pennsylvania, the police departments would first not need the listening devices and secondly could not afford to include them in their budget.

Another fact that should be considered by the public is that with the present understaffed situation in every police department, there is no time to waste in tapping phones or homes unless that person is actively involved in crime. The police do not have the time, manpower, or interest to spy on what would be in the great majority of cases in a very dull life.

A great deal of publicity was given to the fact that the olive in a martini could be bugged with a toothpick. This brings us down to the situation that we must depend upon our suspect drinking martinis and not highballs or beer. The ridiculousness of the whole situation seems to appeal to the public's innate propensities to "cloak and dagger" stories.

At one time large police departments utilized wire tapping in proceedings against known racketeers, bookies, and gamblers. This was the only way in which law enforcement could pierce the "iron curtain" with which these overloads of crime surrounded themselves. It was the only way in which you could deal with the bookies who constantly used the telephone as their favorite method of operation.

Alleged civil liberty exponents protest that the legalization of wire tapping would mean that police could listen to a conversation between a man and his wife. I wonder out of the billions of conversations how many would even prove interesting let alone illegal.

The wiretap has been outlawed but the laws on the subject are ambiguous. I believe the federal law does not forbid the tapping of your telephone but rather the disclosure of information gained in such a way. Other states permit wire tapping if a court order is obtained in advance. I, for one, hope that this important weapon will someday be restored to the police, but in the meantime let us calmly analyze the various facets involved rather than to dread that someone will hear the grocery order, the conversation about Mary's mumps, or the fact that John's back is acting up again.

There is no doubt that the rights of people are guaranteed under the Constitution, but one of the rights is that they may be secure in their homes. I feel that one of the best ways of enforcing that security is to give police the means to apprehend the criminal.

[*Police*, November–December 1966, vol. 11, No. 2]

Sheltering Justice

(This editorial feature was prepared by Thomas F. McDermott, Second Vice President of the Police Chiefs Association of Southeastern Pennsylvania)

Policemen are called law enforcement officers, but are they really? Just when has the law been enforced? The law has been enforced when the law violator taken into custody is brought before the court and the penalty by law is involked against him. Police do not invoke the penalty of the law.

No one likes to be arrested unless he is a "nut." But the professional criminal does not particularly fear arrest if that is all that happens to him. Sure, it is a nuisance and a temporary interruption to his activities, but he doesn't actually fear it. Naturally he would rather not have it happen, but he is not afraid of it either. Just what is he afraid of? He is afraid of swift indictment and trial, not necessarily a greater severity of justice, but celerity, certainty and finality of justice.

The failure of justice in America, which largely makes for the present increase in crime, can only be consequent upon a widespread lack of respect for, and fear of, our country's laws, and that lack has its origin, in most part, in the American habit of "dilly-dallying" with the criminal.

God fearing, well-disposed men and women would still respect the rights of their fellow men even if there were no penal laws. The law violator cannot be coaxed in good conduct by any love of the law.

There is a great need in this country today for the law violator to have a fear of the penalties of the law. It is most essential to the efficacy of punishment as a deterrent, that the penalty follow swiftly upon the crime; that the suffering of the victim and the retribution of the wrongdoer should mingle as nearly as

possible. The public mind needs to connect the suffering of the prisoner with the wrong done his victim, or else the great unconcerned multitude will pity the present misery of the criminal and lose sympathy with the forgotten misery of the victim.

Penalties shorn of their deterrent or reformatory effect have for their imposition absolutely no jusification. If society is as well off when it waives a penalty as it is when it inflicts a punishment, then, no matter how mild the sentence, its fulfillment becomes in itself a needless cruelty. For that reason, when by lapse of time for any reason whatsoever, the punishment dissolves its connection with the offense, the deterrent, as well as the reformatory effects, are destroyed.

The time consumed by arrest, trial, conviction, sentence, new trial, appeal to State higher courts, new trial again, conviction, then appeal to Federal Courts or ultimately to the United State Supreme Court, or easy parole or probation after conviction, with easily flowing executive clemency, contitutes today in the United States, an injury to the law abiding citizen that is without excuse, defense, or parallel.

The purpose of punishment is not retribution, but for the deterrence of evil in others, and the reform of the criminal.

Just where do the rights of the criminal end, and just where does the safety of the public begin? And what are the rights of the poor forgotten third party—the bereaved family of a victim of crime?

It seems to this writer, that this is the heart of the whole subject of crime and punishment. I firmly believe that the criminals' rights extend up to, and including, a fair trial and constitutional disposition of *any* reasonable doubt—and no further.

Once convicted at a fair trial, with every reasonable legal resource exhausted, the convicted criminal *must* take his medicine. If he believes it is a bad medicine, then he should have thought of that before undertaking his crime.

The "bleeding hearts" pleas and argument that punishment neither makes amends to the victim, nor serves as a deterrent to other potential criminals, is pure hog wash. The whole point is that punishment is directed toward neither of these ends—it is society's retaliation against the wanton transgressor, and the punishment should be sure and swift. It is only common sense that a society which doesn't retaliate against the transgressor, has no backbone, no character, and no moral fiber.

The supreme need now of this country of ours is for a sheltering justice—justice for guilt or innocence, which shall be for the innocent a shield; for the guilty a resolute sword—justice which shall go undelayed, sure, and final in the fulfillment of its awards, as well as of its condemnations.

Mr. McDERMOTT. I have here an indication that the press in Philadelphia is backing us.

I have the editorials of various papers and cartoons that I would like to submit.

Senator McCLELLAN. The editorials may be printed in the record at this point, the cartoons will be made a part of the subcommittee files.

(The editorials referred to follow:)

[Times Newspapers, Apr. 1, 1965]

EDITORIAL VIEWS OF THE TIMES: WHO'S BEING PROTECTED?

The Times this week begins a brief series of articles on crime and how recent United States Supreme Court decisions are hampering efforts of police and the lower courts to protect decent citizens.

The author of these articles knows whereof he writes. Thomas F. McDermott was former Chief Philadelphia County Detective and presently is a vice president of the Police Chiefs Association of Southeastern Pennsylvania.

His thoughts reveal how frustrating it must be for a dedicated officer of the law to try to enforce that law.

He is disturbed, as no doubt you are, by the continuing unsuccessful attempt to stem the spread of crime.

It is particularly unfortunate that this frustration is the result of several recent decisions of the Supreme Court, our highest tribunal. Equally unfortunate

is the fact that neither Mr. McDermott nor we are able to do anything about Supreme Court decisions except to "burn" within ourselves.

Then, it follows, what is the solution?

The United States Supreme Court has the power to set the precedents. It also has the equally important power, and has exercised it in many recent cases, to change those precedents.

Let us hope for the latter event, so that law enforcement officers can have the feeling of having done a good job, and law abiding citizens can rest safely in their homes or be able to walk their city's streets without looking over their shoulders in fear of attack or worse.

[Philadelphia Inquirer, Jan. 17, 1965]

BRING THEM TO TRIAL

Justice delayed interminably is justice denied entirely.

The people of Philadelphia, viewing with consternation a rising wave of crime, are entitled to whatever comfort could be derived from knowing that suspects accused of criminal acts will be brought to trial with all deliberate speed.

This frequently is not the case. The city is witness to the sorry spectacle of defendants in criminal cases winning one postponement after another, often for reasons that appear transparent and unsubstatial. Meanwhile, the accused roam the streets, free on bail, and sometimes are arrested and charged with additional crimes while awaiting trial on earlier charges.

The instance of a Philadelphia man who recently won a fifth postponement of his trial on a series of burglary charges is a flagrant example. There evidently is no end to the technicalities that an enterprising defendant can come up with to stymie the wheels of justice.

Although the right of defendants to legal counsel in criminal cases has been made clear by the U.S. Supreme Court, it is not necessary in upholding the right, to allow the defendant to make a mockery of American jurisprudence. Presiding judges in the courts may insist on adherence to efficient procedures and reasonable deadlines in the selection of counsel and the preparation of cases. This should apply both to the prosecution and the defense.

Some years ago, while discussing the desirability of tempering law with sympathy, the eminent Justice Oliver Wendell Holmes observed that "it is still more desirable to put an end to robbery and murder."

This kernel of judicial wisdom would seem to have special application in present-day Philadelphia.

[Times Newspapers, Aug. 4, 1966]

TIMES EDITORIAL VIEWS: IS THERE NO PROTECTION UNDER THE LAW?

On Dec. 20, 1965, at 12:45 p.m., Policeman Thomas Jones observed two men carrying a large carton in North Philadelphia. There was something about the two men that aroused the officers' suspicion. The officer stopped the men for questioning and inside the carton was a large 17-inch portable TV set. After listening to their explanation of how the TV came into their possession and not being satisfied with it, the officer took the two men into custody.

Investigation was continued in police headquarters and at 4:25 p.m. the same day, John Maxwell, of N. 19th St., above Allegheny Ave., returned home and found his apartment burglarized and his 17-inch TV missing. Mr. Maxwell identified the television set the policeman had taken from the two men as his property, stolen from his apartment during his absence.

On the strength of the evidence presented before the magistrate there was little doubt as to the guilt of the defendants and they were held for the action of the Grand Jury. The Grand Jury found a "true bill" against the defendants and they were held for trial for court.

On June 30, 1966, the two defendants were brought up for trial before Judge David Weiss, of Westmoreland County, sitting as a visiting judge in the Philadelphia court.

The defendants' lawyer, from the Voluntary Defender's office, told Judge Weiss that in his opinion, this was an illegal arrest, basing this opinion on the grounds the officer had apprehended the two defendants before he knew a crime had been committed.

Believe it or not, Judge Weiss, after complimenting the officer for being so observant, agreed with the lawyer and discharged the two defendants stating: "There had been no crime reported at the time the men were taken into custody," and therefore it was an illegal arrest.

"In over 30 years in law enforcement, I never heard a decision such as this and I never believed I ever would," comments Thomas F. McDermott, former chief of County Detectives.

Judge Weiss apparently had based his decision on one of the many decisions which has been handed down recently by the United States Supreme Court.

A decision such as this has given a license to steal, rob, rape or murder with complete immunity, the only stipulation is that the crime must be committed without witnesses or without giving the victim the opportunity of reporting the crime.

"I wonder if the full impact of this miscarriage of justice can be realized by the public," Mr. McDermott says.

"Let us say you have just returned home after a two-week vacation and find your home has been burglarized. From neighbors you learn the police stopped several men driving from your driveway. The neighbors inform you the police questioned the men but having no complaint were forced to leave the burglars go.

"When you inquire at the police station as to why the men were freed, you are informed the police were powerless to search the car without a warrant and no warrant could be obtained without a complaint and as there was no report of a crime, they had to leave the men go free.

"This may seem ridiculous, but the decision was made in a Philadelphia court room based on, I believe, Judge Weiss' interpretation of recent U.S. Supreme Court decisions.

"I suppose the victim in this case, John Maxwell, should be happy Judge Weiss did not give the thieves his TV set."

For the past two years, almost weekly, the Times newspapers have called attention to the increase in crime. It is only in recent months that the daily papers have joined in the battle to make our persons, streets and home safe for all law abiding citizens.

Thanks to our splendid police force, the Greater Northeast is probably the most law-abiding section of Philadelphia. But it still isn't safe enough.

[Philadelphia Inquirer]

THE LEGALITY OF CONFESSIONS

With State and lower Federal courts at loggerheads over the use of confessions at criminal trials, it was as inevitable as it was desirable for the U.S. Supreme Court to pass on this question. The Court has agreed to do this, in reviewing appeals involving five indigent prisoners who were convicted on the basis of confessions.

In taking up this tangled issue, the Supreme Court will no doubt clarify the 1964 landmark ruling in the case of Danny Escobedo, of Chicago. Because Escobedo had asked to see his lawyer before confessing to the killing of his brother-in-law, and the police kept the two apart, the Supreme Court threw out the conviction.

But several questions were left unanswered by the decision. Does the right to counsel apply if the suspect does not ask to see a lawyer, or cannot afford to hire one? Are the police required to advise a suspect of this right at the instant of arrest? When, and under what circumstances, does a suspect's statement become admissible?

The U.S. Court of Appeals in the Third Circuit, embracing Pennsylvania, New Jersey and Delaware, held last month that a suspect must be told of his right to counsel, and to keep silent, immediately upon arrest. The New Jersey Supreme Court decided not to follow that decision, but the Pennsylvania Supreme Court felt itself bound by it.

If that had not furnished enough complications, the Second Circuit Court of Appeals, taking in New York, Connecticut and Vermont, has taken a diametrically opposed view to that of the Third Circuit Court in holding that a suspect does not have to be advised by the police, in the initial stage of an investigation, of his right to remain silent or to have a lawyer.

The majority opinion stated that it was 'highly undesirable to lay down a rule which would deprive the police of the opportunity to question suspects and to use such statements as are found to have been given voluntarily and to have been procured fairly."

The rights of a suspect must be protected, but the public has to be protected against the lawbreaker, also. Tying the policemen's hands in making an arrest and an investigation after the commission of a crime is not insuring the public's protection. A good many persons, on both sides of the law enforcement fence, will await with interest the Supreme Court's action.

[Philadelphia Inquirer]

Murder at the Corner Grocery

It was a few minutes before closing time Saturday night when a thug with a gun in his hand walked into the grocery at 13th and Dauphin sts., killed the proprietor and wounded his wife in an unsuccessful holdup attempt.

The tragedy and brutality of this cold-blooded crime are shocking. A life is snuffed out in less time than it takes to tell. A man who served as neighborhood grocer for 13 years, and had the courage to defend his family and property against armed intrusion, is dead.

Worst of all, the episode has an all-too-familiar ring. Crimes of violence upon the citizenry of Philadelphia in their homes and places of business and on the streets are common occurrences. Municipal officials and the public at large have been too complacent about it. Police, for the most part, have done a commendable job of catching the culprits but the courts, in far too many cases, are disposed to bestow leniency upon the convicted to a degree which we believe is very often unwarranted.

More sympathy for the victims and less for the criminals would help. Fewer second, third and fourth chances for vicious and unrepentant hoodlums would reduce the danger to law-abiding society. The entitlement of the public to be secure in their persons and in their property needs to be more vigorously safeguarded by increased police vigilance, by more forceful prosecution of defendants and by sterner judicial attitudes toward the guilty.

[Philadelphia Inquirer]

When the Police Are Handcuffed

Persons accused of committing crimes are entitled to full protection of their Constitutional rights. There should be no question about that. However, when these rights are interpreted in such a way that they are magnified beyond the bounds of reason and common sense, then the inevitable result is a mockery of the law and a shameful degrading of law-enforcement officers.

The public has rights, too. One of those rights is to be protected against criminal activity and to be assured that police are unhindered in carrying out legitimate investigative work to prevent crimes and to apprehend perpetrators of crimes.

There are increasing instances of suspects in criminal cases arrogantly assuming attitudes of defiance when taken into custody and harassing law officers with outrageous demands and insults.

In New Jersey, for example, a suspect in a murder case was not satisfied merely to be provided with legal counsel at taxpayers' expense. He demanded a lawyer with a national reputation and fame as a defense attorney.

The same suspect filed a number of complaints about inadequate lighting in his cell, insufficient changes of clothing while in jail, and the tardiness of prison officials in providing him with a toothbrush.

Are prisoners, henceforth, to be supplied with the last word in three-way, indirect lighting, conveniently placed next to an easy chair? Shall the well-dressed prison inmate of the future have a choice of suits—in color, styling, with vest optional and, of course, all selections available in double-breasted models, if desired? How about color television sets in all the cells—and don't forget curtains at the windows in the occupants' favorite designs.

The woes of law-enforcement officers begin long before the defendant gets to jail, if he ever does. In Philadelphia the other day a suspect in a morals case was found hiding in a clothes closet—hardly a place for a law-abiding citizen to be, when the police come calling—but he naturally had no explanations to offer after being informed of his inalienable right to say nothing.

In another arrest, pertaining to investigation of the loan shark racket, police found the suspect well prepared with a handy slip of paper setting forth his rights under the Fifth Amendment—a convenient item to fall back on, until the lawyer gets there.

To give defendants their full rights is one thing. To mollycoddle them, to fawn over them, to deliberately give them the upper hand and to place the police in a subservient position—that is unjustifiable nonsense.

It's time to take the handcuffs off the policeman doing his duty and put them where they belong.

[Times Newspapers, Oct. 7,1965]

TIMES EDITORIAL VIEWS: SPEED REQUIRED FOR TRUE JUSTICE

Justice delayed interminably is justice denied completely.

This is exactly what has happened in the Anthony Scoleri case. The people of Philadelphia, viewing with consternation and alarm a rising wave of crime, are now aware of a condition existing where instead of being brought to trial with all deliberate speed, indicted criminals are successful, through their legal mouthpieces, of having their criminal cases postponed over and over again; and in many cases the reasons are not substantial.

Finally, after many continuances and months and sometimes years later, the defendant may be found guilty. Immediately, justified or not, the merry-go-round begins, appeal after appeal after each conviction. Witnesses may die or disappear, or in some cases be threatened with bodily harm or worse. Then, in many instances, the Commonwealth has no case, and the convicted criminal walks out a free man, thumbing his nose at all those who caused his arrest.

The United States Supreme Court, as presently constituted, has probably had the greatest impact on the nation of any court in recent years, and in its position and thinking at least, of the five-man liberal majority. This five-man team has imposed a whole series of restrictions on police and lower courts in its dealing with suspected criminals and defendants.

The people in Philadelphia should not be confused when they read and hear of unusual court decisions. These are are not Philadelphia Court decisions. We in Philadelphia have courts to be proud of. Our Philadelphia judiciary is more qualified to pass on major criminal cases than any member of the United States Supreme Court.

Our judges, to a man, are all qualified to render judgment in any case before them. I am speaking of course of our veteran judges, and there is no doubt the recent appointees to the bench here will follow suit, as all were good, honest, qualified attorneys.

There are many people who do not know that of the present members of the United States Supreme Court, only three had prior judicial experience.

Major crimes of violence continue to mount. Murder, forcible rape, robbery and aggrivated assault climbed 15 percent as a group; while property crimes of burglary, larcency of over $50 and auto theft climed 13 percent. All crimes of violence are on the increase, and much of the blame can be placed on High Court decisions.

This overprotection of the individual, at the expense of the community, will lead either to a Utopia or Hell on earth.

Pity the businessman who seems to be bearing the brunt of increased criminal activity. If no one goes to jail for the crimes he commits, it seems only common sense that more people will be willing to take a chance and commit crimes.

The smart criminal knows he will have the benefit of restraints on the use of evidence at his trial. He knows he can appeal to the Federal Courts after his conviction in a State Court, and have a good chance of having his sentence upset.

Crime *is* paying, and the criminal is blind if he misreads or misunderstands it. So that the public understands. I repeat that local courts are compelled to follow the lead of the U.S. Supreme Court, and when "funny" decisions are handed down

in regard to illegal search or illegal detention of a prisoner, it is at the High Court's direction that this is done.

We have confidence that under President Johnson's determined effort to halt crime, and courts like ours in Pennsylvania and New Jersey, perhaps the pendulum is moving now in the other direction.

[Philadelphia Inquirer]

POLICE AND SUSPECTS: NEW RULES

The ground rules laid down by the U.S. Supreme Court in the police questioning of suspects go far beyond the scope of the landmark decision in the Escobedo case, and seem bound to have a profound impact on law enforcement.

The majority decisions handed down on Monday, reversing convictions for murder, armed robbery and rape, were based on the alleged absence of safeguards insuring that statements made by the defendants were truly the product of free choice.

The historic 1964 ruling in the Escobedo case extended the right of counsel to a suspect in a police station.

Monday's decision considerably broadens the rights guaranteed a person under arrest, and correspondingly restricts police interrogation and the use of confessions made by a suspect in the absence of a lawyer.

Chief Justice Warren declared that current practice of "incommunicado" interrogation is at odds with one of our Nation's "most cherished principles that the individual may not be compelled to incriminate himself."

So what is to be done when the police capture and arrest a person suspected of, say, murder, or rape or armed robbery?

The Chief Justice presents these guidelines for various situations:

The suspect must be warned, prior to any questioning, that he has a right to say nothing, that anything he says may be used as evidence against him, and that he has a right to the presence of an attorney—retained by him, if he so desires, or appointed for him.

If the suspect is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.

He may waive any of these rights, provided this is done voluntarily, knowingly and intelligently; and if at any subsequent stage of the questioning he wishes to consult with any attorney before speaking, there can be no further questioning.

Certainly, no arrested person should be deprived of any right guaranteed him by the Constitution. At the same time, it would be a pity, at a time of increased lawlessness, if more attention is given the rights of lawbreakers than the rights of the public to have effective police protection.

In a dissenting opinion, Justice Harlan said "I believe the decision of the court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell."

His warning has a somber ring.

[Philadelphia Evening Bulletin]

ADVISING THE SUPREME COURT

A certain sort of merit badge belongs to those who have the temerity to stick out their necks for the sake of causes which are not universally popular. For politicians—who must always keep their eyes on the main chance—such riskiness amounts to a redouble in spades.

Arlen Specter, the unusual district attorney of Philadelphia, is in the running as of now because of his forthright, and quite astounding dissertation to the U.S. Supreme Court.

Where most young lawyers on the make bring out the prayer rugs and face the Supreme Court building, Mr. Specter offered useful criticism of the fashion in which this august tribunal makes "fundamental modifications in constitutional law."

Mr. Specter made it clear that in simple modesty he does not pretend to superimpose his judgment above that of nine learned justices. He does wonder—along

with many a less coherent spokesman for the older kind of American pattern—if the justices themselves really know what they are doing, if the law would not be better rewritten by the Congress, as the Constitution proposed, than by men in an ivory tower who (though he did not put it this way) perhaps cannot see the woods for the trees.

The Philadelphia DA, not long aboard, has already enough experience to know that the rights of a defendant are not the whole story. His right to suggest that present practice takes a single grain and turns it into a wheat field is quite in accordance with recent history. The justices may not wish to pay any attention to a young lawyer from Philadelphia; but judicial honesty would demand that they do so.

[Philadelphia Inquirer, Aug. 14, 1966]

THE DECLINE OF MORALITY

There is a sickness...

A young man slaughters his wife and mother, and then proceeds to shoot to death 14 persons he never knew.

Another man invades a nurses' home and strangles eight young women, one by one.

In a two-county area along the New Jersey shore, four teen-age girls are found beaten to death in a period of less than a year.

Women raped and beaten and murdered, in their homes, in doorways and alleyways, at night-time and in broad daylight: each day brings its new, terrible account.

There is a sickness...

Racial hate and turmoil besiege the summer. There is a prevalence of terror on the streets. Rioting breeds violence, looting and destruction. Negroes stone whites, and whites stone Negroes in a never-ending charade. The steaming ghettoes send up their cries of despair: out of their miseries and frustrations comes the dangerous desperation of "Black Power."

There is a sickness...

What is right has given place to what is wanted. Contempt for the law is encouraged by those who say that laws are to be obeyed only if they do not get in your way. If you don't get what you want—demonstrate for it; stage sit-ins, sit-downs, lie-downs, or any other means of pressure and trespass you can think of. If you are a student, and you disagree with school policy—go on strike, picket the classrooms, take over the faculty buildings.

The upholders of law and order are treated by some as enemies. When the police do their duty at the risk of their lives, they are accused of brutality, while the real brutes shoot them down without giving them a chance. Court decisions hamper the law enforcer. Police are required to treat criminal suspects with elaborate courtesy, informing them—at the moment their victims may be lying dead at their feet—of their right to refuse to answer questions.

There is a sickness . . . Not physical sickness, not necessarily sickness of the mind, but a degeneration of the moral fibre: a decline of morality.

There are such things as law and justice and discipline and order, and they can still count if we want them to. But courage and integrity are required in the exercise of public authority—not supine yielding to the pressure groups of the moment. Young people need parental concern and guidance—not misplaced indulgence. Poverty, ignorance and intolerance can only be eradicated by the concerted forces of decency and goodwill.

There is a sickness in our society; but it can be overcome by a resurgence of the old-fashioned virtues, by reliance again on the basic principles of a civilized order: honesty, justice and charity toward all.

[Philadelphia Inquirer, Oct. 28, 1963]

POLICE AND THE PEOPLE

Philadelphia police have enough troubles trying to enforce the laws and arrest criminals without being harassed and assaulted by hostile bystanders and unruly mobs.

Public interference with policemen in their performance of dangerous duty was apparent in two ugly episodes over the weekend.

Three patrolmen summoned to break up a fight among teen-agers at a dance hall were beaten badly, requiring hospital treatment for multiple injuries, when dozens of youths turned on the police.

In another tragic affair a patrolman was threatened by a mob of bystanders after he had shot to death a shoplifting suspect who, in resisting arrest, is said to have brandished a knife and tried to escape. Police reinforcements rescued the patrolman but hundreds of persons subsequently gathered in the area. A patrol windshield was smashed during the disturbance.

A fatal shooting by a policeman is a serious matter under any circumstances and is subject to full investigation by appropriate authorities. Mobs in the streets, fed by rumors and uninformed of the facts, achieve nothing but disgrace.

Police are charged with the responsibilities of maintaining order and protecting the public against the lawless. Policemen engaged in the performance of these duties are entitled to public support and cooperation—more than they are now getting in Philadelphia.

We urge all citizens, and especially parents of teen-agers, to encourage by their own example a respect for the law and law-enforcement authorities. Responsibilities of the law-abiding public deserve attention in the schools, in the churches and in the homes.

[Philadelphia Evening Bulletin, July 24, 1966]

GANGS IN THE STREETS

A frightening aspect of the disorders in Chicago, Cleveland and New York is the involvement of apparently well organized youth gangs. The activity, and at times the leadership of these lawless bands strips from these outbreaks any legitimacy as a form of social or economic protest.

Those who, while not part of these troubled racial ghettos, seek to understand and try to help correct the housing and other conditions which stir unrest cannot help but be both repelled and discouraged by the activity of roaming groups of hoodlums interested only in violence for the sake of violence.

A tragic aspect of this is that those who live in these areas of discontent and who have in many cases set about with the help of officials to improve conditions will be the real victims if the gang influence continues. For it is they who must stay in these areas and make their way after the shooting, the looting and the arson ends and the police and the guardsmen and the gang members have gone away.

The real victims of Watts, Chicago, Cleveland and of North Philadelphia of a few years ago have been the great majority of the residents, law abiding and committed to decency, who have lived in the midst of terror. It is to them that authority owes an awesome responsibility.

The cause of this law abiding majority can be strengthened if city officials everywhere to eliminate, on an emergency basis if need be, the source of local complaints. There is, for example, no excuse at all for the hundreds of abandoned and stripped automobiles which dot—like festering sores—the streets of already congested neighborhoods.

Rubbish and garbage can be cleaned from the streets and lots cleared of debris without legalistic arguments as to who is to blame. Disorderly taprooms, often the breeding places of violence, can be the targets of stern police supervision. Streets can be adequately lighted even if this involves special, protective fixtures. Every available recreational area can be kept open and supervised. Housing and sanitation codes can be enforced with the full strength of the law.

These are perhaps mere surface things. But by eliminating such sources of local complaints officials can show their concern and win the support of the many against the few whose aim is anarchy, not protest.

[Philadelphia Inquirer]

A MENTAL PATIENT AND HIS GUN

"They should never have let me out of the hospital!"

That opinion reportedly expressed by a former mental patient—who bought a rifle in a New York City surplus supplies store and, a half hour later, shot down two strangers with it—would be hard for most people to deny. But the questions raised in this case are difficult to answer.

The gunman had entered the hospital voluntarily and had seemed to improve under treatment. He was described as quiet and even as "very nice" by neighbors. Hospital spokesmen said he was non-violent, and appeared to have "an understanding of his mental condition." For this reason they had referred him to a clinic for aftercare but had not felt it necessary to seek court order to hold him against his will when he decided to leave.

Perhaps medical science has not arrived at the stage where more infallible ways of dealing with the mentally ill are possible. Hospital authorities should be very careful, however, in cases like this and lean over backward in favor of the public safety rather than the other way around. The ease with which this man bought the weapon is another matter, however. The sale was apparently legal enough, yet it ought to be more difficult than this, it seems to us, for a former mental patient, one, in fact, supposed to be under treatment at the time to walk into a store and buy a weapon without meaningful objections.

Criminals, perhaps, will find a way to obtain guns in the face of legal restrictions. So will some mental patients. But, in this case and others like it, there is good reason to doubt that the killings would have occurred, if a tighter law had made the weapon more difficult to obtain.

Our citizens should not have to risk facing armed mental patients in the streets.

Mr. McDERMOTT. I have one more article here that I would like to submit, an article about a Judge Weinrott of our court who invites all of the Justices of the U.S. Supreme Court to come and sit with him in Philadelphia and listen to the cases as they are heard in a minor court and to secure knowledge and experience in knowing what the justices in the lower courts put up with.

(The article referred to as follows:)

WEINROTT INVITES U.S. JUSTICES HERE TO SEE IMPACT OF FREE-COUNSEL RULE

Judge Leo Weinrott said yesterday he would like to invite the justices of the U.S. Supreme Court to sit on the bench with trial judges in cities such as Philadelphia, New York and St. Louis to observe the effects of one of their decisions.

Judge Weinrott was referring to the March, 1963, Gideon vs. Wainwright ruling of the high court. It requires that indigent criminal defendants be given legal counsel.

His comments were inspired by the case of a man sentenced in 1947 to a 13½ to 27 years for robbery and assault and battery by the late Judge Harry S. McDevitt.

The prisoner, Clarence Gilbert, now 37, spent ten years at Farview State Hospital for the criminal insane.

RAISES QUESTION

Now he asks a new trial, claiming he was not represented by counsel.

Assistant District Attorney Harold L. Randolph told the judge Gilbert now contends police beat him to obtain a confession.

Judge Weinrott said Gilbert's plea raises the question whether he's entitled to a lawyer for a habeas corpus hearing.

"If he's right and the Supreme Court of the United States is right—and I don't have to agree with them—raising the dead is causing havoc," the judge said.

"If someone asks for commutation or parole," he added, "you'd have to supply a lawyer at every stage of the proceedings.

NOT ENOUGH LAWYERS

"This is just sheer, absolute, unadulterated nonsense," he declared.

The judge said he questioned the 5–4 decision of the Supreme Court.

"I'm bound," he stated, but queried: "How far am I bound?

"One thing I'm sure about," he added.

"It wouldn't hurt if whoever sits on the highest court sat up here—Philadelphia, New York, St. Louis—and see what's happening—maybe we'd get a slightly different viewpoint.

"Somebody has to be alerted here—there is no end to anything," he declared.

"There's not enough lawyers in Philadelphia," he said.

He took the plea under advisement.

Mr. McDERMOTT. I submit my entire prepared statement.

(The prepared statement submitted by Mr. McDermott reads in full as follows:)

PREPARED STATEMENT OF THOMAS F. MCDERMOTT, 1ST VICE PRESIDENT, CHAIRMAN PUBLIC RELATIONS, POLICE CHIEFS ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA

Thank you, Senator, I appreciate the courtesy of your committee and the privilege of appearing before you. Mr. Chairman and members of the committee, I am Thomas F. McDermott, and at the present time, I am the 1st Vice President and Chairman of Public Relations for the Police Chiefs Assn. of Southeastern Pennsylvania. This association has a membership of over 600 active police and security officials. The area covers the southeastern part of Pennsylvania, the southern part of New Jersey, and the entire State of Delaware.

It is in this capacity that I appear before you today, and may I say that I come before this committee with more than thirty years of law enforcement background. I have walked a beat as a policeman, operated a police patrol car, later promoted to the rank of detective, then to sergeant of detectives, lieutenant of detectives, and then to Chief of Philadelphia County Detectives. I have commanded the Burglary Squad, the Narcotic Squad, and later the Commissioner's Squad, and I considered it a distinct privilege to have been a member of one of the finest Police Departments in the United States. For more than 27 years, I have been assigned to the detective branch of the Philadelphia Police Department, working in close cooperation with the District Attorney's Office and the courts. In citing my police experience, all I am trying to do is convince this committee that I have sufficient qualifications to testify on the conditions confronting the law enforcement officer today.

I have made arrests and have investigated practically every type of crime that can be mentioned and in the prosecution of these cases. I have spent a good part of my police years in our courts. So, Mr. Chairman—may I say on behalf of the Police Chiefs Association of Southeastern Pennsylvania, I am proud to stand up and be counted on the side which is for the best public interest. I wish to go on record for our association and police organizations from the entire Delaware Valley area which our association covers, that we favor all the bills introduced by Senator McClellan designed to improve and promote efficient law enforcement. Especially, Bill S. 674 to amend Title 18, United States Code, with respect to the admissibility in evidence of confessions; the other Bill, S. 917, better known as the "Safe Streets and Crime Control Act of 1967." We honestly consider this proposed legislation one of the most important matters to come before this Congress.

Mr. Chairman, as the 1st Vice President of the Police Chiefs Association and a member of the International Association of Chiefs of Police, it has been my pleasant duty to exchange views with Police Chiefs from all over the United States. They represent every state in the Union. They are dedicated professional police officials—conscientious thinking men. These men work closely with the District Attorney or Prosecutor in their respective areas and are guided by their directives, but like the police, the prosecutors too are troubled and confused by the decisions of our high courts, and a great many have expressed themselves through the news media.

A recent decision of the United States Supreme Court, known as the "Miranda decision," has been published, discussed, and projected for the future on many occasions. When this decision was recorded, it became the law of the land, and we are duty-bound to acknowledge it and its meaning. *But*, this does not mean, however, that in the free flow of communication, well intentioned and responsible persons who work in the field of law enforcement must remain silent when experience and practice dictate otherwise in the face of these far-reaching decisions.

Mr. Chairman, the members of our association have designated me to relay to you their alarm over the many "far out" decisions handed down by our High Court, and that the "*Mallory, Escobedo, Mapp, Massiah*, and the *Miranda* decisions representing American Judges' rules reflect a deep seated distrust of law enforcement officers everywhere, totally unsupported by relevant data or current material based upon our experience." These words, Mr. Chairman, are not mine;

they are the words of Mr. Justice White who wrote a scathing minority opinion in the *Massiah* and *Escobedo* decisions.

The Police Chiefs Association of Southeastern Pennsylvania, through its President William F. Riempp, Chief of Police of Bensalem Township, Pennsylvania, join Mr. Justice White and others in their fear of any extension of the doctrines enunciated by our U. S. Supreme Court. We, the members of this police body, take no backward step for any group when it comes to the zealous protection of the defendant's rights. We do not question the rights of defendants to have counsel—we encourage it and we wish to go on record to hope the program to protect the indigent is increased. Under no circumstances would we take unfair advantage of a defendant prior to arrest and during the actual trial. We fail to see how anyone can thrill or take pride in an unfair advantage over any arrested person. We applaud any court for having the courage to set aside such convictions. *But*, from the corrective plateau of a given case, we feel their great and unwarranted intrusions on those charged with the enforcement of law have resulted and have without any doubt, hampered seriously, the police in their fight against crime. We agree that new methods and techniques can be utilized; but a trend which gives the criminal a protection against normal interrogations submitted to willingly, and/or statements voluntarily given, is a trend which has "crippled law enforcement" and made our task a great deal more difficult for unsound and unstated reasons, which can find no home in any provision of the Constitution.

Mr. Chairman, I think we would be remiss in our duties if we did not vocally try to the best of our ability, to inform the Court that these decisions deserve another full look in some effort to equalize society with the individual.

We believe the procedural safeguards of our Constitution are designed to prevent the innocent from unjust or erroneous prosecution and conviction. They were surely not meant to allow the guilty to delay or evade their just deserts, except insofar as is absolutely necessary to protect the innocent. In its emphasis upon such safeguards, the Supreme Court has, however, lost sight of this fundamental principle and has, in effect, said the laws are to be interpreted so that the guilty shall have the maximum opportunity to escape the punishment that law decreed.

Mr. Chairman, the newspapers reported recently that President Johnson was "Worried" over the increase in crime and lawlessness sweeping the country. On May 20, last, Attorney General Ramsey Clark was quoted in the press as saying that the "level of crime has risen a *little* bit, but there is no wave of crime in the country." To say the least, this is confusing. Another misconception that is heard frequently is that just as soon as the police use what scientific methods that are now available, they will be better able to cope with the crime problem. This is utter nonsense—T.V. shows and the movies with their super sleuths have led the public to believe that all the police need to do when there is a rape in an alley or a murder or an assault on a street is to use "scientific methods" to search for clues in tracking down the perpetrator of the crime. This is pure fiction. There are very few cases in which this can be done.

Scientific methods can help clinch a case once you get your suspect. *But*, gentlemen, let me tell you when there aren's any clues and you have nowhere to go, there is only one method that can help, and that is the method that we all use from the F.B.I. down to the newest police recruit—"The Informer", and gentlemen, without information—we are lost. After the information is secured, you look for and find your suspect and interrogate. If help is not received by law enforcement permitting them to question suspects, or if the evidence obtained is thrown out in court, then, Mr. Chairman, all the money in the world or all the scientific equipment now at hand is not going to prevent the criminals from being turned loose on society.

We are not discussing people whose guilt is in doubt—I am speaking of murderers who led police to a body they buried after the murder—I talk about drug peddlers caught with the drugs in large quantities in their possession. I am speaking of rapists who made written statements and turned over to the police, stained clothing for analysis. These are the people who are freed and turned loose again on society on nothing but technicalities. Scientific equipment? What about wiretapping—this needed device for the effective fight against crime?

Again, our Attorney General is against this also. He has taken a stand against wiretapping. Gentlemen, I used wiretapping, and I used it successfully in apprehending many top narcotic peddlers—Yes, I used it while working with San Dash, former Phila. District Attorney, and the author of the "Eavesdroppers"

who *was* a strong advocate for court-permitted wiretapping. We never, under any circumstances, tapped the wires of anyone not violating the law. I ask—How can wiretapping under court order be condemned? The "CIVIL LIBERTARIANS"—on one hand—want everyone to go along with court decisions, and on the other hand—they state the courts cannot be trusted in controlling wire tap requests by police.

Wiretapping is needed under court control and should be permitted under strict supervision of the courts, with heavy jail sentences for willful violations.

Mr. Chairman—Police all over our nation are worried and confused and to a man, look to you and your committee for help. Our Association wishes to extend our appreciation to you and your splendid committee for your untiring efforts to save America in the fight against the criminal and his allies.

Now, may I comment on Bill S. 917. Mr. Chairman, we can proudly say that Philadelphia was the first city in the United States to anticipate favorable congressional action on Senate 917 by creating the Phila. Law Enforcement Planning Council. This agency is developing the comprehensive plans for improving law enforcement at all levels. It is not just another agency; it is unique because the nine member planning council is appointed by the Mayor, the President of City Council, and the Administrative Judge, thus, making it responsible to the three branches of government. Its initial funding has been provided by the City of Philadelphia, but its program can be carried out only if the Congress acts favorably on the "Safe Streets and Crime Control Act of 1967."

We can undertake the wide variety of steps that need doing promptly. In our police departments, we are desperately in need of an Operations Research Program to speed up decision making under all circumstances. We desperately need management studies of our courts to improve the quality of Justice. We know that we need dozens of other improvements, but we are chiefly interested in innovations, any one of which might mean more than all of the things we have been doing for years. The introduction of the computer in police work is going to require careful adaptation of this science to a wide variety of police functions. One of them is currently under study in Philadelphia.

The use of the computer has a potential in predicting crime, but this, in itself, is only the beginning. Philadelphia, like every other city, has a great deal to learn if we are ever to have effective law enforcement, and we look on the "Safe Streets and Crime Control Act of 1967" as the means by which we can learn. The text books have been written by the President's Commission. We, who are expected to apply that learning in our day-to-day operations in law enforcement, must have the help which this Congress provides. We beg of you to do your utmost in securing the enactment of this much-needed legislation.

We in our Association endorse the suggestions made sometime ago by Daniel Gutman—Dean of the New York Law School when he advocated the following steps be taken:

1. Enactment by Congress of legislation to permit wiretapping, pursuant to court order, for evidence of *major crimes*.
2. Recodification of procedural requirements for search and seizure which are distinctive for ancient strictures no longer valid. (Some advancement along this particular area was made by recent Supreme Court decision.)
3. Extension of the right to detain and interrogate with proper safeguards against coercion or violation of constitutional rights.
4. Clarification of the extent and application of the "right to counsel" concept.
5. Relaxation of the rule excluding all evidence improperly obtained, so as to vest discretion as to admission in the trial judge.
6. Convening an extraordinary session of ranking members of the judicial, legislative, and executive branches of the Federal Government for thorough consideration of the problems of law enforcement.

Mr. Chairman, this is a challenge to the bar, the law makers, and the public. The executive and the judiciary *must* cooperate. This is a responsibility of everyone.

The members of our association are extremely proud of our Judges in the lower and the high courts in our respective states, and we believe our District Attorneys are second to none, and we ask this question—Can all the lower courts be accused of disregarding the rights of arrested persons? Can all of our State High Courts be wrong in their interpretation of the law? Can only the five Supreme Court Justices be right?

In conclusion, we believe that during this era of conflict between our Supreme Court and the entire structure of law enforcement, it is incumbent upon all of us to remain steadfast in our obedience to the mandates of statutory law and judicial decision. In that this is a government of laws, and not of men, these divergencies will be resolved through democratic processes. We firmly believe that the vast number of the citizens of our great nation desire a strengthening of the hand of law enforcement. The protection of individual rights demands the effective enforcement of our laws for, otherwise, just who is going to protect the weak from the strong? We are all confident that all this can be accomplished within the framework of the Constitution of the United States of America.

So, Mr. Chairman, let's unite in a spirit of confidence, courage, and determination as we await the dawn of a new tomorrow—Let us ask those five "ultra-liberal" Justices of the Supreme Court to please join us.

Voted upon and approved by entire Executive Board and membership, this 15th day on June 1967.

Approved and signed by:

WILLIAM F. RIEMPP, JR.,
President.
THOMAS F. MCDERMOTT,
1st Vice President.
BENJAMIN F. CAIRNS,
2nd Vice President.
JOSEPH A. BONNER,
3rd Vice President.
CLARENCE R. KULP,
Secretary.
LOUIS F. REALEY,
Treasurer.
HARRY A. NORTON,
Sergeant-At-Arms.

Mr. MCDERMOTT. Thank you for inviting me, Senator. We, in our association, appreciate it. And, again I say, we know that you are doing an excellent job and you are working right directly with law enforcement.

Senator MCCLELLAN. Thank you very much.

I want you to know that the committee appreciates the support it is getting from the public. Unless the public supports us, there is no prospect of passing laws to remedy these conditions. We must have public support. I am not wedded to any actual bill or provision of law except that which we can draft and revise and agree upon that will be effective. But I am unwilling to run from the issue, to refuse to meet the challenge. We have got to recognize that there is an enemy, and we have got to combat it. As I said a moment ago, I have no political ambitions. I do not have to run for office again. If I am working this hard, it is because I am misguided or I am dedicated to the principles that are fundamental to this Nation.

Thank you very much.

The next witness is Mr. Milton Rector.

Be seated, and identify yourself.

Do you have an associate with you?

Will you please identify him?

Mr. RECTOR. I am Milton G. Rector, and I am director of the National Council on Crime and Delinquency. It is a national service organization in the field of delinquency. This is Mr. Mark Furstenberg. I asked my associate to join me, because the national council has just opened a National Capital office in Washington in order that we might be a better resource to the Senate and the Congress through our international information center on crime and delinquency through

which some 60 countries now register all research and development demonstration projects going on in this field, and our own research, and, more important, the work of this agency which is now dedicated to involving the public and informing the public in various specific ways.

Senator McCLELLAN. All right. Mr. Furstenberg, will you identify yourself more fully as to what your connections are?

Mr. FURSTENBERG. Yes, Senator. I was here in Washington in a variety of capacities. I worked for the study group, the Presidential study group which developed the domestic Peace Corps, now known as VISTA—the program now known as VISTA. I worked for the President's Committee on Juvenile Delinquency, and I was on the White House staff under President Kennedy, working on projects of crime, delinquency, and poverty.

Senator McCLELLAN. Very well, you may proceed.

Mr. RECTOR. I have a statement, and in respect to your time ——

Senator McCLELLAN. The statement may be printed in the record in full. You may proceed.

Mr. RECTOR. Thank you.

I would like to make two or three points very briefly.

STATEMENT OF MILTON G. RECTOR, DIRECTOR, NATIONAL COUNCIL ON CRIME AND DELINQUENCY; ACCOMPANIED BY MARK FURSTENBERG, ASSOCIATE, WASHINGTON, D.C.

Mr. RECTOR. Having listened to the problems of sentencing and punishing those who are guilty, while it does not obtain to the legislation pending today, I wonder if we might submit for the committee's consideration in the Federal criminal law, a model sentencing act which has been developed by the Council of Judges of the National Council on Crime and Delinquency?

Senator McCLELLAN. Yes, you may submit it here, and I will have it marked as an exhibit for reference.

Mr. RECTOR. Thank you.

This introduces a new concept in penal law that after a person is convicted, with all the protection of due process, that then there could be a hearing on the basis of dangerousness and long extended terms could be given to persons who could be proved on the basis of their past record and criminal involvement on the point of sentencing and on the evidence which could not be introduced at the time of the trial leading to the conviction.

Senator McCLELLAN. Is that what we have probation officers for? To gather up this information? Are they failing?

Mr. RECTOR. We need a different kind of law, Senator. For example, within the last month one of the kingpins in organized crime in a gambling syndicate in Westchester County, N.Y., has been convicted in violation of the Federal Gambling Tax Act. He received a sentence upon conviction, of 1 year and a fine of $5,000. Had there been a "dangerous offender" statute available to the courts, it then could have been introduced in sentencing this man who made the majority of his money from extra-legal activities, that he had a long criminal record, that he was indeed a dangerous person to society and that so-

ciety could be protected from him best by long incarceration in the penal system.

Senator McCLELLAN. Would we make this apply to all penalties?

Mr. RECTOR. Yes.

Senator McCLELLAN. Where, after conviction and before sentencing, the court could order a hearing as to his character, his activities, his past record?

Mr. RECTOR. Right,

Senator McCLELLAN. Particularly, his criminal record?

Mr. RECTOR. Right.

Senator McCLELLAN. And have a hearing on that?

Mr. RECTOR. And the model sentencing act provides what we think is the beginning of the criteria for dangerousness that can be introduced in the law and should be tested. Because we feel that this is a necessary law in dealing with some of the problems of the sexual psycopaths that prey on children and women and the problems of the crime characters, organized crime characters, whom we all know get short sentences.

Senator McCLELLAN. And the professional burglar.

Mr. RECTOR. Many who come in are within habitual criminal statutes, but the jury will not find—you could, at the time of sentencing, introduce evidence that here is a person with a personality disorder and, in my business, which is correction and rehabilitation, we frankly do not know how to rehabilitate some people, and those in organized crime, the profit is so great, we would fool the public if we tried to suggest we could rehabilitate them.

Senator McCLELLAN. I think some of them are beyond redemption. I think they go so far as to forfeit their rights to liberty, and I am for incarcerating them after they have demonstrated that they have no regard for society or are not interested in performing or becoming good citizens. Where they commit heinous crime, I believe in putting them away.

Mr. RECTOR. I believe in the testimony of a man I respect very much, Frank Hogan, where he said that this is indeed a war against an internal enemy.

Senator McCLELLAN. This editorial that I referred to awhile ago—I just glanced at it—is entitled "Phony War on Crime."

I am saying to you that we are only kidding ourselves if we think that by going out here and spending some money, that that alone is going to solve the crime problem. We have got to be able to convict criminals, punish them, and take them out of circulation. As long as they are in circulation, society is imperiled by their presence.

Mr. RECTOR. The tragedy is: Some of the most dangerous, those involved in organized criminal activities, are getting the shortest sentences and lowest fines.

(The document referred to is in the subcommittee files.)

Mr. RECTOR. I am here today to support the safe streets and crime control bill.

With the exception of a few large cities, they do not have access to crime laboratories needed to assist them. Maybe such a State certified agency would provided guaranteed confidentiality of the tapes that seem to give the courts some difficulty in the taping and eavesdropping.

Also in the field of correctional administration and rehabilitation, I point out that State and local governments are now spending $1 billion a year. This confirms the need for this legislation, because the National Council on Crime and Delinquency conducted a nationwide study of correction in the United States for the President's Crime Commission and we found that State and local governments plan to spend, by 1975, $1.135 billion (in the next 8 years, this is) for additional jail and institutional facilities. This kind of expenditure needs the kind of planning which is not now taking place at State and local government levels, and this legislation would provide encouragement and incentive for planning the correctional facilities in concert with law enforcement and with the court part of the system for the administration of justice, and I will give just a few examples of what is happening now.

There are cities that have adequate city jails, and they are now building new county jails where one facility could serve both the city and county.

There are cities, small cities, planning to build new jail facilities where the State correctional systems should better provide a regional facility that would serve a number of small communities in a region and at the same time provide regional diagnostic centers for all the criminal courts in that particular region.

In the area of Federal-State relationships, I know the States of New Mexico, Oklahoma, and Kansas have a special need for the criminally insane, a special institution. None of these States have sufficient offenders of this type to justify a well-developed, well-staffed institution. There is a real need at the request of the States, and it could be done in the provisions of this bill for the Federal Bureau of Prisons to provide a regional facility in that area which could serve both State courts and Federal courts; also, in the States of Montana, Wyoming, and Idaho, where these States have the money to build a penal institution they can build only one. That is all they can afford, and while they only have 10 percent that requires security, it will be an expensive institution.

In this area, too, a regional security institution constructed and operated by the Federal Bureau of Prisons could also provide diagnostic service to both the State and Federal courts for assistance in sentencing and could provide a quality of career personnel no one State could attract or afford.

The Federal court in Cheyenne, Wyo., now sends a Federal offender down to the Federal institution at Lompoc, Calif., for up to 90 days' observation and returns him for sentencing. But the criminal court has in Cheyenne, no diagnostic centers available. In more populous States, such as Pennsylvania, New York, and California, a new kind of Federal-State relationship, which will be possible under this act, would permit Federal courts also to sentence to State institutions and so provide a total new role for the Federal Bureau of Prisons to play in concert and in support of state services.

So, we very much support the bill, very strongly, through our affiliate bodies, and if we can provide any additional information, we will be glad to do so.

Senator McCLELLAN. Thank you very much, Mr. Rector.

(The prepared statement submitted by Mr. Rector reads in full as follows:)

STATEMENT BY MILTON G. RECTOR, DIRECTOR, NATIONAL COUNCIL ON CRIME AND DELINQUENCY

The National Council on Crime and Delinquency strongly supports and urges the passage of the Safe Streets and Crime Control Act. This support was authorized by action of the NCCD Board of Trustees meeting in Washington, D.C., on May 3, 1967. The Act has been endorsed also by NCCD's 18 state citizen councils of prominent business, labor, and civic leaders. It has also been endorsed by our Professional Advisory Council of 170 of the Nation's leading authorities directing state, community, and Federal juvenile and adult correctional systems and by the fifty jurists representing all levels of courts in America who serve on NCCD's Council of Judges.

The recommendations of the President's Crime Commission report and the import of the Safe Streets and Crime Control Act to the successful implementation of those recommendations were major issues considered by some 2,500 court, law enforcement, and correctional authorities and informed citizens convened at NCCD's National Institute on Crime and Delinquency June 11 to 14, 1967, at Anaheim, California.

I mention the above to underscore that substantial Federal leadership and assistance is helping state and communities to control and prevent crime and delinquency is considered an urgent need by informed laymen and professionals from all sections of our country.

The survey of Corrections in the United States conducted by the NCCD for the Crime Commission revealed that major changes will come about only when correctional planning is related to planning for the rest of the criminal justice system. Effective change will come about only when state and local planning is related to Federal planning.

For example, state and local governments are now planning to spend by 1975 $1.135 billion for new detention and correctional institutions. To operate these proposed new facilities will cost at least $200 million annually over the $800 million currently being spent.

Unless some effective means of encouraging comprehensive planning can be offered soon:

State correctional systems will continue to build institution cells when better training of judges, improved sentencing, probation, and the development of residential centers for offenders would make additional cells unnecessary.

City and county government will continue to construct and operate separate jails where one facility would serve both city and county.

Jails for detention purposes will continue to be overbuilt because planning does not take into consideration remedies for court sentencing delays and bail reform.

Jails and short-term correctional institutions will continue to be constructed to house the thousands of mentally ill and alcoholic cases when both these persons and the construction funds should be diverted to departments of health and hospitals.

Small cities will continue to build new jails when the state correctional system should provide regional detention centers for detention, diagnostic and presentence studies for all courts within that region. (Also the planning for such detention centers for children and for adults could be related to the current state plans for community and regional mental health centers.)

States should be encouraged to consider in their correctional plans how the changes in criminal law to provide special criteria for sentencing dangerous offenders can greatly reduce the number of maximum security institutions required in the future and require an extension of diagnostic and detention centers for state and Federal courts.

States planning prison industries and industrial training in their institutions should be encouraged to consider how construction and relocation of residential-type correctional centers near communities with private industry and educational facilities can permit greater use of release programs for education, training, and work and greater participation by labor and private enterprise in correctional training programs. This will vastly reduce the cost now being projected for large and geographically isolated security institutions and prison industry equipment that can be out-of-date within a short time after its installation.

Comprehensive planning in the juvenile and criminal justice systems should encourage new planning and program relationships between Federal and state correctional systems.

For example: Youngsters from many states are not diverted from the Federal courts and correctional system because the state juvenile courts, dentention and correctional institutions are far below standard. A strong Federal leadership program, as envisioned in the Crime Control Act, should provide grants, standards and technical assistance to bring the state systems up to standards of excellence and to eliminate direct Federal services to juvenile and youthful offenders.

States such as New Mexico, Oklahoma, and Kansas have a desperate need for special treatment institutions and clinical personnel for mentally ill offenders. The small numbers of such offenders in any one of these states does not justify building and staffing a specialized facility. And it is not reasonable to expect the states to develop a compact for the joint construction and operation of a regional institution.

But the Federal Bureau of Prisons and National Institute of Mental Health have the expertise and career plan by which top flight personnel could be assigned to construct and operate a regional institution to serve such a group of states.

When predominately rural states such as Wyoming, Montana, and Idaho build a correctional institution they can only justify one—and it will be an expensive security institution for all inmates although fewer than ten percent require security. A regional security institution constructed and operated by the Federal Bureau of Prisons could also provide diagnostic service to both the state and Federal courts for assistance in sentencing and could provide a quality of career personnel no one state could attract or afford. At the same time the availability of such a regional security institution would enable the states to impose their correctional services for the majority of offenders who do not require maximum security.

The Crime Control Act would also assist the more popular states—those which do have offenders sufficient to justify widely diversified systems—to upgrade their correctional systems. These state systems could serve Federal as well as state courts. Thus all offenders could be rehabilitated as close as possible to their home communities.

We would urge that the legislation require the coordination of all local government planning and operations with appropriate state planning and administrative agencies. While the NCCD does not recommend that state officials have veto powers over community planning and programming, we are of the opinion that failure to require and obtain state recommendations by the Federal granting agency on all local government plans and requests for grants under this legislation would result in a continuation of uncoordinated ineffective, and understaffed local government law enforcement, courts and correctional systems when metropolitan or state operated and staffed regional services and facilities could provide much more effective machinery and personnel for the war against crime.

Senator McCLELLAN. Mr. Furstenberg, do you have any comments?

Mr. FURSTENBERG. No, I have no comments. My job is to bring you the experts and to work with your staff in any way I can be of assistance.

Senator McCLELLAN. Thank you very much. I would like to see a more uniform punishment prescribed and administered.

Obviously, there are many gross discrepancies and inequities in the punishment that is meted out for the same crime in different localities—even within the same jurisdiction by different judges. It is a very imperfect system that we have.

Mr. RECTOR. We found many indications of people who were not dangerous who could be rehabilitated in the street or in the prison and indications that many who were dangerous being placed on probation.

With your permission, I would like to send a copy of model sentencing act as an exhibit and, hopefully, for the future attention of this committee for legislation.

Senator McCLELLAN. Thank you very much.

Mr. Broderick and Mr. Speiser, come forward, please.

Gentlemen, I am not insisting that you testify together, but you are the last ones representing the same organization, so I have called you, and I am not trying to say which one should testify first.

Each of you may identify yourselves for the record.

Mr. BRODERICK. My name is Vincent L. Broderick. I am an attorney, practicing law in New York City.

From 1961 to 1965, I served as chief assistant U.S. attorney for the southern district of New York and from 1965 to February 1966, as police commissioner of the city of New York.

I am testify today on behalf of the American Civil Liberties Union with respect to S. 917.

Senator McCLELLAN. Mr. Speiser?

Mr. SPEISER. I am Lawrence Speiser, director of the Washington office of the American Civil Liberties Union, and I will be testifying on the three bills affecting the admissibility of confessions, S. 674, S. 1194, and S. 1333; and on the one bill on wiretapping, S. 675.

Senator McCLELLAN. Very well.

Mr. Broderick, will you proceed first?

Would you be interested in having your prepared statement placed in the record in full and highlight it as you choose?

Mr. BRODERICK. Yes, Senator, I would appreciate it if you would include my statement in the record.

Senator McCLELLAN. It will be printed in the record in full.

(The prepared statement submitted by Mr. Broderick reads in full as follows:)

STATEMENT OF VINCENT L. BRODERICK ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION

My name is Vincent L. Broderick. I practice law in New York as a member of the firm of Phillips, Nizer, Benjamin, Krim, & Ballon. From 1961 until 1965 I served as Chief Assistant United States Attorney for the Southern District of New York, and from 1965 until February, 1966, as Police Commissioner of the City of New York.

I appear today on behalf of the American Civil Liberties Union, to testify in support of S. 917, which would enact into law the "Safe Streets and Crime Control Act of 1967."

The prime interest of the American Civil Liberties Union is, of course, the protection of the civil liberties of all Americans, whatever their race, color, or religious or political persuasion, however unpopular the causes which they espouse, and whatever language they speak.

We recognize, however, as indeed we must, that civil rights and civil liberties cannot exist in a vacuum: a necessary pre-condition for the enjoyment of civil liberties is a climate of law and social order within which those liberties may be exercised. Liberty in a lawless society is an anomaly; it exists only for those who are strong enough to claim it, and the exercise of liberty by the strong, in such a society, inevitably entails the reckless destruction of the rights and liberties of the weak.

But law and social order in and of themselves do not insure that civil liberties will flourish—Nazi Germany, Communist Russia and modern Spain are witness to the contrary. Law and social order, to be meaningful in a democracy, must be oriented to concepts of individual liberty, and those who are sworn to uphold law and social order must accept without cavil those concepts. In the context of the 1967 United States we must have, in each of our urban complexes, a police force which is alert to the threat which violent crime poses to the freedom and the liberties of the citizens of that municipality; which has the capacties to contain that threat to the extent that it can be contained by an in-

telligent police presence; and which at the same time is oriented to the principles of American democracy.

The ACLU supports S. 917 because it will lend badly needed Federal assistance to the development of effective and properly oriented law enforcement efforts in those municipalities which do not presently have them; and it will lend badly needed Federal assistance to the strengthening of the law enforcement efforts in those which do. And I anticipate that S. 917 will encourage cooperative efforts between law enforcement and other resources of society to solve problems which cannot be solved through law enforcement efforts alone. And this is vital, because even the most imaginatively and intelligently administered police effort can only prevent some violent crime.

Much of the violent crime which besets our society takes place outside the practical or constitutional reach of preventive police action.

Thus some 50 percent of our municipal homicides occur in family contexts: husbands killing wives, parents killing children, etc. Another sizeable proportion of municipal homicides—perhaps 30 percent—involve acquaintances. Most of these homicides involving people known to one another occur indoors, in houses, tenements, bars, outside of the reach of the most carefully planned and pervasive preventive police patrol. Violent assaults follow the same patterns—more than two-thirds of them involve assailants who are related to, or know, their victims. And undoubtedly more than half of our municipal rapes involve victims who know their assailants. This type of familial and spontaneous violence is a societal problem, with social, economic and environmental roots. Much of it stems from the conditions of poverty and discrimination under which so many of our fellow citizens live, conditions which cause so many of our fellow citizens to be disoriented from the aims and purposes of our society, and to live among us without purpose in the present, without hope for the future. Unless we help these deprived citizens to help themselves—unless we provide for them decent and meaningful educational opportunities, adequate housing, and meaningful employment opportunities—then we can expect violent crime to continue.

Our efforts in the law enforcement sphere must be matched by meaningful effort to insure that all of our fellow citizens have a substantial stake in our society, and that they have the means at hand so to develop their own resources that they can achieve status and personal dignity and a proprietary interest in the health of that society through their own efforts.

THE SCOPE OF "CRIME ON THE STREETS"

Our support for S. 917 is predicated upon the conviction that, intelligently administered, it will make a major contribution toward the promotion of a more peaceful climate in our changing cities. But let me stress that this support is not predicated upon acceptance of the bromide of a national crime wave.

There is danger on the streets of many of our cities today. But in every city it tends to be danger which has been magnified by news and television coverage: in many it has been underlined by improved crime statistics, or crime statistics more conscientiously reported. I question whether the streets of most cities are less safe today than they were 30 years, or 50 years ago. New York City was wracked, little more than one hundred years ago, by riots more devastating and more wanton than any this country has seen in recent years; fifty years ago and thirty years ago there were sections of New York through which no police officer would think of patrolling alone. In my judgment, the streets in most sections of New York City are safe today, by day or by night. And I supsect that this is also true of most of our cities. One element which has tended to make the streets less safe has been, of course, reiterated alarms concerning "crime on the streets" which, particularly during political campaigns, have so frightened members of the public that they have stayed off the streets, which became, as a consequence, indeed less safe.

Most streets in most of our cities are safe—but not all. The deprived areas of our cities—overcrowed, populated by people who have been discriminated against in housing, in employment, in educational opportunities—these are not safe, nor are the streets in the areas which abut them. Which points up two of the sobering facts of violent crime in our society. The first is that violence tends to be a resort of the alienated, the deprived, the forsaken. The second is that this violence is most often inflicted upon those who attempt to live responsibly under the same conditions of deprivation. The persons most in need of protection from violent crime are the responsibly, law abiding citizens who live in our modern ghettos.

ARE INCREASES IN MANPOWER FEASIBLE?

It is noteworthy that S. 917 does not contemplate Federal assistance to municipalities by way of subsidizing manpower increases. Violent crime on the streets would certainly be dramatically reduced if it were possible to provide a constant police presence on all streets at all times. Such coverage is manifestly impossible; one of the great and continuing challenenges to effective police administration is the development of resourceful combinations of patrol and response capabilities so that there is a continuing police presence where it is needed while response capacities are maintained.

Indefinite increase in the number of police officers is not a practical solution for the problem. The manpower requirements would be too great, and the cost would be prohibitive.

In 1932, New York City had some 17,000 police offiers: in this year 1967, it has some 28,000. The great part of this increase has taken place in the last 14 years: in 1954 there were 19,000 police officers in New York. But during the period from 1932 to the present time badly needed improvement in police working conditions—shorter hours, longer vacations, compensatory time off, etc., more than absorbed the increase in manpower, so that the total number of police man-hours on patrol will be no greater in 1967 than they were in 1932—perhaps in the prime policing problem in our large cities— how to use most effectively the number will be less. The 1967 patrol force is, of course, much more mobile, with many more patrol cars. And response capacity has been greatly improved, with two-way radio. But intelligent disposition of the available force remains the relatively limited number of men who are available.

The mathematics of the situation precludes seeking a solution in indefinite manpower expansion. S. 917 will provide $50 million for the entire national "safe streets" program. This sum would provide less than 5,000 additional police officers for one year on the basis of New York City police salaries. Concentrated in New York City alone these 5,000 men would not provide the blanket street coverage which would be required to prevent violent street crime entirely. Spread those 5,000 men through the cities of the United States on a pro rated basis and they would have scarcely any impact. They would increase the available manpower by barely one-half of one percent. Put this another way: if a city had 500 men on patrol during a given tour, such an increase would enable that city to increase the number of men on patrol by only two or three.

THE APPROACH OF S. 917

What S. 917 will make possible is the development of new techniques of patrol; the development of new and more effective training and education of police officers; experimentation in the improvement in relationships with persons living in the communities which police serve; exploration of ways in which the communication media can be encouraged to assist in crime prevention.

Much work has already been done by various municipal police departments in these areas. A brief review of some of the more imaginative local efforts, and of problems encountered, will suggest areas in which S. 917 can be expected to have a fertilizing effect.

Techniques of Patrol. Thus New York City has already discovered through experience the utility of the motor scooter in precinct patrol. The patrolman mounted on a motor scooter is a visible deterrent, and a more personal presence than his fellow in a motor patrol car. He thus combines the advantages of the foot patrolman with a high mobility: he can cover five to ten times the area which a police officer on foot can patrol. When equipped with walkie-talkie radio, connecting him with his precinct and his brother officers on patrol, he can provide a presence which in itself prevents crime, and he can immediately respond to emergency. Five police officers in a given precinct, equipped with radios and mounted on motor scooters, may well provide the same quantum and quality of protection that the addition of 20 foot patrolmen would account for. And the combination of this new type of personal patrol with expanded radio motor patrol promises to provide the most pervasive preventive police patrol attainable. Yet here too the obstacle to immediate adoption has apparently been cost: while the motor scooters themselves are relatively inexpensive—approximately $350—the radios, at $600 to $650, have brought the cost of equipping one man to about $1,000.

Police-Community Relations. Detroit, New York and many other cities have placed great emphasis upon developing meaningful relationships with persons

living in the communities they serve. Detroit's block clubs, organized by responsible citizens in various areas to cooperate with the police in maintaining order, have been very successful. New York's precinct community councils, composed of precinct police officers and representative citizens living or working in the precinct, have been extremely successful in certain areas—less successful in others. The block club and the precinct community council each provides a vehicle through which police and citizens come to know each other and each others' problems, and each cuts to the core of a basic policing problem in large changing urban areas—that of alienation stemming from fear which stems from ignorance.

The 24th Precinct on the West side of Manhattan provides a striking case in point. Three years ago relations between the police in that precinct, and the large Spanish-speaking portion of the precinct's population, had reached a low ebb. An incident had created tremendous hostility between the police and the Puerto Rican community. Any new spark might have kindled a riot. Today—and for the past two years—the 24th Precinct has provided a model for the nation of constructive relations between the police officers in a precinct and the residents of the precinct community. Police officers speak Spanish; police morale is high and the citizens are proud of their police force.

Why the change? Because intelligent police officers working in the precinct, community leaders, and an unusual social worker in the area named Thomas Wolfe all decided that something had to be done, and they did it. It was as simple as that. Police officers from the precinct visited Puerto Rico to study the background of the people in their community—they returned Puerto Rico's hospitality by bringing to New York, as their guests, children from the Puerto Rican areas they visited. Police officers on patrol made it a point to get to know the people on their posts, and to seek out their problems. Classes in English were conducted at the precinct house; art shows by children in the community were held there—the precinct became in fact a community center in every sense.

The 24th Precinct was a bellwether, but today it is not unique. It has its parallel in other precincts throughout New York, and in other parts of the country. And this development—of a healthy rapport between the police on a local level and the responsible members of the public they serve—is tremendously important for the future of effective law enforcement in our changing urban complexes. Law enforcement can only be effective—truly effective—when it is welcomed and supported by the community. Such support requires mutual respect—respect by police officer for the citizen, and by the citizen for his police. The development of climates of such mutual respect is essential in the years ahead. Hard economics rules out fighting street crime through unlimited expansion of manpower. The alternative is a simple one: enlist the citizenry as cooperative eyes and ears of the police, and street crime will be reduced.

But consider the obstacles.

First, there are traditions of hostility to and prejudice against police—traditions most generally with their roots in other times and other places and experiences with other police, but too often with their roots in experiences, or rumors of experience, with local police.

Then there is prejudice on the part of some police—prejudice predicted upon race, or language, or different economic circumstance.

Then there is fear: fear of the police; fear of community reaction to cooperation with the police.

And there is identification: the police officer with his blue uniform personifies authority—and he tends to have thrust upon himself the hatred and the fear and the resentment and the distrust which lack of service or mistreatment by any branch of government has engendered. I know from my own experience at various meetings between police and community representatives that the grievances presented ranged the gamut of municipal services—welfare, schools, sanitation, health, hospital—and they only rarely pertained to police work. Yet the onus bears on the police.

And then there is misunderstanding of the scope of police powers: "we can tell you who the policy operators are, and who the dope peddlers are. Why don't you arrest them?" "Probable cause" is, perhaps, a clearly defined legal concept, and is essential to the avoidance of abuse of constitutional rights, but it means very little to a mother who sees her child as a possible victim of a drug pusher. Her immediate conclusion is the police are corrupt.

And, of course, there is actual corruption. The police calling has long been an honorable one, and in more recent years great strides toward professionalization have been made. With professionalization has come a growing and welcome intolerance, in police ranks, of the corrupt police officer. Most police officers I have known and served with are decent and honorable men. But one corrupt man among many honorable ones, can, in the eyes of the public, taint the entire profession. How often, I wonder, has "police brutality" been used to characterize, not physical abuse, but petty corruption. Certain it is that there is and must be in our police ranks no room for the man who uses his shield to exact tribute.

A formidable list of obstacles. But ways and means must be found to surmount them, and S. 917, by encouraging planning, programming and experimentation, points the way. And certainly work which has already been done by such police administrators as Chief Jenkins in Atlanta and Chief Cahill in San Francisco, to mention only two of the many outstanding ones, provides a bank upon which the rest of the country can draw.

Training and education. It has become evident, in recent years, that law enforcement in the second half of the 20th Century requires a sophistication, a knowledge, and a maturity in its practitioners which might not have been necessary in earlier and more simple days. (The need may well have existed before, but it was not so widely recognized.) Thus the development in our more progressive police forces, large and small, of modern police academies, often closely affiliated to colleges and universities. And thus the strides taken by many states to set minimal training standards for municipal peace officers within their boundaries—witness the work, in New York State, of the Municipal Police Training Council. Thus also the development in many major universities of courses and even departments in law enforcement, police science, and the administration of justice.

Is all this necessary? What, after all, need a police officer know besides the content of the law which he is charged with enforcing, and the techniques of enforcement—use of the nightstick, revolver, and perhaps a smattering of judo?

He must, of course, know a great deal more, and his training and education can never be thorough enough. Certainly he must be technically equipped for his profession. This will indeed involve thorough training in the various resources he must upon occasion call upon to take punitive police action.

To a far greater extent, however, it will involve thorough training in the techniques he must as a matter of regular routine call upon to assist his fellow citizens in non-adversary relationships: techniques of traffic control; of emergency rescue; of first aid.

The police officers of New York City are held in extremely high esteem—an esteem which approaches affection—by a large part of the citizenry of that city. This esteem may be of long standing, but its outward manifestations stem from three occasions unrelated save as to time, in which the service nature of the policeman's role was vividly driven home.

The first was the visit of Pope Paul to New York, on October 4, 1965. During a 13-hour period, the Pope toured a great part of New York, conferred with President Johnson, addressed the United Nations, greeted representatives of other faiths, celebrated Mass in Yankee Stadium and visited the World's Fair. He was greeted, as he passed through the streets of the City, by literally millions of New Yorkers and visitors from out of town. He occasioned perhaps the greatest problems of crowd control and, to a lesser extent, traffic control, which New York had ever faced. It was a wonderful day—a day without a single untoward incident, because of the tremendous work, cheerfully rendered, of New York's police.

Early in November of that same year, the day after Election, the lights went out throughout the Northeast. New York was plunged into blackness as the evening rush homeward had barely begun, and it was dark all through the night. No elevators worked, no traffic lights functioned, and hundreds of thousands were trapped helplessly in subways. The occasion was ripe for chaos, and yet those who experienced that night in New York count it one of the memorable experiences of their lives. Policemen were everywhere—off duty officers reported for duty by the thousands, and all through the night they worked, selflessly and cheerfully, side by side with volunteer citizens, giving direction and comfort and assistance, rescuing those who were trapped, moving traffic, controlling crowds, instilling confidence.

January 1, 1966 marked the beginning of a 13-day transit strike which threatened to bring New York to a grinding, crushing halt. It did not. Through 13 days

the lifelines of the City—its subways, its elevated railroads, and its buses—did not move, yet the City remained viable and operable and life, somewhat judgment. Do we ever consider the terrible burden we place upon a police officer by requiring him—on duty and off duty—to be armed? His gun becomes a part of his life: his children are raised in its shadow. We cannot relieve him of this burden until we have taken effective steps to eliminate the availability of arms to lawless members of the community—steps which are, incidentally, long since overdue—but we certainly have the obligation to see to it that he has been educated to live with this burden.

Most of all, perhaps, we must prepare him for the most frustrating anomoly of all—boredom. Because boredom is the lot of every good police officer. Those long hours of night patrol, of park patrol, of patrol in quiet residential precincts—the police presence is necessary and hence the patrol is necessary, but to the extent that the patrol is successful and prevents crime, the police officer performing that patrol is victimized by a consuming boredom, and he must be educated to live with it. (One side advantage of the motor scooter for police patrol is that with its potential for variety in petrolling patterns, it may alleviate this boredom.)

While social order is a necessary predicate for the meaningful exercise of liberty, there is always the danger that the quest for that order will dampen the zest for liberty. Another reason, therefore, why education is essential today for police officers. The law is necessary to the exercise of individual rights, and must be zealously applied to protect those rights. Thus the right to picket, the right to protest, the right to espouse unpopular causes could scarcely be effectively exercised without the protection of police officers who understand that a part of their function, in maintaining law and social order, is to provide an umbrella of protection for the exercise of those rights.

The Bill of Rights and the landmark decisions of the Supreme Court in the civil rights and civil liberties fields must not merely be known to the police officer; they must be so understood by him that they can be intelligently applied by him in his daily work. The police officer's decisions must usually be made under crisis conditions, without recourse to treatise or lawbooks, with full knowledge that his action (or forebearance from action) may be subject to leisurely after-the-fact critical review by attorneys and judges who have such resourse. Thus the imperative of an informed and mature education for the police officer is clear.

There was a time, happily now long past, when education was suspect in police circles. Today its desirability, and its neecssity, are generally recognized. Yet for many reasons, partly economic, partly historical, we do not attract the college graduate to police work. Thus police salaries tend not to be competitive with those in private industry, or, in many cases, even with those paid by other government services. Again, most urban police departments are subject to civil service requirements which mandate that aspirants for senior police administrative positions must pass through all lower ranks, in a series of competitive examinations, before they achieve them: the necessarily long apprenticeship before positions of administrative responsibility can be achieved, together with the extent of exposure during that period, deter ambitious and able young college graduates from choosing a law enforcement career. The more reason, therefore, why educational opporunities must be made available to those who have chosen police work.

Education is, of course, not for the police officer alone: it must also be for the police administrator, of all ranks. And it is here that there is most need for the creative, inquiring approach which S. 917 can do much to engender.

Police administrators, particularly in our larger cities, have long been masters in the bread-and-butter of police work—planning and directing the disposition of men; and the control of crowds and traffic; rescue work at disasters; developing programs for coping with patterns of local crime. They have only latterly realized the importance in changing urban areas of developing and sustaining healthy community relations. They have often, in my judgment—and I have been as guilty as others—permitted their policies to be dictated by immediate problems. without adequately considering the impact of their policies in other areas. A case in point: the practice has developed as a regular routine of police administration to transfer men periodically who are engaged in particular types of work, or when they are promoted. The rationale for this approach, although an unspoken one, has often been the fear of corruption—fear that the plainclothesman or the police superior, who becomes too familiar with the businessmen or with the wrongdoers in the area of his responsibility, is in danger of being corrupted by them. Now obviously a police administrator must always be aware of the danger that men under his command will be corrupted, because nothing can more quickly

destroy the morale of a police force and the confidence of the public in the police. But is a policy of frequent transfers a desirable safeguard? It runs counter to two basic principles of police work, one of long standing and a second which has been more recently developed. So far as crime detection is concerned, a police officer depends upon his sources of information, and these can only be developed over a period of years—frequent transfers prevent the development of such sources. And so far as rapport with the community is concerned it is important for a police officer to know the people in the community he serves, and their problems, and for them to know him—frequent transfers make this impossible.

In New York City precincts—there are some 79 of them—are commanded by captains, which is the top civil service rank. (Promotions above the rank of captain are by designation of the Police Commissioner). Each precinct has been scientifically graded with respect to incidence of crime, and hence the complexity of its command requirements. Until very recently, a captain's first command was one of the quieter precincts, and he was gradually moved, as he matured in rank and in capacity, to more difficult precincts. By the time he was assigned to one of the precincts with the highest crime incidence he was ready for advancement to depuy inspector. The system insured that captains—the future top administrators of the Department—received a great variety of experience prior to their next promotion. But it made the development of an effective rapport between the precinct commander and the citizens of his precinct extremely difficult, since many captains spent no more than six months in any given precinct. The system outraged local community groups, who, recognizing the value of police-community communication, sought to establish effective working relationships on the precinct level, and it became obivous that it had to be changed lest the police-community relations program be undermined. The problem was that the criteria for evaluating the performance of captains was based upon this pattern of varied service. Thus we sought to develop new criteria which would make it possible to establish captains in one precinct on a relatively permanent basis. Commissioner Howard Leary has carried this move toward permanence one step further by retaining commanders in busy precincts even after they have been promoted to deputy inspector.

And here is another problem of police administration. In New York it has been the practice to assign almost all men promoted to deputy inspector to the enforcement of the public morals laws, principally the laws pertaining to vice and gambling. Thus men who have been seasoned in command are relieved of command on promotion and assigned to entirely different and specialized duties—duties for which many of them, competent to command, are not suited. You will find that no established police practice should be lightly discarded, because there is always a good reason for it, though the reason may often be buried far in the distant past.

Here the rationale may have been that all superior commanders—inspectors and above, who hold division or borough commands—are ultimately responsible for the enforcement of the public morals laws within their commands, and they must know the problems in connection with enforcement. One of these problems is that where police departments have been corrupted, the corruption has developed in the public morals areas. And yet query whether it is good administration (a) to relieve of command men who have been seasoned in command, merely because of the happenstance of promotion; and (b) to assign to a particular type of work men who may not be suited, by taste or by temperament, to that particular work.

I cite these problems not because I expect this Committee to take their particulars under advisement, but because they illustrate that there is much room for education and for experiment in the field of police administration, and I suggest that it may develop that the most significant fruits of S. 917 in action may come in this area.

Our society is changing very rapidly. Change begets problems, and many of those problems will develop in the law enforcement area. Thus even if law enforcement had today been polished to a fine science—which is has not—there would be need for S. 917 because the problems of today are no the problems of yesterday, and the science of today may not be adequate to cope with the problems of tomorrow.

One more example from this field of police administration. The police system of incentives and rewards is geared to punitive police action. In New York, for example, most police decorations, medals and citations reward positive police action in the apprehension of criminals, bravery in the performance of duty.

This materially affects a police officer's prospects for advancement, because he receives credit for such attainments upon promotion examinations.

But it has long been my view that some of the finest and most dedicated police officers are those who rarely make an arrest; who by their quiet and commanding presence on patrol deter crime and preserve social order. Their arrests are few because their performance of patrol has prevented the occasion for arrest to arise.

Yet we in police administration have not yet developed means of isolating and recognizing them. Here again study, experiment and imagination, stimulated by S. 917, may make a tremendous contribution to municipal safety, because suitable recognition of this type of police performance will inevitably stimulate emulation.

Involvement of communications media. Newspapers and television regularly report crime—it makes good news. As has been noted, their enthusiasm in reporting violent crime has played a major role in the recent hysteria, only now subsiding, concerning "crime on the streets."

These same media can be involved, and should be involved, in constructive efforts to prevent crime and to fight crime. The FBI has long exploited this potent resource through its "most wanted men" program. Police Superintendent Orlando Wilson enlisted media support extremely effectively for his "crime stop" program in Chicago. Occasionally, when more dramatic crimes are committed, newspapers will cooperate in various communities by publicizing reconstructed drawings of fugitive putative criminals.

Constructive programs on a local level in other communities should be similarly devised to meet local needs. They will call for imagination, and they will require newspaper and television cooperation. And they will need this cooperation on a regular, non-exploitative basis. Any such program should be developed with an awareness of the need to avoid prejudicial pre-trial publicity.

IS LAW ENFORCEMENT ONLY A LOCAL PROBLEM?

It is stressed, in S. 917, that municipal law enforcement is a local function. I do not quarrel with this premise, but neither do I accept it unquestioningly. I do not know. Certainly 50 years ago, when communities were in fact isolated from one another, maintaining public order was in every sense a local problem. Today, however, with every modern means of communication and travel available to criminals, do we not hamstring preventive action against them by stressing the provincial limitations on law enforcement? Is there anything local about our traffic in firearms? It makes freely available to the New York hoodlum any type of handweapon he desires, in spite of a strict local handweapon law, because other states do not have such restrictions. Is there anything local about a gambling syndicate which uses the proceeds of gambling from one state to finance criminal operations in other states? Isn't there a need for some sort of national police effort which could cope with the interstate aspects of organized crime outside of the straightjacket of the existing, and rather narrowly confined, Federal criminal law? The New York metropolitan community is comprised of three states—wouldn't law enforcement and the public it is designed to protect be better served if there were, in that community, a police effort not restricted by artificial political boundaries?

Wouldn't municipal law enforcement itself be improved and fertilized by some mobility of police personnel? The ideas and techniques developed in San Francisco, St. Louis and Chicago might be similarly applicable in New York, and free exchange of police personnel, particularly in the administrative ranks, would certainly stimulate the free flow of ideas.

I stress that I am not committed to a national police effort, but in my judgment, its feasibility should be extensively explored before we dismiss the concept by reiterating the concepts of yesteryear. S. 917 recognizes the necessity of national coordination of law enforcement: let us not, at the threshhold, rule out a more administratively cohesive approach.

CONCLUSION

In sum, gentlemen, I urge on behalf of the American Civil Liberties Union, and personally, that S. 917 be enacted into law. While entitled the Safe Streets and Crime Control Act of 1967, I note with approval that the proposed law has a broader thrust—a concern with the total administration of justice. It will encourage research, experimentation and initiative. It will certainly foster, on a local level, an approach to crime which will respect the individual liberties of

the citizen. If will foster the further development, on local levels, of the climate of law and social order which is a necessary premise for the exercise of individual liberties. It recognizes that the answer to violent crime is not merely more police officers—though there are places where more are badly needed. It encourages a primary emphasis upon the qualtiy of the police service rendered, which in turn will depend upon the calibre of person recruited to police work, on the scope of the education and training which that person will bring to his work, and on the direction and leadership which he receives.

There is nothing incompatible between civil liberties and effective law enforcement: in 1967, in the United States of America, they must be interdependent. Police service rendered without due regard for the rights of the citizen can be an invitation to chaos, while civil liberties without effective police service cannot exist. It is my conviction that S. 917 will provide a necessary impetus to a more effective administration of criminal justice throughout the nation.

Senator McCLELLAN. You were speaking primarily to the Safe Streets and Crime Control Act, the administration bill?

Mr. BRODERICK. That is correct, Senator.

The American Civil Liberties Union strongly supports this bill and urges its adoption. The primary basis upon which we support it is, we feel, that its basic purpose is to support and further the exercise of democratic liberties.

Senator McCLELLAN. What do you mean by democratic liberties?

Mr. BRODERICK. I mean your liberty and my liberty to walk the streets in peace, to live our own lives without interference by our neighbors, and to exercise rights which we have guaranteed by the Constitution.

Senator McCLELLAN. That means law enforcement, does it not?

Mr. BRODERICK. It means a climate of law and social order. And to maintain a climate of law and social order, a vigorous law-enforcement effort is necessary. We feel that S. 917, the administration's bill, will foster throughout the country a more vigorous law enforcement effort to create such a climate and we believe this is in the public interest and we believe that it is in the particular interest of an area that the American Civil Liberties Union is primarily interested in, and that is the protection of individual rights.

Senator McCLELLAN. The American Civil Liberties Union, are they interested in people keeping their obligations of citizenship?

Mr. BRODERICK. It certainly is.

Senator McCLELLAN. You never place any emphasis on it; you always place the emphasis on rights, and nobody says what I ought to do to help my country. That is the thing that has gotten us off on the wrong track in this country. It used to be patriotic for those who though there was a central obligation to preserve their country and to sacrifice for it. And today, all we hear is: "Rights. Rights. Rights." And never an obligation.

Mr. SPEISER. They are not mutually exclusive. The protection of rights of citizens is a way of protecting our country. They are not inconsistent.

Senator McCLELLAN. That is not the only thing.

Mr. SPEISER. That is quite true.

Senator McCLELLAN. We put all the emphasis on that today. You see the beatniks going around, and all these bozos, saying "I am a

human being." That is all they can boast of "I am a human being." Nothing that they ever did, nothing they ever contributed, no ambition or anything; nothing to sustain or support a wholesome society. All they say is "I am a human being." I tell you, unless we decide in America that we are going to fight this war on crime, we are sunk. I say that to you.

I know you are good citizens; I know we have honest differences of opinion, but I feel it very deeply, and I know the Attorney General says we do ourselves a disservice when we read statistics, but we do ourselves a greater disservice if we do not read them and pay no attention to them and try to do something about it, in my judgment.

Mr. BRODERICK. In my judgment, we will do ourselves a still greater disservice if we emphasize law and order to the exclusion of other considerations such as individual liberties. It would be relatively simple——

Senator MCCLELLAN. You put that ahead of law and order, and you say you could not have civil liberties without law and order.

Mr. BRODERICK. I say that; and that is the whole thrust of the American Civil Liberties' position on S. 917. I say it will be relatively easy to establish an atmosphere of law and order in the United States.

It was easy to do it in Nazi Germany, it was easy to do in Communist Russia. We have a problem, because in establishing and maintaining an atmosphere of law and social order, we also have a tradition of respecting individual rights and individual liberties. One of the previous speakers said there was no incompatibility between law and social order on the one hand, and civil liberties and individual rights on the other hand. I go further than that. Without law and social order and without the effect of law enforcement to maintain the climate of law and social order, there will be no such thing as individual liberties, because the liberty of the strong will be a license that runs over the liberties of everyone else.

We do believe—and I do believe. I believed when I was police commissioner in New York City and I believe it today—that it is essential that our law-enforcement effort be oriented toward respect for individual rights. I believe it is so oriented in New York; I believe it is so oriented in Atlanta; I believe it is so oriented in Detroit; I believe it is so oriented in San Francisco, and it should be so oriented in every city, in every hamlet.

Senator MCCLELLAN. Where do you consider it is oriented so as to include it?

Mr. BRODERICK. I am talking about places that I am familiar with. I am familiar with the efforts that the law-enforcement administrators have made there to make sure that their effect of law enforcement effort is an effort which respects individual rights, and it seems to me that this is essential as we move into the 1960's and 1970's.

Senator MCCLELLAN. Proceed.

Mr. BRODERICK. I would say that I think one of the very important parts of S. 917 is the emphasis it places on planning.

Senator, you had before you a panel this morning in which there was some difference of opinion as to whether plans should be related to or made separate from operations.

Senator MCCLELLAN. I think that was research instead of planning. As I understood it, it was research.

Mr. BRODERICK. I think research and planning are fairly closely related, and I think that both of them do have to be divorced from operation.

Senator MCCLELLAN. Have to be divorced?

Mr. BRODERICK. Research and planning on the one hand have to be divorced from operations on the other hand, and it seems to me that the administration's safe streets and crime control bill will encourage that sort of divorce. It emphasizes—the emphasis it places on planning, per se, it seems to me, is an extremely important emphasis.

Senator MCCLELLAN. You would favor that bill then, rather than Senator Kennedy's bill—that approach?

Mr. BRODERICK. I would certainly favor the approach in the administration's bill as being one which is an all-inclusive approach and which has the possibilities for a great variety as the program progresses. I do not think it rules out Senator Kennedy's bill, and I certainly would, on principle, support everything I see in Senator Kennedy's bill, also.

But I do see within S. 917 room for everything that Senator Kennedy's bill and Congressman Scheuer's bill in the House are supposed to do.

Senator MCCLELLAN. I think so, too, but there might be some minor amendments or some amendments that would make the adjustment here a modification to conform with the best judgment. But I do not know that a full new law is needed. If we are going to enact the safe streets and crime control bill some provision in there could take care of it.

Mr. BRODERICK. I think both bills are directed to the same purpose. Both bills are directed to the same purpose, and both bills are desirable because of that.

I would like, Senator, to just underline what I mean when I say you just divorce planning and research from operations.

A great deal of police work is crisis work, it is reacting to problems that arise. And if your planning and research efforts are related in any way to your operational effort, even only to the extent of common personnel or having a common office, planning-operation office, you are going to find that your planning and your research does not get done, because operations always provide the imperative. The crisis occurs, plannnig is set aside, research gets set aside, and you approach the current problem.

A separate planning and research effort is essential in this bill, and in encouraging this on a local level we will make a very great contribution.

I would like to emphasize that this bill, while it proposes an expenditure on a yearly basis of some $50,000,000, which is a great deal of money, is really only providing seed money. The bill is only going to be successful if it initiates and stimulates intensive local action.

Senator MCCLELLAN. How much would you recommend instead of the $50,000,000?

Mr. BRODERICK. I am not suggesting a higher figure. I want to suggest to you that $50,000,000 in terms of the national muncipal law enforcement effort is very little money, indeed. $50,000,000, put in terms of manpower, would pay the salary of 5,000 men for 1 year. If you spread 5,000 men among all the municipal police officers, you would

find that it would have no improvement at all. If you were to attempt to attack street crime, it would be a useless effort; 5,000 men would be adding two or three here, two or three there. It would have no impact at all.

This amount of money in a planned effort, in a research effort, in an effort to stimulate innovation, as the bill puts it, it seems to me will be extremely useful.

I think it must also be recognized, Senator, that the problem of violent crime is only partly a problem that can be met by police activity. Relatively, a small percentage of our violent municipal crime occurs on the streets and only that relatively small percentage can be prevented by street patrols. And the effort which would be represented by the administration's bill here it seems to me must be matched by efforts in other areas. It must be matched by efforts to deal with root causes of crime itself, with the conditions of poverty, the conditions of ill-housing, the conditions of inadequate employment which propel some people to violent crime.

Senator McCLELLAN. When we were less educated and we had more people with poverty, why did we have less crime the than we have now?

Mr. BRODERICK. I do not know whether we had less then.

Senator McCLELLAN. You mean you do not think crime has increased?

Mr. BRODERICK. I think it has increased in absolute——

Senator McCLELLAN. Do you think we have a crime problem?

Mr. BRODERICK. We have a crime problem today and we had one 30 years ago and we had one 50 years ago, and I thank God that we have become aware of it today, Senator.

Senator McCLELLAN. You think it has grown no worse?

Mr. BRODERICK. I am saying, Senator, that I do not think that it has grown nearly as bad as the publicity about the crime and the statistics about the crime indicate that it has grown.

Senator McCLELLAN. You think the statistics are wrong?

Mr. BRODERICK. I think the statistics are more accurate than they were 30 or 50 years ago. You are having crimes reported that you did not have reported then. I think you had a blackout on crime from slum areas up to 15, 20 years ago. I think that you have much more accurate reporting today. I think you are going to have more accurate reporting next year, and I think we can expect to see an increase in crime.

Senator McCLELLAN. Do you think that the statistics are increasing because—not because crime is increasing but because we are detecting more of it?

Mr. BRODERICK. We are doing a great deal of discovery. We are having more reported. I think that is a part of the answer to your question. I think there are frustrations that exist today that did not exist 30 or 50 years ago. I think that we had for the previous generation and for the generation before that safety valves that may not exist today in our urban communities. We had the frontier, we had other areas to move from when there was a block-off of employment in a given area. I think that some of these new frontiers have not opened up today, and I think we have a great fraustration among some of our people that drives them to crime. I think one of the sobering facts that we must realize, that where you have crime produced by condi-

tions of poverty, the victims of that crime by and large are responsible citizens living under the same conditions of poverty. In a city like New York, the victims of our violent crime, the victims of our street crime tend to be, by and large, Negroes, Puerto Ricans, other people who live under slum conditions.

Senator McCLELLAN. Who commits the crime, by and large?

Mr. BRODERICK. In those areas, it is by and large committed by the same people, living under the same conditions.

Senator McCLELLAN. Against each other?

Mr. BRODERICK. That is correct.

Senator McCLELLAN. Go ahead.

Mr. BRODERICK. I think, Senator, the hour is growing late.

I think I have set forth my position and the position of the American Civil Liberties Union on S. 917 in my statement.

So, I would just repeat that I urge personally, and the American Civil Liberties Union urges personally, this bill.

Senator McCLELLAN. I am not trying to crowd you. I notice that we will probably have a vote call in a little while.

Is there anything further you wish to say?

I am not going to interrogate you, because I have not had an opportunity to read your statement. But your support of S. 917 is in line with all of our purposes, to find ways to combat the crime situation and much of 917 I wholeheartedly support; that is, its objectives, to train policemen, to give them better equipment and to do research in the ways of detection of crime, and so forth. All of those things, I support, and I think the Federal Government has the responsibility and that it should try to meet that responsibility.

Mr. BRODERICK. If I may just address myself to two points, Senator?

Senator McCLELLAN. Very well.

Mr. BRODERICK. One is the question of public support of the police.

Senator McCLELLAN. Will you proceed now, Mr. Speiser?

Mr. SPEISER. I would just as soon let Mr. Broderick finish, because he comes from out of the city. I am here in the city. I can submit my statement; I can come back at some other time.

Senator McCLELLAN. Your statement will be placed in the record in full, and we will continue with him and we will try to give you an opportunity to highlight yours. I wanted to be sure we get your statement in the record, and you have been very patient with us.

Mr. BRODERICK. It has been my experience, Senator, that a police department which has the proper orientation toward the enforcement of law and maintenance of order has the support of the public. In my judgment, the New York City Police Department has the support of the public and has had the support of the public.

I think one of the great contributions which can be made by S. 917 is to encourage development on every level of policemen: on the administrative level, on the local precinct level of healthy relationships between the police department, the men in the department, and the people in the community. It is out of the question today in fighting crime, first, to think in terms of any mass expansion of police forces. The mathematics of the situation just make it out of the question. Newly recruited policemen cost $10,000.

Senator McCLELLAN. I do not see why anyone wants to do it even at that price with no more support than they get.

Mr. BRODERICK. My statement is that they do get support if the proper groundwork is laid, and the proper groundwork is the development of good relations, continuing relations, on every level of police work between the police and the community they have served.

I have seen examples in other cities, in Detroit, and I know of practices in New York City where there has been very healthy and vigorous rapport between police and the community and effort has been made to encourage a good relationship.

In Detroit, they have block clubs. These are organizations within small communities, two- and three-block areas, that are formed for the purpose of cooperating with the police—people that have pride in their community and want to encourage the most active possible police protection in that community. They cooperate with the police in every way. And they have had the impact of reducing crime. What you have here is an expansion of police by making the community itself a part of the police force for law-enforcement purposes. We have had the same sort of development through precinct community councils in New York City.

The one part of the educational process which is essential today for people who go into police work is that they understand the people who live in communities where they are serving. In New York City, the conditions are entirely different in different areas, and there can be 10 or 20 different combinations of situations that a police officer, depending on where he is serving, has to cope with, has to understand. A part of his education must be that he knows the relationship with the community on a day-to-day basis, and it is a very essential groundwork and is a basis for effective law enforcement.

Senator MCCLELLAN. I suppose that is covered by this bill, the authorized training of police.

Mr. BRODERICK. It certainly is.

Senator MCCLELLAN. Training in the matter of public relations?

Mr. BRODERICK. It certainly is, and it is one of the great features of the bill.

The other point that I want to make is: It does seem to me that this committee should think through very thoroughly the question of whether or not there is a need for a national police force. I am not suggesting that there is such a need. I am not suggesting that we should have a national police force. What I am suggesting is that there are great policing problems that cannot be coped with today satisfactorily on a local level.

The New York metropolitan community is composed of three States and yet, for all practical purposes, it is one urban complex. It seems to me that it might very well be that a national police effort in an area like that would be much more effective so far as law enforcement is concerned than the effort of three different States or the municipalities of the different States. I think we have been paying lipservice for a long time to the principle that a national police force is an intolerable thing to even consider. What I am suggesting is that we could consider it.

I think today, in some testimony, it was suggested by you that there was an area that the national Federal law was needed because there was not an adequate State law to deal with the particular problem.

Senator McCLELLAN. It dealt with interstate action.

Mr. BRODERICK. It did. Of course, I am talking about interstate crime. I am talking about the type of crime that Frank Hogan did.

Senator McCLELLAN. This was a crime committed against an interstate activity and people engaged in interstate activity. I am not arguing it, but it did occur to me. Ordinarily, I would say "Yes, let the State enforce it. They have laws." But it is not just the local community that is affected. You are talking about the train cases.

Mr. BRODERICK. Yes, sir.

And I would also direct your attention to the organized criminal cases where the interstate activity is the criminal activity, and it does seem to me that we should seriously whether, for many reasons not just this one, a national police effort might not be a good supplement to local police enforcement.

Thank you very much, Senator.

Senator McCLELLAN. Thank you, Mr. Broderick.

All right, Mr. Speiser.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. I will briefly state the conclusions with respect to the other bills before the committee.

We believe that the three bills on the admissibility of confessions are unconstitutional because they do not provide proper warnings as are set down in *Miranda*, and we do not feel that legislation can undercut the due process requirement that the Supreme Court has set down.

Senator McCLELLAN. You are talking about the constitutional amendment. That is a concurrent resolution, I believe.

Mr. SPEISER. I did not have any constitutional amendment in the packet of bills.

All of these attempt to overturn *Miranda* by legislation, and I do not believe that can be done. They attempt to undercut the *Mallory* rule by stating that the delay in bringing an individual before a commissioner shall not be a basis for exclusion of confessions. Although the Supreme Court has not specifically ruled on the constitutional standing of *Mallory*, simply because they have had rule 5(a) of the Federal Rules of Civil Procedure on which to base it, they would hold that the *Mallory* rule does have a constitutional basis as a means of preventing denial of counsel, as a means of insuring that individuals have a proper protection against illegal arrests and, of course, confessions.

It is a method of doing that, and we, therefore, are opposed to any attempts to overturn the *Mallory* rule.

Third, we oppose attempts to restrict appellate review by the U.S. Supreme Court as a threat to the independence of the judiciary.

Senator McCLELLAN. As between the two approaches, if one is to become the law of the land which would you prefer, the limitation of the Supreme Court's jurisdiction, or the procedure in the other bill to let trial courts examine the situation and make a determination and submit it to a jury for such weight as they felt they should give?

Mr. SPEISER. That inherently would restrict appellate review by saying the jury determination would, in effect, be final and not sub-

ject to appellate review. You gave me a Hobson's choice, because I am opposed to both, obviously.

Senator McCLELLAN. In view of the *Miranda* decision, we have the bill that I introduced which would restore what had been a traditional procedure heretofore.

Mr. SPEISER. I will respond to your question.

Senator McCLELLAN. There is some modification. It would restore it to where a trial court and jury would have jurisdiction.

Mr. SPEISER. I will respond, though. I think that by far the most dangerous route would be legislative attempts to take away appellant jurisdiction of the Supreme Court.

Senator McCLELLAN. I said we had four courses: The bill that I introduced, which would be tantamount to restoring the longstanding traditional procedures; the constitutional amendment, which would be a slow and tedious process; placing a limitation on the Court's jurisdiction; and the fourth would be doing nothing.

So, I assume you favor doing nothing?

Mr. SPEISER. No; we are in favor of the Safe Streets and Crime Control Act.

Senator McCLELLAN. That has nothing to do with confessions.

Mr. SPEISER. It has something to do with it, and they are not divorced.

Senator McCLELLAN. Is there anything in the Safe Streets and Crime Control Act about confessions?

Mr. SPEISER. No, sir.

Senator McCLELLAN. That is why I said that bill is unrelated to whether confessions shall be received in evidence.

Mr. SPEISER. The reason for your concern and the posing of the alternatives and confessions is because you are concerned about crime.

Senator McCLELLAN. Let us get back to my question: On the issue, on the direct issue, raised by the action of the Supreme Court in the *Miranda* case, I assume, as between the four things I referred to, you would favor doing nothing?

Mr. SPEISER. You are right, Mr. Chairman, and the reason for that choice is that we do not feel that the confession problem has any effect or much effect, if any, on the question of crime in the United States.

Senator McCLELLAN. I think the bill that I have offered, the one that I mentioned first about restoring judicial procedures in the country, I think it is the mildest remedy, and from my standpoint is the remedy that should be supplied. The Supreme Court can do many things, and they have done many things like 5-to-4 decisions overruling cases that have been the law of the land for a century. They are doing things. I am not sure they are wise in doing it. They may disagree with me like I disagree with the Supreme Court, but just because I disagree with the Supreme Court does not mean that I am going out here and saying that I am not going to obey the Supreme Court decision; I disagree with it; I dissent; I express that dissent, but I want to go through the constitutional process of remedy, the remedy provided by the constitutional process—by legislation. The Court may hold that unconstitutional.

The next step would be to try to amend the Constitution. It is not a personal matter with me, but if the Supreme Court is wrong in what

it is doing or assuming under the Constitution as written at present, if the procedure that it is requiring now is an obstruction to law enforcement and if it hampers the apprehension and protection of criminals, I think it should be remedied if we can remedy it, because I think it does incalculable harm to our country. There may be differences of opinion, and there are differences of opinion. I only express mine. I know your contemporary argues that we have had crime all the time and the statistics are not right.

Mr. BRODERICK. I have said that in another context.

Senator MCCLELLAN. But the point is, the point that I am making is: If harm is going to come to this country by reason of the law of the land as now decreed by the Supreme Court, I think every citizen who loves his country and wants to preserve liberty would want to try to do something about it. We may have different ideas about what we want to do; we may have different ideas as to the consequences of these decisions. Those of us who have an abiding conviction that they have done great harm and will obstruct and hinder and hamper law enforcement and diminish law and order, think we should try to do something about it.

You are satisfied with it, with the status quo, or the result and information and see no evil consequences of it. You have a perfect right to say: "Let us do nothing; this is all right; let us live with it." That is what you are talking about when you talk about the democratic processes. I believe in democracy. You have the perfect right to disagree with me, and I have the right to disagree with you. I happen to be in a position where I can vote on an issue here. It is a vote you cannot control, but you have representatives here and the people have different viewpoints and the people are represented, and we, the Congress, can by inaction make a serious mistake if this condition needs remedying, and we ignore it.

Mr. SPEISER. I think this is a thoroughly useful debate, and I think that it is one of the good things in our democracy that we are here debating this kind of problem. I believe that one of the advantages of the administration is to study the effects of Supreme Court decisions on crime, on police enforcement.

Senator MCCLELLAN. You heard what I said this morning. I think time is beginning to run out on this crime situation. I may be wrong. I hope I am.

Mr. SPEISER. The difficulty with that, Mr. Chairman, is that we have countervailing interests, countervailing values. in our society, and if there is the effect that you feel there is, and, obviously, with which I disagree, then the thing to do would seem to be a constitutional amendment, but it should be an amendment that should be debated that it is going to have a change in our society.

Senator MCCLELLAN. I do not feel as strongly as you do about a constitutional amendment. The Supreme Court changes. You cannot depend on it being stable. I hope we get men on the Court in time who will decide that this Court was wrong. I hope it will become a reality and not only a probability.

Mr. SPEISER. Lastly, of the bills before the committee, S. 675, wiretapping, we are opposed to it. We believe it does not satisfy even the criteria that was suggested by the Supreme Court in the *Berger* case.

Senator McCLELLAN. If we met the criteria, would you still support it?

Mr. SPEISER. We are opposed to wiretapping because it is inherently violative of the fourth amendment.

Senator McCLELLAN. Well, I disagree with that. We have heard testimony here that makes a pretty strong case for wiretapping.

Mr. BRODERICK. Mr. Chairman, I disassociate myself with Mr. Speiser's views on that.

Senator McCLELLAN. Gentlemen, thank you very much. We appreciate your presence and are glad to have your views on the record.

Mr. Speiser's prepared statement will be included in the record in its entirety.

(The prepared statement submitted by Mr. Speiser reads in full as follows:)

TESTIMONY OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

My name is Lawrence Speiser, Director of the Washington Office of the American Civil Liberties Union. I am a member of the Bar of the Supreme Court of the United States, the District of Columbia and the State of California.

I am presenting testimony on behalf of the American Civil Liberties Union on various bills before this subcommittee besides S. 917, "The Safe Streets and Crime Control Act," which was the subject of testimony for the ACLU by Vincent L. Broderick, Esquire.

THE ACLU OPPOSES ALL PROPOSALS TO WATER DOWN THE STANDARDS FOR THE ADMISSIBILITY OF CONFESSIONS

A. S. 674, S. 1194 and 1333 are unconstitutional under Miranda v. Arizona in failing to provide proper warnings to the accused.

These three bills attempt to overturn recent Supreme Court decisions affecting the admissibility of confessions in federal criminal trials. S. 674 provides that any confession may be admitted in evidence if it is voluntarily given. It provides that the trial judge in determining the issue of voluntariness shall take "into consideration" any delay between arrests and arraignment and whether the defendant was given any kind of cautionary instruction. S. 1194 would make the sole test of the admissibility of an admission or confession its voluntary character and would bar the Supreme Court or any other court from barring such confessions even though no cautionary warnings were given by police officers or anyone else. S. 1333 would create a flexible rule for admissibility of illegally obtained evidence or confessions, leaving it to the trial judge to determine in the exercise of his sound discretion.

All three bills concerning the admissibility of confessions in federal criminal prosecutions require that the confessions be voluntary. Voluntariness, however, has come to mean more than a simple declaration by the accused that be confessed of his own free will. If obtained as a result of physical coercion, such a declaration is utterly invalid and inadmissible. *Brown* v. *Mississippi*, 297 U.S. 278 (1936). A confession secured by means of mental coercion is equally defective, *Leyra* v. *Denno*, 347 U.S. 556 (1954), as is one obtained while the accused was without benefit of counsel. *Massiah* v. *United States*, 377 U.S. 201 (1964).

Up until recently, however, physical and mental coercion and denial of counsel were treated as factors to be weighed by the trial judge in determining voluntariness. The United States Supreme Court, in the landmark case of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), altered the status of these elements, finding them to be constitutional rights inherent in the 5th and 6th Amendments. The Court set down constitutional requirements that the accused be warned prior to questioning "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 presence of an attorney, either retained or appointed." 384 U.S.

at 444. These warnings are not to be weighed in a general formula or "totality of circumstances" test by a trial judge. They, or their judicially-approved equivalent, stand as an absolute federal constitutional pre-requisite of admissibility." Anno.—*Admissibility of Confessions*, 16 L. Ed. 2d 1295.

None of the bills before the subcommittee measure up to the *Miranda* requirements. S. 674 grants the trial judge authority to determine the issue of voluntariness prior to admission in evidence—essentially a restatement of the pre-*Miranda* rule. *Haynes* v. *Washington*, 373 U.S. 503 (1963). The standards by which the judge is to make his determination consist in sum of the obsolete "totality of circumstances" test. Taken together, these two features of the bill reduce the *Miranda* rule from a prerequisite to a mere set of suggestions.

S. 1194 grants the trial judge similar authority to judge voluntariness and omits entirely the *Miranda* warnings, requiring only that the ruling on voluntariness be supported by "any competent evidence admitted at trial."

S.1333, while listing the warnings (although omitting, as does S. 674, the right to *appointed* counsel), leaves the determination of voluntariness to the "sound discretion" of the trial judge. It, too, lists the "totality of circumstances" tests as the criteria for the judge's ruling, adding to it the alien considerations of the seriousness of the charge and the strength of the prosecution's case without the confession.

These defects in the bills practically preordain their unconstitutionality. Accordingly, we oppose them.

B. We oppose all attempts to undercut the Mallory Rule

Rule 5(a) of the Federal Rules of Criminal Procedure reads:

"(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."

To assure complance with this congressional edict, the Supreme Court in *McNabb* v. *United States*, 318 U.S. 332 (1943) held that confessions obtained from defendants during a period of unlawful detention were inadmissible in evidence. A decade ago the Court declared that prompt arraignment, as required by Rule 5(a) "is part of the procedure devised by Congress for safeguarding individual rights without hampering effective and intelligent law enforcement". *Mallory* v. *United States*, 354 U.S. 449 at 453 (1957). Taken together, these cases hold that confessions elicited during a period of "unnecessary delay" in bringing the defendant before a magistrate renders such evidence inadmissible at trial.

§ 3501(c) of S. 674 reads:

"In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a commissioner or other officer empowered to commit persons charge with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confessions is left to the jury."

Such a provision violates both the Mallory rule and Rule 5(a) on which it is based. Rather than compelling exclusion of confessions obtained because of unnecessary delay, the matter is left solely for the trial judge to determine if the time lapse was sufficiently long to make the confession involuntary.

The Mallory rule represents a significant procedural safeguard against illegal arrests, coerced confessions and denial of counsel. For these reasons, we feel that it rests on firm constitutional footing and that any statute which attempts to eviscerate it is unconstitutional. The specific wording and clear intent of the Fourth, Fifth and Sixth Amendments of the Bill of Rights afford ample support for this proposition. Although the Supreme Court has not yet enunciated this proposition we believe it is not from a rejection of this contention but merely from the salutary judicial rule against basing a ruling on constitutional grounds when other bases are available.

Soon after Mallory was decided Senator Wayne Morse, in protesting legislation directed against the Rule then pending before this Committee, termed

such proposals "unwise, undesirable and unnecessary". A similar objection was expressed in the 1962 District of Columbia Commissioner's Committee Report on Police Arrests for Inuvestigation—that the Mallory Rule if observed provided protection against police arrests on suspicion. That report cited United States Attorney for the District of Columbia Oliver Gasch as reporting the deterrent effect of Mallory on police practices had resulted in the D.C. police "making better cases by carrying on more extensive investigation prior to the arrest of suspects."

Fundamental demands of due process dictate that a defendant be brought promptly before a magistrate to determine if he was arrested for probable cause. Equally basic is his right to be informed of the charges against him and to receive advice of counsel. Only by a consitiutional requisite for prompt arraignment can these guarantees be secured. S. 674 fails to provide such protection and hence should not be adopted.

C. We oppose attempts to restrict appellate review by the United States Supreme Court as a threat to the independence of the Judiciary

Article III of the United States Constitution delineates the judicial power of the United States Supreme Court in Section 2, Clause2:

"In all Cases affecting Ambassadors, other public Ministers and Counsels and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

The impact of this provision is colored by Article VI, Clause 2, which declares the Constitution to be the Supreme Law of the land. From these two threads Chief Justice John Marshall wove the historic fabric of judicial review, which has come to be a permanent feature of American government:

"It is (Marshall said) emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

Marbury v. *Madison*, 5 U.S. (1 Cranch) 137 at 177. Beginning with the basic notion that an independent judiciary, disinterested and unresponsive to political machinations, is best suited to umpire the workings of the Republic, the Court has passed on the constitutionality of Congressional enactments, arbitrated disputes between States and governed the workings of the federal court system it heads. In addition, it has served as the national appellate court on civil and criminal litigation, establishing rules of evidence and law, the power for which is essential for the dynamic judiciary our trifurcated executive form of government demands.

The trinity of bills before the committee—S. 674, S. 1194 and S. 1333—seek in varying degrees to restrict the Court in its appellate functions, This common trait is indicated, first, by sections designed to delute *Miranda* and *McNabb-Mallory* down to discretionary rules of thumb for trial judges. The effect on appellate review is to restrict the grounds of reversal to abuses of discretion, not prejudicial error of law.

S. 1333 entitles the section pertaining to confessions "Flexible Rule for Admissibility of Illegally Obtained Evidence"—but flexibility at the trial level resulting in restriction at the appellate level. The same bill relies heavily on trial court discretion, allowing value judgments as to the "degree" to which interrogations meet constitutional standards and any "justification" law enforcement officers may advance as an excuse.

S. 674 allows the trial judge full discretion on admissibility as well, but S. 1194 makes the trend most obvious. It seeks to "define" Supreme Court appellate review in criminal cases involving admissions by withdrawing all jurisdiction on the issue of voluntariness "to review or to reverse, vacate, modify or disturb in any way" the trial court ruling.

Such proposals fly in the face of American legal tradition and sound judgment. They, in effect, shackle the Supreme Court in its efforts to lay down rules of evidence—an historic pursuit of our highest tribunal. Taken in the context of the present concern over the rise in crime, they assume the Court is restricting police enforcement through decisions designed to protect the due process rights of innocent and guilty accused.

The basic fallacy of the claim that the Supreme Court is to blame for the rise in crime has been recognized by countless authorities. The effect of court

limitations on police interrogation was found to be negligible in the 1966 Report of the President's Commission on Crime in the District of Columbia, pp. 594–613. Rejecting the notion that a complex problem can be attributed to a single factor, then Acting Attorney General Ramsey Clark a year ago expressed the following view:

"Court rules do not cause crime. People do not commit crime because they know they cannot be questioned by police before presentment or even because they feel they will not be convicted . . . In the long run, only the elimination of the cause of crime can make a significant and lasting difference in the incidence of crime . . . The present need for greater protection . . . can be filled not by . . . court rulings affirming convictions based on confessions secured after hours of questioning or evidence seized and search made without warrants. The immediate need can be filled by more and better protection."

At a time when the Court is under unremitting criticism for supposed coddling of criminals, it would do well to consider the positive role played by the Court in the enforcement and administration of criminal justice. Recent rulings on confessions have not so much restricted police procedure as they have improved it. Knowing their procedures will be closely scrutinized in court, police are doing a more thorough job of investigation, relying on careful research rather than tainted or questionable confessions or searches. As watchman over police practices, the Court is fulfilling an historic role:

"It is evident that every restriction that is placed on police procedures by the courts—or anyone else—makes deterring or solving crimes more difficult. However, it is also evident that police procedures must be controlled somehow. In 1931, the Wickersham Commission reported that the extraction of confessions through physical brutality was a widespread, almost universal police practice. During the next several years the Supreme Court issued a number of rulings that excluded such confessions as admissible evidence in court. There can be no doubt that these rulings had much to do with the fact that today the third degree is almost nonexistent. No one can say just how much the third degree helped law enforcement in deterring or solving crimes, but even if it helped considerably few Americans regret its virtual abandonment by the police." *The Challenge of Crime in a Free Society*, The President's Commission on Law Enforcement and Administration of Justice, 1967, United States Government Printing Office, Washington, D.C., p. 93.

Looking beyond the myopic desire to pin the blame on a group not in a position to offer a defense, the ACLU urges this committee to reject this blatantly anti-Court legislation as senseless, self-defeating and unresponsive to the crime problem in this country.

THE PROPOSED FEDERAL WIRE INTERCEPTION ACT—S. 675—IS UNCONSTITUTIONAL IN VIOLATING THE 4TH AMENDMENT'S PROHIBITION AGAINST UNREASONABLE SEARCHES AND SEIZURES

A. Wiretapping is inherently uncontrollable and usually uncontrolled

Recent years have witnessed the emergence of a new phenomenon which threatens one of the basic tenets of a free society. Great numbers and varieties of highly sophisticated electronic devices, minute and highly sensitive, have flooded the commercial market. Known collectively as "bugs," they have opened countless opportunities for secret and furtive violations of the right to privacy.

To date, no effective national regulatory legislation has been passed to curb the use of bugs and wiretapping devices. Although § 605 of the Communications Act of 1934 prohibits interception and divulgence of telephone communications by anyone, that such practices are widespread in federal and state agencies, as well as by private individuals, in states without effective prohibitions, is common knowledge. Executive recognition of the need for firm action in this area is evidenced both in the Presidential directive of June 30, 1965, forbidding wiretapping by federal agents and in the proposed Right to Privacy Act of 1967 (S. 928, H.R. 5386) sponsored by the Administration. The time for action is at hand.

The terrifying consequences that confront our society if wiretapping continues unimpeded concern us all. Perhaps the most significant aspect of these devices is the fact that they are both uncontrolled and uncontrollable. More specifically, the supposed controls, both present and proposed in S. 675, do not accomplish what they intend. Even if they did, they would still not significantly reduce the enormous invasion of privacy produced by these modern devices.

Wiretapping and electronic eavesdropping are inherently uncontrollable because there is no way to limit the tap to the persons or conversations in which the police officer may have a legitimate interest. Thus a tap on a phone catches the calls of (1) everyone who calls the phone tapped; (2) everyone who uses the phone to make a call; and (3) all the calls of the person whose phone is tapped and under suspicion. And it makes no difference how irrelevant, intimate and innocent the calls and people may be. Such invasions cannot possible be avoided, once the tap is put in.

One of the worst aspects of this inherent uncontrollability is that the necessary confidentiality of legally privileged conversations is inescapably destroyed, even if unintended. There are also many reports of deliberate bugging and tapping of lawyers' offices and telephones, as well as of doctors and ministers. This clearly threatens the 6th Amendment's right to counsel guarantee. Even where the lawyer, doctor or minister is himself a suspect, the tap or bug inevitably catches many privileged conversations of clients, patients and communicants who are fully entitled to confidentiality.

We believe that wiretapping and eavesdropping cannot be authorized consistent with constitutional requirements for a valid search and seizure. The essential elements of the 4th Amendment include probable cause and specificity. Though the first can usually be complied with, the second cannot. Most important is the specificity requirement. If there was any one abuse with which the Framers of our Constitution were concerned, it was with the general warrants and the writs of assistance which authorized general exploratory searches. To prevent this, the Founders required the search and seizure to be limited to specifically listed items. This requirement cannot possibly be complied with where wiretapping and bugging are concerned, for no such limitation is possible. Once the tap or bug goes on, the recording machine starts to operate, and *everything* is taken down, often for weeks and months. The best court order system in the world could not prevent this indiscriminate search and seizure.

The secrecy of the tap or bug, which can be maintained because they are used primarily for leads and not as direct evidence, almost ensures lax judicial scrutiny. This is because it is the probability of challenge that produces the protection afforded by a court order system in the conventional case. It is extremely difficult for a defendant even to learn whether wiretapping or bugging has been used in his case. Except when the police or prosecutor voluntarily discloses the existence of a wiretap, it is almost impossible to learn whether a wiretap has been used and to challenge its issuance.

S. 675, labeled "A bill to prohibit wiretapping . . ." suffers the shortcomings of similar efforts designed to authorize wiretapping under certain categories and by specified agencies. The bill permits state and federal wiretapping in cases of organized and other serious crime (murder, extortion, kidnapping, narcotics offenses) on application for a court order authorizing the placing of a tap on the showing of probable cause. Although controls as to the nature and location of the communications facility taped, the offense for which information is sought and the time period in which tapping is permitted are contained in the bill, such provisions would not prevent the violations of privacy and abuses of constitutional guarantees discussed above. Given the tendency of the courst to rubber stamp police determinations of probable cause, the provision for extension of the original forty-five days in countless twenty day chunks could result in emasculation of the limitations.

The American Civil Liberties Union objects to the extension of authority to wiretap to federal and state agencies. Grant of this broad and secretive power practically courts abuse on a wholesale basis. The danger inherent in government use of secret surveillance under the guise of law enforcement was recognized forty years ago by Justice Brandeis in the case of *Olmstead* v. *United States*, 277 U.S. 438 (1928):

"Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the ends justify the means—to declare that the government may commit crimes in order

to secure the conviction of a private criminal—would bring terrible retribution." 277 U.S. at 485.

For this same reason, we oppose the exception in S. 675 for national security. The bill grants the President power to obtain information "by such means as he deems necessary"—this is too broad and uncontrolled a power. Moreover, no case has been made as to either the effectiveness of such practices in so-called national security cases, or for the need for absolute and unreviewable executive discretion.

The exception for switchboard and common carrier interception seems divorced from any logical need of law enforcement. Such a provision appears practically impossible to enforce in the event of an abuse, and the phrase "normal course of employment" is vague, to say the least. Surely, there ought to be some indication of the purpose for which this broad exemption is to be permitted, without record-keeping, reporting and other controls. Such controls are necessary in order to ensure that this power, if allowed at all, is used as rarely as it should be and not abused, as it so easily can be.

Our primary objection to S. 675, however, concerns the vast scope of crimes towards which the bill would authorize wire-tapping. The bill goes far beyond the national security matters covered by the proposed Right of Privacy Act of 1967. It would extend this odious practice to cover a multitude of situations in which the sanctity of countless innocent persons would be invaded. Under prevailing police practices, such crimes as murder and kidnapping involve prolonged and thorough investigations. If wiretapping is allowed in the effort to solve such crimes, citizens remotely and peripherally related or acquainted to the possible and numerous suspects would discover the pervasive sense of exposure which motivated our ancestors to enact the 4th Amendment. We must constantly guard against the overzealous, keeping in mind the recent warning of Senator Ervin that "constitutional shortcuts are no substitute for good police work." 113 Cong. Rec. S2478 (Daily Ed., February 27, 1967).

In sum, S. 675 does not provide the necessary safeguards to control the abundant and widespread invasions inherent in the practice of wiretapping. Senator Long has warned that "wiretapping is a repugnant invasion of privacy . . . [I]t's use cannot be justified simply on the basis of its convenience." 113 Cong. Rec. S. 4926 (Daily Ed., April 12, 1967). The American Civil Liberties Union urges the Congress not to pass legislation which will make the gloomy prophecy of George Orwell's "1984" an imminent reality rather than a far-fetched fantasy. We urge the committee to reject S. 675.

Senator McCLELLAN. The Chair will direct that a number of editorials which I have listed here together with the list thereof be placed in the record at this point. The list of them will be printed first and the editorials to which the list refers will follow.

(The list and editorials follow:)

LIST OF NEWSPAPER STORIES AND EDITORIALS FOR HEARINGS

Ammunition for the "War on Crime," editorial, The Evening Star, Washington, D.C., Feb. 20, 1967.

Our Crime-Ridden City, editorial, The Evening Star, Washington, D.C., Mar. 1, 1967.

Court Decisions Hurt Crime Fight, McLellan Smith, Washington Correspondent, Delaware State News, Dover, Delaware, Mar. 20, 1967.

Imbalance in Favor of the Criminal, editorial, American, Austin, Texas, Mar. 21, 1967.

The Court and the People, editorial, Starr, Indianapolis, Ind., Mar. 22, 1967.

Crime is Encouraged by Lenient Courts, editorial, Post-Herald, Beckley, W. Va., Mar. 28, 1967.

Why Not Fight Crime?, editorial, Independent Record, Helena, Mont., Mar. 30, 1967.

Crime—What's That?, editorial, The Evening Star, Washington, D.C., May 22, 1967.

Crime—Law Shift Urged In Britain, The New York Times, June 2, 1967.
Message From Britain, editorial, The Evening Star, Washington, D.C., June 10, 1967.
Government by Judges, James J. Kilpatrick, The Sunday Star, Washington, D.C., June 4, 1967.
Exceprts from editorial, Chicago Tribune, Chicago, Ill., June 11, 1967, re Richard Speck case.
"Very Wrong," editorial, Washington (D.C.) Daily News, June 13, 1967.
Rhode Island vs. The Supreme Court, editorial, Chicago Tribune, Chicago, Ill., June 24, 1967.
Crime in the District Rises 41.1 Pct. During May, Washington (D.C.) Post, June 21, 1967.
Crime Statistics, editorial, The Evening Star, Washington, D.C., June 27, 1967.
Eavesdropping Decision, editorial, The Evening Star, Washington, D.C., June 13, 1967.
Bugging Advocate, editorial, The Evening Star, Washington, D.C., July 4, 1967.
The Case for Wiretapping, The Washington (D.C.) Daily News, edit., Feb. 21, 1967.
Wiretapping a Potent Weapon, editorial, Tribune-Democrat, Johnstown, Pa., Feb. 27, 1967.
Wiretapping Has A Place, editorial, Times, Asheville, N.C., Mar. 11, 1967.
Why the Horror Of Police Wiretapping?, editorial, Times-Delta, Visalia, Calif., Mar. 13, 1967.
No Wiretaps Wanted?, editorial, The Evening Star, Washington, D.C., Mar. 17,, 1967.
WMAL/AM/FM/TV editorial broadcast July 6, 1967.

[The Evening Star, Washington, D.C., Feb. 20, 1967]

AMMUNITION FOR THE 'WAR ON CRIME'

The report of the National Crime Commission is a lengthly, well-written and profoundly disturbing document.

By far the greater part of the report is devoted to a re-study in depth of conditions which encourage crime and an assortment of procedures to deal with these conditions.

What is new, and certainly not less important, is the fact that this report probes two areas which have been generally avoided in earlier crime studies.

The first area has to do with wiretaps and electronic listening devices, or bugs. In the second area, seven of the 19 members of the commission take a hard and critical look at the unreasonable burdens which have been imposed on law enforcement by the Supreme Court in the past few years.

A majority of the commission concluded that "the present status of the law with respect to wiretapping and bugging is intolerable" and that "Congress should enact legislation dealing specifically" with these matters. What is actually called for is legislation, subject to "stringent limitations," which would permit the use of wiretaps and bugs by law-enforcement agencies, and which would outlaw any other use of such devices.

This recommendation by the commission majority was available to the President earlier this month when he sent his crime message to Congress, a message which called for a ban on all wiretapping and bugging except in national security cases. Mr. Johnson chose to ignore the advice of his own commission. We hope that Congress will not ignore it.

It should be borne in mind that wiretaps and bugs are useful, essential really, in dealing with certain major crimes and with "organized crime"— that element of the criminal community which now, with relative impunity, takes in untold billions of dollars, corrupts law-enforcement agencies, robs the poor, murders its enemies and wrecks the lives of thousands of people through the illegal sale of narcotics. How anyone, the President included, can say that there is some "right of privacy" which forbids the use of the most modern and efficient methods to apprehend these racketeers is beyond comprehension.

The use of bugs and wiretaps would be of little or no help on the other front of

the war on crime—the battle, also now a losing one, to deal with the hoodlums whose specialties are robbery, rape, burglary, and the like. What is urgently needed here is relief from such 5-to-4 Supreme Court decisions as those in the Escobedo and Miranda cases.

There is nothing in the supplemental report on this subject by the seven commission members which is in any sense an "attack" on the court or an invitation to flout its rulings. Nevertheless, the plain import of their findings is severely critical in the sense that they think the court majority has unduly tipped the scales in favor of the criminal suspect and against the public's right to be protected against crime as well as government's duty to provide that protection. For the benefit of those who think that any criticism of the Supreme Court stops just short of treason, it should be noted that this supplemental report draws much of its support from the comments of dissenting justices and from views expressed by such former members of the court as Justices Jackson and Frankfurter.

It will also be difficult to implement many of the commission's recommendations. The most that can be said now is that the major reforms that are proposed, whatever the difficulty, must somehow be made effective if there is to be any hope of winning the war on crime.

[The Evening Star, Washington, D.C., Mar. 1, 1967]

OUR CRIME-RIDDEN CITY

Three days before the President's District crime message went to Congress the law-abiding residents of this community received the latest bit of bad news. Washington crime in January jumped by 42 percent over the figure for January a year ago. Ten years ago the crime index was 205.4 percent lower than it is today.

Against this dismaying background, Mr. Johnson got off to a splendid rhetorical start. "So long as I am President," he said, "I will take every step necessary to control crime in the District and to make it a community of safe streets and homes, free from crime and the fear of crime."

Unhappily, the presidential performance fell far short of promise.

This is not to say that the recommendations offered by the President would not be helpful if put into effect. Conceivably, they could be of considerable help. But of themselves they will never control crime in the District or make this a safe city, and Mr. Johnson for some incomprehensible reason seems unwilling to take the last crucial steps in his campaign against crime.

In October, after some six years of work, Congress enacted a District crime bill designed, within presumed constitutional limits, to ease some of the handicaps which the courts have clamped on the police in the investigation of crime and the interrogation of suspects. Had this bill become law, it certainly would have helped. But it was vetoed by the President because, he said, some of its provisions possibly might have been struck down by the Supreme Court. Of course this might have happened. But why couldn't he have left that question to the courts?

There is not one word in this message which asks Congress to do anything about the Mallory rule or other crippling decisions. And this despite the fact that his own District Crime Commission agreed that some legislation is needed. A majority of his National Crime Commission said that the present status of the law on bugging and wiretapping is "intolerable" and that legislation is also needed in this area. But not a word of guidance or request came from the President. And the White House has made it clear that nothing of the sort is likely to be forthcoming.

Toward the end of his message, Mr. Johnson said this: "I pledge myself—and I urge Congress—to take every step which is necessary to ultimate success in our drive against crime."

This is repetition as far as the President is concerned. But the invitation to Congress is new.

The hope for this crime-ridden city is that the legislators will take the invitation at face value, enact the best bill they can draft and send it to the White House. If his words mean anything, the President this time will sign it—and let the courts decide its constitutionality.

[Delaware State News, Dover, Del., Mar. 20, 1967]

COURT DECISIONS HURT CRIME FIGHT

(By McLellan Smith, DSN Washington Correspondent)

The President, in recommending broad legislation "to insure the public safety," for the second year in a row has used very strong language about the crime problem in America but was mute on one subject of acute interest to all of us.

He warned against allowing a breakdown of public order, and deplored the fact that in many areas citizens are afraid to use the public streets. He warned against the consequences of contempt and mistrust of legally established authority.

"Lawlessness is like a plague," the President declared, and one Washington newspaper stated that no one can accuse him of exaggeration. In his crime message to Congress, he pointed out that more than 7 million people each year come into contact with the law in America, and on any day over 400,000 are confined in correctional institutions.

He further commented that probably more than twice as many aggravated assaults, burglaries and larcenies occur than are reported. And it is shocking to note that crime is highest in the 15 to 21 age group, with half the arrests for burglaries involving youths under 18.

In recent years crime in the United States has increased at a rate about six times that of our poulation growth. It is a shockingly sad commentary.

And the situation is further aggravated by the ill-advised philosophy of taking the law into one's own hands, of taking to the streets in massive lawless demonstrations, and of violating laws one doesn't agree with.

This trend must be reversed! Public order is the first business of government, as the President stated.

Although the President made some far-reaching suggestions, he was silent on one that we believe to be the most critical problem in law enforcement today: Court decisions which hamper rather than help law enforcement officers and which show more concern for the rights of the criminal than for the rights of law-abiding citizens.

Such an undue burden has been put on law enforcement officers that they are severely handicapped in the investigation and prosecution of crime. Corrective legislation is pending before the Congress and we hope it will be given the consideration it deserves.

If crime is to be abated, law enforcement must be given the tools with which to work, not have its hands tied by Court decisions which overlook the rights of the law-abiding to the advantage of the criminal.

[Austin, Tex., American, Mar. 21, 1967]

IMBALANCE IN FAVOR OF THE CRIMINAL

The concern about the "crime situation" is nation-wide and it is manifesting itself at a very, very personal level—at home.

To this point, Mr. Citizen hasn't been informed about how he can participate, despite a nominal number of organizations set up to foster the study of some phase of crime.

In Austin, the Texas Grand Jury Association is having a state-wide meeting of its membership, presumably with the intention of bolstering interest in this phase of the process by which criminal activity is brought under scrutiny of the judicial system. Then there is the Crime Stop program, which, incidentally, is making some pointed inquiries about procedures of some of the agencies directly concerned with criminal activity.

Now comes Police Commissioner Howard R. Leary of New York, another of those officials on the firing line who are saying point blank that the rules of the game, as set up by society, are at an imbalance in favor of the criminal and his activity.

"If the public wants to stop crime," says the commissioner, "they must have the laws changed to safeguard the community."

Commissioner Leary points out that legislative bodies can increase the penalties for burglary, felonious assault, robberies, sex offenses and other violent crimes.

"Instead of restricting law enforcement, the laws should restrict criminal activity. We don't think the criminal element is very fearful of the present penalties."

The commissioner may be getting at the core of the matter when he says: "We are approaching an imbalance between the protection of the rights of the suspected individual and the protection of the group."

Then he expanded the list of public institutions and agencies that must respond.

"The public must look at the courts and the legislative bodies—the city council, state legislature and Congress. What laws have been passed to protect you?"

In answer to his question, the commissioner answers: "None."

[Indianapolis, Ind., Star, Mar. 22, 1967]

THE COURT AND THE PEOPLE

Last Friday Canton (Ill.) cab driver Lloyd Miller was released from Illinois State Prison by action of the U.S. District Court in Chicago.

Miller had been sentenced to die for the November, 1955, rape murder of an 8-year-old Canton girl. The District Court, in freeing Miller, cited the Supreme Court ruling on the use of confessions.

Thus another convicted killer and rapist goes free because of the Supreme Court ruling limiting sharply the use of confessions in a trial.

A presidential crime commission, studying the problem, has revealed that seven of its 19 members say the situation calls for amendment of the Constitution. Similar suggestions have come from a Senate subcommittee studying the implications of the court's 5 to 4 Miranda decision last June, although some witnesses before the subcommittee have opposed a constitutional amendment saying a future court ruling might soften it.

But writing laws and constitutional amendments is the business of the Congress of the United States, not the Supreme Court. Congress can, if it desires, pass laws to correct what appears an obvious flaw in the law of our land.

Representative Robert Taft, Jr. (R-O.) has introduced in the House of Representatives a bill authorizing the appointment of "masters of examination" to supervise questioning of suspects by Federal law enforcement agencies. He said it could serve as a model for state legislatures to consider in revising criminal codes and added, "We must not be faced with the spectacle of the acknowledged criminal freed merely because a policeman is unable to guess how five of the Supreme Court will vote on a particular issue."

As long as the Supreme Court's set of rules remains in effect, state legislatures cannot enact laws which would nullify them. This is up to Congress. It should enact laws which will restore to police more time and opportunity to question suspects, under reasonable circumstances, than they have under the guidelines laid down in the Miranda case. There is need for more common sense in fixed standards for determining whether a confession is voluntary.

Legislation which recognizes the rights of the victim as well as the criminal should be pressed.

[Beckley, W. Va., Post-Herald, Mar. 28, 1967]

CRIME IS ENCOURAGED BY LENIENT COURTS

Crime and how to cope with it would probably be the prime subject of discussion in the United States if it weren't for the Vietnam war. The way things are going, it may soon even surpass the war in public concern.

That crime continues its upward spiral cannot be denied. It is rising more rapidly in almost all major categories than the growth of the population. But the rate of crime increase is taking a back seat to arguments over how to treat a suspected criminal.

It is a fact the worst crime rate in the nation's history has come during a period when many of the courts of the land—and in particular the Supreme Court—have erected unprecedented safeguards for suspects.

Recent Supreme Court decisions, and subsequent lower court rulings based on those decisions, have made it all but impossible to gain a confession, or even to interrogate a prisoner.

A minority statement in the report of the President's Crime Commission referred specifically to these two areas of police restriction, and asked if "the scales have tilted in favor of the accused and against law enforcement and the public further than the best interest of the country permits."

Others are asking that question, in addition to just about every police officer. The burden of proof rests upon those who long have contended there is no relationship between punishment and crime.

Never have the courts been so lenient, and never has crime in the United States been more rampant.

[Helena, Mont., Independent Record, Mar. 30, 1967]

WHY NOT FIGHT CRIME?

President Johnson has gone through the motions of declaring war on crime, but his plans for action indicate that this war will be fought with the government's hands tied behind its back, just as in the war in Southeast Asia.

For example, one of the stipulations that the President made is that there shall be no wiretapping.

This is as much as admitting that the criminals have a right to operate, to plan their forays against civilized society and that law enforcement can do nothing about it as long as they obey the rules of the game.

In fact, it makes the activities of criminals appear to be a game.

It makes it illegal to do anything about crime as long as these rules are observed by the criminal element, and whenever the law goes beyond the rules, using modern principles of detection, using confessions of the criminals themselves, then we are forced to act as though no crime had been committed.

One is reminded of a childhood game of tag during which one who was threatened with tagging could call out "King's ex," or some similar magic formula and thereby be immune.

Why should wiretapping or bugging be illegal on the part of law enforcement officers?

We can think of no reason which should be persuasive by which any law-abiding citizen would object to wiretapping or the use of other electronic media in the field of detection.

We can think of many reasons why the criminal element would object to having its plans made known before they could be consummated.

Even the President's own Crime Commission in a recent report said that it favored a limited use of wiretapping devices in cases involving national security.

We would go farther and say that limited wiretapping should be legalized in cases involving organized crime.

Perhaps the actual use of the wiretap recording might not be used in court, but it could be used to give direction to the law enforcement officers so that they would know where to look for evidence which could be used in court, so that they would know where to be on hand at the moment a crime is committed, so that they would know who might be involved and could search for evidence involving all the conspirators instead of only part of them.

Crime is getting so serious that we dare not confine ourselves to half-way measures.

Either the nation is going to control crime or crime will control the nation. We had better use all the weapons at our disposal.

[The Evening Star, Washington, D.C., May 22, 1967]

CRIME—WHAT'S THAT?

There is one thing to be said for our new Attorney General, Ramsey Clark. You never know what to expect when he takes off on the subject of crime.

In an interview the other day, the attorney general was reported as saying in effect that all the talk about a national crime wave is much ado about nothing. "The level of crime has risen a little bit," Clark said, "but there is no wave of crime in the country."

As an item in support of this thesis, the attorney general told of one city (unidentified) in which crime was up 1 percent from last year. But last year, he added cheerfully, crime in that city was down 1 percent from the year before. As for official statistics which indicate substantial yearly increases in crime throughout the country, Clark said: "We do ourselves a great disservice with statistics."

For our part, we do not quite know how to interpret this comment. It is true that crime statistics do a great disservice to the Clark suggestion that the crime wave talk is a case of making mountains out of molehills. But our attorney general, in all deference, is talking through his hat—at least as far as the crime statistics for Washington are concerned. Whatever the fact as to the statistics for his unidentified city—statistics, incidentally, which he seemed to think were quite useful—the figures for the Nation's Capital add up to a devastating rebuttal of the Clark crime thesis.

The most recent statistics for Washington show a dismaying crime rise here of 59.7 percent last month over the previous April. This included a 103.8 percent jump in robberies. The rise in serious crime in March was 51 percent over March of 1966. The President's message on crime in Washington, promising safe streets and so on, went to Congress in January. The local crime statistics for that month revealed a jump of 42 percent over the same month a year ago. And to take a longer statistical journey into the past, the crime index in Washington 10 years ago was about one-fourth of its current level.

Yet our attorney general tells us that "we do ourselves a great disservice with statistics." It would be nice, we suppose, if the nasty figures could be thrown down the sewer. Then it might be possible for some people to believe that there really isn't any such thing as a crime wave. Possible for some people that is, but not for those who are the victims day in and day out of robberies, rapes, burglaries, assaults, and you name it.

[The New York Times, June 2, 1967]

CRIME-LAW SHIFT URGED IN BRITAIN

LEGAL UNIT WOULD END RIGHT OF SUSPECT TO KEEP SILENCE

By Anthony Lewis

LONDON, June 1—Britain was urged today to abolish the right of criminal suspects to remain silent under questioning by the police.

Justice, a leading legal organization, proposed a new system of police interrogation in the presence of a magistrate. The suspect would be required to answer, and the answers could be used against him at a trial.

The proposal contrasts striking with the trend of recent Supreme Court decisions in the United States. These decisions have reinforced the protention against self-incrimination by giving the suspect the right to consult a lawyer before being questioned.

Justice is the British branch of the International Commission of Jurists. Its views will carry particular weight because it is regarded as a liberal-minded organization concerned about the rights of individuals.

PAST PROPOSAL REJECTED

Six years ago, a committee of Justice rejected proposals for change in the right to silence, terming them "alien to the general conception of justice in this country."

One member of that committee, Sir John Foster, dissented. He criticized the previlege as "a sentimental sporting rule" that allowed some guilty men to go free.

Since then, the new report said, "the climate of opinion has become less favorable to criminals and Sir John Foster's view has been more and more widely accepted."

The report concluded:

"The time is ripe to abolish the privilege of the accused to keep silent before his trial, while at the same time safeguarding him from improper pressure by

MAGISTRATE WOULD BE ARBITER

overzealous police officers by requiring that his confession shall not be admissible against him unless it is made and recorded before a magistrate."

The report also spoke favorably of a suggestion to abolish the privilege against self-incrimination in trials as well, so that defendants would have to take the witness stand. But it did not take a final position on that point.

The questioning procedure suggested in the report was described as "controlled compulsory interrogation." It would begin with the appearance of an accused person before a magistrate, as soon as possible after arrest.

The police would ask the suspect questions. The magistrate would "disallow any question which he thought unfair or improper," and he could ask further questions himself.

If the suspect refused to answer despite orders, this refusal could be mentioned at the trial. The report did not propose any power to hold a suspect in contempt for refusal to answer.

The suspect would be entitled to have a lawyer present, and the report favored free lawyers for the poor. But it added that under this system it would be "contrary to public policy and to professional etiquette for a solicitor to encourage his client not to answer proper questions."

Once this new procedure was used, no other confession made by a suspect would be admissible—with one large exception. The report urged that policemen be given pocket tape recorders on which they could interview suspects before arrest.

Such interviews should be admissible as evidence, the report said, "subject to satisfactory guarantees against abuse."

[The Evening Star, Washington, D.C., June 10, 1967]

MESSAGE FROM BRITAIN

In the evolution of our system of law, as in many other things, the United States is deeply indebted to the British. And it may well be that in the business of dealing with criminals there is also much of profit for us to learn from this source.

Just the other day, for instance, an organization known simply as Justice, which is the British branch of the International Commission of Jurists, urged the abolition of the right of criminal suspects to remain silent, under questioning by police in the presence of magistrates.

The British proposal calls for getting the suspect before a magistrate as soon as possible after arrest. Subject to the magistrate's ruling on the propriety of questions, the suspect would be required to answer, and the answers could be used in a trial. A defense lawyer could attend, but it would be "contrary to public policy and to professional etiquette for a solicitor to encourage his client not to answer proper questions." Confessions obtained by other means would be for the most part ruled out.

Going a step further, the Justice report suggested that the police be given tape recorders on which to interview suspects before arrest. And while it stopped short of a firm endorsement, Justice also had some favorable words to say for the idea of ending the privilege against self-incrimination in trials as well.

This is a decided switch for the British legal group, which reached a contrary conclusion six years ago. Since then, however, the organization has been swinging toward the view that the privilege of silence is "a sentimental sporting rule" which too often allows a guilty man to go free.

It should be noted, according to the New York Times, that Justice is regarded in Britain as a liberal-minded organization "concerned about the rights of individuals."

This is all so directly contrary to the trend of our own Supreme Court in virtually ending the value of police interrogation that the mere thought of such proposals here would no doubt send our justices spinning.

Our reaction, however, is, Hail, Justice!

It is apparent that in Britain concern for "the rights of individuals" is coming to mean more than concern for the rights of criminals. The message inherent in the new British report is that the victims of crime, and the law-abiding public at large, have rights, too. The day that this revolutionary notion shows signs of gaining ground in the United States will be a day for rejoicing.

[The Sunday Star, Washington, D.C., June 4, 1967]

GOVERNMENT BY JUDGES

James J. Kilpatrick

The Tenth Amendment to the Constitution ordinarily is remembered, when it is remembered at all, as the "States' rights" amendment. The term is a misnomer. It ought properly to be known as the "reserved powers" amendment, but in the light of last Monday's Supreme Court decision in the California case, we may refer to it henceforth simply as the Discarded Tenth.

Until last Monday, many of us truly had believed that not even the Warren court could fail to honor the explicit meaning of the Tenth. What the amendment says is that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively "or to the people."

Those last four words strike to the very heart of popular government. Destory them, and the structure falls. What the court held on Monday is that the people of California, exercising their ultimate sovereignty, no longer have the power to amend their own State Constitution in order to proclaim an elementary statement of property rights. Five members of the high court—Warren, Douglas, Brennan, White and Fortas—substituted their own naked will for the expressed desire of more than 4.5 million Californians. Government by the people yielded on Monday to government by the judges.

The facts in the case are well known. In 1963, the California legislature adopted the Rumford Fair Housing Act. The law, intended to reduce racial discrimination, took away from the owners of certain residential property their right to sell or to lease as they wished. The opponents of the law thereupon initiated a referendum, known as Proposition 14, intended to nullify the Rumford Act and to write into California's supreme law a positive statement of every person's right "to decline to sell, lease or rent (his) property to such person or persons as he, in his absolute discretion, chooses."

Proposition 14 carried overwhelmingly in the 1964 election. Several Negro plaintiffs then brought suit to have the referendum declared void as a violation of the Fourteenth Amendment. The California Supreme Court unheld their position. On Monday, the U.S. Supreme Court affirmed by a 5–4 vote.

To describe the majority's reasoning as bizarre is to put a useful word to an inadequate purpose. The majority's reasoning was simply incredible. As the five justices saw it, California's constitutional declaration of a man's right to decline to sell his property amounted to "encouragement of racial discrimination by the State." Such a State power is prohibited by the Fourteenth Amendment; it therefore cannot be exercised by the people through amendment of their basic law.

How Proposition 14 could be read as "encouragement" of racial discrimination is beyond comprehension. As Harlan said for the four dissenters, "the provision is neutral on its face." Its effect is merely to restore certain private behavior "to the sphere of free choice." The Rumford Act established a special privilege for buyers. Proposition 14 took that special privilege away, and left the law of property where it was before—in a condition where the buyer's right to buy is fairly balanced by the seller's right not to sell. If the people themselves cannot restore that right, how then is it ever to be restored?

The Supreme Court majority could not even find precedents to support its Olympian view. One cited case involved a railway; another involved a political party; a third involved a restaurant owned by a public parking authority in Wilmington; a fourth dealt with State statutes requiring segregation in restaurants. Speaking for the majority, White feebly acknowledged that "none of these cases squarely controls the case we now have before us." The fact was that none of the cited cases remotely approached a California constitutional amendment dealing with free choice in the sale of private property.

In a concurring opinion, Douglas reiterated his alarming view that rights of free choice no longer exist in any area, such as the sale of real estate, that is handled through agents licensed by the State. He has not yet been able to rally a majority of his brothers to this extremist position, but one finds small comfort in the fact. In last Monday's decision, the high court carried its obsessive egalitarianism to lengths that the framers of the Fourteenth Amendment could never have conceived.

Harlan summed it up: By refusing to accept the decision of the people of California, and by contriving a new and ill-defined constitutional concept to allow Federal judicial interference "the court has taken to itself powers and responsibilities left elsewhere by the Constitution." This the high court had no right to do. But five of its members did it.

[Chicago Tribune, June 11, 1967, editorial]

It has been revealed that Richard Speck, the convicted murderer of eight student nurses, freely admitted the killings to doctors at the Bridewell, where he was taken after he tried to kill himself in a skid row hotel. . . .

. . . statements . . . made by Speck to . . . doctors amount to a confession, but they were not introduced as evidence in his trial. They were read into the court record at a closed door session, and on motion of Speck's lawyer, Public Defender Gerald Getty, were suppressed as evidence by Judge Herbert C. Paschen. The public defender contended that the doctors were acting as an "arm of the law" in questioning Speck. Presumably they did not advise him that he had a right to remain silent, and that he had a right to an attorney. . . .

The principal witness against Speck . . . escaped being killed herself by hiding under a bed. Let us suppose that she, too, had been murdered. The only evidence against Speck at his trial would have been three finger prints, and it is possible that he would have been acquitted.

There is something wrong with a system of criminal justice that bars from the trial record a confession like that made by Speck. His statements . . . were to a member of a panel of six doctors appointed by the court and approved by both the state and defense attorneys. Any rational system of justice . . . would permit the introduction of such evidence at a trial. The Supreme court, in its eagerness to protect the rights of defendants, has forgotten that the main purpose of courts should be to discover the truth.

Before the Escobedo and Miranda decisions the test for the admission of confessions as evidence was "voluntariness." If a trial judge . . . found the confession had been given voluntarily it was received into evidence. As a further precaution the jury was always instructed that it could disregard the confession if the members of the jury found the confession was involuntary.

A bill before Congress seeks to nullify the Escobedo a dnMiranda decisions. . . .

Crimes of violence in this country have been rising about four times as fast as the growth in population. It seems obvious that something must be done to enlighten the Supreme court.

[Washington (D.C.) Daily News, June 13, 1967]

"VERY WRONG"

The U.S. Supreme Court has decided, 6 to 3, that a New York State law permitting court-approved electronic eavesdropping is unconstitutional because it transgresses the Fourth Amendment ban on unreasonable searches and seizures.

This is on unwarranted ruling that takes another vital weapon away from those charged with enforcing our criminal law.

We agree with Justice John Marshall Harlan who concluded in his dissenting opinion that what the court did was "very wrong."

The ruling also may serve to thwart efforts in Congress to produce a law that will protect a citizen's precious right of privacy but at the same time permit law enforcement officers under carefully controlled procedures to use modern means of bringing modern criminals to justice.

The court, by its ruling, Justice White wrote in dissent, "ignores or discounts the need for wiretapping authority and incredibly suggests that there has been no breakdown of Federal law enforcement."

He points out what while the majority opinion, written by retiring Justice Tom Clark, does not in so many words hold all wiretapping and eavesdropping constitutionally impermissible, it achieves the same result by "transparent indirection." Justice White attached as an exhibit the pertinent reports of the President's Crime Commission suggesting Congress enact a law that permits wiretapping with "stringent limitations."

Justice Hugo Black, another dissenter, accused the six-man majority with "being compelled to rewrite completely the Fourth Amendment" in order to strike down the New York law.

Justice Harlan said the decision is another step in the court's trend in recent years to take "to itself sole responsibility for setting the pattern of criminal law enforcement throughout the country."

Congress may be able to circumvent by law these recent court decisions—including this latest—that have hampered law enforcement at a time when crime is rising. It should try.

[Chicago, Ill., Tribune, June 24, 1967]

RHODE ISLAND VERSUS THE SUPREME COURT

The Rhode Island state police have been ordered to disregard the recent "do-gooder" rulings of the Supreme court in their effort to stem a rising tide of crime. In issuing the order, Col. Walter E. Stone, the superintendent, said that "hoodlums have turned the streets into a jungle." The latest incident was a shooting fray Wednesday in Providence.

"I've ordered my men to grab these guys on sight," Col. Stone said, "and frisk them and make sure they're not armed. This situation requires firm, tough policemen . . . We're not going to be guided by do-gooder decisions of the last year or two which have been protecting these guys and putting halos around their heads."

He said he had told his men to "forget Miranda and Escobedo," the two Supreme court decisions which have done most to restrict the actions of police.

The Rhode Island attorney general says he has been assured that the constitutional rights of persons arrested or accused of a crime will be respected. This leaves it a little hazy just where the superintendent's order leaves off and whose interpretation of constitutional rights will prevail.

Col. Stone is obviously taking a risk, but up to a reasonable point it is a risk that needs to be taken. The risk, of course, is that the courts may throw out any charges he brings, thus setting the defendants free again. The reason it needs to be taken is that the existing rulings have hampered police all over the country in gathering evidence. In the opinion of respected police officials such as Chicago's O. W. Wilson, they must bear some responsibility for a disturbing growth in crime.

These rulings will stand until the Supreme court itself reverses, modifies, or "clarifies" them. The only way this is likely to come about is for a police department to do what Col. Stone has ordered his to do, and for the prosecution and the lower courts to risk rejection or reversal themselves by seeing that the matter is once again appealed to the Supreme court.

True, there is little immediate hope that the Supreme court, with its reinforced "liberal" majority, is likely to reverse itself. But having taken the position that its duty is to mold the laws to fit what it regards as today's needs and attitudes, the court will probably not ignore public opinion. If crime and disrespect for the rights of the public continue to mount, the popular clamor for change will soon be deafening.

[Washington, D.C., Post, June 21, 1967]

CRIME IN THE DISTRICT RISES 41.1 PCT. DURING MAY

There were 880 more serious crimes reported in Washington last month than there were in May, 1966, an increase of 41.1 per cent.

Police Chief John B. Layton's regular monthly report showed that only aggravated assaults' decreased among the seven crime index categories listed. The 255 of those reported last month represented a decrease of 18.8 per cent from May of last year.

The 3022 crimes reported last month compared with 2142 recorded in May, 1966.

The biggest increase last month was registered in criminal homicides, with 19 of them reported compared with 7 in May, 1966—an increase of 171.4 per cent.

The next largest increase was in robberies, with 414 reported last month and 220 in May, 1966—an 88.2 per cent increase.

Burglaries were up 53.8 per cent over the May, 1966, figures and auto thefts rose 55.2 per cent. Crime index larcenies were up 20.8 per cent last month over the May, 1966, report.

The total May crimes this year compared with 2673 reported in May 1965, an increase of only 13 per cent. However, a revised classification and reporting system adopted recently makes a statistical comparison of the two figures unrealistic.

These are the comparative figures for May:

Crime	1966	1967	Percent change
Homicide	7	19	+171.4
Rape	14	15	+7.1
Robbery	220	414	+88.2
Assault	324	255	−18.8
Burglary	754	1,160	+53.8
Larceny	389	470	+20.8
Auto theft	444	689	+55.2
Total	2,142	3,022	+41.1

[Washington Star, June 27, 1967]

CRIME STATISTICS

Attorney General Ramsey Clark, unable to detect any significant increase in crime, was reported last month as having said: "We do ourselves a great disservice with (crime) statistics." The attorney general has not elaborated on this cryptic comment, nor has he denied making it.

Well, a new batch of crime statistics has come along. The FBI Crime Index, covering the first three months of this year, shows a 20 percent increase in the national crime rate. According to J. Edgar Hoover, this was the sharpest rise recorded since the FBI began publishing its quarterly reports in 1958. For the Nation's Capital, in case anyone is interested, the increase in the rate of serious crime during the three-month period was a shocking 42 percent.

Just how or why we do ourselves a great disservice with crime statistics is far from clear to us. Certainly the public is entitled to know the truth about the country's ever-rising crime rate. Presumably, the attorney general is also interested in getting the facts. So we trust that his curious remark does not foreshadow an attempt on his part to put a stop to the collection and publication of the FBI statistics. It may be possible to suppress the details of the crime story, but that would not help solve the problem or make it go away.

[The Evening Star, Washington, D.C., June 13, 1967]

EAVESDROPPING DECISION

Justice Clark's opinion in the Ralph Berger bugging case is not going to be of much help in drafting legislation to permit the supervised use of wiretaps and electronic devices in "the war on crime." For he seemed in one breath to be saying that the New York law under which Berger was convicted of a bribery conspiracy was unconstitutional because it was "too broad in its sweep." In the next breath, however, he appeared to spell out requirements for a valid law which would be impossible to meet.

If this latter is correct, as some of the dissenting justices contend is the case, then the court, without saying so in as many words, has moved toward banning all eavesdropping by law-enforcement agencies.

Justice Black, who was joined in dissent by Justices Harlan and White, ripped the Clark opinion up one side and down the other.

The majority ruling, he said, despite Berger's "obvious guilt," makes it impossible to try and convict him again. And this despite the fact that the banned evidence shows Berger to be "a briber, a corrupter of trusted public officials, a poisoner of the honest administration of government upon which good people must depend to obtain the blessings of a decent orderly society."

Eavesdroppers, Justic Black went on to say, may be obnoxious. "But they are assuredly not engaged in a more 'ignoble' or 'dirty business' than are bribers, thieves, burglars, robbers, rapists, kidnapers and murderers . . ." Nor, he went on,

can it be denied "that to deal with such specimens of our society, eavesdroppers are not merely useful, they are frequently a necessity."

Justice Black noted that some people say the prosecuting authorities should use more scientific measures than eavesdropping and that others talk vaguely of some unspecified new means of apprehending and convicting criminals. But, he added, the fact is "that crimes, unspeakably horrid crimes, are with us in this country, and we cannot afford to dispense with any known method of detecting and correcting them unless it is forbidden by the Constitution or deemed inadvisable by legislative policy—neither of which I believe to be true about eavesdropping."

Needless to say, we are in wholehearted accord with these sentiments, and it surely is of some significance that this expression of them comes from a justice whose dedication to protection of our constitutional liberties is not open to question.

In this situation, we hope Congress will go forward with legislation, as recommended by a majority of the President's own crime commission, to authorize, under careful supervision, the use by the authorities of modern techniques in dealing with crime.

This most recently majority ruling, while it certainly creates problems, does not necessarily raise an insuperable barrier.

For one thing, Justice Stewart said he did not agree that the New York law was unconstitutional, and he indicated that he would have voted to uphold Berger's conviction if the affidavits supporting the request to bug his office had been in better order. For another, Justice Clark, after 18 years on the court, is now stepping aside because of the designation of his son as Attorney General.

Obviously, in this situation, a great deal depends upon the President's choice of a successor to Justice Clark. It is by no means assured, however, that a newly-constituted court would strike down a carefully drafted eavesdropping law. Congress, in any event, can hardly do less than give it a try—unless all of the fine speeches about stamping out crime are devoid of substance.

[Washington Star, July 4, 1967]

BUGGING ADVOCATE

William O. Bittman, who successfully prosecuted Jimmy Hoffa and Bobby Baker for the Department of Justice, is in a position to speak with authority on techniques which are effective in law-enforcement efforts. And now that he has left the department—not because of any policy disagreement, but to take a position with the Hogan and Hartson law firm—he has had some interesting things to say about the use of electronic devices in dealing with crime, especially organized crime.

Bittman is in fundamental disagreement with Attorney General Ramsey Clark, who has said that eavesdropping by the federal government is both ineffective and a waste of manpower. Bittman says there is no question in his mind that "the use of certain electrical devices would be of great help in fighting organized crime in this country if the information obtained could be used as evidence." He also says we are losing the battle against organized crime, "and I don't think we should deny reputable law enforcement any legitimate tool."

This view is consistent with the majority recommendation of the President's own crime commission and with the very strong testimony given that commission by New York District Attorney Frank S. Hogan, who said that electronic surveillance is "the single most valuable weapon in law enforcement's fight against organized crime."

Nevertheless, both the President and his attorney general, for all of the free-wheeling speeches about their determination to wipe out crime, are opposing the effort in Congress to authorize strictly supervised eavesdropping in major criminal cases. Furthermore, a majority of the Supreme Court announced a ruling in the Berger case this month which raises serious doubt that the court would sanction any kind of eavesdropping legislation.

Even so, we hope that Congress will pass the bill. If this country, in its losing battle against the criminal, is to be denied use of the "single most valuable weapon" in the fight against organized crime, let the onus rest squarely on the Supreme Court, the President, and his attorney general.

[The Washington Daily News, Feb. 21, 1967]

THE CASE FOR WIRETAPPING

Among its many thoughtful proposals for attacking crime, the President's Crime Commission strongly favors a law to legalize wiretapping by law officers—under strict supervision.

As it stands, the situation in this field now is "intolerable," the commission report asserts.

Under a series of laws and Supreme Court decisions, wiretap information is not admissible in Feedral courts. But it is used in some state courts, altho technically in violation of Federal law. President Johnson has banned any type of electronic snooping by Federal agents.

But the Crime Commission reported that the knowledgeable witnesses who helped it in its study of crime believe the use of "electronic surveillance" is substantial and increasing.

It is widely used by private eyes and others. And it is being done with no supervision at all.

The commission included in its report a detailed description of the difficulty of cracking organized crime because of the "layers of insulation" between the top criminals and their minions who might be caught. Then it quotes District Attorney Frank A. Hogan of New York who testified he could not have convicted some of the most infamous gangsters without wiretapping or bugging.

Wiretaps, Mr. Hogan said, are "the single most valuable weapon in law enforcement's fight against organized crime."

The great majority of law officers, the commission said, think these devices are "indispensable."

The commission conceded eavesdropping can be an invasion of privacy. So it made a sensible recommendation:

That Congress pass a law specifically dealing with this problem. That all private use of electronic snoops be outlawed—and we would add with severe penalties for violations. But that law enforcement officers be authorized to use these techniques on a "carefully circumscribed" basis—with advance court approval in each instance.

If crime is the enormous problem the Crime Commission describes—and it is—then the law is entitled to use this weapon in the people's defense.

[Johnstown, Pa., Tribune-Democrat, Feb. 27, 1967]

WIRETAPPING A POTENT WEAPON

President Johnson wants to fight crime.

But he wants to short circuit much of the power from a weapon that could reduce crime from the preposterous proportions it enjoys at present at the expense of the American public.

The President has said:

"A new federal law banning wiretapping and electronic bugging and snooping is essential."

The President wants to prohibit electronic detection except where national security is at stake and then only when the attorney general sees fit to grant exceptions.

Quick to reply to the President's proposal was House GOP leader Gerald Ford of Michigan. Questioning Mr. Johnson's request for a ban except in national security situations, Rep. Ford said that electronic listening devices are "an essential tool in law enforcement."

Rep. Ford also said that the privacy of citizens should be protected. However, he warned:

"We must not throw out the baby with the bathwater."

Assuredly, individual privacy cannot be taken lightly. It must be guarded, but there is no sense in being so intent on preserving privacy that lawlessness shall gain even more of a hold in America than it already has. An individual's privacy is not going to be respected by criminals, laws or no laws and a little over-protection by law officials is better than not enough. And electronic detection can bring an additional measure of protection to the public.

Protection from what? Think about crime in the United States.

Organized gambling.
Syndicate-controlled prostitution.
Narcotics.
Loan-sharking.
Corruption of legitimate businesses.
Murder.
Corruption of public-office holders.
Anything that is rotten and profitable in American life.

Taken separately, but especially when taken collectively, are not these crime-created cancers threats to the national security of the United States?

Of course they are.

And they are dangerous as threats from without the country, possibly even more so because they are working within the guts of the nation.

And for their own good, in the long run, the law-abiding citizens of the country likely will decide to risk a little invasion of privacy so that they can be safer than they now are from the ravages of criminals.

There is no doubt that wiretapping and electronic listening devices of all kinds are potent weapons to be used against criminality. Their use, however, must be controlled, for a police state is hardly more acceptable in the American republic than is a criminal state.

Sufficient controls can be placed on electronic detection by requiring that its use be authorized only by courts of law for use only by bona fide law-enforcement agencies.

With such controls, American law enforcement could continue to fight crime without having one of its hands tied behind its back.

[Asheville, N.C., Times, Mar. 11, 1967]

WIRETAPPING HAS A PLACE

President Johnson and Attorney General Ramsey Clark to the contrary notwithstanding, the present hue and cry against wiretapping and "bugging" by electronic devices doesn't disprove the fact that such practices have a legitimate place in law enforcement.

The outcry against electronic devices has a lot of emotional appeal on the "invasion of privacy" issue. But there are still strong reasons for permitting the practice under legal safeguards. Hear, for example, Judge J. Edward Lumbard of New York, chief judge of the U.S. Second Circuit Court of Appeals. He says, "Wiretapping, under safeguards, is no more an unreasonable search and seizure under the Fourth Amendment than is a search warrant."

This is plain common sense. Enforcement officials are already more than sufficiently under court restraints in seeking to solve crimes. Organized criminal racketeering is especially hard to deal with unless the police have freedom to use electronic devices. In racketeering cases it is frequently necessary to prove conspiracy, and this is extremely difficult to do unless wires can be tapped.

President Johnson and Attorney General Clark want all wiretapping and bugging forbidden except in cases involving the national security. They are wrong, and Judge Lumbard is right when he says that the practice is simply a technical extension of search procedures which have always been granted to the police. Prior securing of a court warrant would be a sufficient safety guarantee.

The current emotionalism should be drained out of the argument and reason substituted. Acres of print and hours of speeches in and out of Congress deplore the rising incidence of crime. It makes the poorest kind of sense to further cripple our beleaguered enforcement officers.

[Visalia, Calif., Times-Delta, Mar. 13, 1967, editorial]

WHY THE HORROR OF POLICE WIRETAPPING?

Our Republic has survivied in freedom for 178 years under a Constitution that permits police to intrude on private property, search through private papers and effects and confiscate evidence under authority of court-issued warrants.

It is a little difficult to understand therefore, the horror that is aroused among some people by the idea of legalized wiretapping or eavesdropping in criminal investigation.

Wiretapping and other forms of electronic eavesdropping are merely extensions of the traditional form of search and seizure of evidence, without which law enforcement would be crippled.

It is strange that the law is being asked to foreswear the use of these technological aids but not others. Logically, they should also be denied the use of high-speed cars and two-way radios.

There have been police abuses even under the Constitution. In recent years, court decisions refining the rules governing the scope of warrants, the admissibility of evidence obtained by means of them and the use of confessions have strengthened the safeguards surrounding the rights of suspected persons. There is no reason why these rules would not be equally applicable to information gained by electronic means.

Nonpolice abuse in this new technology is another matter entirely. Without question, the unauthorized eavesdropping of private conversations should be prohibited by law, just as is the unauthorized physical intrusion into private homes.

This prohibition should cover not only private citizens, nonpolice investigators and "industrial spies," but also agencies like the Internal Revenue Service which has been accused in the past of bugging rooms where taxpayers and their lawyers conferred.

President Johnson, however, wants Congress to pass a total ban on wiretapping and electronic eavesdropping except in cases involving the national security.

A bill introduced by Sen. John McClellan of Arkansas would allow wiretapping (but not bugging) by court order in federal investigations of a limited number of crimes and would also legalize the use in state courts of wiretapping evidence obtained in accordance with state laws.

Testifying before a Senate Judiciary subcommittee holding hearings on the subject, Judge J. Edward Lumbard of the U.S. Court of Appeals recommended that the bill be broadened to include electronic eavesdropping as well as wiretapping and that their use be authorized in the investigation of any federal crime.

"To the great majority of Americans," he said, "it is unthinkable that law enforcement should remain as impotent as it is today."

What it comes down to is this: Either we, the people, trust our police and our courts or we do not. Or if we do not trust them, either we exercise ultimate control over them, through our legislators, or we do not.

But if we have been able to trust them in the matter of physical search and seizure of criminal evidence, it is not clear just what terrible danger is now posed by permitting them a more remote form of this power.

Indeed, the danger may lie in doing the opposite.

[Washington, D.C., Star, Mar. 17, 1967]

NO WIRETAPS WANTED?

Our new Attorney General, Ramsey Clark, appeared on a TV show Sunday and said in confident tones that eavesdropping "is incompatible with what we want in this country." To the extent that he was undertaking to speak for the American people, rather than for himself, we think the Attorney General is just about 100 percent wrong.

Mr. Clark said the Department of Justice has so "tightened" its requirements for approval of wiretaps that a tap can be made only with his written consent, and then only when "there is a direct threat to the security of this nation." As of this time, he added, there are only 38 taps in use. He also indicated that there are no electronic listening devices, or bugs, now in operation.

Presumably, this reflects the sincere personal conviction of Attorney General Clark. Certainly it is consistent with a directive issued by President Johnson more than a year ago. And possibly, although we do not believe it, it arrays both of them on the side of the angels.

It also puts them on the side of the criminal, especially those criminals whose specialty is organized crime—destroying the lives of innocents throught the sale

of dope, corrupting public officials through a variety of rackets, and murdering anyone who gets in their way. These characters operate today in a sort of privileged sanctuary and they will continue to operate securely there as long as the innocents recoil in horror from the mere mention of a wiretap. To a somewhat lesser extent, the same thing goes for other criminals—the robbers, the rapists, the burglars and the like. Invade their privacy? Heaven forbid, say Messrs. Johnson and Clark.

Is this really what "we" want in this country? In our view, if the "we" has even a kissing-cousin relationship to the vast majority of our people who suffer from crime, the answer is an emphatic No!

Three days after the Attorney General spoke his piece on Face the Nation (CBS), the most recent FBI crime report became available. It shows that serious crime in 1966 jumped 11 percent over 1965—and 1965 was a bumper year. In our own city of Washington, there was a healthy (if that is the right word) rise in every major category of crime.

The Attorney General notwithstanding, it is our earnest belief that this ever-upward trend in crime is really the thing that is "incompatible with what we want in this country." We think that an overwhelming majority of the people would welcome anything— wiretaps, bugs, fewer irrational court decisions—that might reverse this ominous trend. But it seems more and more evident that if the people are ever to get any relief they must look to Congress for it.

[An editorial broadcast by WMAL/AM/FM/TV, the Evening Star Broadcasting Co., Washington, D.C., July 6, 1967]

Congress, the Commissioners, the courts, the White House itself—better get cracking before there is no Metrouolitan Police Department to guard this crime-wracked city. The disclosure that the police force is short 352 men is another example of why the District crime rate soars every month. Higher salaries and a vigorous recruiting campaign have done nothing to slow the exodus of trained and experienced officers.

Veteran crime expert Malachi Harney recently told Congress in no uncertain terms why police quit. Harney explains that police quit most often because they are not allowed to do their jobs. A cry of "police brutality" goes up if an officer tries to protect himself. Judges put police on the defensive, but release known criminals on technicalities. Government officials refuse to back up policemen—but bend over backwards to sooth dissidents.

It will take a long time and many changes to undo the harm that has been done. But officialdom must begin protecting the rights of society by giving police a reasonable chance to do the job for which they were hired.

Senator McCLELLAN. This will close the hearings on the safe streets and crime control bill and other bills designed to promote more effective law enforcement.

I do not say that irrevocably. Others have wanted to appear, and if we have time to consider them I will do so. But the record will remain open to receive statements from those who may yet want to submit a statement. I do not know how soon we can get to considering the bills with a view to trying to mark them up and report them and make final disposition of them. We are at the stage of a session of Congress when activity increases and becomes more demanding of our time on the floor in legislative matters. This afternoon, and yesterday and the day before, we proceeded with hearings here while measures were being debated on the floor of the Senate. But if we did not do that, we would not get very much done, and so we just have to adjust ourselves and adapt ourselves to situations that are beyond our control and move with such expedition as we can to give consideration to legislation and to reporting it for action by the Senate. And this legislation, all of it, requires study.

I have expressed some pretty strong opinions in the course of these hearings on different issues, and witnesses like those who have appeared here today have expressed their opinions, and there are conflicting opinions, and so we are faced with a task that requires dedication on the part of the committee, and, I would say, tremendous industry and as much wisdom as we can command, to legislate in this field and legislate wisely.

So, the record will stand closed, subject to the conditions that I have expressed.

We reserve the right to insert in the record any additional editorials or statements or material that the committee deems appropriate.

The Chair takes this occasion to express his gratitude to members of the subcommittee, the chief counsel, Mr. Paisley and other members of the professional staff, together with the clerical staff for their industry, vigilance and cooperation in organizing this series of hearings and in making the necessary preparations so that we could move expediously we were fortunate in having before the committee the testimony of competent experienced witnesses in the field of law enforcement, particularly those entertaining conflicting viewpoints on the vital legislative proposals that the committee is considering.

The staff have been very helpful. They have met our expectations and to them goes a great deal of credit for the success we may have achieved in the hearings that are now concluded.

The committee is adjourned.

(Whereupon, at 4:45 p.m., the subcommittee adjourned.)

(Subsequently the following statements and letters were received for inclusion in the record:)

STATEMENT OF ROBERT M. BROWN,[1] AUTHOR OF "THE ELECTRONIC INVASION"[2]

As has been stressed during several hearings conducted by your investigative subcommittee and particularly the testimony of such persons as Frank S. Hogan, New York County District Attorney, as submitted to the Committee on Bill of Rights and Suffrage of the 1967 Constitutional Convention just last month, I concur that all the available facts point to extensive use of telephone and telegraph as a direct instrument of crime and as a means of conducting criminal business by modern underworld racketeers. In some circumstances, interception of such communications by law-enforcement officers is indeed necessary to combat such activities, providing that this privilege be limited to certain major offenses and contain specified safeguards to insure that such operations are in fact justified. Bill S. 675 presently being considered meets these considerations in great detail and affords even further safeguards through its inclusion of a clause requiring annual review of all wiretap court orders by the Director of the Administrative Office of the United States Courts.

On the basis of my experience as a licensed private investigator for two years, my background in the electronics field, and the extensive research that went into the writing of "The Electronic Invasion," I believe that with proper safeguards and court orders, telephonic interception is the single most effective weapon that can be included in the arsenal of law-enforcement, particularly in light of disturbing facts that have recently come to my attention.

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[1] Robert M. Brown is editor of *CEM—Communications Equipment Marketing*, a communications journal serving the two-way radio industry; has served as editor and on the editorial staff of other magazines in the radio field; and has done extensive writing in technical and electronic areas. Following a part-time stint as a licensed private investigator dealing with cases of personal and corporate surveillance in the New York City metropolitan area, Brown authored a study dealing with "Electronic Eavesdropping," in the April 1967 issue of *Electronics World*. One month later his book "The Electronic Invasion" was released. The book, a detailed account of the little-known world of bugging and wiretapping, has been favorably reviewed by *The New York Times, The Chicago Tribune, The Wall Street Journal*, and *Law and Order*.

[2] *The Electronic Invasion*, John F. Rider, Publisher (Hayden), New York, 1967. 184 pp. Illustrated.

THE SO-CALLED PRIVATE EYES

In New York, where it is illegal to be in possession of bugging and wiretap equipment, to say nothing of its use, it is interesting to review what happened last December (1966). After an intensive investigation spanning twenty-seven months, the Manhattan District Attorney's office presented evidence to the Grand Jury which resulted in the indictment and arrest of 27 individuals and 3 corporate defendants on charges having to do with unlawful eavesdropping. These persons are presently awaiting trial.

What kind of people were caught in this roundup? For the most part they include private investigators, employees of private detective agencies, electronics "experts," as well as three business executives and two attorneys who are alleged to have employed the services of unlicensed, unlawfully-functioning "private eyes."

In my experiences as a licensed private investigator in the state of New Jersey and New York during the period of nearly two years from 1963 to 1965, I first became acquainted with a sweeping undercurrent of change affecting the investigative field that has now taken full effect throughout the country. At that time, most detective agencies engaging in free-lance "private eye" activities relied upon skilled operatives, many of whom were ex-FBI employees and retired members of Police Detective Bureaus. Being a highly-competitive field, the private investigative company in the New York City metropolitan area has been basically specialized in one "vertical" field or another. Many, for example, are known for their confidential fact-finding for corporations and small businesses, discreetly learning for their client any number of personal or corporate secrets designed to give the client a definite "edge." Other firms specialize in the more sordid areas, such as marital relations, divorce cases, etc. Others will probe into the personal lives of any given person for any given reason, providing the price is right. Operating part-time on a free-lance basis for various private investigation firms, I had an opportunity to see the wide range of activity going on at that time in a number of cases.

Just beginning to be felt in 1963 was the "electronic spy," generally a man who sold his specialized services to anyone desiring it, for a healthy percentage of the take. For the most part, this man was a combination electronics designer and private snooper who either devised his own wiretapping equipment, or knew where it could be had as circumstances warranted. The advent of this self-employed electronic private eye afforded the more industrious New York-New Jersey firms to be able to advertise (primarily in the Yellow Pages) their "space-age devices" and "electronic marvels." When a client responded and specifically requested, for example, that a phone tap be arranged for someone's office line, the investigative company brought in the electronics expert and assigned him to do the work. Normally, he received a flat fee of perhaps anywhere from $50 to $200 per day, depending upon a number of variables, not the least being risk.

Today, however, the picture has changed immeasurably. Companies like Consolidated Acoustics of Hoboken, New Jersey, mailing instructive booklets to would-be electronic wiretappers entitled "Big Money In Listening Devices," and "Investigators Manual," have given vent to a burgeoning business in professional full-time wiretapping and bugging not only in the New York City area, but on a wide national scale. Such materials, presented as training aids, have been responsible for luring many curious young people into the spy community. The brochures even tell how much to charge for various types of services, such as tape recording room conversations, installation of telephone taps, etc., based upon certain daily and weekly rates. An ad appearing, for example, as a full-page advertisement inside the front cover of the May, 1967 issue of *Science & Mechanics* magazine tells youngsters of the "wonderful fun, or an exciting new career" in electronic surveillance. It goes on to explain how "to get evidence of cases of extortion, adultery, etc. using electronic listening devices."

Needless to say, the advertising campaigns have paid off. Today the electronic wiretapper finds himself in a highly-competitive field, with new one- and two-man operations springing up almost daily in major big-city areas such as New York and Washington. Whereas just a few years ago the bulk of the wiretap spies worked free-lance for legitimate (licensed) detective agencies, today they work as independents, setting their own fees and dealing directly with the client. Needless to say, most do not enjoy legal status and do not advertise their services. Many are retained full-time by the criminal underworld and are "on call" twenty-four hours per day. Others get more "legitimate" business than they can handle simply by word-of-mouth.

Understandably, the new electronic "private-eye" wiretappers have incurred the wrath of the larger, established private detective agencies. For one, the older outfits are losing some business. But more importantly, the entire industry has been given a black name as more and more electronic eavesdroppers enter the scene. To complete the picture, then: Today there are two distinct kinds of private detectives competing for the client's money—the conventional investigative bureau, and the illegal (but frequently effective) wiretapper.

One reason that the electronic eavesdropper is enjoying such success is simply that only seven states (one of which is New York) impose penalties for activities of this sort. I have found that for this reason in New York it is a bit harder to locate the true dyed-in-the-wool electronic wiretapper, but they are there, and prospering. In Connecticut and New Jersey, they operate more openly. In New York we also have a trend towards convincing the client that *he* should plant the eavesdropping equipment, which gets the supplier off the hook entirely because there are no Federal, state or local laws prohibiting the sale, manufacture, or distribution of such equipment. Regardless of who plants the "bug" or taps the phone, however, attorneys abound who are well versed in such matters. One New York state wiretapper I have met has been arrested 243 times. Thus far, no convictions.

In a conversation with a manufacturer of sophisticated wiretap equipment just last week I learned that the proportion of his business going to "private investigators" has risen "by leaps and bounds in the past year." According to the eavesdrop supplier, "well over 60% of my business comes mainly from the so-called private eye" (meaning independent, unlicensed electronics spy) "although I cannot specify a definite geographic area." When I inquired as to what he meant by this, he replied that although a good percentage of his business comes from walk-in New York City area customers, a significant amount of customers "fly in, from as far off as Florida, Puerto Rico, and California to buy my stuff." It should be added that the criminal underworld constitutes a considerable chunk of his clientele.

FOREIGN GOVERNMENTS

Several weeks ago, when visiting another manufacturer and mail-order sales firm dealing solely with electronic wiretap equipment I was told that sales "to the syndicate" have increased three-fold in the last twelve months. At the same time I was shown an official letter from the Defense Ministry of the Government of Lebanon requesting technical information and prices on a variety of eavesdropping devices. The inference was that should the equipment meet the country's requirements, a minimum purchase of $10,000.00 would be made within three weeks. Several other eavesdrop suppliers received similar letters, although the specifications varied and the monetary value fluctuated accordingly.

Although a substantial amount of sales to foreign governments are conducted through the mails, in this particular case it was apparent that delegates from the Defense Ministry would fly to New York with cash to make purchases on the spot at a predetermined date.

ELECTRONIC MAGAZINES: AN UNDERGROUND COMMUNICATIONS LINK

In doing research for "The Electronic Invasion" I was able to draw additionally upon my experiences in the electronics area, coming up with finding (as they appear in the book) which have been termed by many as shocking revelations. However revealing these facts appear, however, they only represent what I personally have been able to determine and document. The actual statistics relating to the extent of involvement of modern wiretapping by criminal elements in our society may never by accurately ascertained.

As a member of the accredited electronics press with a background in the field that goes back over eleven years, however, I have been able thus far to gain a great deal of cooperation among both groups in question: the private investigation community and the designers/manufacturers/installers of wiretap apparatus, based on my primary function as a reporter. This has permitted me access to many laboratories and design firms that would ordinarily shun publicity, in addition to providing facts about sales and clientele which are revealed in the book.

Perhaps it should be mentioned here that my primary experience is as an electronics editor/writer, and has been ever since the hobby of amateur radio first

lured me into this field at the age of twelve. Even at that time however, it was common knowledge among us electronics buffs that there were a number of individuals and companies who specialized in the manufacture and sale of sophisticated electronic bugging and wiretap equipment. One of the first rumors you heard, for example, was that there was "pure design genius" operating out of a Liberty Street, New York City, shop who could build any device imaginable to serve any specific purpose and no questions asked. The only stickler was that the price be paid in full with cash. He was Emanual "Manny" Mittleman, father of the infamous "harmonica bug," the device which permits tapping a telephone by remote control up to 3000 miles away.

Being young and enthusiastic about radio communications, it was only natural that I subscribe to some of the leading periodicals in the field. I recall receiving my first copy of one such monthly and reading four separate classified insertions featuring "low-cost electronic surveillance equipment for all applications." This is significant, since even *today* the majority of advertising for such equipment is found in monthly electronics publications, generally of the kind reaching the general hobbyist and experimenter, who quite often is a youngster.

What makes this all the more fascinating is that the true electronics enthusiast who can build construction projects from schematic diagrams knows full well that most of the equipment sold for wiretap and bugging purposes is a genuine racket from an economic point of view. As stressed in "The Electronic Invasion," for the most part devices sold for $175 to $500 contain less than $10 worth of components. Cooperating advertisers have also revealed to me that their ads in such electronics publications are *not* drawing response from the average reader, but indeed pay off.

Consider that one of the first things a person interested in wiretapping learns is to pick up the latest issue of one of these consumer electronics magazines. True, he doesn't have a real interest in the editorial content of the publication, but he'll be rewarded many times over when he turns to the classified ad section.

No one seems to know why this secret communications link is in these magazines, but the fact is that it is there and has been for nearly ten years. It is only recently that a few prime advertisers have begun to try ads elsewhere, such as in The *New York Times*, *Signature* (the Diners Club magazine), Esquire, etc. That this advertising has been successful only points out the popularization of the entire concept of wiretapping and bugging by the general public; the "underworld" market normally reached through sometimes cryptic electronics classified continues to thrive.

UNDERWORLD WIRETAPPING

There is still much controversy over where the criminals draw the line between hiring outsiders for their "surveillance" work and employing their own technical experts. While it is known that certain eavesdrop personalities such as Manny Mittleman, Sparky Wiggins, and Bernard Spindel have extremely short memories concerning with whom they do their business, there is one school of thought that the larger syndicates have full-time people (such as the electronic private eyes referred to earlier) working exclusively for them.

Just a few weeks ago, for example, police officials raided the $250,000 estate of a prominent underworld figure in Lloyd Harbor, Long Island. The law-enforcement officers were searching for gambling receipts to prove involvement in a numbers racket in New York. While no such receipts were located (it turned out that a syndicate associate had them concealed at another address), the home was found to contain a fortune in sophisticated electronic bugging and wiretap equipment. Based on possession of their gear, the underworld figure was apprehended and indicted.

INDUSTRIAL SNOOPING

While the use of bugging equipment by criminals is definitely on the upswing, so is its use by American business and industry. Technological lead time and trade secrets are an integral part of our competitive system, and a few eavesdrop and wiretap equipment suppliers can afford to lose their key industrial clients. In "The Electronic Invasion" it is documented that one out of five businesses in the United States engage in eavesdropping to some degree.

The book also reveals a list of multi-million dollar corporations who are known to possess bugging/wiretap equipment. A few of these include American Airlines, American Oil Company, Atlantic Air Freight, Avis Rent-A-Car, Chevron Oil Co., Chrysler Corp., Coca Cola Bottling Co., Hertz Rent-A-Car, REA Express, West-

ern Union, and Wright Aero. It doesn't take much imagination to determine just what these companies are doing with their electronic listening devices.

Other facts included in the book as a result of my probes show that industrial espionage has risen 50 per cent in recent years, currently running over $2 billion annually. Since individual instances of companies using such means to "bug" their employees and competitors take up a significant portion of the book, it would not seem appropriate to go into case histories in this statement. The facts clearly show, however, that a great deal more than seventy percent of all devices that could be use for eavesdropping are in the hands of non-law-enforcement organizations or individuals. Included in that work is the story of just one wiretap/bug supplier who began with $100 in 1961 and today grosses over $5 million annually. Any business executive can walk into any one of his eleven stores in this country and walk out with an arsenal of snooping equipment—no questions asked.

SHORT COMMENT ON PUBLIC EAVESDROPPING

As indicated earlier, the general public is becoming a major market for many suppliers as evidenced by sales reports, advertising, and some of the revelations in the book too lengthy to go into here. It is interesting to note that in spite of the recent mass-marketing of such equipment to the public, few persons have ever been prosecuted for either buying or using the devices.

Although the Federal Communications Commission specifically prohibits the use of eavesdropping equipment (Section 15.11, Prohibition Against Eavesdropping, FCC Rules & Regulations), it investigated only "eight reports involving possible violation" of these rules during all of 1966. Commission Chairman Rosel H. Hyde has said of this only that "most violations were apparently made in an effort to obtain evidence for domestic relations proceedings." Persistent attempts at determining why only eight cases were unearthed in a field where virtually thousands of such devices are in daily use were halted by FCC spokesman Ben F. Waple, who told me that such information is considered to be confidential.

It would seem then, that the Commission is hardly concerned over such non-regulatory complaints as invasion of personal privacy, even though right now it is the *only* Federal body that has the power to enforce the prohibition against such devices by private citizens, corporate interests, or whatever.

INVASION OF PRIVACY

The United States Senate Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary has repeatedly mentioned Justice Brandeis' comment regarding privacy as "the right to be left alone."

This quote has been brought to the forefront in nearly every hearing the group has conducted, in public statements of the Senator from Missouri, and in fact every magazine article and book authored by Senator Long. So closely has this remark of Justice Brandeis been identified with the entire subject of electronic and wiretap surveillance, that it is quite possible to imagine that were the Justice alive he might be appalled to find himself spearheading a movement apparently motivated by a desire to prove the Senator's preconceived notion that wiretapping in any form is all wrong, if not un-American, anti-Motherhood, and downright evil.

The truth is that *no one* wants other persons poking into his personal affairs and, in fact, everyone does cherish his right to privacy if such a state truly exists. Yet to use this emotional tide to cloud our thinking to the point of quick-slap Federal legislation is against the intelligent and thoughful process we have come to know as the American Way.

While we are all aware of how precious basic rights are to us as citizens of the United States, we must also recognize that *no civil right is absolute.* This is because that as human beings in a civilized society we have come to expect a wide variety of liberties as well as a wide variance of police protection.

Our Constitution guarantees all citizens certain fundamental freedoms. Yet the total length or depth or scope of these rights cannot be extended nor can they be taken away. What remains, then, is that they be "adjusted" so as to be applicable for the greatest majority of the citizenry. We like to think, additionally, that this majority is basically law-abiding.

If on the one hand we feel a new kind of power, right, or authorization, is needed in certain safeguard-included instances to combat criminal and heinous

crime, it stands to reason that somewhere we'll have to grant a privilege to the law-enforcement officers who are attempting to make this country a better (and safer) place in which to live. Yet we're not giving up a right and turning it over to the police; we are simply giving them a weapon with which to fight. If anyone's privacy is going to be invaded by these officers, it will be the criminal's.

In the preceding remarks I have attempted to show that while we may well indeed be living in some kind of a goldfish bowl, it is not Orwellian since it is of our own doing. If anybody *is* listening to our phone conversations, it is likely to be just about anyone *except* the police. Most probably, it is your next-door neighbor or your boss.

We have for too long allowed unscrupulous bug merchants and wiretappers to operate with a free hand by not even outlawing the sale, advertising, and shipment of the devices themselves. If we are truly concerned over what Senator Long insists on referring to as present-day lack of privacy, let us at least put things in the proper perspective before we legislate something we'll regret later. Why certain influential sources have been attempting to withhold facts and bias the news can only be interpreted as an effort to shield the guilty.

Under the provisions of the Federal Wire Interception Act introduced by Senator McClellan, wiretapping by law-enforcement officials will only be exercised if a court order can be obtained based upon the judge's decision that in his opinion such interception may provide evidence of one of the following: any offense punishable by death or by imprisonment for over one year under chapter 37, 105, or 115 of the United States Code, certain offenses in violation of the Atomic Energy Act (of 1954), offenses involving marijuana or narcotic drugs, and any offense involving murder, extortion, or kidnapping. While certain other provisions are included that do not bear repeating here, it should certainly be apparent that the McClellan bill is primarily concerned with serious crimes.

No one is suggesting that wiretapping is a substitute for police legwork. It is not. Rather, it is the preliminary to a great deal of it.

New York County District Attorney Frank Hogan's comments in one respect bear repeating, for they clearly show why in some instances such interception is useful:

"When the mobster resorts to the telephone, as he must, he is most cautious, of course, in his conversation. His language is guarded and cryptic. But we have found that from time to time, there are fortunate lapses which, if they don't provide direct evidence of crime, do give us valuable leads. We gain, too, new insights into matters under investigation in the light of information already in hand. We develop, also, a reservoir of useful background material about key underworld figures. That last is what the President's Commission [on Law Enforcement and Administration of Justice] had in mind when it stated that 'information regarding the capabilities, intentions, and vulnerabilities of organized crime groups is seriously lacking.' The Commission recognizes, and places great stress upon, the need for what it describes as 'strategic intelligence.'"

Mr. Hogan also indicated that there are certain kinds of crime—extortion, for example in which "the telephone itself becomes the very instrument of the crime."

With proper controls, wiretap equipment can be an effective weapon against serious crime in this country. Like guns, the criminal element will employ the services of professional wiretappers and bug-equipment builders whether or not it is allowed to continue to be sold legally. Yet to prevent the law enforcement community—which I look upon as the only link, or rather "safety margin" between the protection of my family and the scourge of unlawful crime which would run rampant without such a buffer zone—from utilizing wiretapping as a preventative measure is like taking firearms away from the police.

While the scope of eavesdropping (as detailed in "The Electronic Invasion") is frightening to say the very least, intelligent investigation *must* unearth the fact that any invasion of our personal privacy is being more or less self-inflicted. Cries of Big Brotherism and the ever-popular fixation that the Federal government is probing into every bedroom in the country certainly will be popular with a large proportion of the voting populace. Yet I do not believe the public intellect is presently at a point where it can be insulted and misled very long. For such time as it is possible for private individuals as myself to speak freely, the voter stands a good chance of being able to weigh all sides to an issue. While certain Senatorial attempts to bias the news may work for a while, I will be sorely disappointed if I live to such time as to see it succeed.

Yes, we must impose controls at a Federal level upon the whole of eavesdropping and wiretapping by law-enforcement personnel. But at the same time we must bear in mind that the job is just beginning. If we want to abolish the fear that has been planted in the minds of millions of Americans, we must pursue this thing all the way: outlaw the manufacture, sale and distribution of wiretap and bugging devices. Pursuant to this I should think a Congressional investigation of the extent of electronic eavesdropping by elements of American industry is also long overdue. It should be deemed a violation of the United States Criminal Code for anyone other than duly authorized law-enforcement officers to engage in electronic surveillance and/or wiretapping. Further, it might be revealing to appoint a Wiretap Commission working in conjunction with local, state, and Federal agencies (such as the Federal Communications Commission) whose sole job it would be to regulate legitimate use and prosecute violators. Members of this Commission shall be drawn from various levels of society.

Senator Long has stressed that such practices as wiretapping and other forms of electronic surveillance be limited exclusively to cases affecting the "national security." Even the most avid critics of wiretapping have not suggested that we should abandon its use in such circumstances.

To me, this obvious acquiescence to its employment in cases of national security can only be interpreted to mean that even the Senator from Missouri recognizes that wire interception constitutes a powerful weapon of detection against elaborate, albeit foreign, criminal conspiracies.

If the time ever came when my son's life was threatened by kidnappers, I would hate to think that nothing short of a threat to our "national security" would permit hamstrung police to get there in time.

NATIONAL LEAGUE OF CITIES,
Washington, D.C., July 14, 1967.

Mr. W. H. SMITH,
Subcommittee on Criminal Laws and Procedures,
New Senate Office Building, Washington, D.C.

DEAR MR. SMITH: Following are some comments of the National League of Cities on the Safe Streets Act, which you asked me to send you during our conversation yesterday. The League generally supports the House version of the bill, though we hope that the personnel compensation limitation can be modified.

On the issue of the position of the states in coordination of local applications, we support the provision in the House bill which would allow the governor 60 days to comment on all local plans before they could be acted upon by the Federal government. We believe that this comment process will provide the coordination of plans necessary to meet the comprehensive planning requirements of the Act. Considering the priority consideration which the Attorney General has stated will be given to state action in this area, we think there is little reason to fear that state comments will be disregarded. We have had several discussions with the Department of Justice about this matter, and it is their view that the state comments would show problems of local plans and how these plans are inconsistent with other local plans or with the state plans. This process will allow identification of inconsistencies and permit the Federal, state, and local governments to work out critical differences before the grant applications are approved.

Primary responsibility for the control of crime rests upon local governments. Any alternative to the governor's comment provision which would require state approval of local applications before they are submitted to the Federal government would, we believe, seriously limit the capability of local governments to take full advantage of the Act.

At present, many states have little experience in the problems of local law enforcement, which is where the major emphasis of the Safe Streets Act will lie. A 1966 survey by the International Association of Chiefs of Police reveals that, of a total of only 29,967 state law enforcement officers, 24,715 are assigned to traffic control work. In 14 states, including California, Illinois, and New York, better than 90% of state law enforcement personnel are assigned to traffic duty.

Many states will need to develop experience in local law enforcement before they will be able to develop comprehensive state plans or to judge local plans for approval. Local law enforcement agencies who need Federal aid for improve-

ment programs will face considerable delay if comprehensive state plans or state approval is required in states that do not have significant urban law enforcement experience.

If a formal approval process is required for local plans, authorization from state legislatures will probably be needed to establish and find the state planning and approval agency, whether it is controlled by the governor or directly by the legislature. According to the Book of the States, published by the Council of State Governments, only 21 states hold annual legislative sessions, and, of these, 10 limit their sessions in even years to budgetary matters. Most states hold sessions only in odd numbered years. Thus, in many states, authorization for a formal approval agency would not be possible without a special session until 1969, and any action on state or local grant applications would be delayed until this time. A chart showing the state legislative sessions is enclosed. The less formal comment and coordination process would not require legislative authorization. The governor could appoint existing agencies or special committees to perform the coordinating function as he saw fit.

A definite limit should be set on the time which the states have to comment on local applications. If no limit is set, political differences between some states and their major urban areas might encourage delay in comment on local applications. This delay would cause local law enforcement improvement programs grave difficulties because of the uncertainties in budgeting and staffing which the delay would create.

As noted above, the National League of Cities believes that the provision in the House bill permitting no compensation for personnel from grant funds, except for training or specialized functions, is not realistic for a law enforcement improvement program. Eighty-five to ninety per cent of local law enforcement expenditures are for personnel, and the Crime Commission report has emphasized that personnel changes must be encouraged. The limits on compensation will affect the structure of improvement programs by stimulating grant applicants to think in terms of equipment and other physical improvements in order to maximize aid potential, though expenditures for personnel improvement might provide a greater return. Grants should be allowed for personnel compensation where there are adequate safeguards that the grants will be used to improve present personnel systems.

Enclosed is a copy of the statement which Mr. Allen E. Pritchard, Jr., our Assistant Executive Director, submitted to the Subcommittee on April 20. It discusses in greater depth the National League of Cities' views on the salary limitation and the 5% improvement requirement in the Safe Streets Act. I am available to discuss any of these matters with you in greater detail at your convenience, if you so wish.

Sincerely,

DONALD ALEXANDER,
Legislative Assistant.

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