from Outer Continental Shelf lands, and for other purposes; to the Committee on the Judiciary.

By Mr. MAHON (for himself and Mr. Bow):

H.J. Res. 1276. Joint resolution to provide for the appointment of Robert Strange McNamara as Citizen Regent of the Board of Regents of the Smithsonian Institution; to the Committee on House Administration.

By Mr. RODINO:

H.J. Res. 1277. Joint resolution to provide that it be the sense of Congress that a White House Conference on Aging be called by the President of the United States in 1971, to be planned and conducted by the Secretary of Health, Education, and Welfare to assist the States in conducting similar conferences on aging prior to the White House Conference on Aging, and for other purposes; to the Committee on Education and Labor.

By Mr. RARICK:

H. Con. Res. 780. Concurrent resolution expressing the sense of Congress with respect to the entry into the United States of deserters from the Armed Forces; to the Committee on Armed Services.

By Mr. DORN:

H. Res. 1175. Resolution expressing the sense of the House of Representatives with respect to the use of the Bolling Air Force Base and Anacostia Naval Air Station for general aviation purposes; to the Committee on Armed Services.

By Mr. PUCINSKI:

H. Res. 1176. Resolution that it is the sense of the House of Representatives that the United States enter into an agreement with the Government of Israel for the sale of military planes, commonly known as Phantom jet fighters, necessary for Israel's defense to an amount which shall be adequate to provide Israel with a deterrent force capable of preventing future Arab aggression by offsetting sophisticated weapons received by the Arab States, and on order for future delivery, and to replace losses suffered by Israel in the 1967 conflict; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

344. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the development of Trinidad Harbor; to the Committee on Public Works.

345. Also, memorial of the Legislature of the State of California, relative to Federal participation in welfare payments to nonresidents; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 17374. A bill for the relief of Erasmo LoPiparo; to the Committee on the Judiciary.

H.R. 17375. A bill for the relief of Virgilia and Geuseppe Pappalardo; to the Committee on the Judiciary.

By Mr. ANNUNZIO:

H.R. 17376. A bill for the relief of Vincenzo Angelilli; to the Committee on the Judiciary.

H.R. 17377. A bill for the relief of Elena Giacometti; to the Committee on the Judiciary.

By Mr. BINGHAM:

H.R. 17378. A bill for the relief of Wei Lian Lee; to the Committee on the Judiciary.

By Mr. BRASCO:

H.R. 17379. A bill for the relief of Helene Albilia; to the Committee on the Judiciary.

H.R. 17380. A bill for the relief of Vito Rallo; to the Committee on the Judiciary.

By Mr. BROWN of California:

H.R. 17381. A bill for the relief of Ping-Kwai Chan and Sau-Yee Chan; to the Committee on the Judiciary.

H.R. 17382. A bill for the relief of Raul Fernando Berdugo; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia (by request):

H.R. 17383. A bill for the relief of Edward S. Cook; to the Committee on the Judiciary.

H.R. 17384. A bill for the relief of Ihsan S. Ibrahim, his wife, Hayfa I. Ibrahim, and their children, Nada I. Ibrahim and Hussain I. Ibrahim; to the Committee on the Judiciary.

By Mr. CHAMBERLAIN:

H.R. 17385. A bill for the relief of Dr. Ashraf El-bayoumi, his wife, Soheir, and children, Mona and Amr; to the Committee on the Judiciary.

By Mr. DIGGS:

H.R. 17386. A bill for the relief of Mr. and Mrs. Georgorio T. Mariano, Jr.; to the Committee on the Judiciary.

By Mr. EILBERG:

H.R. 17387. A bill to provide for the relief of certain civilian employees of the Air Force; to the Committee on the Judiciary.

By Mr. FARBSTEIN:

H.R. 17388. A bill for the relief of Sebastian Silvio; to the Committee on the Judiciary.

By Mr. FINO:

H.R. 17389. A bill for the relief of Filippo Passantino; to the Committee on the Judiciary.

H.R. 17390. A bill for the relief of Monique Paule Sulter; to the Committee on the Judiciary.

By Mr. RHODES of Pennsylvania:

H.R. 17391. A bill for the relief of Anna Calafiore; to the Committee on the Judiciary.

By Mr. ROGERS of Florida (by request):

H.R. 17392. A bill for the relief of Carlo Crinto; to the Committee on the Judiciary.

H.R. 17393. A bill for the relief of Gabriele Fioriti; to the Committee on the Judiciary.

H.R. 17394. A bill for the relief of Michele Pucillo, his wife, Giagina Ragozzino Pucillo, and their minor daughter, Geraldina Pucillo; to the Committee on the Judiciary.

H.R. 17395. A bill for the relief of Valerio Rossi; to the Committee on the Judiciary.

By Mr. ROSENTHAL:

H.R. 17396. A bill for the relief of Mr. and Mrs. Dov Haftel and their son; to the Committee on the Judiciary.

By Mr. RYAN:

H.R. 17397. A bill for the relief of Alfredo M. Carreon; to the Committee on the Judiciary.

By Mr. SCHEUER:

H.R. 17398. A bill for the relief of Dr. Nasser Shekib and Lila Shekib; to the Committee on the Judiciary.

By Mr. SLACK:

H.R. 17399. A bill for the relief of Mrs. Latife Hassan Mahmoud; to the Committee on the Judiciary.

By Mr. WALDIE:

H.R. 17400. A bill for the relief of Edith L. Lynch; to the Committee on the Judiciary.

By Mr. ASHMORE:

H.Res. 1177. A resolution for the relief of Faith M. Lewis Kochendorfer and others; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

318. By the SPEAKER: Petition of Mrs. Isabelle Gallegos, Denver, Colo., relative to her son's special orders for Vietnam; to the Committee on Armed Services.

319. Also, petition of Melvin C. Holt, Leavenworth, Kans., relative to his petition dated April 15, 1968, requesting information concerning its status; to the Committee on the Judiciary.

SENATE—*Monday, May 20, 1968*

The Senate met at 12 noon, and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Our Father God, in whose keeping are the destinies of men and nations, endue with Thy wisdom our fallible minds as we face decisions with the background of fearful forces of nature which, if not harnessed by mutual good will, may destroy us utterly.

Give us greatness of soul that the keys of new power may be used to open doors, not of peril, but of plenty for the whole earth.

By tasks too difficult for us, we are driven unto Thee for strength to endure and wisdom to interpret rightly the signs of these testing times.

Save those who minister here from false choices, and guide their hands and minds to heal and bind, to build and to bless.

For—

"We are watchers of a beacon whose light must never die;
We are guardians of an altar that shows Thee ever nigh;
We are children of Thy freemen who sleep beneath the sod;
For the might of Thine arm we bless Thee: Our God, our Father's God."

Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, May 17, 1968, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

WAIVER OF CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SUBCOMMITTEE MEETING DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Business and Commerce of the Committee on the District of Columbia be authorized to meet during the session of the Senate today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 1108, 1110, and 1114.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT OF THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT

The Senate proceeded to consider the bill (S. 2276) to amend the Watershed Protection and Flood Prevention Act to permit the Secretary of Agriculture to contract for the construction of works of improvement upon request of local organizations which had been reported from the Committee on Agriculture, with an amendment on page 1, at the beginning of line 8, strike out "unless requested to do so by the local organization" and, in lieu thereof, insert a colon and "*Provided*, That, if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures."; so as to make the bill read:

S. 2276

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(2) of the Watershed Protection and Flood Prevention Act is amended to read as follows:

"(2) Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: *Provided*, That, if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report—No. 1125—explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

This bill amends the Watershed Protection and Flood Prevention Act to permit the Secretary of Agriculture, upon the request of the local organization, to contract for the construction of works of improvement. At present the Secretary is prohibited from constructing, or contracting to construct, such works, so the contracting must be done by the local organizations.

Local organizations frequently are inexperienced in contract administration, and act under the supervision of the Secretary, with added difficulty for the local organization, the Secretary, and contractors. The bill, by permitting the Secretary to execute the contract, would result in lower cost, save time, avoid disputes, and strengthen operation of the program. It has no effect on the respective contributions of the United States and the local organization to the financing of the project, except to the extent that it would reduce administrative costs.

The committee amendment, which was suggested by the Department, would make it clear that the Secretary could not undertake construction, but would be limited to contracting for such construction.

EMERGENCY CREDIT REVOLVING FUND

The joint resolution (S.J. Res. 168) to authorize the temporary funding of the Emergency Credit Revolving Fund was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S.J. RES. 168

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commodity Credit Corporation is hereby authorized and directed to make advances to the Emergency Credit Revolving Fund (7 U.S.C. 1966) in a total amount not to exceed $30,000,000. Such advances together with interest at a rate which will compensate Commodity Credit Corporation for its cost of money during the period in which the advance was outstanding shall be reimbursed out of appropriations to the fund hereafter made.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1127), explaining the purposes of the joint resolution.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

This joint resolution would direct the Commodity Credit Corporation to advance up to $30 million to the emergency credit revolving fund. The advances would later be repaid with interest out of appropriations to the fund. The background and need for this legislation is explained in the attached report from the Secretary of Agriculture recommending its enactment.

INTER-AMERICAN DEVELOPMENT BANK

The bill (H.R. 15364) to provide for increased participation by the United States in the Inter-American Development Bank, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CARLSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1131), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

1. PURPOSE OF THE BILL

H.R. 15364 amends the Inter-American Development Bank Act of 1959 (Public Law 86–147) to authorize the U.S. Governor of the Bank (the Secretary of the Treasury) to vote in favor of a $1 billion increase in the Bank's authorized callable capital stock. The U.S. Governor is also authorized to agree on behalf of the United States to subscribe this Nation's proportionate share of the increase, amounting to $411,760,000. The bill further authorizes appropriation of the last-named sum, without fiscal year limitation. These funds will be requested in 1968 and in 1970 in two equal appropriations of $205,880,000 each. Such subscriptions to callable capital stock in themselves do not involve any budgetary expenditure. Moreover, the Bank to date has not had any occasion to levy a call on existing capital shares, and it is considered very unlikely that such a requirement for cash payments would occur in the foreseeable future.

2. BACKGROUND

The Inter-American Development Bank, established in 1959, and with lending experience dating from 1916, currently has 21 member countries which are all represented in the Organization of American States. Having withdrawn from the OAS, Cuba is not eligible for membership. The Bank is designed to accelerate economic and social development in the Latin American member countries and is generally modeled upon the organization and procedures of the International Bank for Reconstruction and Development, or World Bank.

As of the beginning of 1968, the Inter-American Bank had authorized an overall total of roughly 450 loans from its resources, involving the equivalent of almost $2.4 billion. These sums actually represent a minority participation in Bank projects for development in Latin America which total approximately $6.4 billion; in accord with the emphasis placed on self-help by the Bank, the Latin American borrowers themselves are investing the greater portion of the funds needed for the projects. Not only does the Bank maintain rigorous criteria for its financing, it also engages in extensive coordination with other international and national development institutions and agencies. In particular, the Bank has undertaken to give special attention to the views of the Inter-American Committee on the Alliance for Progress (CIAP, as it is abbreviated from the Spanish).

Since the Bank commenced operating in 1960 it has conducted its activities through one "hard-loan" window, the ordinary capital account, and two "soft-loan" windows, the Fund for Special Operations (FSO) and the Social Progress Trust Fund (SPTF). These three funds are kept completely separate from each other. In 1965, however, the three windows in effect were reduced to two when the funds available to the SPTF ($525 million entirely supplied by the United States) were not replenished after use, and its social development functions were taken over by the FSO. The Fund for Special Operations last year was provided with the assurance of additional lending resources of $1.2 billion from the Bank members over a 3-year period. The pending request from the Bank concerns only the ordinary capital, or hard-loan window.

3. BANK ORDINARY OPERATIONS

The following table illustrates the authorized capital stock resources of the Bank taking account of the original 1959 authorization, the 1964 increase and the increase proposed for this current calendar year:

AUTHORIZED CAPITAL STOCK

[In millions of dollars equivalent]

	Total	U.S. share
Original capital	850	350.00
Of which paid in	(400)	(150.00)
Of which callable	(450)	(200.00)
1964 increase in callable capital	1,000	411.76
1964 increase in capital for subscription by possible future members	300	.....
Authorized total	2,150	761.76
Proposed 1968 increase in callable capital	1,000	411.76
Authorized total after increase	3,150	1,173.52

From these figures it will be seen that only some $400 million of the total current authorized capital has actually been paid into the Bank. The bulk of the ordinary lending resources increasingly are derived from the Bank's bond issues in private capital markets here and abroad. The Government-guaranteed backing for these bonds (which have a triple A rating) is afforded by the callable subscriptions to the capital stock. These callable amounts are not paid in cash when subscribed and appropriated; they remain only a book entry unless needed to make good on guarantees that cannot be covered otherwise. The "funds" appropriated for the U.S. shares of callable capital since 1959 thus have remained with the U.S. Treasury.

Through the end of 1967, ordinary capital loans from the Bank on normal commercial terms numbered 155, involving authorizations for $901 million; over half that sum had been disbursed, and some $62 million had already been repaid. By that same date, there had been 77 loans totaling about $380 million equivalent devoted to industrial and mining projects, 26 loans of roughly $188 million for agriculture and 18 loans of about $180 million for electric power. Other areas receiving smaller sums were transportation, water, and sewage, export financing and preinvestment studies. It should be noted that Bank lending and technical assistance are not confined to strictly national projects, but are increasingly being devoted to multinational areas in keeping with the aims of regional economic integration.

The terms for loans from the Bank's ordinary capital are what are usually described as "hard": that is, they reflect the cost of the funds borrowed by the Bank from private markets. Also, principal and interest are payable in the currencies loaned, and maturity dates range between 7 to 20 years, with the average running at about 15 years. Currently the interest rate on dollar loans is 7¾ percent, and a standard commitment fee of 1¼ percent is charged on the unused balance of such loans, commencing to accrue 60 days after signature of a loan contract. Charges are slightly higher on loans made from resources obtained by bond flotations in the capital markets of nonmember countries. Through these terms the Bank has been able to accumulate ordinary capital reserves now approaching the $45 million mark.

4. THE CURRENT PROPOSAL

In a report of April 1967 the Bank's Executive Directors set forth a goal of maintaining an ordinary capital lending rate of $175 million a year for the period 1968–70. However, as of December 31, 1967, the Bank had available cash funds of about $52 million and remaining borrowing capacity of roughly $98 million, giving a total of approximately $150 million, which would not even cover the projected lending rate for 1 year.

The reason for the limited borrowing authority remaining to the Bank lies in agreements made with bondholders when the first borrowing was made in 1962. The Bank undertook that it would limit its borrowings and guarantees to the amount of the subscription of the United States to the Bank's callable capital. It did so in order to acquire the highest ratings for its bonds and to hold down the cost of money borrowed from the private market, which in turn is reflected in the interest rates on loans to Bank members.

Accordingly, the Bank's Board of Governors in April 1967 recommended to member governments the proposed $1 billion expansion of authorized callable ordinary capital stock. The proposal will become effective in October 1968 if members subscribing to at least 75 percent of the increase, $750 million, accept it through their standard constitutional procedures. Each country is scheduled to share in the increase in the same proportion as its existing share in current total authorized stock. Thus the U.S. share remains at 41.18 percent; there also has been no change in the 42-percent voting power of the United States. All subscriptions are to be made in two installments in 1968 and 1970, and no country's subscription to either installment will become effective until 75 percent of subscriptions for each installment are completed. Enough countries have completed action so that the U.S. subscription will bring the increase into effect.

5. COMMITTEE ACTION

The President of the United States, in his budget message of January 29, 1968, stated his intention of requesting an increase in the U.S. subscription to the callable capital of the Inter-American Bank. On February 8 there was referred to the Committee on Foreign Relations a letter from the Secretary of the Treasury transmitting a draft of proposed legislation to give effect to the Presidential determination. An NAC report favoring such action was received by the committee on February 27 from Secretary Fowler in his capacity as Chairman of the National Advisory Council on International Monetary, and Financial Policies. On February 15 Senator Fulbright, by request, introduced S. 2975, a virtually identical bill to H.R. 15364, to provide for U.S. participation in the proposed increase in callable capital of the Bank. However, the House of Representatives passed its companion bill on March 19, 1968, and H.R. 15364 was referred to the Foreign Relations Committee the following day.

The committee held a public hearing on H.R. 15364 on March 25, receiving testimony from Under Secretary of the Treasury Joseph W. Barr; Robert M. Sayre, Deputy Assistant Secretary of State for Inter-American Affairs; and Reuben Sternfeld, alternate U.S. Executive Director of the Inter-American Bank. Thereafter the bill was considered in executive session on April 3 and several members felt that another hearing should be held in order to develop additional information on the balance-of-payments question, on loan procedures and end-use review, and on methods employed in the eventuality of a call on member governments of the Bank. These subjects are discussed briefly under subheadings below.

An executive hearing was held on May 8 with Mr. Reuben Sternfeld and Mr. John Petty, Assistant Secretary of the Treasury for International Affairs. At the conclusion of the hearing that day the committee further considered H.R. 15364 in executive session and, without objection, ordered the bill reported favorably without amendment.

A. The U.S. balance of payments

According to testimony given the committee by Under Secretary of the Treasury Barr, over the past 5 years through 1967 the impact of the Bank's ordinary capital operations on the U.S. balance of payments has amounted to a plus to this country of a total of $129 million—"or an average of a favorable $26 million per year." It was pointed out that the Bank has recently intensified its efforts to float bond issues outside the United States capital markets. Thus, of the Bank's total funded debt of roughly $513 million at the end of 1967, about 35 percent was borrowed abroad.

The Bank has additionally established a formal policy of seeking to cooperate with the United States in the payments field. The more technical aspects of this policy are best quoted directly from the NAC report on the current proposal:

"On October 15, 1967, the Bank took a further significant action which had the dual effect of helping to generate additional funds from nonmember countries and of showing its understanding and constructive attitude regarding the U.S. balance-of-payments problem. On that date the Bank announced plans for the adoption of measures aimed at mobilizing additional financial resources for Latin America's development from countries not currently members of the Bank. These measures will condition procurement financed with ordinary capital loans in economically advanced nonmember countries on an appropriate contribution of resources to the Bank by the respective country. Procurement under ordinary capital loans now takes place on an international competitive bidding basis.

"Under the decision announced by the Bank, a country in a reasonably advanced stage of development will be considered eligible for procurement under loans from the ordinary capital resources of the Bank in any given period only if, up to a date shortly before the beginning of the period, the country has provided resources to the Bank on reasonable terms in a cumulative amount bearing an acceptable percentage relationship—100 percent after a transitional period—to cumulative procurement already effected in such country. Contributions of financial resources to the Bank can include bond sales, funds entrusted to the Bank for administration, participation in Bank loans, and parallel financing operations. The new policy applies only to procurement under loans authorized after October 15, 1967. However, for purposes of determining the eligibility of developed countries, both procurement and the provision of resources will be taken into account from the beginning of the Bank's operations on a cumulative basis.

"This new policy, effective January 1, 1968, applies to a list of economically advanced countries initially consisting of Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, South Africa, Sweden, Switzerland, and the United Kingdom.

"The Bank's cooperation with respect to the U.S. balance-of-payments problem is also demonstrated in its handling of the proceeds from the flotation of bond issues in the U.S. capital market. This cooperation has taken the form of undertakings on the part of the Bank to invest in the United States the proceeds from the sale of bonds to U.S. investors in such manner as to eliminate any effect on the U.S. balance of payments until the end of 1969. Under these conditions the Bank's loan flotations in the United States have no early impact on our balance of payments. It is only at a later stage when the proceeds from such issues are disbursed under loan contracts that the Bank's ordinary capital transactions may affect the U.S. balance-of-payments situation. These undertakings to invest proceeds of bond issues in the United States help assure the Bank's ordinary capital operations will have only minimal effect on the U.S. balance of payments."

B. Audit and end-use review

Late this past February the Bank's Board of Executive Directors approved a new proposal—resulting from a congressional initiative last year—to create within the Bank a system of comprehensive and continuing independent audit, with special attention to be given to the effectiveness of loan procedures. This new system, which originally

was developed from a set of guidelines offered by the U.S. General Accounting Office, was unanimously accepted by the Directors and is being implemented. It is designed along the line of what we would term an end-use review, and it will be supplementary to the regular financial audit undertaken by the firm of Price Waterhouse & Co. A special small auditing group, including a member from the United States, will be expected to examine procedures and operations both in Washington and in the field. And the results of such audits will be available for scrutiny by member governments of the Bank. These auditors will be under the guidance of the Executive Directors rather than of the Bank's management. Their work will be completely additional to the extensive loan control techniques already in use and described in a July 1967, report to the Director by the Bank's Executive Vice President; a copy of this paper is available in the committee files.

Although not every committee member was fully convinced of the likely efficacy of the proposed new measures, there was much appreciation expressed for the forthcoming attitude of the Bank. There was no member who was not willing to withhold judgment until evidence had been accumulated about the workings of such a system.

C. Calls in event of defaults

Some confusion was created in committee as a result of the discussion in the public hearing concerning the way in which the guarantees might be invoked by the Bank in case of need. Calls may be made only to meet Bank obligations created by borrowings of funds for inclusion in the Bank's ordinary capital resources. In other words, calls could be made only if the Bank did not have the money to pay back its bond-holders. Such an unlikley event could occur only if there were large-scale defaults by the Bank's borrowers which would wipe out the reserves which the Bank has established for such contingencies. To date, there have been two defaults in the hard-loan operations, and none in the soft-loan activities, together amounting to slightly over $10 million. Both loans were made in the Bank's early days before government or quasi-official guarantees were required. After completion of legal moves to recover everything possible from the failed enterprises the net loss to the Bank probably will be slight. In any event, such sums would be relatively minor when set in the context of constantly increasing reserves of roughly $45 million.

However, in a hypothetical situation in which the Bank did not have the resources to repay the bondholders, then the Bank would make a call on all member countries in proportion to their respective shares in the capital stock. The call would be made in the currency necessary to meet the default. The U.S. share in any such call would be approximately 41 percent. If one or more other members failed to respond to the call, an unlikely course which would virtually destroy a country's international credit position, then all the other members would be liable for that unpaid share. In that circumstance, another call would be issued to all Bank members and the U.S. share again would be roughly 41 percent of the amount needed to make up an individual nation's unmet obligation. In this second call, if one of the members refused to accept its share, there would be a third call to meet that unpaid obligation. The process would continue until all obligations to bondholders had been fulfilled. At the same time, any defaulting member country would continue to be held legally responsible for its share which was covered by other members.

From this it will be seen that there is no reason to be concerned that the United States alone would have to fulfill all guarantees issued by the Bank. Such a wildly improbable event presumably could only come about as a result of worldwide financial chaos.

6. CONCLUSION

The Committee on Foreign Relations continues to maintain the view that no geographical region is more important to this country than Latin America, and that multinational partnership with our neighbors is the best means of our helping forward the economic and social development of the region. In promoting this objective the record of the Bank has been a sound one. The pending legislation involves no cash payments from the Treasury, but only a book entry in the nature of a contingent liability. Moreover, its longer-term impact on the U.S. balance of payments is likely to be either modest or nonexistent. The committee therefore urges the Senate to take early favorable action on H.R. 15364.

EXECUTIVE COMMUNICATIONS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF ACTUAL PROCUREMENT RECEIPTS FOR MEDICAL STOCKPILE OF CIVIL DEFENSE EMERGENCY SUPPLIES AND EQUIPMENT PURPOSES

A letter from the Acting Secretary of Health, Education, and Welfare, reporting, pursuant to law, on the actual procurement receipts for medical stockpile of civil defense emergency supplies and equipment purposes, for the quarter ended March 31, 1968; to the Committee on Armed Services.

AMENDMENT OF FOREIGN SERVICE ACT OF 1946

A letter from the Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed legislation to amend the Foreign Service Act of 1946, as amended, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on review of administration of U.S. assistance for capital development projects in Brazil, Agency for International Development, Department of State, dated May 16, 1968 (with an accompanying report); to the Committee on Government Operations.

A letter from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report on savings available to the Government through elimination of duplicate inventories, General Services Administration, Department of the Navy, dated May 16, 1968 (with an accompanying report); to the Committee on Government Operations.

NOTICE OF RECEIPT OF PROJECT PROPOSALS UNDER SMALL RECLAMATION PROJECTS ACT OF 1956

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, on the receipt of project proposals under the Small Reclamation Projects Act of 1956, from Cameron County Water Improvement District No. 2, San Benito, Tex., Central Oregon Irrigation District, Redmond, Oreg., Lakeside Irrigation Water District, Hanford, Calif., and Buttonwillow Improvement District, Bakersfield, Calif.; to the Committee on Interior and Insular Affairs.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the PRESIDENT pro tempore:

A joint resolution of the Legislature of the State of California; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION 35

"Joint resolution relative to Federal participation in welfare payments to nonresidents

"Whereas, The Federal Social Security Act since its enactment in 1935 has permitted the various states to impose reasonable residence requirements for eligibility to the various public assistance programs whose costs are partly paid by federal funds; and

"Whereas, The Federal Social Security Act so provides at the present time, with California having consistently required a reasonable continued residence as an eligibility factor for permanent public assistance payments; and

"Whereas, A federal court in California and other federal courts in other parts of the nation have declared the unconstitutionality of such residence requirements alleging that they contravene the "equal protection of the law" guarantee of the Federal Constitution and that they unduly restrict the freedom of Americans to travel at will within the country; and

"Whereas, If this new judicial theory is upheld by the United States Supreme Court, state and county costs of public assistance in California will be tremendously and permanently increased; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend the Federal Social Security Act at once so as to provide full federal financing of public assistance payments made to recipients who do not meet the length of residence requirements presently permitted by federal statute and contained in the California Welfare and Institutions Code and applicable statutes in other states, such federal financing to continue in each case only until the existing length of residence requirements have been met by each recipient; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

"Adopted in Assembly May 3, 1968.

"Adopted in Senate May 2, 1968."

A resolution adopted by the National Guard Association of Alabama, Birmingham, Ala., praying for the reexamination of the Army National Guard; to the Committee on Armed Services.

EXECUTIVE REPORT OF A COMMITTEE

As in executive session, the following favorable report of a nomination was submitted:

By Mr. SPARKMAN, from the Committee on Banking and Currency:

Manuel Frederick Cohen, of Maryland, to be a member of the Securities and Exchange Commission.

BILL INTRODUCED

A bill was introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. MAGNUSON (by request):

S. 3519. A bill to provide increased programs of assistance to the fishing industry of the United States; to the Committee on Commerce.

(See the remarks of Mr. MAGNUSON when he introduced the above bill, which appear under a separate heading.)

S. 3519—INTRODUCTION OF BILL TO PROVIDE INCREASED PROGRAMS OF ASSISTANCE TO THE FISHING INDUSTRY

Mr. MAGNUSON. Mr. President, I introduce today, for appropriate reference, legislation to assist the depressed American fishing industry. This introduction is at the request of the AFL-CIO Maritime Committee which has dedicated considerable thought and effort toward this proposal which they believe to be a step forward in assisting the harvesting fishermen in particular.

The Commerce Committee files contain a large number of broad, omnibus-type proposals to assist the American fisherman. None are perfect, but in each there are ingredients which offer good hope for progress in our long effort in this regard. Among them is a proposal by the Congress of American Fishermen, representing a broad spectrum of the producing fishermen on the west coast. It is my intention to introduce the CAF suggested program at an early date.

Because of the complexity of the problems facing our domestic fisheries, particularly of those who harvest the adjacent resources—often in near-direct competition with foreign subsidized fishing fleets—the answers are equally complex. By the same token, the suggestions of one segment or geographical area are not consistent with the answers provided by others. There is great difficulty in achieving any kind of unity or consensus to attack a problem which is one of great gravity and concern to this Nation.

It seems to me that the introduction of these measures, coming as they do from the grassroots of harvesting experience, may assist our committee in providing proper direction for assistance of the depressed American fishing industry.

There are problem areas in all of these omnibus proposals. For example, the proposal I introduce today by request of the AFL-CIO Maritime Committee includes a section to provide for the construction of three fish protein concentrate plants and four leased plants. The suggested construction authorization figure has been set at $6 million, and the leasing, operation, maintenance, and research authorization is proposed at $4.6 million annually for a period of 5 years.

I am totally in favor of this needed development in this country, but the facts which confront us indicate that the other body is presently wrestling with the need for an additional $900,000 to get the first such plant in operation. In view of this, the suggestion in this bill does not square with some current legislative realities. I have not given up, however, Mr. President, on fish protein concentrate as I feel that when the facts are known to the subcommittee members now studying the problem they will act as rapidly as did my Senate committee and the Senate itself in the passage of S. 3030, which provides for these necessary funds.

Our fishermen need assistance of some kind. They need it badly. There is no debate on any fishing coast of the country as to need, but there is evidence of varied views as to method. It is my hope that these proposals will assist by providing for accelerated discussion.

The PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3519) to provide increased programs of assistance to the fishing industry of the United States, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

REREFERRAL OF BILLS AND JOINT RESOLUTION

Under authority of the order of the Senate of February 20, 1968, the Committee on Public Works was discharged from the further consideration of the following bills and joint resolution, and they were rereferred to the Committee on the Judiciary:

S. 470. A bill granting the consent and approval of Congress to the Illinois-Indiana Air Pollution Control Compact;

S. 2350. A bill granting the consent and approval of Congress to the West Virginia-Ohio Air Pollution Control Compact; and

S.J. Res. 95. Joint resolution to consent to and enter into the Mid-Atlantic States Air Pollution Control Compact, creating the Mid-Atlantic States Air Pollution Control Commission as an intergovernmental, Federal-State agency.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967—AMENDMENT

AMENDMENT NO. 805

Mr. SCOTT submitted an amendment, intended to be proposed by him, to the bill (S. 917) to assist States 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, which was ordered to lie on the table and to be printed.

AMENDMENT NOS. 806 THROUGH 808

Mr. ERVIN submitted three amendments, intended to be proposed by him, to Senate bill 917, supra, which were ordered to lie on the table and to be printed.

NOTICE OF HEARINGS ON INTERCIRCUIT ASSIGNMENTS OF JUDGES

Mr. TYDINGS. Mr. President, as chairman of the Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery, I wish to announce hearings on the operations of chapter 13, title 28, United States Code.

The hearings will be held on May 28 and 29, 1968, at 9:30 a.m., in the District of Columbia Committee hearing room, 6226 New Senate Office Building.

Any person who wishes to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Improvements in Judicial Machinery, room 6306, New Senate Office Building.

NOTICE CONCERNING HEARINGS ON SENATE JOINT RESOLUTION 169

Mr. MONDALE. Mr. President, the first day of hearings on Senate Joint Resolution 169, the East-West trade resolution, originally scheduled for May 22 have been postponed. When a new date is set, it will be announced.

The hearings will continue on June 13 and 27, and July 17 and 24, commencing at 10 a.m. in room 5302, New Senate Office Building.

DEDICATION OF MILFORD RESERVOIR IN KANSAS

Mr. CARLSON. Mr. President, last Saturday, the giant $50 million Milford Reservoir on the Republican River, near Junction City, Kans., was dedicated.

This project marks the completion of another one of a group of important reservoirs constructed in Kansas during the last 25 years, and will add much to the control of water runoff in our State.

The master of ceremonies for the occasion was John D. Montgomery, Civilian Aide at Large to the Secretary of the Army, and publisher of the Junction City Daily Union.

Participating in the program were the Honorable Robert Docking, Governor of Kansas; Maj. Gen. F. J. Clarke, Deputy Chief of Engineers, Office of the Chief of Engineers, Washington, D.C.; and Col. W. G. Kratz, district engineer of the Kansas City district. It was my honor and privilege to give the dedicatory address, and I ask unanimous consent that the text of the address be printed at this point in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR FRANK CARLSON AT THE DEDICATION CEREMONY OF THE MILFORD RESERVOIR, MAY 18, 1968

It is indeed an honor and a privilege to share with you this dedication of the Milford Reservoir.

During this period of our national history, when we have become almost totally preoccupied with grave and pressing problems, it is indeed refreshing to participate in a ceremony such as this.

For here, we dedicate a project that serves as an example of our ability to work together—to build—to cooperate—to mutually agree upon a project of progress. This project typifies the traditional American "can do" attitude and our national ability to work together for the benefit of many.

Certainly, the Nation acted very wisely when the plan for the Missouri River Basin was adopted under the 1938 Flood Control Act. The actions that we have taken since that time are indicative of the wonderful American ability to use foresight—to look to the future and to build for tomorrow.

As a people, we have come to realize that our natural resources are basic to our National strength and greatness. We have accepted the fact that our natural resources must be used in the best interests of society as a whole.

Our modern day society has placed fantastic demands upon our land, water and other resources and these demands are intensifying daily. These same demands serve to intensify the need to develop sound plans for the proper utilization and conservation of our natural resources—sound plans that will

not only meet the needs of today but those of the future as well.

When compared to our abundance of natural resources, man seems small indeed but man has become the dominant factor—the master of his environmental fate. It is an awesome challenge. We must fit our needs and activities into our total environment. We must not only make the best use of our great resources but insure their use and beauty for future generations to come.

This challenge assumes larger proportions each passing year. We are now a nation of 200 million. The next century will see an additional 100 million Americans. Perhaps the greatest challenge facing us today is not whether we can reach the moon and explore outer space, but if we can provide a decent and desirable environment for ourselves here on earth.

And, although we recognize this challenge, we cannot afford to sit back and bask in this knowledge and in past accomplishments—we have not always been so wise. The story of the Great Plains should remind us all that man can destroy our natural resources as well as preserve them.

Indiscriminate use of the plow turned under millions of acres of fine grass for the planting of crops. Much of the land was not suited for the purpose. By 1930, the scene for disaster was set and successive years of drought and wind took their toll.

When I first came to Washington—a newly elected member of the House of Representatives—the Midwest was known as "The Dust Bowl." We paid dearly for our thoughtless and ill informed treatment of the land.

Since then, we have witnessed the formulation and partial execution of a blueprint for the control and development of the water resources of the Great Plains area—already these projects have greatly changed the face of Kansas.

We began with the Flood Control Act of 1938—which was later expanded by the 1944 Flood Control Act.

I consider myself very fortunate to have been a member of the House Committee that deliberated on the bill that was to become that important legislation. The act provided for flood control—water supply management—hydroelectric power—navigation and other benefits, including erosion control—fish and wildlife conservation and public recreation facilities.

Nature, however, did not wait for us to transfer the blueprint into reality before providing the forceful lessons of the need for such a plan. The 1951 and 1952 floods served as grim warning of the need for action.

And then being the contrary lady that she is, nature showed her other hand. Beginning with 1954, the Missouri River experienced eight consecutive years of below normal run-off.

It was during this time that accelerated action on this project was begun in the form of dams and local flood control projects.

We saw the construction of the Topeka levees—the Ottawa protection unit—projects at Manhattan, Salina—the Wilson Reservoir—Tuttle Creek—Kanapolis— and Perry. These are but a few of the parts that make up the total river basin project.

The value of this overall project is almost incalculable. The Corps of Engineers early last year estimated that the completed portions of the Missouri River Basin Program had prevented flood damages to date in excess of $1.5 billion dollars.

This Milford project has already added its share of benefits. In June of 1965, this partially completed project prevented serious flood damage.

In addition, the benefits of the plan have attracted nationwide attention. These reservoirs generate millions of kilowatt hours of electricity—float barges carrying millions of tons of commercial freight—irrigate thousands of acres of land—provide quality water for municipal and industrial uses—and enable virtually millions of people to enjoy recreational benefits.

During my years in Congress, we have certainly come a long way in our efforts to conserve and wisely use our resources. I have seen the Great Plains—our own Midwest—change from a "Dust Bowl" to a virtual water wonderland.

This project serves as a noteworthy example of cooperative planning and working for a common purpose. Federal, state and local governments, working together, have again demonstrated our determination and ability to properly utilize this Nation's basic material strength.

I would only repeat my earlier statement that the challenge of man living in his environment gets greater each year. We cannot afford too much time looking over our shoulder at what we have done—much remains to be done in the future.

The first chief of the U.S. Forest Service—Gifford Pinchot—a man who was a conservationist long before that profession and philosophy became popular—left us a meaningful challenge concerning our great natural resources. He said:

"The rightful use and purpose of our natural resources is to make all of the people strong and well—able and wise—well taught—well fed—well clothed—well housed—full of knowledge and initiative, with equal opportunity for all and special privilege for none."

Only history will be the final judge of how well we lived up to Mr. Pinchot's challenge and how well we husband this Nation's wealth and greatness for those who will follow us.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. McINTYRE in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS TO 9:30 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess, not until 10 a.m. tomorrow, as previously agreed, but until 9:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR WILLIAMS OF DELAWARE TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the completion of the prayer and the disposition of the Journal tomorrow morning the distinguished senior Senator from Delaware [Mr. WILLIAMS] be recognized for not to exceed one-half hour, or until 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Mr. President, is not all time under control?

Mr. MANSFIELD. Beginning at 10 o'clock.

Mr. McCLELLAN. Tomorrow?

Mr. MANSFIELD. Yes.

Mr. McCLELLAN. The Senator is talking about in the morning; one-half hour in the morning.

Mr. MANSFIELD. Before time starts on the bill.

Mr. McCLELLAN. I thought time was under control today.

Mr. MANSFIELD. The Senator is correct.

Mr. McCLELLAN. I have no objection. I was trying to understand the situation. That was my recollection.

Mr. MANSFIELD. The Senator is correct. The time today is under control, and, as I recall, it is under the control of the distinguished Senator from Arkansas [Mr. McCLELLAN], the manager of the bill, and the distinguished Senator from Maryland [Mr. TYDINGS], who is the proposer of an amendment.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Will the Chair advise us what the pending business is at the moment?

The PRESIDING OFFICER. The bill is not before the Senate yet.

Mr. McCLELLAN. Nothing has been laid before the Senate yet?

The PRESIDING OFFICER. When the pending business is laid before the Senate, the question then will be on the amendment offered by the Senator from Maryland as a substitute for the amendment of the Senator from Michigan.

Mr. McCLELLAN. That would be true of any amendment lying on the desk; when it comes before us, that will be the pending business.

The PRESIDING OFFICER. No. These will be the pending questions because they have already been offered.

Mr. McCLELLAN. Are they now the pending business?

The PRESIDING OFFICER. When the morning hour is concluded.

Mr. McCLELLAN. They will be the pending business when the morning hour is concluded?

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ERVIN. There was a unanimous-consent agreement entered into placing a limitation of time on a motion to strike title II. My inquiry is: If a substitute is offered for title II which goes beyond a motion to strike, is there any time limitation left?

The PRESIDING OFFICER. The pending question is a motion to strike and insert, and a motion to strike and insert takes precedence over a motion to strike.

Mr. ERVIN. I do not believe that answers my question.

I would then oppose a unanimous-consent agreement to place a limitation of time upon a motion to strike. That is

what the unanimous-consent agreement is directed to.

Now, we have a different proviso, not only to strike, but also an amendment to insert in addition to strike.

My parliamentary inquiry is: Does a unanimous-consent agreement which is entered into only on a motion to strike fall by the wayside——

The PRESIDING OFFICER. I am informed by the Parliamentarian that the answer to that question is "No," because the Senator fails to take into account the additional proviso of the unanimous-consent agreement which states:

Provided, That if there are any amendments to the Tydings amendment or to any of the language proposed to be stricken out by the Tydings amendment that has not been disposed of prior to that time, debate on such amendment or amendments will be limited to 1 hour to be equally divided and controlled by the proponent of the amendment and the Senator from Maryland (Mr. Tydings) or any Senator designated by him.

Mr. ERVIN. A Senator can make a motion to strike, and then abandon it by making a motion to strike and insert in its place, and an agreement which Senators are willing to make in respect to the former is binding on the latter. By so doing, a Senator may be able to frustrate a vote on the real issue.

The PRESIDING OFFICER. This is all part and parcel of the unanimous-consent agreement which was agreed to without objection.

Is there further morning business?

Mr. ERVIN. It will be a long time before I ever allow a unanimous-consent agreement to be made that will tie my hands like this.

The PRESIDING OFFICER. Is there further morning business?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A NEW SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Mr. HILL. Mr. President, last Thursday I had the pleasure of being present at a ceremony in the White House at which Wilbur Cohen was sworn into office as Secretary of Health, Education, and Welfare.

President Johnson said that Mr. Cohen "has been a planner, he has been an architect, he has been a builder, and he has been a repairman on every major piece of social legislation in the last 35 years."

I can personally attest to Wilbur Cohen's long record of dedicated work on behalf of better health for all Americans. As chairman of the Committee on Labor and Public Welfare, I have observed, over the years, the traits of character and the know-how which have so well prepared Wilbur Cohen for the important office he now holds.

I ask unanimous consent that the text of the President's remarks be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

REMARKS OF THE PRESIDENT AT THE SWEARING-IN CEREMONY OF WILBUR COHEN, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, MAY 16, 1968

Secretary Cohen and family, Mr. Vice President, Members of the Cabinet, ladies and gentlemen, distinguished members of Congress:

One thing I have always noticed about Wilbur Cohen is that he never does anything without a reason. Usually I can figure out what he is up to. But for the life of me, I just couldn't understand why he chose the man he did to administer the oath of office this morning.

In any discussion of our social history, two landmark laws deserve very special mention, Social Security and Medical Care. Each was passed after very long and searching debate in the Congress. Each looked at one time or another like it was a very lost cause.

Each is a monument to the compassion and the enlightenment of the American nation and each bears the indelible mark of one man—Wilbur Cohen.

If there is any man in America whose record and whose devotion to public service qualifies him for high office, it is Wilbur Cohen. I am glad that I had a chance to participate in that decision that brought him to the highest office in his field.

He has been a planner, he has been an architect, he has been a builder, and he has been a repairman on every major piece of social legislation in the last 35 years.

He hasn't minded being a private in the rear ranks and now he is a general in the front ranks. But he will be doing the same things.

During the early years of the long battle for health insurance Wilbur wasn't always the best loved leader in the land, at least in the medical society meetings.

After one earnest speech before a medical society, I am told a doctor came up and offered to provide Wilbur personally with free medical care. In fact he volunteers to make a no-cost incision—from here all the way over to here. He said he could economize by not using anesthesia.

But Wilbur kept on working and as we meet here today, more than 19½ million Americans are getting the benefits of Medicare and the benefits of his long hours, his patience and his understanding and his devotion to his country.

Today the reformers would do well, I think, if they would just take Wilbur Cohen's life and study it. In a time when we are hearing so much about power, black power, white power, green power and student power, perhaps someone should do an analysis of another kind of power—"Wilbur Power".

You might define it as "Wilbur Power" with something added. Certainly it is the power of optimism over pessimism. Certainly it is the power of involvement over indifference. It is the power of reason over rhetoric. It is the power of the patient, persistent reformer over the noisy zealot. I have found that it is power that gets the job done.

Wilbur Cohen knows that you cannot move a nation from an ivory tower. But he has also learned that you can't move a nation with a bulldozer.

It took more than 20 years to achieve Medicare and this man's determination and his skill in the agonizing art of turning dreams into law worked the miracle when lesser men could only stamp their feet in frustration.

A friend once said that Wilbur feels every person in the country who is at home alone, who is sick, is his personal responsibility.

But we did not come here for this ceremony simply to praise Wilbur's past record, great as that is. Wilbur Cohen is taking the oath of office today because I believe that he knows the needs of our country.

He knows the need to raise the national spirit. He knows the need to win new victories in new ways against disease and ignorance and poverty. He knows how urgent it is to erase the old indignities and to do it now, to end the old inequalities and to do it now, and to replace neglect with opportunity and to do it now.

Our future is filled with unfinished business, but it is rich with hope and with a great deal of opportunity, too.

So, Wilbur, we welcome you, knowing that any man who marries a redhead from Texas is a man who really loves challenges.

(The oath was administered to Secretary Cohen.)

THE CITIZEN SOLDIER AND THE ALLIANCE OF THE FREE

Mr. SCOTT. Mr. President, today, in California, our minority whip, the distinguished senior Senator from California, is to address the San Fernando Valley American Legion on the occasion of its 10th annual Armed Forces Day luncheon. Senator KUCHEL has emphasized the vital importance of a citizen response by the American people, together with peoples of the free world, in the face of challenges to our security.

In his remarks, he has called for a system of selective service based on random selection. I also invite attention to the Senator's call for the adjudication of the *Pueblo* issue by the World Court. I ask unanimous consent that a partial text of Senator KUCHEL's remarks be printed in the RECORD.

There being no objection, the excerpt from the remarks was ordered to be printed in the RECORD, as follows:

THE CITIZEN SOLDIER AND THE ALLIANCE OF THE FREE

(Partial text of remarks by U.S. Senator THOMAS H. KUCHEL before the 10th annual Armed Forces Day luncheon of the San Fernando American Legion Luncheon Club, North Hollywood, Calif., May 17, 1968)

I am deeply honored on this our national Armed Forces Day to address the 10th Annual Luncheon of the San Fernando Valley American Legion. On this day, we honor our men in uniform. As all of us who have answered the call to the colors in our own time remember on this occasion, the deep significance of that uniform in the life of our Republic. Those who wear it are the guardians of the achievements of a long and historic struggle to perfect free society and to make it safe and strong.

I want to recall for a moment one of the chapters of that story. Not far from Washington, where the broad York River moves gently through the Tidewater country of Virginia to the Chesapeake Bay, lies the battlefield at Yorktown. Here the independence of the United States was finally delivered from British imperial hands. Here, men with faith in inalienable human rights proved their power, by standing together, to win freedom.

Yorktown was the finest hour of General George Washington. His genius set the trap for the British forces on the James Peninsula. Fighting alongside him were 5,000 French troops. Off in the Atlantic stood French ships-of-the-line which decisively defeated the British fleet at the Battle of the Virginia Capes. Without support of these allies, there could well have been no victory.

The Frenchmen were modest, despite their courtly ways. When British commanders refused to surrender their swords to the Yankee commoners, it was a Frenchman of noble blood who stood forward to insist that the full honors of victory be given the Americans.

We owe eternal gratitude to the people of France, and to those other peoples of Europe who helped us gain our independence. One hundred fifty lears later, our obligations were remembered. With the nostalgic cry, "Lafayette we are here," American doughboys landed in France to join a struggle which they hope would make "the world safe for democracy."

The challenge was met once again, on the beaches of Normandy, on the front at St. Lo, in the Battle of the Bulge. From the cruelties of World War II, men learned the lesson that, without one another, in joint determination, the flame of freedom may be snuffed out.

Two themes run through this chain of events. One is the awareness among free men in the Western democracies of the need to make common cause in defense of liberty. This we have come to call collective security. It has been the basis of American foreign policy since the beginning of this century. It is the most effective means yet available to assure the independence and safety of free nations without pawning them to larger powers.

The other is the reliance on the citizen soldier—the shareholder in American sovereignty who will ever respond to defend his birthright. Through him our defense becomes truly a national effort. Our wars have been fought and won by him. With his inspiration our people have known unity and determination.

It has been 23 years since the last world war. The great alliances of the Atlantic democracies are today in sad repair. Our European allies remain aloof. In Vietnam, our long standing ties with Western Europe have been little availing. Petty nationalism has narrowed the interests of some European leaders. Last year, the French Foreign Minister stated that international crises now center in Asia. As a consequence, he said, they are of little concern to the nations of Europe.

The departure of France from the councils of the Free World is indeed tragic. The quest for narrow grandeur at the expense of a broader view of mankind is a backward move. The French posture is a policy that is bound to result either in a frantic effort to play both ends against the middle or, worse, in submission to satellite status before some greater empire.

De Gaulle would have the world believe that America seeks an empire in Europe. You and I know that this is far from the truth. America stands ready today to join in the defense of freedom. This is the testimony of our effort in Vietnam. The greater tragedy is that our purpose has been so badly misunderstood.

The rigid confrontation of the Cold War has broken down on both sides. French behavior is but one of the new elements in the world around us. In Communist Rumania, there is a progressive effort to break loose from Soviet domination. In Yugoslavia, there is a continuing move from socialism toward a market economy, where the consumer rather than the state can be the arbiter of trade. In Czechoslovakia, a frozen Communist glacier has been unrelentingly exposed to hot demands for freedom. Rigid Communist rules of censorship have broken down. The Communist hacks, who unthinkingly took their ideas from Moscow, have been thrown out. A new era of political competition is opening. I believe it unlikely that Communist doctrines and rigid ideology will survive if free debate and open criticism are permitted.

The Soviet Union is worried. It has summoned the newly appointed Czech leaders to Moscow. Economic pressures are being applied. The threat of none-too-subtle military action looms in the bitter memory of the intervention in Budapest 12 years ago. But times have changed. The Russians may no longer be able to prevent the unraveling of the Iron Curtain as they once could. The voice of freedom in Czechoslovakia is an old and hardy one. The rulers of neighboring Communist states are uneasy. East Germany, for example, is jamming broadcasts from across the Czech border. But inevitably the voice of struggle for human freedom is being heard, and it will be victorious if those who seek freedom stand together.

None of us can be too sorry to see an end to the old, Cold War World. But, in its heyday, it did provide a kind of certainty. We knew our adversaries. We believed our allies could be counted on. Today, the United States seems caught between "going it alone" or attempting to pull behind our vast oceans in a vain hope that they might again protect us. Neither alternative is realistic. Neither isolation nor the role of the world's policeman fit this country's future. Peace is best pursued by nations working in concert.

In this new era for any nation to ignore the concept of collective defense is to invite conflict. For a small nation to adopt a strategy of defense against every point in the compass, as France has done, makes for little safety, and probably for economic disaster as well. The likelihood of conflict appears from rising tensions where none need be. We need communication, not isolation.

Many of the old problems, of course, remain. I have no doubt that the Kremlin's leaders still dream of a "World Revolution" in which our way of life would be destroyed. I rather think they also see in their dreams the nightmare of nuclear warfare, emanating, possibly, from the land of their Chinese neighbor, in which their cities, and perhaps the human race, could be utterly devastated in a matter of an hour or two.

Danger comes by surprise. New causes of peril appear where we least expect them. Our nation has only now come to realize the gravity of the criminal seizure of the U.S.S. PUEBLO last January. Eighty-three Americans are still held hostage in North Korea. So far, our diplomacy has been unavailing. We seem powerless, short of an all-out war, to obtain their freedom by use of force, and the tragic fact is that the well-being of the captured Americans is at the whim of the North Korean Communist regime. I assure you that there is no responsible Member of the Congress who has not daily agonized over how to get these men back, safe and sound. Recently the Deputy Chief of Naval Operations, Vice Admiral W. F. A. Wendt, wrote me the following statement:

"From our experience with the Asian communists, one fact has emerged rather clearly. Once an American falls into the hands of North Korea, Communist China, or North Vietnam, there is little that the use of force can accomplish toward defending or securing his freedom. The dilemma is not unlike that of law enforcement agencies in a kidnapping case. However, the difficulties and consequences of punishing an offending country are obviously far more complex."

Admiral Wendt has put the dilemma very well. Lately, it has seemed to me that America should call for adjudication of the conflict by the World Court, as another means of seeking action in the matter. There is precedent for this action. We have a right to demand such action in the United Nations Security Council. North Korea has been at odds with the family of nations for two decades. It is time that this outlaw Communist state be brought before the bar of world justice.

For the years ahead, our nation must yet be prepared for many trials in unexpected quarters. The United States is going to have to test every aspect of her relationship in this new world. We will have to take our bearings and find the high road we must follow. Our nation has always sought a world ruled by law—a world where nations would recognize the rights of their neighbors, would accept the futility of global conflict, and would uphold the manifest advantages of settlement of dispute by peaceful means. This search for the rule of law is as valid in international affairs as it is in Newark, Chicago, or Santa Monica.

We are approaching a major turning point in the affairs of the United States. What we do in these coming years is crucial. Further steps must be taken cautiously and, in my opinion, with the constant participation and approval of the American people. That is a test for our system—indeed, the very reason for it.

In the world ahead, we will continue to depend on the determination of all Americans to accept the joint responsibility for defending freedom. The Vietnam war has shown us, that even in the nuclear age, we continue to need the undeviating devotion to country of the individual citizen. The Roman Cincinnatus, who left his plow to lead the defense of his Republic, remains an inspiration in our own time.

America must be able to depend on her citizen soldier. Recent experience has shown that the present draft laws can be improved. Our nation, with its highly sophisticated and rapidly developing industry, is faced with a terribly complex problem in time of war. America must train men for her armed services, and at the same time, continue to fill the expanding manpower needs of our increasingly complicated economy. Above all, the risks for each American having to place his life on the line in the face of a deadly enemy must be equalized.

Of the possible alternatives, it seems to me, the most equitable and workable is a system of random selection. By this means, each man faces equal odds. His period of exposure to the lottery can be reduced under present manpower requirements to no more than one year. After that time, he would have certainty and independence. He would be free to plan his career, once his year of risk is passed.

Most important, this plan would permit the vital process of higher education to continue without interruption. Today, our universities face reductions in enrollments from 20 to 60 percent below current levels in their graduate schools. This is a heavy burden. Over time, this drain in trained manpower will be felt with disastrous force on our economy. The growth potential found only in the exuberant capacities of young minds meeting new horizons must not be lost to our nation. As we treasure our young men, so must our policy strive increasingly to treat them with wisdom and fairness.

America is threatened with an appalling reduction in our cadre of trained citizens. This is a grave matter both to our economy and to our national security. Let me point out the contrasting situation in the Soviet Union. The Russians are training three times as many engineers as we are. Far from cutting their enrollments in scientific studies they doubled them between 1960 and 1964 and the output of trained manpower continues to rise. Meanwhile the relative advantage of the United States has dwindled. We may now fall well behind.

In America, we demand an equal sharing of the risks and privileges of citizenship. The call to the colors must certainly be no exception. I believe that we can be of great assistance to the American youth as they shoulder the burdens of our country and its defense. We can and should remove the uncertainties and inequities from the operation of our Selective Service System.

In this new world, we must be prepared not only to defend ourselves, but to take advantages of the cracks in the Communist monolith as they appear. This means diplomacy, as well as preparedness. This means getting the message of freedom across, both by public and private means. It means an effective system of public information purged of the credibility problems. It means a voice of America, both public and private, that speaks with unity. It means that when the world hears the word of our government, it is the word of the people.

In the world ahead, the great traditions of our Republic will be our primary source of strength. The need for an individual response to the nation's problems is enshrined in our belief that there can be no wide separation between the man in uniform and the man in the street. History tells us that alliances of free men from independent nations in common defense of their rights is the safest guardian. The experience of American society leads us to seek a world ruled by law. The alternative is the law of the jungle augmented by all the modern and sophisticated tools of destruction.

I believe now, as Mr. Lincoln said long ago, that our American nation is the last best hope on earth. I believe that America must remain free, and that the hope she represents will not be shattered or dispelled. Those who wear the uniform of our country stand ready to take arms in defense of our faith in this future. We owe them all honor.

But the grim paradox of our time is that while our beloved country is, indeed, stronger militarily today than ever before in our history, she is far more vulnerable to sudden attack from across the seas. Much as we dislike it, we have learned to live with a balance of terror, as we continue struggling to find, or to try to find, a better means to achieve a peace, both just and enduring, for the family of man.

Twenty-two years ago, as the Second World War came to a close, General Douglas MacArthur spoke to the American people:

"Men since the beginning of time have sought peace. Various methods through the ages have been attempted to devise an international process to prevent or settle disputes between nations. From the very start workable methods were found insofar as individual citizens were concerned, but the mechanics of an instrumentality of larger international scope have never been successful. Military alliances, balance of power, Leagues of Nations all in turn failed, leaving the only path to be by way of the crucible of war. The utter destructiveness of war now blots out this alternative. We have had our last chance. If we do not devise some greater and more equitable system Armageddon will be at our door. The problem basically is theological and involves a spiritual recrudescence and improvement of human character that will synchronize with our almost matchless advance in science, art, literature, and all material and cultural developments of the past two thousand years. It must be of the spirit if we are to save the flesh."

THE NEW WAR PROFITEERS

Mr. PROXMIRE. Mr. President, one of the tragic ironies of war throughout history is that there are those who profit excessively from it. The greed of war profiteers has been identified during and after countless wars of the past as one of the fueling elements if not the cause of those wars. A part of this villification, of course, has been due to nothing more than a frenzied search for scapegoats. But there has usually been a solid core of truth in the charges.

There is growing evidence, some of it gathered by the Subcommittee on Economy in Government of the Joint Economic Committee which I chair, that the Vietnam war has been producing its own crop of war profiteers.

It may even be a bumper crop for all we know for as James Reston pointed out in an excellent column in the New York Times on May 3:

The arts of cheating the Government are improving and the techniques for exposing the profiteers are declining.

Adm. Hyman Rickover, a fearless, articulate, and brilliant, if not popular Pentagon insider, has been sounding the alarm. He testified April 11 before the House Committee on Banking and Currency that profits on defense contracts were, on the average, 25 percent higher in the period from 1964 to 1967 than they were in the 1959–63 period. This is due in part to higher labor and material costs, but it is also due, he said, to the ability of contractors to charge unwarranted costs to defense work. As an example of the steep increase in profits on negotiated defense contracts, Admiral Rickover related that propulsion turbines for nuclear submarines have gone up almost 100 percent in price—from $5.5 million to about $10 million. No one in the world knows more about nuclear submarines, and the costs involved, than Admiral Rickover.

One of the problems the admiral identified in his testimony is the Pentagon's weak-kneed enforcement of the Truth in Negotiations Act. For more than a year, my Subcommittee on Economy in Government has been urging stronger enforcement of this law. I introduced a bill at the last session, S. 1913, which would tighten up the Truth in Negotiations Act by giving the Pentagon clear authority to postaudit defense contracts. The bill is still pending before the Committee on Armed Services. An identical bill in the House passed just last week, I am pleased to say, and I am hopeful there will now be action in the Senate on the proposed legislation.

A determined effort must be made across the board to recover excessive profits already reaped out of the Vietnam war—a job that must be handled by the Renegotiation Board.

James Reston's discussion of the Renegotiation Board is most instructive. I ask unanimous consent that his column on the subject, published in the New York Times, be printed in the RECORD. I also ask unanimous consent that a recent article, on the same subject, written by Sanford Watzman, and published in a national periodical, be printed immediately after the Reston column.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the New York Times, May 3, 1968]

WASHINGTON: THE NEW WAR PROFITEERS

(By James Reston)

WASHINGTON, May 2—Every war has produced a new crop of "war profiteers," and the Vietnam war is no exception. What is original now is that the arts of cheating the Government are improving and the techniques for exposing the profiteers are declining.

The task of eliminating excessive profits on Government contracts and subcontracts is the responsibility of the Renegotiation Board, which was established by the Renegotiation Act of 1951. It enabled the Government to recover more than $800 million through renegotiated contracts in the Korean War alone, but since then its authority and its personnel have been substantially reduced.

HANDCUFFING THE COPS

For example, in 1952, the board had about 550 employees. Today is has about 180, though the level of defense procurement has increased from $25 billion to over $45 billion in the last few years.

Also, more and more exemptions have been written into the Renegotiation Act since it first passed the Congress. Under the original act contracts of $250,000 and more were subject to review by the board. This was amended in 1954 to exempt all contracts under $500,000, and in 1956 to exempt all contracts under $1 million.

In addition, certain important categories of goods were withdrawn from the board's supervision—for example, "durable productive equipment," meaning machinery and tools with a life of over five years; and also "standard commercial articles or services." Similarly, certain agencies originally covered were removed from the board's supervision, including the Department of Commerce, the Bureau of Mines, the Coast Guard, and the Bureau of Reclamation.

This issue is now coming to the fore for two reasons: It takes about a year and a half between the time contracts are awarded until the Renegotiation Board begins its review. So the vast Vietnam buildup of 1966 and 1967 is just now coming under the board's scrutiny, and the board's tenure ends this summer.

RICKOVER'S CHARGES

The likelihood is that it will be extended for another two years, but it will come under attack as usual unless vigilant members of the executive, the Congress and the press watch the undercover battle going on here to weaken it further or even put it out of business.

Vice Adm. H. G. Rickover, the Navy's self-appointed watchdog, recently told a subcommittee of the House Committee on Appropriations that profits on defense contracts were running at the rate of about $4.5 billion a year.

"In the past several years," he said, "I have seen profits on defense contracts go higher and higher. I have pointed out that the weighted guidelines method of profit analysis adopted by the Department of Defense a few years ago resulted in higher profits for the same work—in some cases as much as 30 per cent higher."

His charge is that lack of uniform standards for letting contracts and lack of uniform standards of accounting are costing "hundreds of millions of dollars each year," and that even the present inadequate laws are not properly enforced by a Defense Department "too much influenced by an industry viewpoint."

Representative Henry B. Gonzalez, Democrat of Texas, has introduced legislation to restore the original authority of the Renegotiation Board, but despite the likelihood of a $20-billion budget deficit, and though the Government is now offering to pay 6 per cent interest on some Government securities—the highest since 1920—there is surprisingly little interest on Capitol Hill in the issue.

PUBLIC APATHY

Also, official secrecy makes investigation of war profits exceedingly difficult. The new freedom of information law covers Government contracts in theory, but efforts by The New York Times and others to get at the details have been turned aside on the ground that other laws protect the privacy of these contracts.

The loopholes in the present law on renegotiation are obvious. Industry can assign costs, Rickover asserts, "in almost any manner it chooses under loose Department of Defense guidelines" and "generally accepted accounting principles." But despite all the cries about "inequality of sacrifice" in the Vietnam war, there has been less of an outcry about "profiteering" this time than in any recent American war.

[From the Nation, Mar. 4, 1968]

LITTLE WATCHDOG OF THE DOLLAR WARRIORS

(By Sanford Watzman, reporter in the Washington bureau of the Cleveland Plain Dealer)

WASHINGTON.—The Renegotiation Board, an already crippled agency that polices war profiteering, will die on June 30 unless Congress renews its license to live. Though it will probably win another reprieve with less supplication than has been necessary in former years, because now more than ever it is needed as an adornment for the war budget, the issue is not merely whether this five-member independent board should survive but whether its former powers should be restored to it, so that it can really keep track of all the riches flowing from where the action is today.

The board is a small beast in the bureaucratic jungle, with low visibility on Capitol Hill, where it has few good friends and has frequently been ambushed by its enemies. A pariah of sorts, it can't roar for attention as other agencies do because (a) its absurdly small budget of $2.5 million a year does not afford a press agent or, to use the euphemism, a public information officer; and (b) like the Internal Revenue Service, it must take a vow of silence about the corporations it duns on behalf of the U.S. Treasury.

The board is sequestered in its own little office building, in a remote corner of downtown Washington. It was discovered there by its current champion, low-ranking Rep. Henry B. Gonzalez, a liberal Democrat from San Antonio, after a chance reference was made to it at a committee hearing on another topic. Gonzalez has since confessed to the House: "At the time, I knew nothing about the board. I have been pained to discover that the same is true of most of my colleagues."

The fact is that the agency is better known to lobbyists than to legislators. The former and their defense contractor clients, whose sales exceed $125 million a day, have felt the board's bite; they fear it still, even though the board has had many teeth pulled and been shrunk drastically in size.

In the wake of Korean War spending, the agency was recovering excess profits at the rate of more than $150 million a year; the figure for the last fiscal year was $15.9 million. Recurring amendments to the Renegotiation Act of 1951 have opened large loopholes in the law, and the board, violating all the laws of bureaucratic respectability, has been withering away. It had 558 employees in 1952 and 742 in 1953. It sank to 639 employees in 1954, 550 in 1955, 466 in 1956 and then by steady decline to 178 in 1967. These are total personnel figures, including board members, not the staffs only of the Washington headquarters but of the two regional offices as well.

On December 31, the agency published its annual Blue Book—a report to Congress which hardly anyone reads. It is terse enough, but the prose is hardly as stimulating as—and of course less comprehensible than—the latest communiqués out of Vietnam. Yet this particular Blue Book would have been especially meaty for the press agent which the Renegotiation Board lacks. For in it the agency, whose reporting runs two years behind because of the time it takes to receive and process contractor's filings, begins to lift the curtain on the costs of stepped-up procurement of Vietnam war materiel. The book is full of indicators that the profitability of defense contracts is escalating, with excess profits also surging.

What is meant by "excess profits? In a free enterprise economy, the question is often asked and one would expect constant quibbling over it, especially since the renegotiation law is deliberately vague and flexible on the point. But the U.S. tax court has had no trouble with the term. It asserted buntly in one case: "The word 'excessive' has a generally understood meaning. . . . It means more than is reasonable." And even the contractors, in their quiet and private dealings with the board, appear to have no trouble understanding the phrase. For the record shows that when the board has decided there was profiteering, the corporations agreed nine times out of ten (99.9 per cent of the time, to be exact), to refund money to the U.S. Treasury. There have been 3,375 such cases since the board was established during the Korean War; only 142 cases have been appealed to the tax court. The board has won seventy-one of these lawsuits, the court decreased the board's billings in forty others and the rest are pending. One case was that of the Boeing Airplane Co., which stormed into court protesting a finding of excess profits amounting to $9.8 million and slunk out owing $13 million—because the court took a closer look than had the board. (Only those cases that reach the court become known to the public.

When the board asked Congress in 1966 for a new lease on life, ultimately winning a two-year extension, the House Ways and Means Committee publicly announced it "would be pleased to receive written comments from any interested individuals or organizations." But only foes of the board replied, including such powerful lobbies as the Aerospace Industries Association, National Association of Manufacturers, U.S. Chamber of Commerce, Electronic Industry Association, National Security Industrial Association, American Institute of Certified Public Accountants and Machinery and Allied Products Institute. They insisted that the board serves no legitimate purpose and that it be abolished or further weakened. One reason that an independent agency is not needed to watch for profiteering, they added, is that the Defense Department was already doing this very thing itself as a consequence of the 1962 Truth in Negotiating Act.

This reasoning by the contractors is noteworthy because many of them had opposed a strong "Truth" Act, and because a series of Congressional hearings in 1967, notably those held by Sen. William Proxmire's Joint Economic Committee, disclosed that the Defense Department had never adequately enforced that law. For instance, it took five years for the Pentagon to agree last October, under fire from Proxmire and others, to implement the audit provisions of the "Truth" Act. It is understandable, thus, that defense contractors would rather deal exclusively with the Pentagon (the military half of the military-industrial complex), which had overlooked padded prices totaling countless millions of dollars, than suffer the curiosity of an independent Renegotiation Board.

But as the Vietnamese War was then heating up, the lobbyists deemed it prudent not to press too hard. A *modus vivendi* was reached when they tacitly agreed that the board be allowed to carry on for two more years at its existing level of limited operations. The consideration was that a study would be undertaken by the Joint Committee on Internal Revenue Taxation to determine, among other things, whether "this ancient and antiquated [board] meets today's needs"—a question posed by Rep. Charles S. Gubser (R. Calif.). The same joint committee had published an innocuous study on the subject only four years before. This is the background against which the impending debate will be held.

Corporations are required to file annually with the board if they hold defense or space contracts or deal with certain agencies such as the Atomic Energy Commission—unless the companies qualify for one of the numerous exemptions that have punctured the law in recent years. The filing is a report on that portion of the year's business with the government that remains covered by the Act. It resembles the corporation's income tax return, to which the board legally has access. In this sense, it differs from the accounting that a company is supposed to make under the Truth in Negotiating Act, which is enforced (when it is) on a contract-by-contract rather than on a broad annual basis.

The Renegotiation Act sets forth standards for determining excess profits; it is more liberal than the "Truth" Act in allowing costs to the contractor. Some of the criteria are (1) reasonableness of the profits netted on defense contracts, assessed against the normal earnings of the company; (2) the extent of financial risk assumed by the corporation and the inventiveness of its product; and (3) government assistance to the company in developing the product.

The board's finding of $15.9 million in excess profits in fiscal 1967 was down from $24.5 million the previous year. But the latest Blue Book warns that this comparison could be misleading. It asserts: "Because of the normal time lag between award of a contract . . . and the time required for processing a renegotiation case, the effect of accelerated Vietnam procurement is not reflected [by the $15.9 million]." The annual report also contains indicators which are more current and that point to fat in many Vietnam contracts. For instance:

Corporate filings are screened at board headquarters in Washington, where an overwhelming majority win quick clearance. But when profiteering is suspected, the filing is bounced back to a regional board for renegotiation of profits between the company and board officials. The Blue Book says on this point: "In fiscal 1967, 635 filings were thus assigned, as against 444 in fiscal 1966, an increase of 43 percent. Most of the increase occurred in the last quarter of the fiscal year, when the first filings reflecting the surge of Vietnam procurement were processed. This sharp increase indicated the beginning of an upward trend in the Board's workload."

Also suggestive was the fact that corporations reported $30.3 million in voluntary refunds and price reductions to the board, against $23.2 million in the previous fiscal year. Since these cases were not run through the bureaucratic mill, the contractor having elected to take a short cut, the voluntary figures are regarded as more current and a better reflector of Vietnam spending than the lagging official determinations of the board. Representative Gonzalez and other advocates of a rearmed Renegotiation Board see the voluntary refunds as a crucial element. This money flows back, they contend, because it looks better when the companies cough it up themselves than when they get caught with it later by the board. In fact, Chairman Lawrence E. Hartwig, chosen by the last four Presidents of the United States to sit on the five-member panel, views the agency as a strong inducement to corporate honesty. Though he has no idea how much money is saved by fear of the board, he says that the figure—if known—would dwarf the dollar amounts officially recovered.

The Blue Book shows more companies (20.7 per cent more) reporting profits and fewer companies (20.3 per cent less) claiming losses than in the previous year. Average profit margin of the moneymakers was 4.99 per cent, compared with 4.62 per cent in fiscal 1966. When the "loss" companies are figured in, these percentages drop to 3.53 and 3.02. Although this portion of the board's statistics points to only a slight upward trend in profits, the figures are regarded with a great deal of skepticism by the agency. Profit figures, it is argued, are deflated by the many exemptions and allowances in the renegotiation law. Besides, generalizations about the highly diversified defense industry are said to be hazardous. Where there is a monopoly or oligopoly on a sorely needed military item, the deck is stacked in favor of high profits. On the other hand, corpora-

tions are generally willing to take a loss for a few years in order to develop a monopoly item, such as a new weapons system.

Representative Gonzalez was perhaps not the first Congressman to discover the Renegotiation Board and its significance for the Vietnamese War, but he was the first to find something to say about it. Last March, he introduced a bill that seeks to return the board to its Korean War strength. Despite a number of speeches on the House floor, he had a difficult time winning attention to his cause until a series of articles appeared last January in the Cleveland Plain Dealer. It was this newspaper which first exposed the Pentagon's "comprehensive lack of compliance" with the Truth in Negotiating Act—a conclusion reached by the Joint Economic Committee—and which has since taken an interest generally in the subject of war profiteering. After the articles appeared Gonzalez won an important ally in Rep. Charles A. Vanik (D., O.), who joined him as a cosponsor of the bill. Vanik is a member of the Ways and Means Committee; Gonzalez is not. Other Ohioans, including Reps. William E. Minshall of the defense appropriations subcommittee and Jackson E. Betts of Ways and Means (both are Republicans), have been aroused.

The Gonzalez-Vanik legislation has two major provisions to bring more Defense Department purchasing under the jurisdiction of the board. It would require any corporation holding at least $250,000 in renegotiable government contracts to file annually with the agency. This, the Korean War figure, was subsequently raised to $500,000 and then $1 million. (Some lobbyists speak of boosting the exemption again—to $5 million.) The bill also would repeal the so-called standard commercial article exemption that after the Korean War drained away much of the authority the board could have exercised despite the raising of the floor. This dispensation excuses from renegotiation proceedings the purchase of certain products when it can be shown that the contractor sells at least 35 per cent of the item to customers other than the government.

The legislation also would make the board a permanent agency. No longer would it have to implore Congress periodically for authority to survive, for one or two more years, with the lobbyists sharpening their knives in advance. Even should the Vietnamese War end, Gonzalez and Vanik argue, unsettled world conditions and competition in the cold war will sustain a high level of defense and space buying. They cite the impending anti-missile race with Russia as an example.

Even today, the agency has enough staff and other resources to strike at the giants, like Boeing. Measured in terms of large dollar amounts, it is among the top defense contractors that most of the excess profits have been found. But when the number of separate cases is recorded, more instances of profiteering turn up in the less exclusive group just below the giants, where prices may be proportionately just as bloated.

In fiscal 1967 the board examined sales totaling $33.1 billion. The new legislation would permit the board to thumb through an additional $6 billion to $7 billion a year in defense and space contracts. The bill also would triple the number of contractors that come under the board's scrutiny, the figure then shooting up to 11,300 annually. A large share of the board's new "customers" would be subcontractors, now enjoying a boom with the escalation of the war in Vietnam. Because subcontractors, especially on the lower tiers, do not deal directly with Pentagon procurement officers, their pricing policies are not open to the Defense Department, but they would become visible to the board.

Business protests that such legislation would make an octopus of the board, giving it tentacles that would choke what the corporation spokesmen are pleased to refer to as "small business." At a time when the government should be encouraging more competition for defense contracts, the smaller corporations would become strangled by red tape flowing out of costly and pointless confrontations with the Renegotiation Board.

An answer to this argument was given as far back as 1948, when a special Senate investigating committee headed by the late Sen. Owen Brewster (R., Me.) confessed an "error" on its part. It had recommended boosting the filing floor from $100,000 to $500,000 and its proposal was adopted in 1943. "The committee now feels in view of our wartime experience in the administration of the renegotiation laws that this recommendation was a mistake," the panel reported. It explained that most of the complaints received about profiteering during the war were directed at contractors with less than $500,000 worth of contracts, adding: "It was damaging to war morale . . . It frequently happened that contractors about whom complaints were received were located in small communities where it soon became common knowledge that the contractor was profiting excessively."

Chairman Hartwig told a House appropriations subcommittee last year: "There have been instances where the board has found salaries unreasonable. Our statute ties in with the Internal Revenue Code. We must allow those costs which are good tax deductions. Internal Revenue, of course, can disallow excessive salaries. And so we have on occasion disallowed salaries." Hartwig also warned about the need for keeping track of satellite corporations. He asserted: "Otherwise, an individual could organize four or five companies, each with less than $1 million in renegotiable business (the present minimum required for board review), and escape renegotiation. . . . Chasing down affiliates and subsidiaries is not an easy task, and certainly requires the staff we have. We are down to the bare bones with only twenty-two people in that office."

Congress last year gave the agency the budget requested for it by President Johnson. The President and Ways and Means Chairman Wilbur Mills (D., Ark.) are the two persons most likely to determine the board's future. Representative Gonzalez sometimes hitches a ride when Mr. Johnson flies to his ranch in Texas. Should the President side with Gonzalez and Vanik, he would find himself in the company not only of some liberals but even a few conservatives—such as hawkish Chairman L. Mendel Rivers (D., S.C.), of the House Armed Services Committee. Defending the board's sniffing on the trail of Defense Department purchases, Rivers once advised the House that the renegotiation agency doesn't "deal in chicken-feed."

"The contractors and subcontractors are big men," he said. "They hire the smartest people on earth to come down here to Washington to sit across the table with some little colonel . . . who may not know exactly everything about a computer. These people can steal you blind, if they want to. That is a fact of life. I know what I am talking about, because I have a subcommittee that looks into this."

MICHIGAN SUPPORTS PEACE CORPS EFFORT

Mr. HART. Mr. President, the opportunity to participate in the development process of other nations has enriched the lives of thousands of Peace Corps volunteers. The Peace Corps has resulted in foundations of concrete and foundations of understanding, improved agricultural methods and improved attitudes, stronger educational systems and stronger friendships that span national boundaries. The minds of U.S. participants and participants of developing nations have been expanded far beyond the capacity of LSD.

In its 6 years of existence, the Peace Corps has developed a distinguished record. I am delighted that the Peace Corps is creating programs that enable those here at home to be a part of its effort. Its school partnership program encourages school and church groups in the United States to collect and donate funds to schools in other lands.

Michigan schools are deeply involved in this program. I am proud of the students and schools. I am proud to report this to the Senate. Students at the Plymouth, Mich., senior high school raised $900 for schools in Kagnigada, Togo, and Francisco de la Cruz, Peru; the Church Youth Group at the St. James United Presbyterian Church in Detroit raised $1,025.36 for a school in Brahmansasan, Ind.; the Taylor, Mich., junior high school raised $10 for a school in Brahmansasan, Ind.; and the Rodney B. Wilson High School in St. Johns, Mich., contributed $1,028 for schools in Assere and Kagnisi in Togo and schools in Malkapur and Andhra Pradesh in India.

Human beings tend to believe most strongly what they see. And for the citizens of developing nations to see real evidence of the interest of young Americans in their own schools will result in an awareness of American concern and increased international understanding at a time when that commodity is scarce indeed.

NEW U.N. TREATY POINTS UP SENATE INACTION ON HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, in 1949, President Truman sent to the Senate the Convention on Genocide. Hearings were held, and this convention was then shelved, even though the vast majority of the testimony favored it.

In 1963, President Kennedy sent to the Senate the Convention on Slavery, the Convention on Forced Labor, and the Convention on Political Rights of Women. Once again, hearings were held. Once again, the vast majority of witnesses favored ratification. But so far, only one convention, that on slavery, has been reported for a vote by the full Senate.

While the Senate has dragged its feet on these limited treaties, the United Nations has gone ahead. On December 16, 1966, the General Assembly of the United Nations unanimously passed a comprehensive treaty, the International Covenant on Civil and Political Rights. The passage by the U.N. of this new treaty vividly points out the inaction of the Senate in the field of human rights.

Mr. President, I ask unanimous consent that the International Covenant on Civil and Political Rights with an optional protocol be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Preamble

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable

rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the United Nations Charter.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent, authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the Present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall inform immediately the other States Parties to the Present Covenant, through the intermediary of the Secretary-General of the United Nations of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) The preceding sub-paragraph shall not be held to preclude in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*"ordre public"*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*"ordre public"*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself, or to confess guilt.

4. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order (*"ordre public"*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*"ordre public"*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*"ordre public"*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Rights to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as required by his status as a minor, on the part of his family, the society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall by universal and equal suffrage and shall be held by se-

cret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as "the Committee"). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election of the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in paragraph 4 of article 30.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights; (a) within one year of the entry into force of the present Covenant for the States Parties concerned and (b) thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may after consultation with the Committee transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports and such general comments as it may consider appropriate to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, if may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the

matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in this Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution is not reached, within the terms of sub-paragraph (e), the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General of the United Nations unless the State Party concerned had made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as "the Commission"). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement was reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the Commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter.

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, as well as its views on the possibilities of amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, inform the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudices to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned in accordance with paragraph 9 of this article.

Article 43

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 41, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant of or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amndments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference the Secretary-General of the United Nations shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General

Assembly and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties being still bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant") and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as "the Committee") to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals, subject to its jurisdiction, claiming to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provision of article 1, individuals claiming that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under this Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) the same matter is not being examined under another procedure of international investigation or settlement;

(b) the individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provision of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference the Secretary-General of the United Nations shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties being still bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification address to the Secretary-General of the Untied Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

PHARMACEUTICAL MANUFACTURERS ASSOCIATION WITNESSES COMMAND HIGH FEES

Mr. HART. Mr. President, on behalf of the Senator from New Mexico [Mr. MONTOYA], I ask unanimous consent to have printed in the RECORD a statement prepared by him entitled "Pharmaceutical Manufacturers Association Witnesses Command High Fees" and the text of an article entitled "The Professors Cash in, Raising Ethics Questions," published in the National Observer of March 18, 1968.

There being no objection, the statement and insertion were ordered to be printed in the RECORD, as follows:

PHARMACEUTICAL MANUFACTURERS ASSOCIATION WITNESSES COMMAND HIGH FEES

(Statement by Senator MONTOYA)

The article which follows this statement, entitled "Professors Cash in, Raising Ethical Questions," was published in the March 18, 1968, edition of National Observer.

This piece was prompted by a request of the Senate Small Business Committee's Monopoly Subcommittee to the Pharmaceutical Manufacturers Association that it furnish for the committee records a listing of

the fees paid to economists and professors who testified on behalf of the association during December 19, 1967 hearings on high prescription drug prices.

The writer of the article, Mark Arnold, says that the size of the fees paid these professors "raised eyebrows" in government, industry and more particularly in "academic circles."

The five professors and the economic consultant who represented PMA's viewpoint on December 19 received a total of just under $40,000.

Government witnesses, on the other hand, receive $16.00 per day plus transportation.

Members of the academic community hold a special and unique place in our way of life. While no one would criticize the increasing involvement of scholars in extra-curricular activities as being incompatible with the pursuit of truth—in fact I applaud it, for everyone should become involved in the problems of society—the PMA witnesses do raise questions of professional ethics.

A lawyer can and must build a case for his client. That is what is expected of a lawyer. A lobbyist sells his company's views as hard as he can; that is what is expected of a lobbyist. A consultant, once he has agreed to his retainer, looks for and finds every possible way by which the cause of his sponsor can be promoted. In all these cases, the question of fees has remained pretty much what the traffic will bear.

But, what are the ethics involved, as the article points out, of PMA professors acknowledging that "they were not necessarily speaking their own minds" and that "they were not going down as completely objective professionals?"

Dr. William McPherson of the University of Illinois and former chairman of the American Association of University Professors Committee on Professional Ethics said: "A professor has no business testifying for something he doen't believe in. His responsibility is finding the truth, not in building a case."

The writer of the article says that Professor Paul H. Cootner of the Massachusetts Institute of Technology, defended his $1800 fee on the basis that "there's risk to one's professional reputation." He said, "You should see the stream of uncomplimentary letters I've got from my testimony."

One of the witnesses contends that it is ethical to receive a fee of $4,250 so long as "you believe in what you are saying."

Another, who commanded $4,500, stated: "Nothing I said was either for or against the drug industry. All I said was there is a relationship between risk and return as theoretical principle. . . . That was deduced to be in support of the drug industry."

The question really becomes, according to one economist, that "when the fees begin to bear little relation to someone's normal fees and when the amount of work done is minimal, it leaves a bad taste."

The academic community of this country has done a remarkable job in educating to an exceptional degree the masses of our people clamoring for highly sophisticated training.

I am not criticizing the vast majority of those who are taking part in our society, molding our public opinion, working for causes, and leading our nation in those highly technical fields of competence. But I do think the *National Observer* article raises questions which should be closely scrutinized by the country's professors themselves.

THE PROFESSORS CASH IN, RAISING ETHICS QUESTIONS—DRUG INDUSTRY PAYS BIG FEES FOR ITS TESTIMONY; ISOLATED INCIDENT?

(By Mark R. Arnold)

WASHINGTON, D.C.—Scholars are in demand.

They're advising business and government, signing petitions, working for political candidates, and—increasingly—testifying before Congress.

Few would contend that such conduct is, in and of itself, incompatible with the academic pursuit of truth. Yet the growing involvement of professors in outside activities does raise questions of professional ethics.

Last week it was revealed that five economics professors and one other economist-consultant received fees totaling $40,000 in connection with testimony they gave to a Senate Small Business subcommittee, which is investigating competition in the prescription-drug industry. Their testimony was clearly labeled as sponsored by the Pharmaceutical Manufacturers Association (PMA). No law was breached no deception intended.

QUESTIONS OF OBJECTIVITY

Yet the disclosure did raise eyebrows in some academic circles. The fees were high—ranging up to $1,200 a day. And the chores the economists performed underlined the age-old question of a scholar's commitment to objectivity: Does a professor's dedication to pursuing the truth preclude him from "building a case for a client" the same way a lawyer would?

The six economists testified Dec. 19 before the subcommittee, which is headed by Sen. Gaylord Nelson of Wisconsin. Senator Nelson, a leading critic of the drug industry, believes the prices of brand-name prescription drugs are excessively high and could be lowered without any appreciable adverse effect on the pharmaceutical industry. The testimony of the six economists bolstered the argument of the PMA that industry profits are high because the risks involved are high, and that to lower profits by price reductions would have a serious, adverse repercussion on the industry.

AN UNUSUAL REQUEST

The subcommittee took the unusual step of asking to be informed of the fees paid the PMA witnesses. That information was furnished in a letter last week from PMA President C. Joseph Stetler to Senator Nelson. In the letter, Mr. Stetler protested having to supply the requested information, saying he failed to understand how the request served "any legislative purpose."

The letter listed payments of $6,450 to Paul H. Cootner of the Massachusetts Institute of Technology, $4,500 to Jesse W. Markham of Princeton University, $4,250 to Simon N. Whitney of New York University, and $875 to John M. Firestone of City University of New York.

In addition, it showed payments of $13,100 to Gordon B. Conrad, a senior staff assistant at Arthur D. Little, Inc., a private research firm in Cambridge, Mass., and $10,250 to Irving H. Plotkin, an MIT economist now spending much of his time at Little as a consultant.

It has long been accepted practice in Washington for groups interested in legislation to offer expert testimony before congressional committees. Big lobbies like the U.S. Chamber of Commerce and the AFL–CIO have trained staff people who frequently work up their own studies on the implications of a proposed bill, and present them in an attempt to influence the legislation's prospects.

Smaller organizations must rely for expert testimony on outside consultants, sometimes paid a retainer, other times commissioned specifically for a set of studies on a particular issue. Only in recent months has Congress been interested in the financial arrangements.

Last August, Maryland Democrat Daniel B. Brewster sent questionnaires to 37 experts who testified or submitted statements in 1965 to a Senate subcommittee considering the idea of putting a warning label on cigarettes. Among the 21 replies were 5 from experts who acknowledged receiving fees from tobacco companies or law firms representing them.

One respondent, Darrell B. Lucas, chairman of marketing at New York University's Graduate School of Business Administration, reported receiving $3,200, or $400 a day for "eight days or parts of days." Professor Lucas submitted a statement backing the industry's position against cigarette health warnings.

NO CONSISTENT PATTERN

The fees disclosed last week represented no consistent pattern. Both Princeton's Markham and MIT's Cootner were retained as part-time consultants by Arthur D. Little, which was commissioned at an undisclosed sum last year to work up economic studies favoring the position of the PMA at Senator Nelson's hearings. But Professor Markham charged the firm $250 a day while Professor Cootner's bill was for $600 a day, plus $1,200 for testifying before Congress.

Professor Markham says his $4,500 payment represents "about 20 days I put in over the past year and a half" at Little on drug problems; Professor Cootner said he spent "eight or nine days" consulting with Little, two of which were "wasted." "They flew us down to Washington to answer questions for the PMA, but they didn't have any questions. That was $1,200 right there."

The Little study was coauthored by economists Conrad and Plotkin and drew contributions from Professors Cootner and Markham. Professors Whitney and Firestone were paid for work they did on their own. The Little study argued that drug industry profits were not out of line with those of high-risk industries generally, and that the prescription-drug industry is, indeed, a high-risk industry.

Rival witnesses, retained by the subcommittee, maintained the industry was low-risk and its profits were excessive. Among these was economist Willard F. Mueller of the Federal Trade Commission, who noted that the drug industry has consistently ranked first or second in profits among all large manufacturing industries since 1956.

THE GOVERNMENT FEES

The Nelson panel paid its witnesses $16 a day plus transportation, the standard rate paid by congressional committees. Says a committee spokesman: "We've never had anyone tell us that wasn't enough money and they wouldn't come."

The PMA's economists concede their fees were higher than usual. Appearing before a committee whose chairman is hostile to your position "commands a premium," says MIT's Mr. Cootner; the panel has been known to subject witnesses to "mental and emotional strain." Too, there's a risk to one's professional reputation. "You should see the stream of [uncomplimentary] letters I've got from my testimony," he adds.

Is it ethical to collect high fees for testifying?

Yes, if you believe in what you're saying, asserts NYU's Simon N. Whitney, who declines to say how much work he did for the $4,250 he collected from the PMA. "I believe in the free-enterprise system and don't mind saying so." Wr. Whitney, a frequent drug-industry consultant, testified that drug profits could not be lowered to the average level of other industries without jeopardizing the industry's research program aimed at discovering new drugs.

NO "PRETENSE WHATSOEVER"

Several of the economists said they weren't necessarily speaking their own mind. Says Professor Markham, of his testimony before the committee: "None of us made any pretense whatsoever that we were going down as completely objective professionals." Adds economist Cootner: "Nothing I said was either for or against the drug industry. All I said was there is a relationship between risk and return as a theoretical principle. . . . That was deduced to be in support of the drug industry."

The 80-page Little study, complete with charts, graphs, and exotic mathematical symbols, developed a correlation between the rate of an industry's return and its risk, and showed that the drug industry fit the pattern established. Explains Dr. Conrad: "A client may pay us to do a study and the study is meant to elucidate his position, but everything we do is scrupulously honest. Our job is to uncover the truth for our client. If it's useful to him in an adversary situation, he'll use it; if not, he can't use it."

Little, of course, is a private firm. No one, as far as is known, has ever questioned a private research company's right to defend whatever proposition it is paid to defend. Many scholars, however, contend that professors should follow a different standard of conduct.

"A professor as a professor is dedicated to the discovery and dissemination of truth," says the University of Illinois' William McPherson, former chairman of the American Association of University Professors' committee on professional ethics. "He has no business testifying for something he doesn't believe in. His responsibility is in finding the truth, not building a case."

"WHAT THE TRAFFIC WILL BEAR"

High fees, too, can raise problems. "It's an accepted economic principle to charge what the traffic will bear," says one economist. "But when the fees begin to bear little relation to someone's normal fees and when the amount of work done is minimal, it leaves a bad taste."

Economist Whitney of NYU thinks it was "playing dirty" for Senator Nelson to publish the fees paid to the economists. It's established practice that industry-retained witnesses—particularly on controversial issues—command high fees. Professor Whitney says it's unfair to make an example of the incident.

The PMA's Joseph Stetler thinks so too. "I wish we could get witnesses at $16 a day," like congressional committees, he says, "Believe me we don't like spending this kind of money to defend ourselves."

DOMESTIC FOOD ASSISTANCE ACT OF 1968

Mr. MONDALE. Mr. President, on May 16, 1968, I introduced a bill called the Domestic Food Assistance Act of 1968. In remarks made at the introduction, I stressed the paradoxical nature of the hunger problem in the United States. I quoted extensively from "Hunger, U.S.A.," prepared by the Citizens Board of Inquiry. I called for immediate action to correct a condition that is killing, maiming, and sickening 10 million or more Americans today.

Mr. Presdent, it is not only our consciences that must impel immediate action, but also our commonsense. Hunger is unforgivable in this abundant land. And the effects of hunger in our society affect us all.

An article by Dr. Joshua Lederberg, and published in the Washington Post, explains well the social repercussions of domestic starvation and malnutrition. As he says:

Commonsense Should Impel Moves To End U.S. Hunger.

My bill would help us to do just that.

I ask unanimous consent that Dr. Lederberg's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COMMONSENSE SHOULD IMPEL MOVES TO END U.S. HUNGER

(By Joshua Lederberg)

Controversy over priorities for effective action quickly dissipates our verbal compassion about proverty. Do we stress racial self-esteem or integration, jobs or schools, reform or law and order? We argue, and we procrastinate. Meanwhile, children go hungry, a crime that no civilized community knowingly tolerates.

The most recent documentation of "Hunger, U.S.A." was issued a few weeks ago by an unimpeachable Citizens Board of Inquiry inspired by Walter Reuther. Its findings were mainly anecdotal; but a few realistic pictures of starvation may have more human impact than do scientific statistics.

These graphic portrayals of misery have been widely publicized and have received the most compassionate editorial comment. It still has to be seen whether the Government will respond to some common sense proposals for Federal salvage of local irresponsibility in existing programs.

The most cogent indictment in the report was that food subsidy programs have been geared more closely to the management of agricultural surpluses than to the needs of the poor and hungry. The same criticism must of course, be lodged against our programs of foreign food aid.

The more analytical parts of the report deserve more attention than they have received. "We have been startled by the absence of knowledge, research, experimentation, affirmative action—and even concern. The sad truth is that the extent of recorded medical knowledge about dietary intake and malnutrition among the poor in the U.S. consists of approximately 30 studies. Those who have gained expertise in malnutrition problems among the poor have done so . . . in other countries. The problems at home have been ignored.

"Society uses the lack of data as the basis of its inability to move quickly toward solutions."

In fact, the inquiry is not, in a scientific sense, an important contribution to the statistics of hunger in the United States. There was no difficulty in finding too many poignant examples of starving children; but it had no tools to assess the actual magnitude of the problem, or to define it more sharply in terms of the specific nutrients that were lacking in the diets of particular people.

The board's approach to a solution is the only one that can be mounted quickly enough to meet the immediate emergency; make an abundance of food more readily available. Where cash is lacking, distribute food stamps more widely to the poor, and they will eat enough.

The urgency of these measures is sharpened by increasing evidence of the stunting effect of malnutrition during the early years of life. Recent studies by Dr. Stephen Zamenhof at the University of California at Los Angeles have verified that when pregnant mice are fed protein-deficient diets, their offspring are born with neurone-deficient brains. Since there is good evidence that brain neurones do not multiply significantly after birth, these studies give a firm biological basis to clinical observations on mental retardation in protein-starved children. Dr. B. F. Chow at Johns Hopkins University has led several studies on rats with similar effects on learning behavior ("intelligence?") of the offspring. Furthermore, female rats that had been congenitally stunted by starvation did not fully sustain the nutrition of their offspring, even though they are adequately fed during their own pregnancy.

In the long run, the whole society will pay for the imposed retardation of its human resources. There is no surer mortgage against our future than to neglect present-day hunger. But the response must be twofold: prompt intervention with common-sense but crude measures like food stamps, especially for mothers and children, and a long-range program of nutritional research, field study and education in elementary domestic science for the most efficient use of our total resources.

SMALL BUSINESS DEVELOPMENT AND RURAL AMERICA, A BLUEPRINT FOR RURAL RENEWAL

Mr. SPARKMAN. Mr. President, the problems of our overcrowded and congested cities cry out for urgent solutions. Regardless of what approaches we use to resolve the crisis in the cities today, no long-range solution can ever be effective unless it serves to stop the migration of rural and farmworkers into these areas.

Immense growth is a fact of life in the American city today. As a matter of fact, in the next two decades, the population of the United States will increase by 70 million people. The largest part of this growth will occur at the periphery of the metropolitan areas which are already the focal points of our society. Obviously, if something meaningful is not done now, conditions will worsen rapidly.

Forty-three million people now live in 61 cities with populations over 200,000. Yet four times as many people, 156.5 million, live outside of these concentrated areas in our suburbs, small towns, and rural areas.

Actually, more people classed as "poor" live outside the large population centers—in small cities and in rural areas—than in the biggest central cities.

The point is, rural America has needs, too. Equal attention must be given to both urban and rural America if we ever hope to solve today's domestic problems.

Our society, in the waning years of this decade, looms as an ominous frontier of doubt and irresolution. Our cities are out of scale with the people who live in them, and they will be out of tune to the needs of the people of the seventies.

In spite of our efforts to foster an economic framework which will preserve our fundamental institutions of democracy, opportunity, and free enterprise, there remain vast economic wastelands; urban and rural areas of social and economic decay—dismal testimonials to our failures.

Our American environment must be reshaped and remolded. It should serve us and our institutions, be they political or economic.

Our development process must discover solutions that are long overdue: We need better answers to give our people who want broad opportunity to shape their lives to an environment that is free from the unsightly clutter along our highways, free from the overcrowding and violence of the ghetto, and free from the antipathy and bitterness of the jobless wanderer, who aimlessly searches for the chance to find the self-respect and dignity of a payroll.

Mr. President, to sum it all up, the enormous growth experienced by this country since the end of World War II has largely been fragmented, ill conceived, and incomplete. Our efforts, or lack of them, seem actually to have aggravated rather than alleviated the prob-

lems of disorder which we have come to know as the "ghetto."

As long as the rural jobless are forced to seek refuge in our inner cities, there will be no solution to this disorder. It can only become worse. Therefore, I have decided to schedule hearings before my Small Business Subcommittee on Financing and Investment to seek tools with which we may develop a balanced pattern of economic growth and with which we can replace this fragmented and ill conceived growth of the past two decades.

I think these hearings will make it quite clear that more job opportunities and bigger payrolls are the keys to a rural-urban balance.

I think, further, that we will find our small business community will be able to provide a large measure of those jobs. It has already made a good beginning.

Mr. President, I submit that SBA's development company loan programs should serve as a blueprint for "rural renewal." These programs, based on the concept of a Federal-State-local community partnership designed to foster and create jobs, should be looked to as providing us with one essential and workable solution to our inner cities' economic and social ills.

These programs are now a decade old. During their relatively short life, States and local communities, in close partnership with the Small Business Administration, have financed projects which have resulted in adding over 61,000 jobs to our Nation's economy. Reliable estimates indicate that tax revenues from these jobs and from increased corporate profits net the U.S. Treasury $87,362,000 annually. At this rate, the $215,000,000 loaned by SBA since the inception of the programs through April 30, 1968, would be repaid in less than 3 years.

More astounding is the fact that, assuming the average term of development company loans is 20 years, the remaining 17 years of continuing income tax payments could be expected to generate a "profit" to the U.S. Government of better than $1.4 billion.

It has always been a source of satisfaction to me that I sponsored and guided this legislation through to enactment.

Mr. President, I believe strongly in jobs and payrolls.

Throughout my nearly 32 years as a Member of Congress, I have always contended that adequate jobs can do more toward solving our Nation's problems than all of the social welfare programs in the world.

Give a man a job, and he has self-respect—something he can call his own.

Give a man a job, and he has the purchasing power to buy a home for his family.

Give a man a job, and he is better able to educate, feed, clothe, and protect his children.

Give a man a job, and his children are much more likely to grow up conditioned to working for a living than children who are brought up in welfare situations.

These SBA programs provide jobs. I hope we can find ways to strengthen these programs and develop new ones.

These hearings will provide the subcommittee with an opportunity to make a diligent search for ways to improve the economic climate of rural America. We will search for ways to provide more permanent jobs in rural America through all aspects of small business development.

To this end, the subcommittee hopes, during the course of these hearings, to hear from representatives of the Economic Development Administration, Department of Transportation, Office of Economic Opportunity, Department of the Treasury, Department of the Interior, Department of Labor, Appalachian Regional Commission, and the Securities and Exchange Commission, as well as influential spokesmen from the private sector. I am sure we can all learn from their experiences.

Mr. President, it is up to us to shore up the economy of rural America before our cities, now bad, become intolerable.

WASHINGTON COMMISSION ENDORSES PENDING OCEANOGRAPHY BILL

Mr. MAGNUSON. Mr. President, on March 12 I introduced proposed legislation to earmark portions of the Federal revenue from Outer Continental Shelf oil leases for exploration and mapping of the marine environment and for enlarging the sea-grant college program.

The bill, S. 3144, is predicated on my conviction that we should reinvest a portion of the revenues the Government obtains from the Continental Shelf and Outer Continental Shelf in programs that will expand the resources and knowledge that produce these revenues.

The bill, which would amend the Marine Resources and Engineering Development Act and title II of the act, the National Sea Grant College and Program Act, would create, from Treasury receipts under the Outer Continental Shelf Lands Act and certain funds held in escrow a marine resources fund, in the amount of $50 million each fiscal year.

Of this fund one-half, or $25 million, would be available, subject to appropriation, for the exploration, description, and prediction of the marine environment, and the remaining $25 million would be available for implementing the national sea grant college program. Hearings are expected to be held on his proposed legislation shortly.

Mr. President, I have received a communication from Capt. Griffith C. Evans, Jr., U.S. Navy, retired, Executive Secretary of the Oceanographic Commission of Washington, advising me that the Commission has formally endorsed S. 3144, and enclosing a copy of the resolution of endorsement.

I ask unanimous consent that the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, a Bill, S. 3144, has been introduced before the 90th Congress, second session, of the United States which would amend the Marine Resources and Engineering Development Act of 1966 and the National Sea Grant College and Program Act of 1966 in order to provide financing for programs under such acts; and

Whereas, this Bill would require the initial $50,000,000 of all revenues received in each fiscal year beginning after June 30, 1968, which otherwise would be deposited in miscellaneous receipts of the United States Treasury under the Outer Continental Shelf Lands Act, to be placed in a special fund in the Treasury to be known as the "Marine Resources Fund"; and

Whereas, these moneys would be used only for the purposes of exploration and description and prediction of the marine environment pursuant to the Marine Resources and Engineering Development Act of 1966 and for the National Sea Grant College and Program Act of 1966 except that not in excess of $25,000 may be so appropriated for either of these programs in any fiscal year; and

Whereas, the investment of these moneys in this manner will result in the national good by creating better understanding and utilization of the resources of the sea,

Now therefore be it resolved, That the Oceanographic Commission of Washington does endorse S. 3144 and asks that this Bill be speedily passed by the Congress of the United States and enacted into law.

Signed this 7th day of May 1968.

JOHN M. HAYDON,
Chairman.

Mr. MAGNUSON. Mr. President, the Committee on Commerce, before which this proposed legislation is pending, expects to hold hearings on S. 3144 in the near future.

ANNIVERSARY OF THE POLISH CONSTITUTION

Mr. CLARK. Mr. President, May is a month of special significance to the Polish people and to friends of Poland everywhere. Long before the birth of the Communist movement, which celebrates May Day as a ceremonial occasion, May 3 was an important day for Poland. That is because on May 3, 1791, the Polish nation adopted a constitution which made that country one of the pioneers of the new liberal spirit in Europe.

Since that time the course of liberalism in Poland has been a stormy one. Numerous partitions invasions, and other tribulations have plagued that unhappy country. There is strong evidence now that a wave of officially sanctioned anti-Semitism is sweeping Poland. I know that all friends of Poland join in hoping that this deplorable situation will be remedied, and that Poland will one day return to that tradition of liberalism which is so basic a part of her national heritage.

COOPERATIVE FERTILIZER PLANT FOR INDIA

Mr. PEARSON. Mr. President, the need for increased food production is one of the great challenges facing India today. Considering the fact that millions of Indians are already suffering from inadequate diets, and in view of the rapid growth in the Indian population, it is apparent that local food production must be increased by truly gigantic proportions.

An absolutely basic ingredient in this effort to increase food production is a greatly expanded system for producing and distributing agricultural fertilizer. Last year, on July 25, in a statement on the Senate floor, I discussed the subject of agricultural fertilizers in India and

also reported on a survey I had conducted of American agricultural firms capable of building fertilizer plants in India and otherwise assisting in India's fertilizer production program. The survey showed that there was great interest in American private firms and U.S. cooperatives in participating in this effort and that despite numerous problems progress was beginning to be made.

Therefore, Mr. President, I was especially pleased by a recent announcement of a major new fertilizer facility to be built in India. This particular project owes its existence to the initiative of a number of cooperative organizations, principally the Cooperative League of the U.S.A. and the International Cooperative Development Association. The leadership of the American cooperatives have long recognized this basic need in India and are particularly well suited for working with the Indian Government and Indian agricultural cooperatives in developing a joint project of this type.

The $119 million nitrogen plant to be built at the port city of Kandla will be financed by the Indian Government and Indian cooperatives and an AID guaranteed loan from the Bank of America. When completed in 1970, it will produce 800,000 tons of finished fertilizer a year. Considering that 1 pound of nitrogen usually results in 10 pounds of increased wheat and rice production, the output from this single plant could mean an increase of more than 80 million bushels of additional wheat or rice each year.

Mr. President, this is a most worthwhile project and the manner in which all the various parties have cooperated in bringing it to fruition is most encouraging. I bring this to the attention of the Senate and ask unanimous consent that a detailed account regarding the background of this project be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COOPERATIVE FERTILIZER PLANT IN INDIA IS "ALL SYSTEMS GO"

Indian and U.S. cooperatives—assisted by private capital and a government guarantee—are working together to build a $119 million nitrogen fetilizer plant in India.

The project is believed to be the world's largest international business transaction by cooperatives.

It has been in development for more than two years, but because of the complex and many-sided negotiations involved, only fragments of its story have heretofore been made public.

Parties to the project are: in India, the National Cooperative Union of India, the Indian government, Indian AID (U.S. Agency for International Development) Mission, Indian Farmers Fertilizer Cooperative, and other cooperatives; and in the United States, U.S. AID in Washington, the Bank of America, and some two dozen cooperative organizations.

For one of the principal participants, the Cooperative League of the USA, Chicago, the projects marks a major fruition of 13 years of joint effort with the Indians to develop and strengthen cooperatives in their country. The League has maintained an office in New Delhi since 1955.

The Indian Farmers Fertilizer Cooperative, formed to own and operate the new plant and distribute its products, was inaugurated at a ceremony in New Delhi, April 11. Donald H. Thomas, president of Cooperative Fertilizers International of Chicago, new U.S. organization brought into being because of this project, was one of the speakers.

Following this inauguration, at which Jagjivan Ram, India's prime minister for food and agriculture, was the principal speaker, Thomas and Allie C. Felder, Jr., head of the Cooperative League India office, said that the project could be described as "all systems go."

The proposed plant will produce 1,000 tons of anhydrous ammonia (83% nitrogen) per day—an estimated (depending somewhat on formulas) 800,000 tons of finished fertilizer products a year.

One pound of nitrogen is computed to produce up to 10 pounds of additional wheat or rice. Thus, on the basis of 300 days' operation, this single plant could account for more than 80 million bushels of additional wheat or rice in a year.

This would mean a 3% to 5% increase in India's total annual grain production. It also is equivalent to nearly one-third of the wheat and feed grain the United States sent to India in 1967, peak year of its shipments under the "Food for Freedom" program.

The homemade fertilizer also will represent a saving of foreign exchange for India, which imports about $400 million worth of fertilizer a year.

Of the estimated plant cost of $119 million, 10% ($12 million) is to come from the Indian cooperatives, 20% ($24 million) from the Indian government in the form of a redeemable stock, 23% ($27 million) from the Indian government as a loan, and 47% ($55 million) from a loan to be obtained in the United States.

The investment is projected to pay off in 12 years. In that time the plant will, according to computations, pay $128 million in principal and interest; redeem the Indian government's $24 million in shares and pay it $12 million in dividends; save farmers $165 million in cost of fertilizers; save the country $350 million in foreign exchange, and represent a net worth of $49 million. All of this is apart from the increased value of crop production resulting from the fertilizer.

Ram said in his April 11 speech that the plant is expected to reduce fertilizer prices from current levels by 10%, 20%, and 30% in its fourth, sixth, and eighth years of operation.

The plant will be built at Kandla, a port city on the Gulf of Kutch in northeast India. Construction is expected to begin in 1969, with completion targeted in 1971.

Development of this "India fertilizer project" is a many-stranded story.

In 1953 the American International Association for Economic and Social Development (AIA)—founded by Nelson Rockefeller and active principally in Latin America—established a supervised agricultural credit project in India. The man in charge, Thomas B. Keehn, found himself working primarily with the Indian cooperatives.

In 1955 Jerry Voorhis, executive director of the Cooperative League from 1947 to 1967, made the League a partner with the AIA in the India project. Felder went to India for the League in 1956 as an agricultural credit specialist. In 1961 both Keehn and AIA left India and Felder took charge of the League's India office.

In 1961 Nationwide Insurance companies of Columbus, Ohio, a League member, sent a five-man team to India to study the possibilities of further assistance to cooperatives. This group recommended fertilizer production as part of an overall cooperative development plan.

In 1964 Howard A. Cowden, president of the 1-year-old International Cooperative Development Association, visited India and, as the result of talks with Indian co-op leaders, strongly recommended a fertilizer program.

Felder, working closely with the Indian co-op leaders, Indian government, and AID Mission, developed a comprehensive plan of cooperative development. The Indian government asked the Cooperative League to send a team to study the feasibility of the cooperative part of this plan.

On September 5, 1966, this team left for India, where it worked three months, returning in December.

The team members were Howard H. Gordon, retired general manager of Southern States Cooperative, Richmond, Va; William Mitchell, manager of the plant food department of Tennessee Farmers Cooperative at La Vergne, Tenn.; and Albert J. Soday, process engineer of Mississippi Chemical Corporation, Yazoo City, Miss., Ferris S. Owen, administrator of AID projects for the Cooperative League, recruited the men; their trip was financed by the League's overseas-assistance contract with AID.

The team found the fertilizer project feasible and recommended a go-ahead.

At that point the Cooperative League referred the project to the International Cooperative Development Association, Washington, D.C., which had been formed by U.S. cooperatives in 1963 for the express purpose of promoting international cooperative business operations. Herbert C. Fledderjohn, who had succeeded Cowden as president of the ICDA, then took the lead in developing the plan, which ICDA's board approved in January, 1967.

A dramatic and perhaps decisive moment in development of the project came on January 19 at a meeting in the Jung hotel in New Orleans. ICDA called the meeting on short notice because representatives of most U.S. cooperatives in the fertilizer business were there for the annual meeting of the National Council of Farmer Cooperatives.

Fledderjohn presided. Kenneth F. Lundberg, president of the Central Farmers Fertilizer Company, Chicago, and Owen Cooper, president of Mississippi Chemical Corporation, both ICDA member organizations, presented the plan for a cooperative fertilizer plant in India.

One after another, on a rising wave of enthusiasm, the men present expressed themselves in favor of helping Indian farmers get a fertilizer plant. They left the meeting having pledged themselves to seek from their organizations $1 million—not as invested capital expected to bring any return, but as a contribution to the costs of getting the plant going; travel to India, economic studies, and such.

In April Fledderjohn, Owen (who also had been on the 1961 Nationwide team), Lundberg, Cooper, and Gordon went to India to present the plan to the Indian cooperative and government. Felder and the India AID Mission were party to the talks.

The Indians liked what they heard, and on May 26 the government asked the ICDA, also a contractor with U.S. AID, to send a team of experts to get down to the brass tacks of plant location, type, size, and such. This team—Thomas, then an economic analyst for Central Farmers Fertilizer Company (which is owned by 22 fertilizer-producing co-ops in the United States and Canada); John Wiley, marketing specialist for Central Farmers; and Soday—worked in India six weeks in June and July.

On October 19 the Indian government formally accepted the plan, the cooperatives already having done so.

Meanwhile, on September 25 at a meeting in Washington the interested organizations had formed Cooperative Fertilizers International (CFI) to handle the U.S. side of the operation. CFI elected Thomas president and Lundberg chairman of the board. And during the summer the U.S. cooperatives had formally committed the $1 million to be paid in four equal parts over four years.

The Agency for International Development in Washington found that, because of cutbacks in funds, it could not lend the $55

million needed to build the plant. It could, however, guarantee the loan; and on that basis a private lender was found: the Bank of America.

In April, 1968, CFI arranged for Ernest C. Davis, manager of the fertilizer plant of Central Nitrogen, Inc., at Terre Haute, Ind., to go "on loan" to India as its representative during the detailed planning and construction of the plant. He will work with Shri Paul Pothen, managing director of the plant.

Thomas, accompanied to India by O. Roy Wiebe, secretary-treasurer of Central Farmers, told his inauguration-day audience that the cooperative fertilizer plant will create "healthy competition" among plants in the private and public sectors of the industry, thereby benefiting all farmers.

In Chicago, Stanley Dreyer, president of the Cooperative League, described the India project as "a wonderful example of cooperation among cooperatives—both within this country and between the two countries."

He said the League staff is proud of the part it has been able to play and is genuinely appreciative of the support of its own board and members as well as the cooperation of other organizations.

PENNIES TO WAGE PEACE

Mr. CLARK. Mr. President, an editorial from the Greensburg, Pa., Tribune-Review, has recently come to my attention. It discusses a subject which is of great concern to me, the need for adequate financing for the Arms Control and Disarmament Agency, and it voices my sentiment on the matter. I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PENNIES TO WAGE PEACE

Sen. Joseph S. Clark delivered himself of a wry comment, the other day, on a subject that falls under the general heading of penny wisdom and pound foolishness. "I think," he told his colleagues, "we could afford the modest sum of 11 million dollars a year to wage peace."

His colleagues evidently think otherwise. Clark's reference was to the administration request for 33 millions to finance the Arms Control and Disarmament Agency over the next three years. The Senate, mindful of the demand for twice that sum daily to finance our Vietnam involvement, authorized only a two-year extension of the Disarmament Agency and held its budget for that period to 17 million dollars.

No one supposes that this agency, however well financed, could of itself stem the international arms race and set the world on a peaceful course. Also, it would be unfair to imply that this is the only segment of the U.S. government that "wages peace;" a variety of federal effort is directed more or less to that end.

Yet the fact remains that the Arms Control and Disarmament Agency is assigned the task of working with other governments to curb and perhaps even reverse the deadly arms spiral. It is a task whose signal importance is underscored by the development of even more powerful and ingenious weapons of mass destruction. The Senate was penny wise and pound foolish to vote for such piddling support.

SELECTIVE SERVICE AND THE RIGHT TO COUNSEL—S. 3303

Mr. YARBOROUGH. Mr. President, it is my privilege to join the distinguished Senator from Missouri [Mr. LONG] in cosponsorship of S. 3303, legislation to permit the right of counsel to young men when they appear before their local selective service boards. This right is now specifically denied by section 1624.1(b) of the selective service regulations which states:

No person other than a registrant shall have the right to appear in person before the local board, but the local board may, in its discretion, permit any person to appear before it with or on behalf of the registrant: *Provided* . . . That no registrant may be represented before the local board by anyone acting as attorney or legal counsel.

This denial is a shocking violation of the spirit if not the letter of the Bill of Rights. While an appearance before an administrative body to appeal a draft classification technically may not be the same as defending oneself in a criminal case, the consequences of the Board's decision may be comparably grave for the young man whose very life, especially in times of war, may be in the Board's hands.

This is certainly true today. In spite of hopeful peace talks, the war in Vietnam continues to rage. During the week of May 5 through May 11—the same week peace negotiators were meeting in Paris—there were 562 Americans killed in Vietnam fighting. That is the highest weekly total of American deaths since this unfortunate war began. From January 1 through May 11 of this year—just over 4 months—6,954 Americans have died in that tragic conflict, 12,000 lonely miles away. At this rate, more than 18,000 American boys could die in that bloody land during 1968—double the number of American lives lost there last year.

In this context, the decision of the local draft board cannot be viewed merely as a matter of administrative classification; rather it must be considered for what it is: a very human matter involving the possibility of death. In such a proceeding an individual citizen's access to legal counsel must be considered a fundamental right.

Nor is death the only issue. At the very least the draft is an interruption of one's domestic pursuits and an infringement on one's freedom of choice. The local board has the power to require a young man to forgo career, educational, and personal plans for a 2-year period. In many cases, this means an irretrievable loss of opportunity.

Anthony Wolff, an assistant editor of Look magazine, eloquently described the inequitable position of today's youth in confronting Government bureaucracy when that Government is to decide his immediate and, perhaps, long-term future:

After the first flush of coming of age, an 18-year old boy may begin to sweat. In his pocket, keeping company with his driving license as part of the thin dossier that proves he's a man, is a card from Uncle Sam that says the Government has a lien on his life. In most states, he may not buy a drink, vote, marry without parental consent or sign a legal contract, but he knows that his Government can arrogate to its own purpose two years of his irreplaceable youth and subject it to unfamiliar indignities, perhaps to death.

Within the framework of our democratic system, the right of the state to appropriate 2 years of an individual's life, perhaps at the cost of that individual's life, can be granted only when there exists every protection for the individual's rights.

The words of Justice Sutherland in Powell against Alabama, which recognized an indigent criminal defendant's right to have a court-appointed attorney in cases which might result in capital punishment, accurately reveal the need of counsel for both the criminal defendant and the prospective draftee:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

The Supreme Court, in Gideon against Wainwright, Escobedo against Illinois, Miranda against Arizona, and other cases, has expanded the right of counsel to all criminal defendants from the earliest stages of police interrogation or investigation of a particular criminal suspect. If such protection is available to even the meanest criminal defendants throughout the proceedings against them, surely it should be available to the youth who has done nothing wrong but only wishes to appeal from what he believes to be a wrong determination by an administrative board.

The Government does provide appeal agents, but as a critique of the Selective Service recently observed:

As his title implies, the Appeal Agent—who may or may not be an attorney—is legally bound "To be equally diligent in protecting the interests of the Government and the rights of the registrant . . ." It might be difficult for the most diligent and sympathetic Appeal Agent, stretched on such a rack, to provide full legal counsel.

The urgent need for attorneys to represent the appellants' interests particularly at the early stages of the classification process is further evident from the recent oral opinion of a Federal Judge indicating that he was powerless to overturn a selective service recommendation that draft boards reclassify as 1–A students who participate in illegal antidraft demonstrations.

The suit had been brought by the National Student Association, other student groups, and 15 student council presidents who protested General Hershey's widely publicized directive to local selective service boards as an attempt to stifle legitimate dissent to the Vietnam war. Judge George Hart found that the letter was not binding on the local boards and therefore of no legal effect and that individuals who believed their draft status was being changed because of their opposition to certain policies had administrative and judicial remedies.

This is of little comfort when one realizes that the State appeal board reviewing the local board determination, also

composed of volunteer citizens, cannot consider any information the local board has not seen and no one is allowed to appear before it. If the appeal board is unanimous in rejecting an appeal, the appellant can appeal to a national appeal board designated by the President, but only if the State selective service director or General Hershey agrees to sponsor it. No appeal may be taken from the National Appeal Board.

I need not dwell on numerous cases reported in the press which seem to indicate that many local selective service boards, as well as applicants, are also in need of legal advice on the selective service laws and the Constitution. Some inequities have appeared in areas such as the classification of conscientious objectors.

Many inequities occur largely because no one advises the prospective draftee of his rights. The April 2, 1968, issue of Look magazine tells of boys going to their draft boards to volunteer for the draft under the impression that they could get educational benefits by volunteering rather than waiting to be drafted. No one told them of the difference between volunteering for enlistment and volunteering for the draft. All the latter gets is preference on the 1–A list.

The right to counsel in these proceedings will not solve all the inequities in our present system of selective service, but it will go far toward giving hundreds of young men a chance to have their cases fairly heard and judged. For this reason I am pleased to cosponsor S. 3303 and to lend to it my full support.

SOLVING THE NATION'S PROBLEMS—IT CANNOT BE DONE ALONE

Mr. CLARK. Mr. President, last week, on May 16, the Chamber of Commerce of Greater Philadelphia made its William Penn Award for distinguished service to Frederic A. Potts, formerly president and now chairman of the board of directors of the Philadelphia National Bank, one of the great banking institutions in the city of Philadelphia.

Mr. Potts made an extraordinarily courageous speech, I thought, to a group of business leaders of Greater Philadelphia.

His speech is entitled, "It Can't Be Done Alone." It is a plea for joint action by Government and the private sector of the economy to solve the frightening problems of economics, race, sociology and, indeed, of politics, which confront every great city in the land today—Philadelphia being no exception.

Mr. Potts' message is well worth the attention of all serious students of the domestic problems which confront the country today. I commend it to all readers of the CONGRESSIONAL RECORD. Therefore, Mr. President, I ask unanimous consent to have it printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

IT CAN'T BE DONE ALONE

(William Penn Award speech of acceptance by Frederic A. Potts, May 16, 1968)

The welfare of a community depends on the degree of confidence, cooperation and understanding which exists between the private sector and the body politic.

This is a strong statement, but I firmly believe in it. Without open lines of communication between business and government, a stifling stultification of forward movement ensues. The slackening of advancement may not be seen immediately, but becomes increasingly apparent over a period of time. *A bridge of dialogue and comprehension must be built.*

I could recite examples of the negative and unhappy events that can occur in the absence of such mutual understanding; they are to be observed all over the United States and one reads of them daily in our press. Instead, I am going to confine my remarks to the positive aspects of my thesis, and try to show its application in our own community.

Urban problems have always been legion, but they are intensified today because of the hard core of unemployed at a time when the majority enjoys unprecedented affluence. In the Delaware Valley the difficulties are acute and at an explosive stage. For various reasons—some obvious and some not altogether clear—*certain* cities in this country have erupted. *It could happen here at any time* and my fingers are crossed; but what you should be aware of, if you do not already know, is that much preventive action has already been taken. Indeed, in my estimation there is currently a closer rapport developing between whites and blacks in Philadelphia than ever before.

That is a good thing and most encouraging, but it is not in itself sufficient to accomplish all that needs to be done. Better understanding between the whites and non-whites sets up a more favorable climate for action; but without specific goals, plus organized effort to attain them, no constructive action can take place, and, by this I mean no nonviolent action! That is the heart of my argument. It is the responsibility of business and government jointly to provide the organized, coordinated effort which is vital in bringing about the healthy community advancement so badly needed. Business cannot do it alone. Government cannot do it alone. But business and government can accomplish wonders if they keep in close sympathetic touch with each other and work *together* in formulating and carrying out a common program to attain essential goals in employment, housing, education in short, equal opportunity for all.

Please do not think that I am dismissing or selling short the *people* of this city. In truth, the city is its people. But two million citizens, two million separate individuals, of whatever income or race or creed, must have some means of *focusing* their desires and hopes for a better world and be provided an opportunity to enter it. Organized *leadership* is needed to identify the problems and to find solutions based on the best thinking and the widest practical experience the community has to offer. Business and government together can and must provide these ingredients.

We, who make our living in Philadelphia and go to comfortable homes at night in the suburbs have too long turned our minds away from some of the main problems and responsibilities which are left in the city. It's human nature not to want to take on additional problems when we already have so many. But does this make sense? Is it even safe? What happens to business when urban blight spreads beyond the critical stage or when people desiring positions are not employable because of lack of education?

Benjamin Franklin, wisest and most practical of Philadelphians, once said, "A little neglect may breed mischief. For want of a nail the shoe was lost. For want of a shoe the horse was lost. For want of a horse the rider was lost."

Philadelphia has changed somewhat since Dr. Franklin lived here, but I'm pretty sure he would say the same today. He genuinely loved his fellow citizens; but he was also a shrewd businessman and smart enough to understand that he could not long prosper if everyone else was broke. Today we call this enlightened self-interest. Some might call it good citizenship. It is certainly good common sense. Whatever the terminology, this precept is based on sound economic principles and a good rule to live by.

There are critics who might say, that's all very fine, but why complicate matters when business already is contributing via increased taxes to the education, health and welfare of our citizens? Why go further, why go overboard? Why not leave it to government?

Actually solutions cannot be bought with tax dollars. Welfare payments and handouts are not the answer. Nor are the oft repeated cliches of past generations going to resolve the complexities of an expanded urban population, such as: "Have you ever tried to work—it works!" "Early to bed, early to rise," et cetera.

Imagine what it would mean if we could turn the unemployables into employed and the poor who are now a drain on the taxpayer into taxpayers! These families represent a tremendous potential market. If the incomes of the substantial number of poor American families involved were increased significantly, the generative power would not run into millions but into billions of dollars.

The advantages of an active partnership between business and government already have been publicly recognized by government itself. Vice President Humphrey remarked recently: "The Federal Government can help; it can stimulate and supplement; but in the last analysis the key is to be found in the private sector." And in actual practice I happen to know that some of America's leading bankers and businessmen, including Philadelphians, go regularly to Washington for informal talks at the highest level. In addition here in our own city informal meetings are currently taking place between the city government and representatives of the business community.

All of this is valuable and adds to the impressive list of projects and organizations—that you are quite familiar with—in which Philadelphia businessmen are already working actively with government. Business has contributed much to the well-being of Philadelphia and its citizens. It can contribute *more* and a still wider range of dialogue and understanding is needed.

The *efforts* of business to alleviate poor living conditions and unemployment have not gone unappreciated. Whitney Young, Executive Director of the National Urban League, recently paid tribute to the business community's contribution, and voiced confidence in its goodwill and ability.

However, the fact is that at present only a small minority of the blacks can afford what the average white family enjoys. As the late Dr. Martin Luther King pointed out when he spoke here at a Chamber of Commerce luncheon over two years ago, the median income of the Negro family in this country is only about half that of the white family. One of the main reasons is that the unemployment rate for Negroes is *more than twice as high* as that for whites.

The fault lies in the system, and the blacks don't like their lot any more than we would like it. Of course there are a few who are allergic to work, like some white people I know. But the great majority want to work, and work hard, at any job that pays a decent wage. Dr. King called for a massive job-training program to get these "hard core" unemployed off the relief rolls and into the main stream of American life. At this minute, jobs for *skilled* labor are going begging; one has only to look at the want-ad section of the daily papers. American business needs

many more qualified people. How to get them?

As Mark Twain said, "Training is everything. The peach was once a bitter almond. Cauliflower is nothing but cabbage with a college education."

One of the shining examples of business and government getting behind the job-training idea is the Reverend Leon Sullivan's Opportunities Industrialization Center organized here in Philadelphia 5 or 6 years ago. "OIC" programs are now set up in over 60 cities and have become the most practical and successful undertaking dedicated to a frontal attack on the problem.

I would like to interject here that working closely with The Rev. Dr. Leon H. Sullivan since the inception of "OIC" has been not only a privilege but also a challenging and most exciting experience.

In ways other than job-training, the Philadelphia business community already has made some interesting advances. The Job Loan Corporation with a $2 million loan pool has been set up by the Philadelphia Clearing House banks for the purpose of helping the Negro community launch new business ventures and expand those already existing. The Loan Corporation has been swamped with applications. Not everyone who applies gets a loan, of course; but if the applicant shows initiative, intelligent planning and some basic knowledge of financial principles, he does get it, together with free counsel in matters such as bookkeeping, legal and business practices.

Once again I would like to refer to the Rev. Sullivan, who recently said, "The day must come when the Negro must not only go to another man's factory for a job, but must build the factories for others." The Job Loan Corporation goes a long way in that direction. The interest in it shown by Negro small businessmen directly belies, I think, a statement made by another Negro minister, and I quote, "whites don't know how to talk to blacks, and blacks won't speak to whites." Whites are beginning to show that they do know how to talk very practically to blacks, and blacks are glad to talk to whites when the whites show understanding and a sincere interest in helping them to help themselves.

As most of you know, Philadelphia business recently agreed to provide $1 million to launch a coalition of active young Negro leaders upon a program of self-initiated economic projects aimed at the full spectrum of ghetto ills, including housing, jobs, education, and health services. This project indicates the degree of interest of business in turning problems into opportunities. I would like to make it clear that this effort is designed to compliment the very fine programs already in effect which have similar goals—such as National Alliance of Businessmen, Urban League, the Mayor's Manpower Commission, and others. However, much more is needed. Let us always remember that actions speak louder than words—and let both our words and our actions be such that Philadelphia will be a city that other cities will emulate.

Consideration must be given not only to the ghetto but to the part which business should play in advancing the total daily life of a big urban community. It runs the whole gamut—from art museums and symphony orchestras to hospitals and schools; from labor unions to unemployment; from garbage disposal to air and water pollution; from mass transportation and expanded airport facilities to further improvement and modernization of the Port of Philadelphia. And so it goes!

In all of this, good communications between people, and particularly between business and government, are an absolute "must"—for only in this way can there be a common understanding—and thus a basis for joint action, regarding the needs and aspirations of business, of government, and of the common weal.

The more I see of the misery and misfortune in this world, the more I am convinced that most of it springs from a lack of communication. I have never believed that people are fundamentally cruel or callous; they are busy, preoccupied perhaps, worried, or even downright afraid; but these attitudes usually can be traced to a failure to comprehend what is in the other person's mind and heart.

Understanding and cooperation are at the core of all successful human endeavor. It is only through these means that our way of life as a democracy can be preserved. Only thus can the hopes and ideals of the founders of our country be brought to fuller realization for the generations to come.

May we continue, now and always, to work together whole-heartedly for the fulfillment of our goals for Philadelphia!

Thank you!

MUGGERS

Mr. BYRD of West Virginia. Mr. President, the New York Times has done a distinct service, I believe, with the publication of an article in today's edition concerning the increasing number of assaults and robberies in New York City.

The article's conclusions are shocking. The Times concludes:

The average mugger strikes many times before he is arrested.

Even when arrested and convicted he will prowl the streets again in a relatively short time.

The time he spends behind bars is unlikely to furnish him with meaningful rehabilitation treatment.

And because many crimes are not reported at all, the statistics probably underestimate the total number of robberies and muggings that occur in the city. A survey . . . indicated that about 50 percent of all robberies are never reported to the police.

I ask unanimous consent that the article headlined "Fear of Muggers Looms Large in Public Concern Over Crime" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FEAR OF MUGGERS LOOMS LARGE IN PUBLIC CONCERN OVER CRIME

(By David Burnham)

Predatory, often senselessly savage, the mugger looms as the most menacing figure in the public concern over crime.

A mugging is a type of robbery that involves a physical attack. It is a crime that is reported to the police in Manhattan 16,200 times each year.

Although muggings represent only a fraction of all serious crimes reported to the police, the mugger exacts a high toll in terms of physical and mental anguish and personal property loss, and he diminishes the quality of life in a fearful New York.

In an effort to learn more about the mugger, his habits and society's attempts to deal with him, The New York Times studied the court records of the 136 persons arrested in 100 cases in Manhattan during the first two months of 1967 on charges of assault and robbery, the legal charge placed against most muggers.

The broad conclusions suggested by this statistical study and by an examination of pertinent law enforcement records are:

The average mugger strikes many times before he is arrested.

Even when arrested and convicted, he will prowl the streets again in a relatively short time.

The time he spends behind bars is unlikely to furnish him with meaningful rehabilitation treatment.

Despite the enormous public concern over muggings, the mugger is a rare subject of statistical research. Neither the courts nor the police, for example, have compiled statistical information about the mugger because under state and Federal law mugging is classified as a kind of robbery and not singled out as a separate crime.

The Times's study examined the first 100 attacks in Manhattan in 1967 that resulted in arrests for assault and robbery. The period of the study was selected to permit the cases to work their way through the courts to final disposition. The specific findings of the study were:

Eigthy-two per cent of the defendants had been arrested at least once before and 46 per cent had been arrested five or more times. Because details about a man's conviction record listed on the police arrest sheet is considered incomplete by lawyers and researchers, the exact percentage of those who had been convicted of previous crimes is not known. The arrest statistics suggest, however, that perhaps half of the defendants had at least one previous conviction.

Initial bail for 60 per cent of the suspected muggers was set at $2,000 or higher, high enough so that probably well over half the defendants were unable to make necessary premium payments and be released immediately. Although bail is sometimes lowered at subsequent hearings, the notations of such actions are erratic enough to make generalization difficult. However, the widely held belief that most muggers are immediately released on the streets by the courts is not supported by the evidence.

The case against 31 per cent of the defendants were dismissed. Though the records often indicated that the cases were dismissed at the request of the assistant district attorney, the reason for the request usually was not given. Court officials say a major reason for the dismissals was the refusal of many victims to press charges. In this sense, police complaint that law enforcement is hampered by the public's unwillingness to cooperate has some substance.

The average sentence for guilty defendants was slightly more than a year. (Of the total, 62 per cent pleaded guilty and 7 per cent were tried, with half of them being convicted). A one-year sentence usually means nine months in prison, because of time off for good behavior. At the time of the study, the mandatory sentence for first-degree robbery, one of the charges placed against many of the defendants, was 10 to 30 years. The difference between the actual sentences and the sentence required by law can be explained by the fact that not one of the 136 defendants was convicted of the crime for which he was arrested.

More than half of the incidents of assault and robbery—54 per cent—occurred in hallways, elevators, stairs and apartments, and thus raised questions about whether police patrols that are legally restricted to the streets and parks can adequately protect the public from this kind of crime.

At least 20 per cent of the attacks studied were against chronic drunks or men seeking the company of prostitutes or homosexuals, victims who by their habits are unusually vulnerable to being mugged.

LINKED TO NARCOTICS

Much public discussion has attempted to link muggings with the serious narcotics problem in the city. The court records studied did not indicate how many of the 136 defendants were narcotics addicts. But a study published last week by the New York Police Department indicated that the number of addict attackers is far less than is generally believed.

According to the police, only 7.4 per cent of all those persons arrested for robbery in

1967 admitted they were narcotics users. Experts believe some of the arrested persons would not tell the police about their narcotics habit, they believe that enough do to make the statistics roughly accurate.

The problems of the police in apprehending robbers is documented in the 1967 Statistical Report of the New York Police Department. According to this report, only one robber was arrested for every six robbery complaints.

And because many crimes are not reported at all, the statistics probably underestimate the total number of robberies and muggings that occur in the city. A survey by the National Opinion Research Corporation, for example, indicated that about 50 per cent of all robberies are never reported to the police.

DETAILS OF ATTACK

Perhaps one of the best ways of looking at the mugging problem, is to examine in detail one of the 100 cases selected for the study.

At 8:15 P.M. on Saturday, Feb. 4, 1967, Mrs. Virginia Haspel (that is not her real name) walked along 169th Street near Broadway in Washington Heights. It was a cold, cloudy evening.

Suddenly, a youth accosted her and tried to grab her purse. Mrs. Haspel fought back. In the struggle, her arm and leg were cut by a knife held by the assailant. The mugger yanked the purse from Mrs. Haspel's hand and started running.

Mrs. Haspel's screams attracted a patrolman, who chased and apprehended the youth, who was 20 years old. That night, he was fingerprinted, photographed and taken to Night Court, where he was held on $5,000 bail. The complaint typed out by the patrolman at the request of Mrs. Haspel charged the youth with assault and robbery, both felony charges.

Three days later, on Feb. 7, the youth pleaded guilty to assault in the third degree, a misdemeanor charge. On March 1 he was sentenced to six months in prison.

TYPICAL AND UNTYPICAL

In a number of ways, the attack on Mrs. Haspel and the way in which the court dealt with her assailant are typical of the manner in which New York City is now dealing with muggers. In other ways, it is not.

Most of the muggings examined, for example, were similar to the attack on Mrs. Haspel in that they were committed by an individual assailant. Seventy-two percent of the attacks in the study involved a single assailant, the others by two or more persons. On the basis of the study, fears of roving gangs responsible for most of Manhattan's muggings are not supported by the evidence.

The initial bail set for Mrs. Haspel's mugger, $5,000, is considerably higher than that set for most persons arrested for assault and robbery. Judges set the same or higher bail for only 25 per cent of the 136 defendants in the study. For 30 per cent of the defendants, the bail was set at $1,000 or lower. Bail for the rest of the defendants fell in between these two figures, with the largest concentration at $2,500. Judges are permitted wide discretion in the setting of bail.

CAN'T MAKE BAIL

According to a survey made by the Vera Institute of Justice, 25 per cent of all defendants here do not have enough money to pay the necessary premiums when bail is set at $500, about 45 per cent cannot make bail when it is set at $1,500 and 63 per cent cannot make bail when it is set at $2,500.

Thus the effect of initial bail is likely to keep mugging suspects in jail even though the legal purpose of bail is to assure the appearance of the defendant in court.

The fact that Mrs. Haspel's assailant had been arrested three times before (once for intoxication, once for auto theft and once for the possession of burglar tools) also was not unusual.

More than 80 per cent of the defendants in The Times survey had been arrested at least once before and 40 per cent had previously been arrested five or more times. Though many of these arrests were for such minor charges as public intoxication, a majority of the defendants had previously been arrested for more serious offenses, such as burglary and robbery.

The number and seriousness of previous arrests appeared to influence the bail decisions. Those with no previous arrests or only a few minor arrests were granted the lowest bail while judges tended to require higher bail for those with more serious records.

SIXTY-TWO PERCENT PLEAD GUILTY

The decision of the defendant in the Haspel case, on the advice of a Legal Aid lawyer, to plead guilty to assault (one of the lesser charges placed against him at the time of his arraignment) also was typical of most defendants in the study.

In 62 per cent of the cases the defendants were permitted to plead guilty to a less serious charge.

Studies done by the American Bar Association and the President's Commission on Law Enforcement and Administration of Justice indicate that judges, prosecutors and nearly every major city in the country encourage defendants to plead guilty to lesser charges by offering them the inducement of lighter sentences.

This is done, according to these studies, because the small number of available prosecutors, judges and lawyers would be unable to handle the workload if more than a handful of defendants demanded a time-consuming trial. A study by the President's Commission said that 95.5 per cent of all convictions in New York were obtained by pleas of guilty rather than at trials.

In a recent speech before a meeting of the Correctional Association of New York, Lester C. Goodchild, administrator of the New York Criminal Court, took note of the proportions of the problem when he said each judge in his court processed more than 58,000 cases in 1967.

MANY TRAFFIC CASES

Many of these cases, however, involved traffic summonses, which require very little court time. According to an earlier report by the Criminal Court, each of the city's criminal judges handled about 23 nontraffic cases each working day during 1966. With arraignment, bail and other hearings, almost all cases will involve more than one appearance before a judge.

Donald J. Newman, a professor at the School of Criminal Justice of the State University of New York at Albany, and a leading authority on plea bargaining, said he believed that while plea bargaining was necessary, it had three major dangers.

"One is that the very dangerous recidivist [incorrigible criminal] escapes long control—he gets off too easily," Professor Newman said. "The other is that the person who may be innocent pleads guilty rather than face the chance of gettting [jailed] for a long time."

Professor Newman said the third danger was that the plea-bargaining system often resulted in the defendant going to a short-term jail rather than to a prison "and that to the extent there is any rehabilitation and treatment, it is not in our jails."

FEW SOCIAL WORKERS

Just how little rehabilitation is offered in the jails—the penal institutions that usually hold muggers imprisoned for a year or less—was suggested in a recent national survey of correctional agencies by the National Council on Crime and Delinquency. According to this survey, less than 3 per cent of all jail employes are social workers, psychologists, psychiatrists and teachers.

In the Times's survey, many of the 136 persons originally charged with assault and robbery were indicted on felony charges of first-degree robbery and assault and were later permitted to plead guilty to petit larceny and assault in the third degree, both misdemeanors.

In only 7 per cent of the cases was the matter of guilt or innocence decided by trial. Of these, slightly less than half the defendants were found not guilty. The remainder, after being arrested for assault and robbery, were indicted for petit larcency and third-degree assault, found guilty and given a variety of sentences ranging from a suspended sentence to four months.

The six-month jail sentence given to Mrs. Haspel's mugger was typical of the lower court that sentenced him. Those who were either found guilty or pleaded guilty in the Criminal Court received an average sentence of 5.6 months.

In the State Supreme Court, which in theory at least handles more serious incidents, such as a mugging in which the victim was slashed by a knife, the average minimum sentence was 18 months. The combined average sentence, using the minimum average of the upper court, was 12.4 months.

MOST GET TIME OFF

This does not mean that those sentenced to a year will serve a year. Anyone sentenced to six months or more before September, 1967, was eligible for and usually received a third of his time off for good behavior.

Last Sept. 1 New York State's new penal law went into effect. The law, designed to simplify and improve the old statute, was drafted by the State Commission on Revision of the Penal Law and Criminal Code and approved by the State Legislature after several years of debate.

Under the new penal law, a person found guilty of first-degree robbery, typical charge placed against a mugger, could be sentenced to from 1 to 2 years in prison.

However, Richard Denzer, staff director of the commission, does not believe the penal law changes have meant any significant alteration in the length of sentences given to persons arrested for assault and robbery.

Police Commissioner Howard R. Leary has suggested the enormity of the over-all problem facing the agencies of criminal justice in dealing with criminals:

"Our problem as police officers is that we arrest the same person again and again for robbery, we arrest the same person again and again for burglary, we arrest the same person again and again for pushing narcotics.

"Until such a time that society generally, not the police alone, have a way of dealing with the problem of repeated offenders, we are constantly going to be faced with the problem of increased crime and assaults against the person."

MINIMAL ACCOMPLISHMENTS

Presiding Justice Bernard Botein of the Appellate Division's First Judicial Department said in an interview that because of the resources given the system of criminal justice are inadequate, "its accomplishments are minimal."

"We pay a lot more lip service to the idea of rehabilitation and deterrence and the safety of the individual citizen than we actually seem to deliver," he said.

Justice Botein is supporting a bill now in Albany that would increase the number of Criminal Court judges in the city from 78 to 98 and increase the number of Supreme Court justices in the city from 89 to 122.

Because Democratic and Republican leaders have not been able to divide this rich source of patronage, the bill has been bottled up in the Legislature for a number of years, although last week a "general understanding" was reported to have been reached on the creation of new judgeships.

But Frank Remington, a professor of law at the University of Wisconsin and a leading legal researcher, believes that "increasing the number of judges isn't the only answer."

"With a few exceptions," he said, "there are no court systems in the country that

have responded to the enormous challenge facing them. Much talk has been spent on the Supreme Court and crime. But talk is easy. Getting at the real problems of criminal courts in the big cities, finding some way of dealing with individuals, is going to require an enormous amount of leadership, innovative research and money."

OPPOSITION TO A SURTAX ON INCOME

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD a transcript of questions which were asked of me during a TV interview which was filmed on May 15, 1968, together with my answers thereto.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

TEXT OF SENATOR BYRD'S TELEVISION INTERVIEW, MAY 15, 1968

Question. Senator, what is your position on the bill providing for an income tax surcharge and a $6 billion reduction in Federal spending?

Answer. Well, I voted against the bill when it passed the Senate and I expect to vote against the conference report when it comes back to the Senate. I am against any increase in taxes until such time as the Federal Government cuts back on nonessential spending and wasteful programs.

Question. Well, the bill provides for a $6 billion reduction, what's your objection to that?

Answer. Well, I would like to see the reductions made in a selective manner. For example, I would like to see the moon shot program cut back. I think we ought to cut back drastically on foreign aid programs. I believe that most of our servicemen and their dependents in Western Europe should be brought home. This would constitute a great savings. So, these are selective cuts, which I would institute.

Now, the $6 billion reduction which was provided by the bill which passed the Senate would make cuts in areas which would hurt my State. For example, the highway program could be cut back and many public works projects, such as the R. D. Bailey Reservoir, East Lynn, Burnsville, and Beech Fork Reservoirs could be cut back or even stopped completely.

And then there are other programs which might be cut back. For example, the Food Stamp Program, hospital construction, aid to education, urban renewal, FHA loans, SBA loans, and VA loans, and so on. I think these constitute the wrong places in which to institute reductions. They would hurt my people, and for this reason, as I say, I voted against the bill and will vote against the conference report.

Question. Senator Byrd, what are the chances of passage of the Omnibus Crime Control and Safe Streets Act? And just what is your position on the bill?

Answer. Well, I think the bill will pass the Senate. There have been some amendments already to the measure and there will likely be more. I think, in the overall, it is a good piece of legislation.

It is sickening to look at the proliferation in crime that has occurred since 1960. Now the figures for 1967 have not yet been fully processed but according to FBI projections, crime will have increased 88% over what it was in 1960. The population increase was just 10%. So, crime is increasing at a rate ten times faster, or at least nine times faster, than is the population. So I think some legislation is needed.

Now this legislation would provide for grants to be given to the States for the improvement of law enforcement. It would also prohibit wire tapping and electronic surveillance except by duly authorized officers of the law, acting on specific cases involving major crime, and acting under a court order. It would also seek to prevent firearms from falling into the hands of people who are not legally eligible to possess them, such as juveniles, criminals, and persons who are mentally incompetent. And finally, and perhaps most importantly, it would provide for the admissibility of confessions, when they are voluntarily made, into evidence. This would be left up to the trial judge and to the jury.

I think that during the past few years we have seen decisions rendered by the United States Supreme Court which have hurt law enforcement and handcuffed the police. And this has emboldened the criminal. And this legislation, if this provision is enacted, will restore equity into the balance and protect society and allow the police to enforce the law and, I think, inhibit the criminal from his profession.

INTERVIEWER. Thank you, Senator Byrd.

THE MARCH ON WASHINGTON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD the following items:

A story from today's Washington Star entitled "Leaders Meet on Capitol Hill Demonstrations";

An article in today's Washington Star entitled "Transit Agency Steps Into Union Company Row";

A column by David Lawrence, in today's Washington Star, entitled "Washington's Reign of Terror"; and

An article in today's Washington Post entitled "Poor City Rolls Rise to 1,500."

There being no objection, the articles were ordered to be printed in the RECORD as follows:

[From the Washington (D.C.) Evening Star May 20, 1968]

MARCHERS MAP PROTEST RALLIES—LEADERS MEET ON CAPITOL HILL DEMONSTRATION—BOLLING IS MENTIONED AS SECOND CAMPSITE AS POOR POUR INTO DISTRICT OF COLUMBIA

Leaders of the Poor People's Campaign worked into the early morning hours today on plans for the first mass demonstrations by their followers, who now number about 2,500 in the Washington area.

The critical housing shortage at the Resurrection City campsite on The Mall was eased temporarily by a Sunday of feverish construction activity by volunteers. The activity by volunteers. The population of the camp nearly doubled yesterday, and some 2,000 campaigners are now housed in the plywood huts.

But with an additional 3,000 demonstrators expected before the end of next week, it became clear that an additional campsite would be necessary. About 400 marchers for whom there was no room at Resurrection City are being put at 15 nearby Virginia churches, where they will stay until Wednesday.

ANACOSTIA MENTIONED

A possible second campground that has been mentioned is Bolling Field in Anacostia, although the Rev. Ralph David Abernathy said the leaders would prefer something closer to the Capitol Hill and downtown targets of the march's lobbying efforts.

Abernathy, chairman of the Southern Christian Leadership Conference, returned to Washington yesterday from a nationwide fund raising tour. He presided at the strategy meeting in the Pitts Motor Hotel in the 1400 block of Belmont Street NW.

The meeting lasted for two and a half hours. Participants would not reveal immediately what came out of the meeting except to say that "some important decisions" were made.

Involved in the discussion were: Bayard Rustin, director of the A. Philip Randolph Institute and an organizer of the march on Washington in 1963; the Rev. Wyatt Tee Walker, former Southern Christian Leadership Conference aide and now urban affairs adivser to New York Gov. Nelson A. Rockefeller; Norma Hill, a Rustin assistant; the Rev. Andrew Young, executive vice president of SCLC; Anthony Henry, a director of the campaign; the Rev. Jesse Jackson, national director of Operation Breadbasket, a selective buying adjunct of SCLC; and the Rev. James Bevel, an aide to Abernathy.

HILL ACTIVITIES PLANNED

It was indicated that SCLC staff members would continue discussions today although Rustin and Hill were reported on their way back to New York.

Young said the group would begin some kind of activities on Capitol Hill this week. He said he wasn't concerned about the ban on large demonstrations at the Capitol because House Speaker John McCormack, D-Mass., "has promised to protect the demonstrators' right to petition."

"We might march to the Capitol," Young said, "and then break into smaller groups and have the demonstrators go visit their own congressmen.

"When we move, we will move," he added.

The Sunday afternoon rainstorm caused the leaders at the campsite to call off an unscheduled demonstration that was planned as a parade from the Lincoln Memorial area to the Capitol and back.

FACE SEVERAL PROBLEMS

Under the permit granted by the National Park Service, only 3,000 demonstrators can stay in the campsite by the Reflecting Pool, and this number appears likely to be reached in a matter of days as construction continues and caravans roll into the city from all directions.

Housing is not the only problem faced by the SCLC leaders. But leaders voiced optimism about the financial squeeze the campaign is in, and discounted speculation that their control of the protest will be made harder by the growing number of militant youths among the latest contingents to arrive.

Volunteers worked all day Sunday and into the evening putting together the A-frame structures, which now number about 500. Buses shuttled between The Mall and the Washington Coliseum throughout the day, bringing over the 1,000 marchers of the Midwest contingent who had been housed in the sports arena Saturday night.

The Rev. James Groppi, the militant Roman Catholic priest who led months of open housing marches in Milwaukee, was with this group.

LITTERED WITH RUBBISH

After the marchers were taken from the Coliseum to the campsite, it was reported that the building was littered with rubbish. An official said lockers containing soft drinks and beer had been rifled.

The arrival of Abernathy and the other "top brass" of the campaign appeared to buoy up the spirits of Resurrection City residents. "Now we'll get down to business," was the feeling expressed by more than one demonstrator.

During last week's delay and confusion as the campaign faced a financial crisis and construction lagged at the camp, several of the demonstrators were heard complaining that they came to demonstrate and not sit around in some church basement waiting for housing.

When asked about the housing problem, Young said that if people need housing and there is land available, "we will use it."

He added that he wasn't concerned about opposition from Congress if the demonstrators attempt to move onto neighboring parkland because "Congress has to operate on its own logic."

Standing at the muddy campsite that had been hit by a rough rainstorm earlier in the day, Young refused to be concerned about reports that tough militant gangs from Memphis, Chicago and Milwaukee had taken over the city.

He said SCLC had brought many different people from vastly different places and backgrounds and over the next two days would begin trying to build a community.

"We have to mold the people into one disciplined, nonviolent fighting unit," he explained.

In an interview at National Airport, Abernathy also discounted reports that young militants were attempting to seize control of Resurrection City.

"The last report I received was that the Blackstone Rangers were serving as marshals and were helping keep things under control," he said.

Abernathy also discounted reports that the campaign was experiencing severe financial difficulties.

"There is no crisis," he said. "We still need funds, of course, and welcome more contributions. But I would say we have cleared up our problems."

THOUSANDS OF SIGHTSEERS

The rain, which dispelled fears that the shelters would leak or blowdown, also delayed the construction and soaked piles of clothing and shoes that had come into the site from early in the day.

The storm also added to the general traffic tieup along Independence Avenue and around the Lincoln Memorial as sightseers came out by the thousands to catch a glimpse of the city.

In various cities around the country, groups of demonstrators were poised for the move on Washington.

Three busloads scheduled to leave Buffalo, N.Y., last night were held back when the leaders were informed that there was no room for them in the capital. Revised plans call for up to 400 persons—10 busloads—to leave Buffalo May 29 for arrival in time for the Memorial Day mass demonstration.

RALLY IN DENVER

In Denver, 520 members of the campaign's western contingent held a rally on the steps of the State Capitol yesterday, Bernard Lafayette, national coordinator for the campaign, told the Negroes, Mexican-Americans and Indians making up the group that they are going to Washington "to demand payment of a bad check the government issued" on civil rights legislation.

Buses from San Antonio, Dallas and Oklahoma are scheduled to join the Denver caravan in Kansas City, and the combined contingent is expected to arrive in Washington on Friday.

A Pacific Northwest caravan reached Bismarck, N.D., yesterday in two buses. Most of the party were from Washington and Oregon cities, but they were joined by two white persons and 15 Indians at Missoula, Mont. A third busload of 15 to 20 North Dakotans joined the caravan at its departure for Washington today. Most of them were Indians from Fort Berthold, who want to press claims against the federal government.

REACTION IS MIXED

Reaction to the campaign continued to be mixed.

Senate Democratic Whip Russell Long said yesterday he would not knuckle under to "threats" by the poor people.

Referring to Abernathy, leader of the Poor People's March on the city, Long said:

"If he wants me to vote for something on the threat of burning Washington down, then let him burn it down." The Louisiana Senator then said, "If the President and the federal government are not disposed to carry out the law, then maybe they ought to burn it down and move the capital to some state."

Long's remarks were made on the CBS television and radio program, Face the Nation. He emphasized he would be willing to listen to the poor people so long as they observed the law and petitioned Congress peaceably.

Long noted that Abernathy had stated that the SCLC would remain nonviolent during the campaign to persuade Congress to do more for poor people. Long also noted that Abernathy said the SCLC could not be blamed if other groups took advantage of the situation and became violent.

Meanwhile the demonstration won the endorsement of Gov. Rockefeller of New York, who said in a television interview that he looked upon it "as a new imaginative way of creating a lobby, to bring attention to congressmen they have a problem, they want help."

The Americans for Democratic Action meeting in Washington, also endorsed the march and pledged a $1,000 contribution.

[From the Washington (D.C.) Evening Star, May 20, 1968]

TRANSIT AGENCY STEPS IN IN UNION, COMPANY ROW—ATU LOCAL ORDERS NIGHT BUS DRIVERS NOT TO CARRY CHANGE AFTER 6:30 P.M.

(By Lee Flor)

The Washington Metropolitan Area Transit Commission today said it was stepping into the dispute between the D.C. Transit system and the bus drivers' union, which had ordered its members to refuse to carry money to make change on night runs.

The executive board and the officers of Local 689 of the Amalgamated Transit Union met in emergency session yesterday and late in the day issued the order for drivers to refuse to carry change after 6:30 p.m.

The union said a requirement by the company that the drivers carry money to make change provides "bait" that attracts robbers.

George Avery, chairman of the transit commission, said he had been working with the District to help get extra police protection for the drivers. Avery said his commission was directly involved because the crisis might result in a slowdown of service tonight in some form of crisis affecting transportation.

RANGE OF AUTHORITY

The transit commission regulates bus routes and service requirements and establishes the level of bus fares. Its authority over the drivers is not as strong as over the company, but Avery may be able to negotiate a compromise, or his staff may be able to develop some alternatives to settle the dispute.

For several months the rate of holdups of D.C. Transit buses has been increasing. Last Friday bus driver John E. Talley died of gunshot wounds received in a holdup of his bus near Dupont Circle.

Services for Talley were scheduled today at Ager Road Methodist Church, Hyattsville, with burial in the National Memorial Park cemetery in Falls Church, Va.

George W. Apperson, president of Local 689, said his drivers were planning to pull over to the side of the road for a 60- or 90-second observance of the funeral.

Apperson said he and other union officials would be attending the funeral and then would go to D.C. Transit divisional offices to back up the drivers on the union decision to stop carrying bus company money after 6:30 p.m.

Apperson said that between 30 and 350 buses and men are involved in the night service. He said no meeting was scheduled between D.C. Transit and the union officials.

The bus company has been active for several months in trying to get more police protection for its drivers. However, a spokesman for the company said it was impossible for the company to accept the proposal by the union that its men not carry change for passengers.

The spokesman said that this would mean a large number of passengers could get on the bus at night and ride free by merely claiming they had only a large bill.

The bus company has been in a series of disputes with local organizations and the transit commission for the past several years, with the company saying it does not make enough revenue.

EXTENSIVE AUDIT

The transit commission earlier this year said it agreed that the bus company needed higher fares after an extensive audit of company books.

Apperson said the bus company's latest decision to insist that drivers carry change was "made with the sole purpose of protecting the company's profits in that the bus company made it clear that it was alarmed over the possibility that a few passengers might ride the buses free of charge."

Apperson said the union's decision was made so that it would be "clear that there no longer will be any money in the driver's possession and thus eliminate the money motive as a reason for holding up our bus driver members."

The union has made several suggestions to the bus company to help protect the drivers, and has asked for $50,000 in felonious assault insurance protection for each driver, but the company has rejected each suggestion because it would cost money, Apperson said.

The bus company's position is that if a driver wants to work, he will have to carry money to make change for his passengers. The bus company so far has remained silent about its plans for dealing with the problem tonight.

WASHINGTON'S "REIGN OF TERROR"

(By David Lawrence)

A reign of terror prevails in the capital of the United States. Drivers of buses are afraid to work at night because one of their number was killed a few days ago by robbers. Attempts to steal the money collected from passenger fares have produced 234 incidents thus far this year.

The police force is inadequate. Businessmen are dismayed. Tourists are reluctant to come to the national capital. Residents of the city are scared to go out on the streets at night. Theaters and movies have smaller audiences. Owners of parking lots are particularly apprehensive. Two hundred members of "the park and shop" organization unanimously signed a letter to the President and Congress which was published in a page advertisement in the newspapers Friday. It said in part:

"This nation has borne the allegedly spontaneous rape of its cities with restraint and patience beyond ordinary understanding, but the eyes of the whole country are now on Washington, and with a clear understanding that the approaching events will not be spontaneous. An aura of uncertainty and personal insecurity, a growing smog of fear hangs over this, the national capital. It is not just another city. It belongs to all Americans, and all Americans are watching . . . .

"Will the government of the District of Columbia and the nation provide an overwhelming deterrent to violence? Will they provide visible police and troops sufficient to discourage the criminal few from acts which unfortunately and unjustly are often blamed on the innocent majority of one segment of our whole people? . . .

"We ask for a deterrent to destruction, not only a promise of control after it has started . . . .

"If sufficient police are patrolling this city, are seen in large enough concentrations and numbers, and are known to be authorized to

enforce the law with all means necessary, serious rioting, arson and looting will never have the chance to begin. If sufficient police are unavailable, there are in the area of Washington and at the disposal of the commander-in-chief more than sufficient troops to provide the necessary show of force. It would seem preferable to show force before, rather than to have to use it afterwards."

The police in Washington are so busy watching the encampments where 3,000 "demonstrators" are to spend 30 days that there are not enough patrolmen to protect people on the streets and prevent the wave of looting and arson which has been going on.

Although the population of this city is more than 800,000, the police number only 3,000. Troops can help temporarily, but a larger force is really necessary. It cost the federal government $5,375,400 to deploy troops across the nation after the assassination of Dr. Martin Luther King Jr. brought on "demonstrations" which gave criminals a chance to start fires and rob stores. Property losses in Washington alone were 13 million and amounted to much more across the country.

When bus drivers are fearful about operating at night, and the transit company has to require passengers to carry the exact change so that the cash box can be kept locked, it certainly indicates that the governing authorities are lax and that not enough policemen have been utilized to deter acts of crime.

During such periods of disorder, "demonstrations" of any kind should not be permitted. There are enough halls and auditoriums for free speech to be exercised fully.

"Demonstrations" and mass gatherings could be forbidden by city ordinances everywhere until such time as an adequate force of troops has been provided to afford protection. It's an expensive way to assure respect for law and order, but it would cost far less in lives and property damage than bringing in soldiers after the riots and vandalism have occurred.

Disorder, meanwhile, is sweeping the nation. Members of college faculties and students who should know better are joining in the deliberate creation of conditions of disorder. All this is happening because federal, state and city governments are afraid of the so-called "liberal" vote and the possibility that Negro voters will be likely to misconstrue the mobilization of police power as somehow related to the controversies over racial discrimination.

The American people, however, have again and again in a national election held the party in power responsible for unfavorable conditions.

[From the Washington (D.C.) Post, May 20, 1968]

POOR CITY ROLLS RISE TO 1,500—LEADERS PLAN FIRST STRATEGY TALKS TODAY

(By Irna Moore and Paul W. Valentine)

The ranks of the Poor People's Campaign swelled to at least 1500 at their West Potomac Park encampment last night as Campaign leaders prepared for their first strategy session on demonstrations today.

Construction of plywood and plastic shelters, which had bogged down late last week, picked up over the weekend, allowing hundreds of campaigners waiting at the Washington Coliseum and at churches in Prince George's County to move in.

Nearly 400 shelters were completed by the end of the day, filling much of the 15-acre "Resurrection City."

The entrance to the city became increasingly congested as more campaigners arrived, and weekend tourists and curiosity seekers mingled around the snow fence serving as a city boundary.

Brief but heavy showers yesterday afternoon sent people running for cover and turned the dusty campsite into a quagmire.

MARCH CALLED OFF

A planned march from the site eastward to the Capitol was called off. It was not clear how many persons were going to participate or whether they intended to go on the Capitol grounds.

Most D.C. policemen working the 8 a.m. to 4 p.m. shift were held over in anticipation of the march but were released at 6 p.m.

Though leaders will hold their first strategy session today at Resurrection City, the Rev. Andrew Young, executive vice president of the Campaign-sponsoring Southern Christian Leadership Conference, said he did not favor starting demonstrations early this week.

The Rev. Ralph David Abernathy, SCLC president and head of the Campaign, arrived here from Atlanta about 5 p.m. yesterday and joined other SCLC staff members in a meeting at the Pitts Motor Hotel, 1451 Belmont st. nw.

With several Campaign contingents still on the road or waiting in Washington suburban areas to join the encampment, a total of 5,000 participants is expected by later this week.

LIMITED TO 3,000

The Interior Department permit for the use of West Potomac Park provides for occupancy for only 3,000 persons.

At a press conference yesterday, Mr. Young repeated the SCLC response to questions about acquiring more park space for the overflow: when the time comes, "we'll just claim it," without seeking a permit from officials.

But at an earlier press briefing yesterday, Tom Offenburger, chief of SCLC information officer, said the search for an additional campsite "may include" negotiating an arrangement with the Interior Department.

Neither spokesman would say what sites they are considering.

Mr. Young said the Campaign is "doing extremely well" so far, "especially in view of all the contingency factors."

CITES MAJOR PROBLEMS

He cited lack of donations and coordination of travel arrangements as among the major problems. Getting persons organized at the West Potomac encampment, he said, "was only short of a miracle."

Though the Campaign has not entered into the demonstration phase, it already can claim some accomplishments, he said.

"It has gotten everyone in America talking about poverty the way they never did before," he said.

Composition of the encampment now appears to be an even balance of families on the one hand and independent youths, many of them from urban gangs, on the other. Most participants are Negroes.

MORE FAMILIES

Offenburger said a greater number of families and non-Negro participants will arrive with contingents from the West Coast. He said youths were deliberately included in the early arrivals to help with construction of Resurrection City.

Among the gangs represented in the city are the Blackstone Rangers of Chicago, the Invaders of Memphis and a group called Hell's Black Cobras.

A group called the "Commandos," young Negro men who formed a support corps for Father James E. Groppi's fair-housing demonstrations in Milwaukee, Wis., is also in the city.

Father Groppi led a singing, hand-clapping Mass for about 70 persons in the Washington Coliseum yesterday morning. Some 800 campaigners from the Midwest spent Saturday night in the Coliseum on hastily furnished cots. Food, mostly fruit, doughnuts and sandwiches, were distributed to them.

Harry G. Lynn, owner of the Coliseum at 3rd and M Streets nw., made the building available at no cost after District Building officials asked him to help out.

Not all of the marchers who came over to the campsite from the Coliseum found a place to stay at Resurrection City. By 6 p.m. about 100 of the Midwest marchers were camped under a large tent, waiting for the rain to stop and construction of more units to continue.

Cleveland Henry, a 19-year-old from Muskegon Heights, Mich., who came in with the Midwest caravan, said the group had been eager to leave the Colseum "because we've been on the road for 12 days and we wanted to get in here and start living."

About 15 members of the Midwest caravan planned to leave Resurrection City and return home tonight. One of the marchers, Howard Wright, 23, of Milwaukee, said the group was leaving "for various personal reasons." He planned to return with them to take his final exams at Marquette University in Milwaukee.

About 700 members of the Northeast contingent, who spent Saturday night at churches in Prince George's County, came into Resurrection City yesterday.

The Southern contingent, 450 to 500 strong, left Richmond to spend last night in 15 churches in suburban Virginia.

Caravans from San Francisco, Los Angeles, San Antonio, Tex., and Seattle, Wash., were expected to arrive later this week.

Yesterday, several independent persons and families arrived at Resurrection City in their own cars.

In another development, New York Gov. Nelson A. Rockefeller endorsed the Poor People's Campaign as a "new, imaginative way of creating a lobby" for the poor.

Also, the Americans for Democratic Action gave its formal endorsement to the Campaign and contributed $1100 to it.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The BILL CLERK. A bill (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.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TYDINGS. Mr. President——

The PRESIDING OFFICER. How much time does the Senator from Maryland yield himself?

Mr. TYDINGS. Mr. President, I yield myself 1 hour.

I rise to speak against title II of Senate 917 as is presently retained in that measure as a result of a tie vote of 8 to 8 of the Senate Judiciary Committee. In other words, half of the members of the committee voted against the inclusion of that title in the bill. I was one of those eight who voted against that title in the committee.

Mr. President, title II is a legislative proposal which is not, in my judgment, a law enforcement proposal. In fact, it threatens to undermine the basic constitutional system under which this country has grown up and operated for almost two centuries.

Title II contains several separate provisions. Considered separately, each of these provisions is, I believe, subject to the gravest constitutional doubts. Considered together, the provisions of title II rank among the most serious and extensive assaults against the Supreme Court and the independence of the Federal judiciary in the history of our Nation.

Briefly stated, the provisions of title II would overrule, by legislative act rather than constitutional amendment, the Supreme Court's decision in the Miranda case, and in the Mallory case, and in the Wade case. The effect would be to permit Federal criminal suspects to be questioned indefinitely before they are presented to a committing magistrate, and leave each State free to adopt any rule it might consider desirable, with regard to the safeguards necessary to protect the fundamental rights of an accused to remain silent under the historic fifth amendment.

It would overrule the Supreme Court's decision in the Wade case by leaving the States free to admit eye witness testimony, regardless of whether it was secured by even the most unfair procedural conduct.

Title II would suspend the writ of habeas corpus, that great writ, for those State prisoners for whom there is no other effective means to vindicate their rights under the Constitution of the United States.

Proponents of title II urge that it should be enacted to assist in the battle against crime. I challenge that assertion, Mr. President.

Title II is not a law enforcement measure. If title II were enacted, the chaos which would surround law enforcement procedure would be devastating. Law enforcement in this country would be in a state of confusion for at least 3 or 4 years, until another case reached the Supreme Court. During that time the constitutionality of the title II provision would be tested in court. Ultimately, vast numbers of arrests which may have been made in reliance on title II would be invalidated by the Court. At that point retrials would, in many cases, be impossible. Witnesses would have died. Memories would have faded. Convicted criminals could be released. This would be a tragic situation.

The enactment of title II will not generate, in my judgment, respect for the law, because many of the provisions in title II, if not all, are little more than an attempt to amend the Constitution of the United States by statutory enactment rather than constitutional amendment.

This act, in and of itself, is not legal. Moreover, the abolition of the Supreme Court's decision to review the voluntariness of confessions in State court proceedings can only generate many, many different definitions of the term "voluntary." Nonuniformity in the application of fundamental Federal rights can only generate cynicism toward that belief which has been the bulwark of our liberty, the rule of law.

Finally, the repeal of the habeas corpus jurisdiction is, in effect, eliminating the only remedy available to many persons illegally incarcerated.

Federal habeas corpus is available to State prisoners only when there is no remedy in the State courts——

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I think I will deliver my speech, Mr. President, and then I shall be happy to engage in debate.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. TYDINGS. Federal habeas corpus is available to State prisoners only when there is no remedy in the State courts or such remedy as does exist is clearly defective.

Can one seriously defend the proposition that there can be a right without a remedy to enforce the right? This is the argument which proponents must make to overcome what clearly is their intent, an unconstitutional suspension of habeas corpus, a great writ, a writ which was bought with the blood of our forefathers here and overseas.

Title II should not be a partisan issue. It should not divide Democrats and Republicans. There is not a liberal or conservative position on this issue.

Thirty years ago, in this Chamber, a similar assault was made on the independence and the power of the Federal judiciary by a powerful President of the United States, Franklin D. Roosevelt. The distinguished Senator from Georgia, Walter George; my father, the Senator from Maryland, Millard Tydings; the senior Senator from Virginia, Mr. Harry Byrd; and others fought the President of the United States and his legislative effort to attack the judiciary almost 30 years ago. That assault was the infamous Court-packing plan. A few Senators who stood firm to defeat the attempt to destroy our constitutional checks and balances and weaken the Federal judiciary are still in this Chamber.

The circumstances surrounding that attempt were that the administration of President Roosevelt, and some of his leaders in the Congress, were not happy with a number of decisions rendered by the Supreme Court under the decisions of Charles Evans Hughes. They were decisions which upset certain progressive administrative proposals made in the 1930's. Among them was the NRA, AAA, and other acts. The President of the United States and his leadership in the Congress sought to change the Supreme Court of the United States by adding a number of new members so that the President would have a majority, in a sense, and thus remove the delicate balance which the judiciary then held over actions of the legislative and executive branches.

Many people labeled the victory when the Court-packing plan was defeated a "conservative victory." It was not that. It was a victory for the strength and the continued viability of our basic institutions of Government, and of the democratic system as we know it, with our checks and balances.

It is necessary to defeat title II, Mr. President, for the same reason that it was necessary to defeat the Court-packing plan. This is neither a "liberal" battle nor a "conservative" battle. The defeat of title II will be a victory for our Constitution, and a reaffirmation of our faith in the wisdom of our Founding Fathers. It will be a victory for government of law and reason, and not of emotion and the passion of the time.

Basically, there are two different approaches embodied in title II. The first is a frontal substantive assault on Supreme Court decisions regarding constitutional rights and police interrogations in lineups. The second is a "sidedoor" jurisdictional attack on the same decisions, and on the great writ of habeas corpus. Each of these attacks is equally unwise and equally invalid under our Constitution.

On May 3 of this year, in this Chamber, I discussed at some length the history of the right against self-incrimination in Anglo-American law. The right against self-incrimination, under our Constitution and the Anglo-American law, did not come easily. It was purchased with the blood and the anguish of our ancesters. On May 3, I related how the infamous Star Chamber under the Stuarts and other kings of the British Isles used secret interrogation and the methods of torture to extract self-incriminating statements from prisoners. I related how the House of Commons and Cromwell's Army fought for and established the principle that no man should be compelled to testify against himself. I related how the roots of the privilege against self-incrimination go even deeper, even to Biblical times. The Gospel according to St. John relates than when, following the Last Supper and following the accusation, Christ was confronted by Pontius Pilate, and Pilate attempted to have Christ incriminate Himself, Christ responded, according to the Scriptures:

> Why ask ye me? Go to them that heard me.

This historic principle against self-incrimination was sparked by the frightful tortures and deprivations used in the Spanish Inquisition during the time the New World was being developed. It was carried by the colonists into the New World, and when the American Republic was created and the Bill of Rights proclaimed, this great idea was enshrined in the fifth amendment, that "no person shall be compelled, in any criminal case to be a witness against himself."

This extensive history is the background against which the Miranda case

was decided. There can be no doubt that it is the law of the land that a man should not unwillingly be convicted out of his own mouth. The Supreme Court, for years, tried to protect this ancient and sacred right of our Anglo-American jurisprudence by the rule that confessions must be voluntary. Their experience with the so-called voluntariness tests was totally unsatisfactory. When an accused is taken into custody and held incommunicado for a long period of time, without the benefit of counsel and without the benefit of contact with his family and friends, it is virtually impossible for him to establish whether or not any statement was voluntary, whether or not there was abuse in the extraction of the confession, and whether or not he was fully advised of his constitutional rights.

The rules of procedure set down in Miranda were designed to meet this need. Exclusion of the confession was the only remedy available to the Court. The Miranda case requires: The defendant must be advised that he has a right to remain silent and that anything he says may be used against him; the defendant must be advised that he has the right to consult with a lawyer and to have the lawyer present during his interrogation; the defendant must be advised that if he cannot afford a lawyer, a lawyer will be appointed for him.

No one can seriously suggest that any thing less than these procedural requirements is adequate to protect what I presume we all acknowledge to be the longstanding constitutional rights of the accused. On the basis of the experience of the Supreme Court with a much more flexible "voluntary standard," applied as each State court sees fit, no reasonable man can seriously suggest that the repeal of the Supreme Court's jurisdiction to review the admissibility of a confession in State court proceedings is anything less than an open invitation for the State courts to ignore the Miranda safeguards.

With regard to Federal proceedings, there is a similar attempt to repeal Miranda and Mallory. The provisions of section 3501 of title II are an attempt to destroy the important safeguards erected in those decisions. By making voluntariness the sole test, title II can only lead to chaos and confusion and place a huge additional burden on the Supreme Court.

The greatest sin of these provisions is that they are worthless to protect the rights of the accused. They are a cruel hoax aimed at creating the illusion of a constitutional right. At best, they provide substance to that right only in the unusual case when a policeman present during the interrogation of the accused decides to testify against his fellow officers. Without the presence of an attorney or other friend, the accused has no opportunity to rebut exculpatory police testimony.

However, of far more importance to us today, as we work on S. 917, the Safe Streets Act, is the fact that title II is a great disservice to the police and to law enforcement efforts, because of the uncertainty as to what each police officer must do, and what he may not do, when he makes an arrest.

The legality of the conduct of an individual law officer will depend on what some unknown judge and jury may eventually decide and upon what State he happens to be in at the time the arrest is made.

Finally, the failure to provide clear and easy to follow procedures for proper police conduct will multiply the opportunities for unfounded charges of illegal police conduct and police brutality.

The Supreme Court made it quite clear in its Miranda opinion that its holding was firmly grounded in the Constitution. In both the briefs and oral argument, the Court was expressly requested to withhold decision until legislative bodies acted upon the issue. The Court replied to the arguments presented in briefs and orally.

> 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 [in the Court's holding] 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. . . . 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.* (Emphasis added.) 384 U.S., at 490–491.

Mr. President, I submit that the legislation pending before us in title II is an attempt to do by statute that which clearly can only be done by constitutional amendment, and to throw the law enforcement officers of this country into turmoil and uncertainty as to whether they can proceed without reference to the safeguards for individuals in Miranda would do them a great disservice.

If we seek to amend the Constitution, let us amend it; but let us not try to amend the Constitution by an illegal act of Congress which clearly, when it reaches the Supreme Court, will be overruled.

The Court's invitation in Miranda for legislatures to adopt "other fully effective means" to protect suspects in the free exercise of their constitutional rights cannot be used as a justification for the provisions now found in title II. As just stated, the provisions of title II dilute so substantially the safeguards for these rights as to constitute an abridgement of the right. The means provided in title II are manifestly less effective than the safeguards prescribed in Miranda.

I reiterate again the language of that decision:

> Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

MIRANDA AND MALLORY IMPOSE NO UNDUE BURDEN ON EFFECTIVE LAW ENFORCEMENT

Certainly all men would agree that a good many more people would be convicted of crimes if, every time a crime was committed the sole function of the police was to go upon the street grab the first man who came along and torture him until he confessed. But convictions alone are not what we seek, we seek only to convict the guilty. Long ago, our Founding Fathers enshrined in the Bill of Rights the ancient maxim, Nemo tenetur seipsum accusare. In the words of the fifth amendment, no person "shall be compelled in any criminal case to be a witness against himself." This principle lies at the very heart of the Anglo-American accusatory system of criminal justice. It represents the belief that the state must produce evidence against an individual by its own independent labors, rather than by the cruel, though simple, expedient of compelling it from his own mouth. As Sir James Fitzjames Stephen commented almost a century ago:

> There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the shade rubbing red pepper in the poor devil's eyes than to go about in the sun hunting up evidence.

Forty years ago, Justice Brandeis forcefully answered the recurrent argument that the needs of law enforcement outweigh the rights of the individual. In Olmstead against United States he said:

> 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 imperiled 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—

That, in my judgment, is what title II seeks to do. I continue to read:

> . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face. 277 U.S. 438, 485 (1928) (dissenting opinion).

That the protections provided by the Miranda case will not hamper law enforcement is amply demonstrated by the fact that these protections are already made available to criminal suspects by the Federal Bureau of Investigation. Over the years the FBI 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 he may secure the services of an attorney of his choice and, more recently, that he has a right to free counsel if he is unable to pay. In 1952, J. Edgar Hoover, Director of the FBI, 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 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.

Mr. Hoover continued:

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.

Mr. President, these are practices of the Federal Bureau of Investigation, the most effective and the most efficient law enforcement institution this country has ever seen. They are practices which have been in effect, by Mr. Hoover's own words, since 1952.

My experience as a U.S. district attorney leads me to state, without fear of contradiction, that the efforts of the FBI were always effective, that in my district they always subscribed to the language and the philosophy set forth by Mr. Hoover in 1952, and that their rate of effective law enforcement is second to none.

Similar to FBI practices are those of the Armed Forces. The Uniform Code of Military Justice has long provided that no suspect may be interrogated without first being warned of his right of silence and that any statement may be used against him. Denial of the right to consult counsel during interrogation has also been prohibited by military tribunals. Surely, the rights we make available to our Armed Forces should be equally available to all our citizens.

FRUSTRATION OF THE POLICE UNDER TITLE II

Mr. President, I believe that the provisions of title II will cause years of delay, uncertainty, and frustration for our police.

The provisions of title II on the admissibility of confessions and eyewitness testimony are likely to spawn great confusion among law-enforcement officers. Whereas Miranda formulated a constitutional rule specifying with considerable precision what the police must do in order to insure the admissibility of a defendant's statement, title II seeks to dismantle the rules and to require the police and the courts to start all over again, and would permit each State of the 50 States to adopt its own rules with regard to voluntariness.

By making voluntariness the issue, but specifying no prerequisites, title II leaves each court to develop its own case-by-case definition of what constitutes a voluntary statement.

The potential for years of uncertainty under title II is enormous. First, the police, prosecutors, and courts in each jurisdiction must try to reach agreement, through discussion and litigation, on whether they will follow Miranda, Mallory, and the Constitution, or the new provisions of title II. Second, even if they choose to follow title II, a new standard of voluntariness must be evolved. In each jurisdiction, and in each case, the police must in the first instance address such questions as: "Shall we bring the accused promptly before a magistrate, or shall we continue the interrogation?" "How long may we continue?" "How much should we tell a suspect about the charge we are considering?" "Should we warn him of his right to remain silent?" "Should we tell him of the consequences of any statement?" "Should we tell him of his right to counsel?" "Should we honor his request if he asks for counsel?" "Should we delay questioning until counsel arrives?" "Will answers we get without one or more of the above warnings be worth anything in court? or an appeal? or after some future test of title II's constitutionality?"

Title II would confront law-enforcement officers with a Pandora's box of confusion and uncertainty which could only hinder their effective law-enforcement work. If we wish to change the Miranda or Mallory decisions, let us do it in a legal and proper manner, and let us amend the Constitution of the United States and the Bill of Rights. But let us not throw into the already difficult area of law enforcement all sorts of impossible questions on constitutional areas and uncertainty, with the possibility that the entire act may be upset or will be upset in a later court review.

Each prosecutor must ask similar questions before proceeding—amidst what will likely be an already crowded criminal calendar—with a prosecution based on prearraignment questioning, or to introduce a statement by the defendant which may undermine any conviction he obtains.

Each trial judge must decide anew—balancing title II, Mallory, Miranda, and his conscience—whether to admit or deny evidence, or to acquit or convict a person prosecuted with questionable evidence.

Each appellate court, perhaps without the benefit of Supreme Court resolution of such issues, must struggle anew with questions now nearly settled prior to the introduction of title II by the Committee on the Judiciary.

Despite the extravagant charges of the proponents of title II, the new test of voluntariness which title II offers runs deeply contrary to the recommendations of the National Crime Commission. That body urged that legislatures make rules to clarify the law for the police. It predicted that the courts would withdraw from police rulemaking if specific, sensible, and fair rules were forthcoming from the administrative and legislative process. Title II does not proceed in this path. It completely abandons the present clearcut rules. Instead, it substitutes the vague standard of voluntariness, susceptible to different interpretation in each of the 50 States. Our police and courts will be obliged to spend years of searching for new principles to clarify the rights and duties of the police in the solution of crime. What our police really need is certainty in the techniques they follow—certainty that if carefully stated rules are followed, confessions will be admissable in evidence. We cannot require our law-enforcement officers to guess, at their peril, the dividing line between a confession that is voluntary and a confession that is involuntary. They would far prefer to operate under strict but clear rules than under rules like title II that portend dangers and pitfalls at every step of the way.

I submit that it is literally impossible to turn the clock back to the pre-Miranda days. We may disagree about particular aspects of the revolution in criminal procedure that has been accomplished in the past four decades. The Miranda decision was but the culmination of a long process of evolution of basic rights under the Constitution. Even if the Miranda decision itself is overturned, its impact on courts, counsel, and defendants cannot be dispelled. Today, lawyers know that confessions may be challenged on many grounds, including the crucial factors emphasized by the Supreme Court in Miranda. Title II still requires such factors to be taken into account in determining the voluntariness of a confession. Defense lawyers will rely on the absence of such factors to challenge at every stage of the legal proceedings the use in evidence of confessions obtained in the absence of such factors. Title II thus leaves the police with almost all of the criteria of Miranda, but none of its certainty. The result can only be disaster and frustration for law enforcement.

In a very real sense, therefore, I believe that Congress in title II is abdicating its responsibility to provide strong and clear guidance for law enforcement.

EYEWITNESS TESTIMONY—THE REPEAL OF WADE

For the same reasons enumerated in my earlier discussion of confessions, the provisions of title II overruling United States against Wade and its progeny is unconstitutional. Section 3503 is in direct conflict with the decisions in United States against Wade, Gilbert against California, and Stovall against Denno. In Wade and Gilbert, the Supreme Court held that a pretrial lineup at which a defendant is exhibited to an identifying witness is a critical stage of a criminal prosecution and the accused must be accorded due process of law; to insure this result he is entitled to the presence and assistance of counsel. The presence of counsel during lineups was found to be a safeguard necessary to insure that the accused was accorded due process of law as required by the fifth and 14th amendments to the U.S. Constitution.

In Stovall, the Court held that, even though the Wade decision was not to be applied retroactively, lineups in pending cases must meet due process requirements. Decisions like Stovall indicate, contrary to the suggestions of the proponents of title II, the Supreme Court is in fact highly sensitive to the problems and needs of law enforcement.

Title II, by providing that eyewitness testimony shall be admissible regardless of the underlying circumstances if enacted will put the U.S. Senate on record for the proposition that the criminally accused are not entitled to due process of law during a lineup. Let me examine, very briefly, the gravity of this position.

In the Wade decision itself, the Supreme Court discussed at length the grave potential for prejudice and miscarriage of justice inherent in lineup procedures. Eyewitnesses to crimes are notoriously subject to mistaken identifications. Frequently, their opportunity for

observation at the time of the crime was insubstantial.

We all know instances where identifications were made by so-called eyewitnesses of a criminal suspect at the time of a crime which were completely different from the identification and description when the criminal was apprehended.

At the lineup, individual eyewitnesses are highly susceptible to suggestion, whether intentional or not, based on the manner in which the prosecutors or police present the suspect for identification. Where the victim himself is the witness, the hazard to objective identification is even further increased, because of the turbulent and possibly vengeful emotional attitude of the witness.

One expert authority quoted by the Supreme Court has given graphic examples of cases in which grossly unfair lineups were conducted, and on the basis of which lineups positive identifications by "eyewitnesses" were made:

> In a Canadian case . . . the defendant had been picked out of a line-up of six men, of which he was the only Oriental. In other cases, a blackhaired suspect was placed in a group of light-haired persons, tall suspects have been made to stand with short non-suspects, and in a case where the perpetrator of a crime was known to be a youth, a suspect under twenty was placed in a line-up with five other persons, all of whom were over forty.

Surely, the Senate does not want to go on record as condoning this type of illegal lineup and yet that is what we would do in title II.

Once an eyewitness has picked a suspect from a lineup, the witness easily becomes totally committed to the identification and at trial is frequently unable to distinguish between the supposed identification relating to the crime and the identification at the lineup. It is very unlikely that once having made an identification in an unfair lineup he will go back on his word. He has a so-called vested interest, Mr. President. The Supreme Court did not believe that civilized men nor a civilized nation could condone such unfair tactics by its officials. Accordingly, to provide a modicum of protection for the accused during this stage of the criminal proceeding, it required that the accused have the assistance of counsel.

There is no basis for suggesting that Wade is likely to place an undue burden on effective law enforcement. The Court suggested a variety of procedures which could conveniently be used by law-enforcement officers to assure fair and impartial lineups. It also suggested appropriate alternative procedures that could be used in circumstances where the presence of the suspect's counsel at a lineup was likely to cause prejudicial delay or obstruction of police proceedings.

In other words, the Supreme Court did not say the defendant had to have his own counsel present at the lineup if the delay would be prejudicial to police investigation. They did say he had a right to counsel at this stage of the procedure—an attorney, legal aide, or some other disinterested attorney—so that the accused would be afforded protection against illegal and improper frameups at this vital stage of investigation.

The Wade opinion offered workable guidelines for achieving a reasonable accommodation between the needs of law enforcement and the constitutional rights of the accused. So far as I am aware, no study has yet been made of the impact of Wade on law enforcement. Certainly there is no empirical evidence that the Wade decision has hampered law enforcement. Again I wish to emphasize the view that before the Senate tosses aside the fundamental rights of the accused, it must act on some rational basis. A general dissatisfaction with the Supreme Court is no basis for striking out blindly. In these circumstances, I submit, the repeal of Wade by act of Congress would not only be unconstitutional, but unwise and highly premature.

ABOLITION OF SUPREME COURT APPELLATE JURISDICTION

Another provision of title II attempts to achieve the same result—to overrule Miranda, Mallory, and Wade—but by a means which, I believe, is even more threatening to our fundamental scheme of government. This provision would deny the Supreme Court any jurisdiction to review State criminal cases in which confessions or eyewitness testimony had been admitted in evidence. In a single stroke, this provision would overturn 150 years of our constitutional history—from the great decision of the Marshall Court in Martin against Hunter's Lessee, and even earlier—and would abolish the historic role of the Supreme Court as ultimate guardian of the supreme law of the land.

This abolition of jurisdiction is, I believe patently unconstitutional. The controlling language of the Constitution on this question is article III, section 2, which reads, in pertinent part:

> The judicial Power (of the United States) shall extend to all cases, in Law and Equity arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority.

Then other classes of cases, such as those affecting Ambassadors, admiralty and maritime cases, and so forth, are enumerated. And the section continues:

> 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.

The proponents of title II argue that this last-quoted language gives the Congress authority to deprive the Supreme Court of jurisdiction over State cases admitting confessions and eyewitness testimony; that this is simply an exception to and regulation of the Supreme Court's appellate jurisdiction which Congress is authorized to make. I submit that this argument is totally incorrect.

By depriving the Supreme Court of appellate jurisdiction of these State cases—and, in addition, by removing any post-conviction review of State criminal cases in any Federal court through the writ of habeas corpus—title II flies directly in the face of the first sentence of article III, section 2—that "the judicial power" of the United States "shall extend"—and I emphasize the word "shall"—"to all cases"—and I emphasize the word "all"—"arising under this Constitution." If title II is adopted, this clear language of the Constitution would be violated; the judicial power of the United States would not extend to all cases arising under the Constitution.

My reading of this constitutional provision is not novel. In fact, this interpretation of the Constitution has been established doctrine since at least 1816, when the great case of Martin against Hunter's Lessee was decided.

In that case, Mr. Justice Story in the opinion for the Court, stated:

> If some of these cases arising under the Constitution, laws and treaties of the United States might be entertained by state tribunals, and no [Federal] appellate jurisdiction as to them should exist, then the appellate power would not extend to *all*, but to *some*, cases. If state tribunals might exercise concurrent jurisdiction over all or some of the other classes of cases in the constitution, without control, then the appellate jurisdiction of the United States might, as to such cases, have no real existence, contrary to the manifest intent of the constitution. (14 U.S. at 339)

I believe that this statement by Mr. Justice Story, speaking for the Supreme Court in 1816, conclusively established the unconstitutionality of the provisions of title II which would deny individuals any Federal review of claims that confessions or eyewitnesses were admitted in violation of the Constitution of the United States.

The reasons underlying the Court's decision in Martin against Hunter's Lessees—that Federal review necessarily exists over State court decisions on Federal questions—is rooted in the essential framework of our institutions of government. As Justice Story indicates, in his opinion:

> The constitution has presumed . . . that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice. (14 U.S. at 345)

As we have seen in the cases I discussed earlier, where shocking coercion of confessions by State law enforcement officials was overlooked by State courts, and constitutional rights against coercion were only upheld by Supreme Court review—this constitutional principle noted by Justice Story is justified by historical experience.

I might add that the cases of confession which have been reviewed and reversed by the Supreme Court were always cases where the highest court of the State had upheld that confession and always on the ground that it was voluntary, that the defendant was a "self-confessed" murderer or a "self-confessed" rapist or "self-confessed." That word "self-confessed" was used by the Spanish perpetrators of the Inquisition when they tortured Protestant prisoners and Protestant seamen. The "self-confessed" is the same justification rationale used by the Stuart and Plantagenet

Kings after they had tortured their political prisoners.

"Self-confessed guilty" is the same term used by the Communists when, one by one, they exterminated all who opposed them.

"Self-confessed accused" and "self-confessed guilty" are always the terms used by a power and authority which wishes to justify its own actions.

Let me tell the Senate the facts on some of these cases where self-confessed defendants' testimony and statements were upheld by the highest court of the State until review by the Federal court gave them the constitutional protection that they were all afforded or should have been afforded.

In Brown against Mississippi, 1935, three ignorant Negroes were beaten with leather straps, one was hung from a tree by his neck and whipped, let down and then hung again, all three were threatened with mob vengeance, and finally confessions were extracted. The State supreme court ruled that those confessions were all voluntary. They were "self-confessed," just as the Protestants who were tortured in the Spanish Inquisition were self-confessed; just as the political prisoners of the Tudor Kings were all self-confessed.

The PRESIDING OFFICER. The time yielded by the Senator from Maryland to himself has expired.

Mr. TYDINGS. Mr. President, I yield myself an additional half hour.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. TYDINGS. Let me recall the facts in that case. The supreme court of the State ruled that those confessions were voluntary, that the accused were self-confessed guilty, and that the defendant's right to the due process law of the United States under the Constitution had not been violated. But because the judicial power of the United States extended to all cases, and extends to all cases arising under the Constitution, article III, section 2, the defendants were able to appeal to the Supreme Court of the United States. The three individuals who had been beaten and tortured said their rights under the 14th amendment of the Constitution had been violated.

The Supreme Court took the case and reversed the shocking and brutally obtained confession of the so-called self-confessed guilty.

Title II of the bill purports to deprive the Supreme Court of this review authority. It would leave Brown and his codefendants to the tender mercy of the high court of his State.

Can anyone deny that Federal review of the State court decision in Ward against Texas was unnecessary? In that case, a self-confessed guilty man, the defendant, was taken alone by the local sheriff from one town to another, over 100 miles from the town where he lived, and was whipped and beaten by the sheriff. Burning cigarettes were snubbed out on his bare skin. Finally a confession was extracted.

The high court of the State ruled that that was a voluntary confession and was admissible in evidence. However, under article III, section 2, if a man has a constitutional right which is deprived, he has recourse to the Supreme Court of the United States. Ward against Texas went to the Supreme Court, and, of course, the Supreme Court reversed.

Mr. President, in my earliest speech I set forth at length a great many similar cases, but I shall not do so again. The reason for these constitutional provisions is not to provide meaningless procedural formalities. These protections are needed to guard against the real possibility of abuse.

In 1961, the Commission on Civil Rights found much evidence to indicate that some policemen still resort to physical force to obtain confessions. As the Supreme Court observed in the Miranda case, in a series of cases decided long after the infamous Wickersham report of the 1930's, there were some law-enforcement officers who restored to physical brutality, physical beating, hanging, whipping, and holding prisoners incommunicado for sustained and protracted questioning, in order to exact confessions.

A 1965 New York State case cited by the court tells that in Kings County, N.Y., the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness to secure statements incriminating a third party. A 1958 seventh circuit case tells of the defendant suffering from broken bones, and multiple injuries sufficiently serious to require 8 months' medical treatment after being manhandled by five policemen. A 1957 Maryland case tells of a police doctor who told the accused, who was strapped to a chair completely nude, that he proposed to take hair and skin scraping from anything that looks like blood or sperm from various parts of his body. A 1945 Colorado case tells of a defendant held in custody over 2 months, deprived of food for 15 hours, forced to submit to lie detector tests whenever he wanted to go to the toilet.

These are exceptions. I am hopeful that these shocking cases will become more and more infrequent. But procedural protections must exist to insure that brutality does not again rear its ugly head.

In each of these cases the prosecution always argued, "here we have a self-confessed murderer, a self-confessed rapist. We have his statement right here. What more do you need?" That is the historic rationale used by the torturers in the Tower of London, and used by the Communist Party.

Mr. President, I submit that our Constitution deserves to be upheld.

Without our constitutional protections of the fifth and 14th amendments, the temptation to take shortcuts can become overpowering. We must never forget that the protection exists to protect the innocent, not to aid the guilty.

Justice Storey's words in Martin against Hunter's Lessee were not idle concerns. The history of this country clearly establishes that Federal review of constitutional claims is necessary to protect essential liberties under the Constitution.

Mr. President, I wish that the instances of misconduct and tortured confessions which have gone to the Supreme Court could not take place today; that they were peculiarly past history; that they could not occur now. Mr. President, let me remind you of one case which occurred in New York City, in April of the year I was running for the U.S. Senate, 4 years ago.

At 7:30 a.m. on April 24, 1964, George Whitmore, a slow-witted 19-year-old Negro drifter with no previous arrest record, was ushered into the back room of a Brooklyn police station. Within 22 hours, he had confessed to an attempted rape and two murders—the double killing of career girls Janice Wylie and Emily Hoffert, New York's most sensational crime in recent years.

There he was. They had the self-confessed murderer-rapist by his own words—after 22 hours, of course, but there he was, a self-confessed murderer-rapist.

Six weeks after Whitmore had confessed, the Supreme Court issued its decision in the case of Escobedo against Illinois. That ruling, which was the direct precursor of the Miranda decision, sent shock waves through the Nation's prosecutors and is one of the major Supreme Court decisions that, like Miranda, the proponents of title II now seek to overrule.

When the Escobedo decision was announced, the prosecutors took to the press. From public platforms and in private interviews, they charged that the Court was "coddling the criminal element" and "swinging the pendulum too far" in favor of defendants' rights as against the public's safety.

In a long harangue directed at a reporter, one of the top assistants of a great district attorney, Frank Hogan, explained the connection between the Escobedo and the Whitmore cases. He was arguing that the Escobedo case should be overruled. Senators will recall that the Escobedo case was reversed when it was learned that during the interrogation of the accused, his attorney was in the stationhouse, that he had requested the right to talk to his attorney, and that that right was refused until after Escobedo signed a confession.

The assistant district attorney, in arguing about the terrible thing about the Escobedo case—that is, depriving a defendant of the opportunity to see and talk to his lawyer—used the Whitmore case as an example. This is what he said:

> Let me give you the perfect example of the importance of confessions in law enforcement. This, more than anything else, will prove how unrealistic and naive the Court is.
>
> Whitmore! The Whitmore case. Do you know that we had every top detective on the Wylie-Hoffert murders and they couldn't find a clue. Not a clue!
>
> I tell you, if that kid hadn't confessed, we never would have caught the killer!

In January of 1966, 6 months after this passionate statement by his top assistant, District Attorney Frank Hogan dropped the charges against Whitmore for the Wylie-Hoffert murders. Why? Because shortly after Whitmore's confessions, after 22 hours—Whitmore, this self-confessed rapist and murderer—another man, a drug addict named Richard Robles, was arrested for minor offenses, and he volunteered information about the Wylie-Hoffert murders, which dem-

onstrated that he alone was the killer. Then it was learned that Whitmore was prompted in the details of the crime by the police officers who questioned him in isolation for 22 hours.

If Whitmore's tragically false confession could have been obtained in the office of Frank Hogan, one of the great district attorneys in the Nation, it could have been obtained anywhere. Yet, title II preaches that George Whitmore and others like him must be sacrificed in the greater interest of the needs of law enforcement.

In the development of our liberty—

Wrote Justice Brandeis—

insistence upon procedural regularity has been a large factor.

And this is especially true in the realm of criminal justice, where loss of liberty, or loss of life itself, may turn on the integrity of the inquiry made into the charges preferred against the accused. The accused's general bad character, or even his probable guilt, is not an acceptable excuse for the shoddy administration of justice. As Judge Cuthbert Pound, of the New York Court of Appeals, once put it:

The defendant may be the worst of men, but the rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected.

The community that fails to insist on scrupulous observance of high standards by its police, by its prosecutors, and by its judges and juries, has surrendered responsibility for its own most awesome institutions. Such a community has lost track of the purposes that brought it into existence.

Mr. President, if the 90th Congress can suspend the Constitution by an illegal act, and deprive the Supreme Court of the right of certiorari in habeas corpus cases involving fifth amendment confessions and fifth amendment due process of criminals, it can do the same—suspend the writ of habeas corpus—in first amendment cases involving the freedom of speech of Members of this very body.

I submit, Mr. President, that the great writ of habeas corpus is the single most important political protection that one can have under our Anglo-American system of democracy, and that it was the one most important factor in the development of freedom of speech, the right of Parliament against the King, in the development of the Anglo-American system of democracy.

Once we set this precedent for depriving the protection of that great writ to one class of individuals, those who seek fifth amendment protection in the matter of confessions and illegal lineups, then there is no reason why members of a legislature or Members of this body cannot be deprived of first amendment protection.

I realize that emotions are aflame. I realize the tempers of the time. But the thought that this body could suspend the great writ of habeas corpus should be enough to make John Marshall turn over in his grave tonight.

We cannot close our eyes to the fact that in interrogation and lineup practices, State and local officials have in the past—and may be expected in the future—to violate the constitutional rights of some of our citizens. We cannot escape the further fact that State courts have not in the past always been scrupulous in vindicating these Federal constitutional rights. And, as Justice Story said:

The presumption rooted in our Constitution is that State institutions—because of State attachments, State prejudices, State jealousies, and State interests, might sometimes obstruct or control the regular administration of justice.

Federal review of cases arising under the Constitution is thus essential—and the Constitution, in article III, section 2, assures this. But title II of this bill would ignore this overriding constitutional principle.

This is not the only argument which supports Federal review of State court decisions where constitutional rights are at stake. In Martin against Hunter's Lessee, Justice Story continued with another equally compelling argument:

A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret the statute, or a treaty of the United States, or even the constitution itself: If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different, in different states, and might, perhaps, never have precisely the same construction, obligation or efficiency, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed, that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

Mr. President, as I now quote Alexander Hamilton in Federalist No. 80, hear with me how true these words are today—even more so than they were in 1816, when Justice Story handed down his decision, and even more so than in 1787, 1788, and 1789, when the Constitution was being ratified.

Bear in mind how true those words are today as history has borne out the wisdom of our Founding Fathers.

It is this great constitutional principle which title II throws to the wind, by abolishing any Federal review of claims that confessions or eyewitness evidence had been admitted as evidence in State cases in violation of the U.S. Constitution.

As Alexander Hamilton eloquently stated, in Federalist No. 80:

The mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

It is this great constitutional provision that title II seeks to throw to the winds. It seeks to abolish any Federal review of claims in areas of fifth amendment confessions or eyesight evidence that has been admitted as evidence in State courts, even though it is in violation of the U.S. Constitution.

Title II, however, carries Hamilton's example of a nightmare, namely, the 13-headed hydra, into the 20th century. We now have a 50-headed hydra, which title II seeks to set up with each State court having final jurisdiction to interpret the Constitution in its State regarding confessions and eyewitness evidence.

Is the highest court of the State which decided Brown against Mississippi and held that confession was voluntary going to admit into evidence all confessions even though men are beaten and are hung by their hands or their heels for a period of 3 days? I hope not. However, the possibility is there.

These arguments are, I believe, conclusive that the provision of title II, withdrawing Supreme Court jurisdiction over confession and eyewitness cases, is unconstitutional and unwise. When we can withdraw jurisdiction over confessions in eyewitness cases, we can withdraw jurisdiction in any other area.

The power to regulate and make exceptions to the jurisdiction of Federal courts may and has been used for diverse legitimate purposes. Certainly, as was the framers' intent, it is important that the Federal judiciary be arranged so that it can conduct its business in an expeditious and efficient manner. This should be the primary purpose to which the power is put. For example, there should be a sufficient number of Federal district courts to handle the case load present in their respective areas. It has been found desirable to establish specialized Federal courts like the Tax Court or the Court of Claims to more efficiently handle discrete categories of cases. The Congress, by providing the Supreme Court with discretionary jurisdiction over cases which arise through certiorari jurisdiction has made it possible for the Court to stay relatively current with its docket. These are all legitimate exercises of the power vested in Congress to "regulate and make" exceptions to the jurisdiction of Federal courts. But the power to "regulate and make" exceptions to Federal court jurisdiction does not—and cannot, under article III, section 1—extend to abolishing all Federal jurisdiction over claims arising under the Constitution. Title II of this bill attempts to do this, and therefore is not a legitimate exercise of the "exception and regulation" power.

Mr. President, the last time the U.S. Congress tried to do this was in the radical, Republican-controlled Congress during the Reconstruction years when the House of Representatives had prepared a bill of impeachment for the President of the United States. The Senate was seated to try that impeachment.

The legality of the Reconstruction legislation was pending before the Supreme Court of the United States, and the Congress under the whip of the radical Republican leaders at that time, through legislation, deprived the Supreme Court of the right to pass on the legality of the Reconstruction legislation because it was

felt that the Supreme Court would overrule that legislation.

That gave rise to the famous McCardle case which went to the Supreme Court of the United States.

THE M'CARDLE CASE: NO PRECEDENT FOR ADOPTION OF TITLE II

Proponents of title II have argued that one clear precedent does exist to justify the extreme exercise in removing Federal review from State confession and eyewitness cases; that precedent is, they assert, the Supreme Court decision in ex parte McCardle, handed down immediately following the Civil War. In that case, briefly stated, the Congress abolished the Supreme Court's appellate jurisdiction over habeas corpus cases while McCardle's habeas corpus appeal—challenging the constitutionality of the Reconstruction Act—was in the Supreme Court.

The act was passed. The McCardle case went up on habeas corpus.

The Court thereupon dismissed McCardle's appeal, ruling that Congress could validly withdraw its jurisdiction. But the crucial aspect of the Court's holding, which was made evident a few years after McCardle in ex parte Yerger, was that the Court retained under the Judiciary Act of 1789 the power to issue an original writ of habeas corpus, and McCardle could obtain Federal court review of his claims under the U.S. Constitution by using this route.

Mr. ERVIN. Mr. President, will the Senator yield? I would like to ask the Senator from Maryland to point out where the Supreme Court said anything like that.

Mr. TYDINGS. I would be happy to do so for the RECORD, and I ask unanimous consent that the entire decisions in ex parte Yerger and in re McCardle be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ERVIN. Mr. President, I have read the case. I did not see anything like that in it.

Mr. TYDINGS. In title II, defendants would be deprived of any Federal court review of constitutional claims in confession and eyewitness identification cases; and McCardle clearly does not authorize the extreme abolition of Federal review power.

I submit that the McCardle case does not support title II.

Mr. ERVIN. Mr. President, I ask the Senator from Maryland if the Supreme Court of the United States did not hold twice that the Supreme Court had no jurisdiction to review the constitutionality of the Reconstruction Acts.

Mr. TYDINGS. Mr. President, the Supreme Court, it is my understanding, did not review the McCardle case. As it arose on habeas corpus, it did not review the prisoner McCardle's petition. It is my understanding of the case, however, and I will read it into the RECORD.

Mr. ERVIN. I am not talking about——

Mr. TYDINGS. Mr. President, I wish the Senator would hear me out. He asked me a question. I wish he would let me finish it.

It is my understanding that McCardle still had the right of appeal, and the court still retained under the Judiciary Act of 1789 the power to issue an original writ of habeas corpus.

Mr. ERVIN. Does the Senator from Maryland not know that prior to McCardle, the Supreme Court held twice that it had no jurisdiction to consider the constitutionality of the Reconstruction Acts, notwithstanding the fact that this Reconstruction Act provided for the trial of civilians in military courts?

Mr. TYDINGS. I am aware that the Court in the McCardle case upheld Congress abolition of the writ of habeas corpus and, therefore, that in that specific they left a loophole and that McCardle still had available the use of the original writ of habeas corpus under the 1789 statute. That is my understanding.

The PRESIDENT OFFICER. The initial time of the Senator from Maryland has expired.

Mr. TYDINGS. I yield myself 15 additional minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 15 additional minutes.

Mr. TYDINGS. The essential reasons why the provisions of title II depriving the Supreme Court of jurisdiction over State cases must be rejected, Mr. President, when taken with a point of reference of the McCardle case, in that there is no loophole, no exit, in title II where the Supreme Court assumed jurisdiction in habeas corpus cases.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I yield.

Mr. ERVIN. I should like to ask the Senator from Maryland if he does not know that from the time of the creation of this Republic to the year 1867, the Supreme Court of the United States and no other—neither the Supreme Court of the United States nor any other Federal court—had any jurisdiction to review on writ of habeas corpus the conviction of any person in a State court.

Mr. TYDINGS. Has the Senator asked his question?

Mr. ERVIN. Yes.

Mr. TYDINGS. I shall now answer:

In 1867 Congress made the Federal writ of habeas corpus available to all persons, including State prisoners, restrained of their liberty in violation of the Constitution or laws of the United States, and permitted inquiry into both the facts and the law of the detention. The 1867 act is now codified in section 2241 and the following sections of title 28 of the United States Code. Thus, in all cases in which a full and fair disposition of a Federal claim had not been reached in a State court, the Federal courts were made available on a general basis as an alternative forum through their habeas corpus jurisdiction to test the legality of the prisoner's confinement.

Much has been made in these debates of the fact that Congress waited until 1867 before granting habeas corpus jurisdiction to the Federal courts over State criminal convictions. The history of habeas corpus reveals, however, that long before 1867, and well before the habeas corpus suspension clause was written into article I of the Constitution, authority existed under the common law to issue the writ to remedy any kind of governmental restraint contrary to law.

At the time the Constitution was adopted, therefore, habeas corpus was available under the common law even to State prisoners. The act of 1867 merely broadened the common law writ by extending Federal habeas corpus to all State prisoners on a general basis. The reason for this significant statutory expansion of the writ by Congress was the grave political crisis facing the Nation after the Civil War. Congress passed the 1867 act in specific anticipation of possible southern hostility to Reconstruction legislation. The act was intended to provide a liberal and rapid remedy for any Federal officer imprisoned by the States.

The 1867 statute was the last major statutory change in the Federal habeas corpus statute. For more than 100 years, therefore the writ has been generally available in the Federal courts to all State prisoners subjected to arbitrary or illegal detention.

EXPANDING SCOPE OF HABEAS CORPUS

Although the broad statutory habeas corpus jurisdiction of the Federal courts over State criminal convictions is now more than a century old, it is only relatively recently—within the past four decades—that the complexities of the habeas corpus jurisdiction have become abrasive in our Federal system. There can be no doubt that Federal habeas corpus today is one of the most important post-conviction remedies available to State prisoners who claim that their trial was marred by a fatal constitutional defect.

Why were the problems that now bristle in almost every aspect of Federal habeas corpus so long in emerging after the 1867 statute was enacted? The answer is simple, and it lies in the nature of the appellate jurisdiction of the Supreme Court and the doctrine of exhaustion of State remedies. In the first case decided by the Supreme Court under the 1867 statute, the Court held that the Federal writ of habeas corpus could not be issued unless the State prisoner had presented his Federal claims to the appropriate tribunal of his own State.

The effect of this division was virtually to eliminate Federal habeas corpus from State criminal convictions. A State defendant was required to pursue his State remedies through the highest State court. From that decision, he was required to seek review by the Supreme Court under what was known at that time as a writ of error, which was a method of appeal as of right, not the discretionary review that is available today. Once a State defendant had started up the ladder of State remedies he would inevitably reach the U.S. Supreme Court. And, of course, no lower Federal court was likely to disagree with the decision of the Supreme Court. As a consequence, Federal habeas corpus for State prisoners was almost unknown.

In the early days of the 20th century, however, almost half a century after the enactment of the 1867 statute, Congress eliminated the requirement of mandatory review by writ of error in the Supreme Court, and substituted the discre-

tionary remedy of review by writ of certiorari. Thereafter began a series of the now familiar Supreme Court orders, "certiorari denied." State prisoners were no longer able to obtain effective Federal review of their convictions.

The first modern case establishing the availability of Federal habeas corpus for State prisoners came shortly thereafter in Moore against Dempsey 1923, in which Justice Oliver Wendell Holmes delivered his classic opinion holding that mob denomination of a criminal trial constituted a violation of the due process clause of the 14th amendment.

Now I will be happy to yield.

Mr. ERVIN. Will the Senator from Maryland inform the Senator from North Carolina whether the Senator from Maryland is reading a pronouncement of Chief Justice John Marshall or a speech delivered by the Senator from Maryland?

Mr. TYDINGS. I am reading a pronouncement of the junior Senator from Maryland, made on the floor of the Senate on May 10, 1968.

Mr. ERVIN. Despite my great respect for the Senator from Maryland, I must say that I attribute more weight to the statement of Justice Harlan, that it was also during this period that Congress, in 1867, first made habeas corpus available by statute to prisoners held under State authority.

I assert that prior to 1867, no Federal court had any jurisdiction to issue a writ of habeas corpus to inquire into the legality of the detention of any State prisoner held under the judgment of a State court.

Mr. TYDINGS. I have outlined in my response the 1867 statute. I believe, however, that, once granted, the right of the writ of habeas corpus cannot be suspended; and I believe the Senator from North Carolina will find that clearly spelled out in the Constitution.

Mr. ERVIN. In the Constitution; but in every decision, I say to the Senator from Maryland, neither the Supreme Court nor any other Federal court had any power to issue any writ of habeas corpus to inquire into the legality of the detention of any person held under the judgment of a State court prior to 1867.

I further assert that, notwithstanding the pronouncement made by the distinguished Senator from Maryland, the Federal courts had no common law jurisdiction in respect to habeas corpus or anything else.

I thank the Senator for yielding.

Mr. TYDINGS. The Senator does not dispute the fact that the writ of habeas corpus is a fundamental part of the common law of this country and of States which have adopted the common law?

Mr. ERVIN. The Senator from North Carolina would say, in reply to the interrogation of the Senator from Maryland, that the States of the Union whose law was founded on the English system, had the common law, but the Federal Government has never had any common law. It is the creature of the Constitution.

Mr. TYDINGS. The Senator is not being responsive to my question.

Does the Senator from North Carolina agree that the writ of habeas corpus is a fundamental part of the common law, Anglo-American common law?

Mr. ERVIN. Yes, but quite a different writ——

Mr. TYDINGS. Does the Senator agree that over one century ago, the Congress of the United States extended the benefits of the writ of habeas corpus—the Supreme Court of the United States——

Mr. ERVIN. The Senator from North Carolina not only affirms that, but also affirms that that was the first time that any Federal court had jurisdiction to issue a writ of habeas corpus to inquire into the legality of the detention of any prisoner held under the judgment of a State court.

Mr. TYDINGS. Does the Senator agree that over a century ago the Congress——

Mr. ERVIN. In 1867 the Federal courts became vested for the first time with jurisdiction to issue writs of habeas corpus to inquire into the legality, under the Constitution and the statutes, of a State prisoner held under the judgment of a State court. But before that time, from the time of the morning star hanging in glory to 1867, it had no such jurisdiction.

Mr. TYDINGS. Does the Senator agree that there is also a provision that the writ of habeas corpus shall not be suspended except in times of rebellion or war?

Mr. ERVIN. In that provision there was no reference to State matters. It had reference to powers of Congress or the President to suspend the writ of habeas corpus.

Mr. TYDINGS. I thank the distinguished Senator.

That, in brief, is the holding of the McCardle case. And this summary indicates why the case cannot be used by the proponents of title II either to justify removal of Supreme Court appellate review over State confession and eyewitness cases, or the abolition of all Federal habeas corpus review over State criminal convictions. The McCardle case, however, is the most notorious instance in the history of our country in which the Congress tried to intimidate the Supreme Court and undermine the Constitution by depriving the Court of jurisdiction. I believe this case serves as a present-day warning to us. I believe that, if title II is enacted, historians will view it as just as notorious—and potentially destructive to our institutions of government—as the actions of Congress which gave rise to the McCardle case.

These, then, are the essential reasons why this provision of title II depriving the Supreme Court of jurisdiction over State cases must be rejected. Because this provision is so clearly directed at overruling the Supreme Court's decisions in confession and eyewitness identification cases, and because Congress has no power to act by simple statute to amend the Constitution and change Supreme Court rulings based on the Constitution, it is clear that this back-handed jurisdictional attempt to reverse the Supreme Court and change the Constitution will be held unconstitutional. In addition, this provision is flatly contrary to article III, section 2 of the Constitution, and it would undermine the historic role of the Supreme Court as the ultimate tribunal to vindicate and establish uniform interpretations of Federal constitutional rights. Justice Oliver Wendell Holmes stated, more than 50 years ago:

> I do not think the United States would come to an end if we (the Supreme Court) lost our power to declare an Act of Congress void. I do think the Union would be imperilled if we could not make that declaration as to the laws of the several States.

By depriving the Supreme Court of the power to review State court decisions based on the U.S. Constitution, title II would, in Justice Holmes' words, "imperil the Union." We must not take that disastrous step. We must reject title II.

The final provision of title II would abolish the Federal writ of habeas corpus for State prisoners.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield to the distinguished Senator from Montana.

CLARIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, for the purpose of clarification, I ask unanimous consent that the time to be used this afternoon be equally divided between the distinguished Senator from Arkansas [Mr. McCLELLAN] and the distinguished Senator from Maryland [Mr. TYDINGS], so that there will be no misconception as to what the intent was on the division of time.

Mr. TYDINGS. That was my understanding of the intent.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. McCLELLAN. That is correct with respect to this afternoon, but what about tomorrow?

Mr. MANSFIELD. It was our understanding, and I repeat, that tomorrow the time allocated would be evenly divided between the Senator from Arkansas and the Senator from Maryland, beginning at 10 o'clock and ending at 2 o'clock; and that the first vote would take place at 2 o'clock.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). Without objection, it is so ordered.

Mr. TYDINGS. Is the unanimous-consent request that the first vote take place at 2 o'clock?

Mr. MANSFIELD. That is the understanding.

Mr. TYDINGS. I withhold agreement to the request because it is possible an amendment to perfect title II might be offered prior to 2 o'clock, when the pending amendment comes up, and I would not agree to that because there might be offered some amendment I am not aware of. We have the same situation as we had with respect to title IV. I do not think the Senator from Arkansas would want to agree to that.

Mr. McCLELLAN. I think that is correct. The first vote should come at 2 o'clock unless there is some perfecting amendment pending. If so, we will allow one-half hour on each side.

Mr. MANSFIELD. That is all right but I wish to emphasize what we told the Senate last week with respect to 2 o'clock being the time. However, on this basis that is fine.

Mr. McCLELLAN. There may not be a perfecting amendment, and then there would be equal time before a vote.

Mr. TYDINGS. In any event there would be a vote at 2 o'clock or the 1-hour limitation would start to run on the vote on the pending business.

Mr. McCLELLAN. I know of no perfecting amendment, but no one can be sure.

Mr. TYDINGS. Mr. President, what is the unanimous consent request that is being propounded?

The PRESIDING OFFICER. That the time between 10 and 2 o'clock tomorrow will be equally divided, with the time controlled between the Senator from Arkansas and the Senator from Maryland, and with a vote at 2 o'clock, providing there is no amendment pending; but if an amendment is pending, 1 hour on that amendment to be equally divided between the proponent and the opponent. That reaffirms the unanimous-consent agreement.

Mr. McCLELLAN. During this day, time would continue to be equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLELLAN. One can speak as long as he wishes; but I did want that time charged against the 4 hours tomorrow.

The PRESIDING OFFICER. The Senator is correct. Without objection, it is so ordered.

Mr. TYDINGS. Mr. President, I have been speaking now for an hour and a half. I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. TYDINGS. Charge it to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The time the Senator had yielded to himself has expired.

Mr. TYDINGS. I yield myself an additional 20 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, article I, section 9, clause 2 of the Constitution states categorically that "The privilege of the writ of habeas corpus shall not be suspended unless in cases of rebellion or invasion the public safety might require it."

Those words are pretty clear. We do not have any invasion of our land. There is no rebellion. Where, then, is the justification of the suspension of the writ of habeas corpus which has stood for over one century?

I submit that there is no such justification, and that the attempt in title II to suspend the writ of habeas corpus will be declared unconstitutional as soon as it is tested in the courts. Title II is a blatant denial of an effective remedy for State prisoners suffering violations of their constitutional rights. Federal habeas corpus is the channel of ultimate resort through which State prisoners can vindicate their constitutional rights when all other recourse has failed and all State remedies have been exhausted. With the abolition of Federal habeas corpus for State prisoners, the sole Federal review of Federal claims by State prisoners will be appeal or certiorari to the Supreme Court, an inadequate and inappropriate remedy at best.

The writ of habeas corpus—the great writ—is one of the ancient pillars of our Anglo-American civilization. It has played a central role in the development of our modern system of jurisprudence.

The writ of habeas corpus is inextricably bound up with the growth of fundamental rights and personal liberty in the United States. Throughout its history, it has proved a prompt and effective remedy for restraints that society deems to be intolerable. The use of habeas corpus is based on the precept that government in a civilized society must always be accountable to the judiciary for a man's imprisonment. The writ requires the body of a person restrained of his liberty to be brought before the court, so that the lawfulness of the restraint may be determined.

Blackstone called the writ of habeas corpus "the most celebrated writ in English law." The writ of habeas corpus is nearly as old as the Magna Carta. Throughout English history it has been used to implement the fundamental guarantee of the Magna Carta that "no free man shall be taken or imprisoned except by the lawful judgment of his peers or by the law of the land," and that "to no one will we sell, to no one will we refuse or delay, right or justice." In its modern operation, the office of the writ is clearly guided by the spirit of these fundamental guarantees.

Mr. President, that goes back a long time. In its modern operation, the office of writ is clearly carried by the spirit of those fundamental guarantees which were gained so long ago.

The American colonists were thoroughly familiar with the great struggles in which the writ of habeas corpus had been forged and used.

On the eve of the American Revolution, habeas corpus was used to bring about the release of a Negro slave in Somersett's case, in which Lord Mansfield delivered his famous decision that a slave brought into England could not be held in bondage.

The Presiding Officer in the chair at this moment will recall that in 1763, John Wilkes was released on habeas corpus from the Tower of London, on the ground that, as a Member of Parliament, he could not be imprisoned for writing his famous North Briton No. 45, which was critical of the Crown.

In Bushell's case in 1670, an entire jury had been sent to jail for disregarding the court's orders to convict William Penn of rioting—all that Penn had done was to hold a Quaker meeting in a London street. The jurymen sought habeas corpus and obtained their liberty. The court held that they could not be lawfully punished for reaching their own determination of the facts and that they were being restrained illegally.

As these cases clearly indicate, the right to seek habeas corpus had been a strong defense for the exercise of basic rights in our society—the right of the Negro not to be enslaved, the privilege of a legislator not to be arrested, and the right to trial by an impartial and uncoerced jury.

In the U.S. Constitution, the sole provision on habeas corpus is contained in article II, section 9, clause 2 which provides—I repeat, as I have three times in my speech—that, and I repeat:

> The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The Constitution assumes, without stating, that the writ of habeas corpus will ordinarily be available. It provides only for the suspension of the writ, and then only in the narrow range of circumstances dealing with national emergencies. The Constitution assumes without stating it that the writ of habeas corpus will ordinarily be available because the Constitution was adopted in 1787 by those who had knowledge of, were familiar with, worked with, or were governed by Anglo-Saxon common law.

Statutory provisions for habeas corpus have been continuously on the national statute books since the first Judiciary Act of September 24, 1789. These statutes find their prototypes in the English Habeas Corpus Acts of 1679 and 1816. Under their provisions, every U.S. judge has the power, and in appropriate cases the duty, to issue the writ.

Congress must, of course, legislatively create courts before the writ of habeas corpus can be employed. But having established Federal courts, Congress would be powerless to deny the privilege of the writ. Otherwise article I, section 9 of the Constitution would be reduced to a dead letter. The Constitution does not merely prohibit suspension of habeas corpus statutes, or of the writ, but of "the privilege of the writ" a privilege long antedating the codification and reforms embodied in the English statutes of the 17th century. In England, all the higher courts were open to applicants for the writ, and it is hardly supposable that, under the new government, founded on more liberal ideas and principles, any court would be, intentionally, closed to them.

It has not always been easy in our history to enforce the writ of habeas corpus in the United States in time of political crisis. During the War of 1812, Judge Hall of Louisiana issued a writ to bring before him one Louaillier, the editor of the Louisiana Courier, who had been placed under military arrest for criticizing Gen. Andrew Jackson. On direction of the general, the military authorities ignored the writ and escorted Judge Hall out of the city of New Orleans. At the end of the war, however, the judge returned to his court, found Andrew Jackson in contempt, and fined him $1,000.

Another famous example of defiance by military and political authorities of a writ of habeas corpus issued by a Federal court occurred in the case ex parte Merryman. At the outset of the Civil

War, the military commander at Fort McHenry in Baltimore ignored a writ of habeas corpus, issued by Chief Justice Taney himself, to bring before the Court John Merryman, who had been charged with various acts of treason and was being held in military custody. The military commander refused to comply with the writ, and President Lincoln declined to support the order of his Chief Justice.

In contrast to the Civil War era, complete respect for the writ of habeas corpus as a protector of civil liberty characterized American authority in the First and Second World Wars. The most famous case is ex parte Quirin, 1942. In that case, prisoners of war had been condemned to death by a military commission after being captured while entering the the United States as enemy saboteurs. On an application for a writ of habeas corpus in the Supreme Court, it was held that the military commission had lawful jurisdiction over the saboteurs, and the writ was denied. Nevertheless, the case demonstrates how far habeas corpus procedure may be pursued even in time of war by a person who is a citizen of an enemy power and who is held in the United States as a prisoner of war.

In ex parte Endo, 1944, an American of Japanese descent secured her release on habeas corpus from the War Relocation Center, where thousands of Japanese Americans had been detained during World War II on the ground of their ancestry. The decision by the Supreme Court in this habeas corpus case was broad enough to invalidate the entire detention scheme and put an end to one of the darkest chapters in recent American history.

The two areas in which the writ of habeas corpus has produced the most litigation in recent years are the areas of deportation proceedings and criminal convictions. The writ is available to test the validity of the detention of an alien under a Government order directing his deportation. That is, the writ may be used to secure a judicial determination of the validity, both in law and in fact, of the deportation order. In the case of criminal convictions, the writ is available to test whether a prisoner who has been sentenced to and is serving a term of imprisonment was denied a fundamental constitutional right at the time of his trial, such as the right to the assistance of counsel, or the admission of a coerced confession.

Although the broad statutory habeas corpus jurisdiction of the Federal courts over State criminal convictions is now more than a century old, it is only relatively recently—within the past four decades—that the complexities of the habeas corpus jurisdiction have become abrasive in our Federal system. There can be no doubt that Federal habeas corpus today is one of the most important postconviction remedies available to State prisoners who claim that their trial was marred by a fatal constitutional defect.

In 1963, the Supreme Court handed down the two decisions that are so seriously criticized by the proponents of title II—Townsend against Sain and Fay against Noia. I would like to examine these cases briefly and attempt to demonstrate that the decisions themselves represent a fair and reasonable accommodation between respect for State legal processes, and the right of an accused defendant to at least one full and fair hearing on his constitutional claims.

What were the facts of the Sain case, that have caused so much furor and misunderstanding? In spite of this complicated procedural history of the case, the facts are quite simple. The defendant was a 19-year-old narcotics addict with a mentality barely above that of a moron. To relieve his narcotics withdrawal symptoms, the police, after his arrest, allowed a doctor to administer a shot of hyoscine and phenobarbital. Hyoscine, also called scopolamine, is known to most of us as "truth serum." The defendant contended that the State court, in determining the voluntariness of his confession, was not informed that hyoscine was a truth serum, and that it was neither common nor proper to administer this drug to an addict suffering from withdrawal symptoms. The prosecution conceded there was no direct mention made of the identity of hyoscine and truth serum. Does any of us honestly believe in these circumstances that the defendant received a full and fair hearing on his confession, or that a hearing in Federal habeas corpus was not fully justified?

In Fay against Noia, the other recent decision of the Supreme Court heavily castigated by the proponents of title II, the problem before the Court was: What is to be done if a valid State procedural law prevents a defendant's constitutional claim from being litigated? Noia was convicted of murder with two accomplices. The accomplices appealed their convictions, but Noia did not. Years later the accomplices were successful in reversing their convictions on the ground that their confessions had been coerced. The State conceded that Noia's confession, too, had been coerced. The State argued, however, that Noia had lost his chance for freedom because he had failed to take a timely appeal from his conviction. Thus, a man languished in jail for years, convicted on a coerced confession but barred from freedom by the State's harsh procedural rules. Habeas corpus came to the rescue. The Supreme Court held that the writ was adequate to meet the urgent demand for liberty presented.

The true function of the habeas corpus jurisdiction of the Federal courts is revealed most clearly by analysis of Supreme Court cases in which the writ has been issued for State defendants.

Take a case like Mooney against Holohan, 1935. In that case, the Supreme Court held for the first time that the guarantees of the due-process clause of the 14th amendment prohibited the conviction of a defendant on the basis of perjured testimony knowingly used by the prosecution. Mooney had been convicted in California of murder in the first degree, on charges growing out of a bombing that killed nine people during a parade in San Francisco in 1916. He was originally sentenced to death, but the sentence was subsequently commuted to life imprisonment. Mooney's conviction was affirmed by the highest court of the State of California, and certiorari was denied by the Supreme Court. There was considerable feeling that, because Mooney was a militant California labor leader, powerful antilabor forces took charge of the investigation and prosecution in a deliberate attempt to find, and if necessary, fabricate evidence connecting Mooney with the crime. Subsequently, Mooney discovered evidence of blatant perjury by the State witnesses on whose testimony he had been convicted, and he filed a petition for habeas corpus in the Federal courts. The State of California did not dispute any of the facts alleged in Mooney's petition. The State simply filed a demurrer, alleging that the acts or omissions of a prosecutor at a trial could never, in and of themselves, amount to a denial of due process of law. The Supreme Court summarily rejected this astounding assertion by the State.

I wish I could say that Mooney against Holohan is ancient history, and that today's prosecutors no longer knowingly and willfully use false or perjured testimony to obtain convictions. But take a case like Miller against Pate, decided only last year by the Supreme Court. The defendant Miller had been convicted of rape and murder. An important link in the chain of circumstantial evidence was a pair of stained underwear shorts. At the trial, the shorts were characterized as "bloodstained." In the context of the vicious and revolting crime with which Miller had been charged, the Supreme Court found that the emotional impact of the shorts on the jury was "incalculable." The prosecutor not only argued at length that the shorts were bloodstained but that the blood was of type "A," the same blood type as that of the murder victim. It was not until the habeas corpus proceedings in the Federal district court that it was established that the so-called bloodstains on the shorts were nothing more than paint, and that the prosecutor had known all along during the original trial that the stains were paint, not blood.

Again, I ask, would the proponents of title II really have us deny the privilege of habeas corpus to defendants like Miller?

These cases—all arising out of habeas corpus proceedings brought in the Federal courts by State prisoners—demonstrate beyond doubt the need to maintain the power of Federal courts as a forum to test the constitutionality of a prisoner's confinement in all cases where a full and fair hearing on his Federal claim has not been reached in a State court. For a hundred years, the Federal courts have vindicated the basic constitutional rights of American citizens through habeas corpus proceedings, frequently after blatant denials of such rights have gone uncorrected in the State courts. Many of the great principles of American constitutional law have been established in such proceedings. To abolish this jurisdiction would destroy a century of progress in our legal system, and banish American criminal procedure to the Dark Ages.

The proponents of title II are quick to argue that such blatant denials of fundamental rights as I have described

are easily corrected by the Supreme Court through direct review by appeal or certiorari. These procedures, however, are grossly inadequate as a method of review by the Supreme Court for correcting constitutional errors. As methods of review in such cases, appeal and certiorari are subject to serious infirmities.

In the first place, the procedures of appeal and certiorari at the present time are ineffective methods of Federal review of State decisions. As is well known, the appeal and certiorari procedures are largely and necessarily discretionary in the Supreme Court.

The second serious deficiency is that the Supreme Court as an institution is simply not in a position to serve as a court of errors and appeals for all cases arising in the State courts.

The third serious deficiency is that the issue involved in the case is often not exposed on the record as the criminal case comes from the State courts.

The fourth serious deficiency is that postconviction remedies in the State courts may not be available at all. Or, if they are available, they may be too narrow to fully protect the fundamental rights of the defendant. Frequently, the record in such State proceedings is unclear. The defendants are indigent, and they frequently do not have the assistance of counsel. The records of the proceedings are often disjointed, and the transcripts are incomplete or ambiguous. Appellate review is unable to function in the face of such difficulties.

By accepting title II, therefore, the Senate would be turning back the clock and taking away a basic safeguard of liberty that has stood the test of time for more than a century. Repeal of Federal habeas corpus jurisdiction would effectively destroy a fundamental component of our constitutional system, the ability of the Federal courts to review the actions of State courts. As Mr. Justice Oliver Wendell Holmes stated more than 50 years ago:

> I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States.

Much has been made in the report of the Judiciary Committee with respect to the increasing number of habeas corpus petitions that are being filed in the Federal district courts by State prisoners. The significance of the figures quoted in the committee report can only be assessed in their proper perspective when it is realized that the number of Federal habeas corpus petitions occupies only a very small portion of the overall business of the Federal district courts. Equally important, the number of habeas corpus petitions that eventually are successful for the prisoners is extremely small—of the order of 1 percent. Almost 97 percent of the habeas corpus petitions are disposed of without a hearing and without any contest in the Federal district courts. In effect, the overwhelming majority of the petitions are disposed of on the basis of the State court proceedings. It cannot be said, therefore, that the Federal district judges spend even a substantial portion of their time reviewing the merits of State criminal convictions.

Even on the merits, however, the increasing number of Federal habeas corpus petitions filed by State prisoners does not reflect an abuse by the Federal courts of the writ. Rather, the increase reflects the rapidly evolving concepts of fairness and due process of law in criminal cases.

It was not until the present century that the 14th amendment was held even to apply the fundamental provisions of the Bill of Rights to the States. More recently, further applications of the 14th amendment to State criminal proceedings have led the Supreme Court to find correspondingly more numerous occasions upon which Federal habeas corpus would lie for State prisoners. The fault, if any, does not lie in misuse of habeas corpus. Rather, it lies in the substantive principles of the criminal law. At bottom, therefore, it is the basic constitutional principles of fairness and due process that the proponents of title II now challenge.

The habeas corpus jurisdiction of the Federal courts has served the highest traditions of Anglo-American law. An attempt to circumvent the writ must be cautiously and skeptically viewed. As Justice Black has eloquently put it:

> [I]t is never too late for courts in habeas corpus proceedings to look straight through procedural screens in order to prevent forfeiture of life or liberty in flagrant defiance of the Constitution . . . Perhaps there is no more exalted judicial function.

I urge the Members of the Senate not to join in the dangerous and unwarranted assault on the great writ that is threatened by title II. I urge you to strike title II from S. 917.

As Thomas Jefferson, the major architect of our Bill of Rights, said in his first inaugural address:

> Equal and exact justice to all men, of whatever state or persuasion, religious or political, . . . freedom of religion, freedom of the press, freedom of the person under the protection of the habeas corpus, and trial by juries impartially selected—these principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. This wisdom of our sages and the blood of our heroes have been devoted to their attainment. They should be the creed of our political faith—the text of civil instruction—the touchstone by which to try the services of those we trust; and should we wander from them in moments of error, or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty and safety.

Before we throw aside our right to "freedom of the person under the protection of the habeas corpus," before we discard the wisdom of the centuries and our great constitutional heritage, before we adopt title II of this bill, let us—as Jefferson says—"hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety."

EXHIBIT 1

EX PARTE MCCARDLE

The Chief Justice delivered the opinion of the court.

The first question necessarily is that of jurisdiction; for, if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions.

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make."

It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the first Congress, at its first session, was the act of September 24th, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court, and prescribed regulations for the exercise of its jurisdiction.

The source of that jurisdiction, and the limitations of it by the Constitution and by statute, have been on several occasions subjects of consideration here. In the case of *Durousseau* v. *The United States*,[1] particularly, the whole matter was carefully examined, and the court held, that while "the appellate powers of this court are not given by the judicial act, but are given by the Constitution," they are, nevertheless, "limited and regulated by that act, and by such other acts as have been passed on the subject." The court said, further, that the judicial act was an exercise of the power given by the Constitution to Congress "of making exceptions to the appellate jurisdiction of the Supreme Court." "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress, providing for the exercise of jurisdiction, should come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it.

The exception to appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Several cases were cited by the counsel for the petitioner in support of the position that jurisdiction of this case is not affected by the repealing act. But none of them, in our judgment, afford any support to it. They are all cases of the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction.[2]

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[1] 6 Cranch, 312; Wiscart *v.* Dauchy, 3 Dallas, 321.

[2] Lanier *v.* Gallatas, 13 Louisiana Annual, 175; De Chastellux *v.* Fairchild, 15 Pennsylvania State, 18; The State *v.* Fleming, 7 Humphreys, 152, Lewis *v.* Webb, 3 Greenleaf, 326.

On the other hand, the general rule, supported by the best elementary writers,[3] is that "when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed." And the effect of repealing acts upon suits under acts repealed, has been determined by the adjudications of this court. The subject was fully considered in *Norris* v. *Crocker*,[4] and more recently in *Insurance Company* v. *Ritchie*.[5] In both of these cases it has held no judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted.

It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Counsel seem to have supposed, if effect be given to the repealing act in question, that the whole appellate power of the court, in cases of *habeas corpus*, is denied. But this is an error. The act of 1868 does not except from that jurisdiction any cases but appeals from Circuit Court under the act of 1867. It does not affect the jurisdiction which was previously exercised.[6]

The appeal of the petitoner in this case be dismissed for want or jurisdiction.

EX PARTE YERGER

The Chief Justice delivered the opinion of the court.

The argument, by the direction of the court, was confined to the single point of the jurisdiction of the court to issue the writ prayed for. We have carefully considered the reasonings which have been addressed to us, and I am now to state the conclusions to which we have come.

The general question of jurisdiction in this case resolves itself necessarily into two other questions:

1. Has the court jurisdiction, in a case like the present, to inquire into the cause of detention, alleged to be unlawful, and to give relief, if the detention be found to be in fact unlawful, by the writ of *habeas corpus*, under the Judiciary Act of 1789?

2. If, under that act, the court possessed this jurisdiction, has it been taken away by the second section of the act of March 27, 1868,[1] repealing so much of the act of February 5, 1867,[2] as authorizes appeals from Circuit Courts to the Supreme Court?

Neither of these questions is new here. The first has, on several occasions, received very full consideration, and very deliberate judgment.

A cause, so important as that which now invokes the action of this court, seems however to justify a reconsideration of the grounds upon which its jurisdiction has been heretofore maintained.

The great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defence of personal freedom.

In England, after a long struggle, it was firmly guaranteed by the famous Habeas Corpus Act of May 27, 1679[3] " for the better securing of the liberty of the subject," which, as Blackstone says, "is frequently considered as another Magna Charta."[4]

It was brought to America by the colonists, and claimed as among the immemorial rights descended to them from their ancestors.

Naturally, therefore, when the confederated colonies became united States, and the formation of a common government engaged their deliberations in convention, this great writ found prominent sanction in the Constitution. That sanction is in these words:

"The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

The terms of this provision necessarily imply judicial action. In England, all the higher courts were open to applicants for the writ, and it is hardly supposable that, under the new government, founded on more liberal ideas and principles, any court would be, intentionally, closed to them.

We find, accordingly, that the first Congress under the Constitution, after defining, by various sections of the act of September 24, 1789, the jurisdiction of the District Courts, the Circuit Courts, and the Supreme Court in other cases, proceeded, in the 14th section, to enact, "that all the before-mentioned courts of the United States shall have power to issue writs of *scire facias, habeas corpus*, and all other writs, not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law."[5] In the same section, it was further provided "that either of the Justices of the Supreme Court, as well as Judges of the District Courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment; provided that writs of *habeas corpus* shall in no case extend to prisoners in jail, unless they are in custody, under, or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

That this court is one of the courts to which the power to issue writs of *habeas corpus* is expressly given by the terms of this section has never been questioned. It would have been, indeed, a remarkable anomaly if this court, ordained by the Constitution for the exercise, in the United States, of the most important powers in civil cases of all the highest courts of England, had been denied, under a constitution which absolutely prohibits the suspension of the writ, except under extraordinary exigencies, that power in cases of alleged unlawful restaint, which the Habeas Corpus Act of Charles II expressly declares those courts to possess.

But the power vested in this court is, in an important particular, unlike that possessed by the English courts. The jurisdiction of this court is conferred by the Constitution, and is appellate; whereas, that of the English courts, though declared and defined by statutes, is derived from the common law, and is original.

The judicial power of the United States extends to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority, and to large classes of cases determined by the character of the parties, or the nature of the controversy.

That part of this judicial power vested in this court is defined by the Constitution in these words:

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a 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."

If the question were a new one, it would, perhaps, deserve inquiry whether Congress might not, under the power to make exceptions from this appellate jurisdiction, extend the original jurisdiction to other cases than those expressly enumerated in the Constitution; and especially, in view of the constitutional guaranty of the writ of *habeas corpus*, to cases arising upon petition for that writ.

But, in the case of *Marbury* v. *Madison*,[6] it was determined, upon full consideration, that the power to issue writs of mandamus, given to this court by the 13th section of the Judiciary Act, is, under the Constitution, an appellate jurisdiction, to be exercised only in the revision of judicial decisions. And this judgment has ever since been accepted as fixing the construction of this part of the Constitution.

It was pronounced in 1803. In 1807 the same construction was given to the provision of the 14th section relating to the writ of *habeas corpus*, in the case of *Bollman and Swartwout*.[7]

The power to issue the writ had been previously exercised in *Hamilton's case*[8] (1795), and in *Burford's case*[9] (1806), in neither of which cases does the distinction between appellate and original jurisdiction appear to have been made.

In the case of *Bollman and Swartwout*, however, the point was brought distinctly before the court; the nature of the jurisdiction was carefully examined, and it was declared to be appellate. The question then determined has not since been drawn into controversy.

The doctrine of the Constitution and of the cases thus far may be summed up in these propositions:

(1.) The original jurisdiction of this court cannot be extended by Congress to any other cases than those expressly defined by the Constitution.

(2.) The appellate jurisdiction of this court, conferred by the Constitution, extends to all other cases within the judicial power of the United States.

(3.) This appellate jurisdiction is subject to such exceptions, and must be exercised under such regulations as Congress, in the exercise of its discretion, has made or may see fit to make.

(4.) Congress not only has not excepted writs of *habeas corpus* and *mandamus* from this appellate jurisdiction, but has expressly provided for the exercise of this jurisdiction by means of these writs.

We come, then, to consider the first great question made in the case now before us.

We shall assume, upon the authority of the decisions referred to, what we should hold were the question now for the first time presented to us, that in a proper case this court, under the act of 1789, and under all the subsequent acts, giving jurisdiction in cases of *habeas corpus*, may, in the exercise of its appellate power, revise the decisions of inferior courts of the United States, and relieve from unlawful imprisonment authorized by them, except in cases within some limitations of the jurisdiction by Congress.

It remains to inquire whether the case before us is a proper one for such interposition. Is it within any such limitation? In other words, can this court inquire into the lawfulness of detention, and relieve from it if found unlawful, when the detention complained of is not by civil authority under a commitment made by an inferior court, but by military officers, for trial before a military tribunal, after an examination into the cause of detention by the inferior court, resulting in an order remanding the prisoner to custody?

It was insisted in argument that, "to bring a case within the appellate jurisdiction of this court in the sense requisite to enable

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[3] Dwarris on Statutes, 538.
[4] 13 Howard, 429.
[5] 5 Wallace, 541.
[6] Ex parte McCardle, 6 Wallace, 324.
[1] 15 Stat. at Large, 44.
[2] 14 Id. 385.
[3] 3 British Stat. at Large, 397; 3 Hallam's Constitutional History, 19.
[4] 3 Commentary, 135.
[5] 1 Stat. at Large, 81.
[6] Cranch, 137.
[7] 4 Id. 100.
[8] 8 Dallas, 17.
[9] 8 Cranch, 448.

it to award the writ of *habeas corpus* under the Judiciary Act, it is necessary that the commitment should appear to have been by a tribunal whose decisions are subject to revision by this court."

This proposition seems to assert, not only that the decision to be revised upon *habeas corpus* must have been made by a court of the United States, subject to the ordinary appellate jurisdiction of this court, but that having been so made, it must have resulted in an order of commitment to civil authority subject to the control of the court making it.

The first branch of this proposition has certainly some support in *Metzger's case*,[10] in which it was held that an order of commitment made by a district judge at chambers cannot be revised here by *habeas corpus*. This case, as was observed by Mr. Justice Nelson in *Kaine's case*,[11] stands alone; and it may admit of question whether it can be entirely reconciled with the proposition, which we regard as established upon principle and authority, that the appellate jurisdiction by *habeas corpus* extends to all cases of commitment by the judicial authority of the United States, not within any exception made by Congress.

But it is unnecessary to enter upon this inquiry here. The action which we are asked to revise was that of a tribunal whose decisions are subject to revision by this court in ordinary modes.

We need consider, therefore, only the second branch of the proposition, namely, that the action of the inferior court must have resulted in a commitment for trial in a civil court; and the inference drawn from it, that no relief can be had here, by *habeas corpus*, from imprisonment under military authority, to which the petitioner may have been remanded by such a court.

This proposition certainly is not supported by authority.

In *Kaine's case* all the judges, except one, asserted, directly or indirectly, the jurisdiction of this court to give relief in *a case* where the detention was by order of a United States commissioner. The lawfulness of the detention had been examined by the Circuit Court for the Southern District of New York upon a writ of *habeas corpus*, and that court had dismissed the writ and remanded the prisoner to custody. In this court relief was denied on the merits, but the jurisdiction was questioned by one judge only. And it is difficult to find any substantial ground upon which jurisdiction in that case can be affirmed, and in this denied.

In *Wells's case*,[12] the petitioner was confined in the penitentiary, under a sentence of death, commuted by the President into a sentence of imprisonment for life. He obtained a writ of *habeas corpus* from the Circuit Court of the District of Columbia, was brought before that court, and was remanded to custody. He then sued out a writ of *habeas corpus* from this court, and his case was fully considered here. No objection was taken to the jurisdiction, though there, as here, it was evident that the actual imprisonment, at the time of the petition for the writ, was not under the direction of the court by whose order the prisoner was remanded, but by a different and distinct authority.

In this case of *Wells*, Mr. Justice Curtis again dissented, and, on the point of jurisdiction, Mr. Justice Campbell concurred with him. The other judges, though all, except one, were of opinion that the relief asked must be denied, agreed in maintaining the jurisdiction of the court. Judge Curtis, who regarded the question as left undetermined in *Kaine's case*, admitted that the jurisdiction was asserted in this, and stated the ground of judgment affirming jurisdiction to be that, "as the Circuit Court had had the prisoner before it, and has remanded him, this court, by a writ of *habeas corpus*, may examine that decision and see whether it be erroneous or not."

Since this judgment was pronounced, the jurisdiction, in cases similar to that now before the court, has not hitherto been questioned.

We have carefully considered the argument against it, made in this case, and are satisfied that the doctrine heretofore maintained is sound.

The great and leading intent of the Constitution and the law must be kept constantly in view upon the examination of every question of construction.

That intent, in respect to the writ of *habeas corpus*, is manifest. It is that every citizen may be protected by judicial action from unlawful imprisonment. To this end the act of 1789 provided that every court of the United States should have power to issue the writ. The jurisdiction thus given in law to the Circuit and District Courts is original; that given by the Constitution and the law to this court is appellate. Given in general terms, it must necessarily extend to all cases to which the judicial power of the United States extends, other than those expressly excepted from it.

As limited by the act of 1789, it did not extend to cases of imprisonment after conviction, under sentences of competent tribunals; nor to prisoners in jail, unless in custody under or by color of the authority of the United States, or committed for trial before some court of the United States, or required to be brought into court to testify. But this limitation has been gradually narrowed, and the benefits of the writ have been extended, first in 1833,[13] to prisoners confined under any authority, whether State or National, for any act done or omitted in pursuance of a law of the United States, or of any order, process, or decree of any judge or court of the United States; then in 1842[14] to prisoners being subjects or citizens of foreign States, in custody under National or State authority for acts done or omitted by or under color of foreign authority, and alleged to be valid under the law of nations; and finally, in 1867,[15] to all cases where any person may be restrained of liberty in violation of the Constitution, or of any treaty or law of the United States.

This brief statement shows how the general spirit and genius of our institutions has tended to the widening and enlarging of the *habeas corpus* jurisdiction of the courts and judges of the United States; and this tendency, except in one recent instance, has been constant and uniform; and it is in the light of that we must determine the true meaning of the Constitution and the law in respect to the appellate jurisdiction of this court. We are not at liberty to except from it any cases not plainly excepted by law; and we think it sufficiently appears from what has been said that no exception to this jurisdiction embraces such a case as that now before the court. On the contrary, the case is one of those expressly declared not to be excepted from the general grant of jurisdiction. For it is a case of imprisonment alleged to be unlawful, and to be under color of authority of the United States.

It seems to be a necessary consequence that if the appellate jurisdiction of *habeas corpus* extends to any case, it extends to this. It is unimportant in what custody the prisoner may be, if it is a custody to which he has been remanded by the order of an inferior court of the United States. It is proper to add, that we are not aware of anything in any act of Congress, except the act of 1868, which indicates any intention to withhold appellate jurisdiction in *habeas corpus* cases from this court, or to abridge the jurisdiction derived from the Constitution and defined by the act of 1789. We agree that it is given subject to exception and regulation by Congress; but it is too plain for argument that the denial to this court of appellate jurisdiction in this class of cases must greatly weaken the efficacy of the writ, deprive the citizen in many cases of its benefits, and seriously hinder the establishment of that uniformity in deciding upon the questions of personal rights which can only be attained through appellate jurisdiction, exercised upon the decisions of courts of original jurisdiction. In the particular class of cases, of which that before the court is an example, when the custody to which the prisoner is remanded is that of some authority other than that of the remanding court, it is evident that the imprisoned citizen, however unlawful his imprisonment may be in fact, is wholly without remedy unless it be found in the appellate jurisdiction of this court.

These considerations forbid any construction giving to doubtful words the effect of withholding or abridging this jurisdiction. They would strongly persuade against the denial of the jurisdiction even were the reasons for affirming it less cogent than they are.

We are obliged to hold, therefore, that in all cases where a Circuit Court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it, and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, this court, in the exercise of its appellate jurisdiction, may, by the writ of *habeas corpus*, aided by the writ of *certiorari*, revise the decision of the Circuit Court, and if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded.

This conclusion brings us to the inquiry whether the 2d section of the act of March 27th, 1868, takes away or affects the appellate jurisdiction of this court under the Constitution and the acts of Congress prior to 1867.

In *McCardle's case*,[16] we expressed the opinion that it does not, and we have now reexamined the grounds of that opinion.

The circumstances under which the acts of 1868 was passed were peculiar.

On the 5th of February, 1867, Congress passed the act to which reference has already been made, extending the original jurisdiction by *habeas corpus* of the District and Circuit Courts, and of the several judges of these courts, to all cases of restraint of liberty in violation of the Constitution, treaties, or laws of the United States. This act authorized appeals to this court from judgments of the Circuit Court, but did not repeal any previous act conferring jurisdiction by *habeas corpus*, unless by implication.

Under this act, one McCardle, alleging unlawul restraint by military force, petitioned the Circuit Court for the Southern District of Mississippi for the writ of *habeas corpus*. The writ was issued, and a return was made; and, upon hearing, the court decided that the restraint was lawful, and remanded him to custody. McCardle prayed an appeal, under the act, to this court, which was allowed and perfected. A motion to dismiss the appeal was made here and denied. The case was then argued at the bar, and the argument having been concluded on the 9th of March, 1869, was taken under advisement by the court. While the cause was thus held, and before the court had time to consider the decision proper to be made, the repealing act under consideration was introduced into Congress. It was carried through both houses, sent to the President, returned with his objections, repassed by the constitutional ma-

[10] 5 Howard, 176.
[11] 14 Ib. 103.
[12] 18 Howard, 308.
[13] 4 Stat. at Large, 634.
[14] 5 Stat. at Large, 539.
[15] 14 Id. 385.
[16] 7 Wallace, 508.

jority in each house, and became a law on the 27th of March, within eighteen days after the conclusion of the argument.

The effect of the act was to oust the court of its jurisdiction of the particular case then before it on appeal, and it is not to be doubted that such was the effect intended. Nor will it be questioned that legislation of this character is unusual and hardly to be justified except upon some imperious public exigency.

It was, doubtless, within the constitutional discretion of Congress to determine whether such an exigency existed; but it is not to be presumed that an act, passed under such circumstances, was intended to have any further effect than that plainly apparent from its terms.

It is quite clear that the words of the act reach, not only all appeals pending, but all future appeals to this court under the act of 1867; but they appear to be limited to appeals taken under that act.

The words of the repealing section are, "that *so much* of the act approved February 5th, 1867, as *authorizes* an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court on appeals which have been, or may be hereafter taken, be, and the same is hereby repealed."

These words are not of doubtful interpretation. They repeal only so much of the act of 1867 as authorized appeals, or the exercise of appellate jurisdiction by this court. They affected only appeals and appellate jurisdiction authorized by that act. They do not purport to touch the appellate jurisdiction conferred by the Constitution, or to except from it any cases not excepted by the act of 1789. They reach no act except the act of 1867.

It has been suggested, however, that the act of 1789, so far as it provided for the issuing of writs of *habeas corpus* by this court, was already repealed by the act of 1867. We have already observed that there are no repealing words in the act of 1867. If it repealed the act of 1789, it did so by implication, and any implication which would give to it this effect upon the act of 1789, would give it the same effect upon the acts of 1833 and 1842. If one was repealed, all were repealed.

Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy; and never, we think, when the former act can stand together with the new act. It is true that exercise of appellate jurisdiction, under the act of 1789, was less convenient than under the act of 1867, but the provision of a new and more convenient mode of its exercise does not necessarily take away the old; and that this effect was not intended is indicated by the fact that the authority conferred by the new act is expressly declared to be "in addition" to the authority conferred by the former acts. Addition is not substitution.

The appeal given by the act of 1867 extended, indeed, to cases within the former acts; and the act, by its grant of additional authority, so enlarged the jurisdiction by *habeas corpus* that it seems, as was observed in the McCardle case, "impossible to widen" it. But this effect does not take from the act its character of an additional grant of jurisdiction, and make it operate as a repeal of jurisdiction theretofore allowed.

Our conclusion is, that none of the acts prior to 1867, authorizing this court to exercise appellate jurisdiction by means of the writ of *habeas corpus* were repealed by the act of that year, and that the repealing section of the act of 1868 is limited in terms, and must be limited in effect to the appellate jurisdiction authorized by the act of 1867.

We could come to no other conclusion without holding that the whole appellate jurisdiction of this court, in cases of *habeas corpus*, conferred by the Constitution, recognized by law, and exercised from the foundation of the government hitherto, has been taken away, without the expression of such intent, and by mere implication, through the operation of the acts of 1867 and 1868.

The suggestion made at the bar, that the provision of the act of 1789, relating to the jurisdiction of this court by *habeas corpus*, if repealed by the effect of the act of 1867, was revived by the repeal of the repealing act, has not escaped our consideration. We are inclined to think that such would be the effect of the act of 1868, but having come to the conclusion that the act of 1789 was not repealed by the act of 1867, it is not necessary to express an opinion on that point.

The argument having been confined, by direction of the court, to the question of jurisdiction, this opinion is limited to that question. The jurisdiction of the court to issue the writ prayed for is affirmed.

Mr. McCLELLAN. Mr. President, I do not know what weight is going to be given to going all the way back to the Crown, but if it is going to be given any weight, I would like to make reference to a more recent Supreme Court decision in the case of Culombe against Connecticut, decided in 1961.

I am contending that the Constitution has always been interpreted to mean just the opposite from what the Supreme Court said in the Miranda case. I read from the case of *Culombe* v. *Connecticut*, 367 U.S. 568, decided in 1961, in which Justice Frankfurter said, with respect to all the factors that must be taken into consideration in considering confessions:

> Each of these factors, in company with all of the surrounding circumstances—the duration and conditions of detention (if the confessor has been detained), the manifest attitude of the police toward him, his physical and mental state, the diverse pressures which sap or sustain his powers of resistance and self-control—is relevant. The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. . . .

Justice Frankfurter wrote that opinion in 1961. That was the Constitution and that was the law of the land then. And who agreed to it? Listen. Here are the judges: Chief Justice Warren, Justice Black, Justice Frankfurter, Justice Douglas, Justice Clark, Justice Harlan, Justice Brannan, Justice Whitaker, Justice Stewart. Every one of them agreed to it in 1961. Four of the judges who dissented in the Miranda case subscribed to that decision as the law of the land just before—5 or 6 years before—the Miranda case.

Yes, Mr. President, if you want to go back, go back 200 years. For 200 years, the test has been voluntariness, not an arbitrary question of whether a warning was given or was not given. The court absolutely, time and time again, said the Constitution did not require that.

All we are trying to do with this provision in the law is to go back to the Constitution that was abandoned and deserted by those who rendered the opinion in the Miranda case.

Mr. President, you can talk about long ago. Look at what is happening today. Look at those charts.

Mr. President, I ask unanimous consent to insert in the RECORD at this point as a part of my remarks an open letter to the President of the United States, published in last Friday's Washington Star, signed by Park & Shop, Inc., begging Congress for protection in Washington.

There being no objection, the open letter was ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.), Evening Star, May 17, 1968]

"AN OPEN LETTER TO: THE PRESIDENT OF THE UNITED STATES—THE CONGRESS OF THE UNITED STATES—THE MAYOR AND OFFICIALS OF THE DISTRICT OF COLUMBIA

"All citizens of the United States have a right to visit their national capital, and this right should be denied to none. All citizens have a concomitant right to do so with reasonable assurance of personal safety. This dream of every American from childhood, this privileged pilgrimage to the shrine of liberty, is now denied to the vast majority of the people by the actions of a few. The majority of the people are afraid to visit Washington, and many of its own citizens are leaving the city. The effect on business, property values, and tax income can not escape even the casual observer, nor can the effect on the support needed by the people's representatives.

"The economic advancement, or even survival, of the entire community of Washington depends largely on the existence and growth of commerce within the city. If all commerce ceased, the community would cease. The daily needs of the people, rich and poor alike, for food, clothing, shelter, transportation, services, health, recreation, and many other aspects of life are provided by the business community. In many areas of this metropolis the innocent citizens are now denied convenient access to these requirements because businesses have been destroyed or driven out by arson, looting, and ever increasing harassment, violence, and open crime.

"These same businesses provide the opportunity for tens of thousands to support themselves and their families, but many are now denied the means of livelihood by the destruction or dispersal of the businesses for which they had worked. Why do the many innocent have to continue to suffer while the few guilty run rampant through the streets?

"The taxes of the business community provide a large part of the support of the social welfare, police, fire and other public functions of this city. Taxes have been increasing, and are expected to increase more, but protection has been decreasing, and if the recent past is any indication, it is expected to decrease more.

"As businessmen and as private citizens we want to live within the law, but we want others also to live within the law. We want the protection and justice of the law for all. We want to respect the rights of others, but we want them to respect our rights.

"Men have given into the hands of society their own defense and the defense of their families in order to attain order and the general welfare through law. Not fear or intimidation, but love of civilization has been the genesis of the self-control and the reluctance to react with force against force on the part of threatened communities during recent disorders. There may well be a dangerous misunderstanding of this point on the part of a militant few. If people are pressed too far, or if their families, communities, or means of livelihood are threatened beyond endurance or beyond the ability or willing-

ness of society to provide adequate protection they will retake into their own hands their inalienable right to self-defense and survival.

"This nation has borne the allegedly spontaneous rape of its cities with restraint and patience beyond ordinary understanding, but the eyes of the whole country are now on Washington, and with a clear understanding that the approaching events will not be spontaneous. An aura of uncertainty and personal insecurity, a growing smog of fear, hangs over this, the national capital. It is not just another city. It belongs to all Americans, and all Americans are watching. Continued order and justice under a common law depends on the outcome. If the Government is incapable of assuring the security of the capital and the personal protection of less than a million citizens, you may fully expect that the lesson will not be lost on two hundred million.

"Our national policy has been to assure national security wherever possible through the existence of sufficient force to be an overwhelming deterrent to aggression rather than through the use of that force to punish aggression. Will the Government of the District of Columbia and the nation provide an overwhelming deterrent to violence? Will they provide visible police and troops sufficient to discourage the criminal few from acts which unfortunately and unjustly are often blamed on the innocent majority of one segment of our whole people? Or will they allow an apparent danger to become a real disaster? Will they bear the guilt of driving each State, each city, and even each citizen to provide his own protection? Will their example teach each individual that in order to survive he must meet the threat of force with force, action with reaction, and counter reaction with escalation until the fabric of our society and our civilization is rent asunder?

"We of the business community feel that we have some guilt for not having pressed for greater protection in the past, for having allowed ourselves to be intimidated by the potential and at times real threat inherent in sticking one's neck out. But it is time to stop worrying about sticking our necks out, about not getting involved. We are involved, and we intend to defend the commercial and economic interests of this city and its people. We ask for the protection to which we have a right, for our lives and property and for the lives and property of the entire community. It will be achieved, but we prefer that it be achieved through the law.

"We ask for a deterrent to destruction, not only a promise of control after it has started. A curfew is an effective emergency weapon to curb destruction, but it penalizes the innocent far more than the guilty. Use of a curfew for long periods in itself could destroy large segments of commerce. If sufficient police are patrolling this city, are seen in large enough concentrations and numbers, and are known to be authorized to enforce the law with all means necessary, serious rioting, arson, and looting will never have the chance to begin. If sufficient police are unavailable, there are in the area of Washington and at the disposal of the Commander-in-Chief more than sufficient troops to provide the necessary show of force. It would seem preferable to show force before, rather than to have to use it afterwards.

"It is obvious to all that the existing number of police does not allow adequate protection, especially when their effectiveness is reduced drastically by imprudent restraints. We, therefore, ask that troops be placed on duty to supplement the police forces prior to and during the impending demonstrations that they be made clearly visible in sufficient numbers to provide an overwhelming show of force, and that the President of the United States and Government of the District of Columbia make a public statement of policy that the police and the troops will be authorized and directed to use all force necessary to assure the peace and order of the community.

"You have taken the oaths of the highest offices of this land that you will to the best of your abilities preserve, protect, and defend the Constitution of the United States. That Constitution guarantees the rights of the citizens to live in peace and free from fear. We citizens now call upon the executive, legislative, and judicial officers of the United States and of the District of Columbia to fulfill their oaths of office.

"Very truly yours,

"PARK AND SHOP, INC."

This letter is sent at the unanimous request of the Executive Board of Park and Shop, Inc., which represents over 200 member merchants and professional firms and over 95% of all commercial parking facilities in the District of Columbia.

Mr. McCLELLAN. Mr. President, we are not going to protect these people by merely passing title I. I have businessmen coming to me and telling me they cannot get insurance in Washington today. Why? Because law enforcement has broken down. Why? Because the Supreme Court is turning criminals loose and establishing precedents under which the lower courts have to turn them loose, notwithstanding that they are known to be guilty and have confessed their guilt.

Mr. President, I ask unanimous consent to also insert in the RECORD as a part of my remarks an article which appeared in today's Washington Star, with the headline "1967 Bank Robbers Put Record Take Above $8 Million."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IN 1967 BANK ROBBERS PUT RECORD TAKE ABOVE $8 MILLION

NEW YORK.—Losses from bank holdups and burglaries and the number of such attacks reached record highs in 1967, the American Bankers Association says.

A total of 1,591 holdups and burglaries of banks occurred last year, causing losses of $8.7 million.

The previous record was in 1966, when there were 1,088 similar attacks with losses of $4.8 million.

Holdups numbered 1,318, up from 865 the previous year, causing losses of $7.2 million compared with $3.7 million in 1966.

The number of burglaries rose to 273, with $1.5 million in losses in 1967 compared with 223 and $1.1 million in losses in 1966.

Herman C. Eberts, chairman of the ABA Insurance and Protective Committee, said the increase in bank crimes "is part of a greater social problem which will require the cooperative efforts of all levels of government, of business, and, indeed, of society in general." Eberts is president of the First National Bank, Melbourne, Fla.

CRIME RATE CITED

Banks with their depositories of money can expect added attacks whenever the nation has a high level of crime, said an ABA spokesman in disclosing the figures over the weekend.

The ABA said the average loss per holdup attack rose from $4,300 in 1966 to $5,400 last year but that almost half of all hold-up attacks—46 percent—netted the bandits nothing or less than $1,000.

Of 1,318 attempted holdups, 259 were frustrated. Bandits involved in the successful holdups got bank loot totaling $9.231 million but $2.011 million was recovered from bandits apprehended.

A total of 639 bandits were arrested and, said the ABA, "additional arrests and recoveries of loot are anticipated."

AVERAGE LOSS RISES

Eighty-seven holdups came as banks were opening or closing for the day. Drive-in banks were attacked 54 times, twice the number in 1966.

The average loss through burglary in 1967 was $5,700, up from $5,000 in 1966. Of the 273 burglary attempts, 121 came on holidays or weekends. There were 118 unsuccessful burglary attacks.

The ABA said embezzlements of $10,000 and over totaled 132 in 1967, 32 below the previous year. However, losses totaled $13.7 million, compared with $12.1 million in 1966.

Mr. McCLELLAN. Mr. President, I read the first two paragraphs. It has a New York dateline:

Losses from bank holdups and burglaries and the number of such attacks reached record highs in 1967, the American Bankers Association says.

A total of 1,591 holdups and burglaries of banks occurred last year, causing losses of $8.7 million.

The article continues:

The previous record was in 1966—

Just the year before—

when there were 1,088 similar attacks with losses of $4.8 million.

It is significant to note that in 1 year's time, from 1966 to 1967, bank robberies increased 46 percent in the Nation, and the take went up 81 percent from the year before.

We are talking about crime in America today, not what happened under the Crown somewhere else. I say that, whatever happened in the past, under the Constitution as interpreted by some of the best jurists we have ever known in this country, we had less crime. A criminal could be convicted and sent to jail, where he belonged. Today it is doubtful. The insecurity as a result of Court rulings is frightening. I know that from the expressions I hear and from the way crime has tended to greatly increase since the Court started the so-called liberalization to turn everybody loose.

Mr. TALMADGE. Mr. President, will the Senator yield me 20 minutes?

Mr. McCLELLAN. I yield 20 minutes to the Senator from Georgia.

Mr. TALMADGE. Mr. President, the wave of lawlessness and fear that have gripped this Nation require prompt congressional action.

The Omnibus Safe Streets and Crime Control Act of 1967 is badly needed legislation that will advance national efforts to curb and control crime in the United States.

Millions of American citizens live in fear for their personal safety and the security of their families, their homes, and their businesses. The root of this fear is rampant crime in the streets.

Since 1960, the total volume of serious crimes reported in the United States has increased more than 60 percent, with violent crimes showing about a 50-percent rise, and property crimes are up about 65 percent.

Latest Federal Bureau of Investigation figures for 1967 report a 16-percent increase in serious crime over 1966. In the past 12-month period, crimes of violence rose 15 percent; robbery 27 percent; murder 12 percent; forcible rape 9 percent; and aggravated assault 8 percent.

This new crime cannot be attributed to the natural increase in U.S. population. The fact is, serious crime has been increasing at a rate almost eight times our population growth.

The recitation of these statistics may seem to be an academic exercise. But it is far from that. Crime is a grim reality for the young child who is criminally assaulted, to the corner grocer who is repeatedly robbed, to the elderly lady at the bus stop who is mugged and brutally beaten, and to thousands of other citizens who each day are victimized by vicious punks and hoodlums.

To express it in even more meaningful terms, in Washington, D.C.—in this would-be showplace of the world—four merchants were shot to death in their places of business inside a recent period of just 15 days. The fear of crime and the tragedy of crime is very real indeed to the families and loved ones of these men, just as it is to other businessmen in Washington who recently secured a full-page ad in the Washington Post to appeal for protection against criminals in the Nation's Capital.

Again, to translate these statistics into human terms, last Thursday night five public buses were held up, and one bus driver was shot and killed. City bus drivers are demanding protection, much in the same way that policemen ride shotgun on subways in some of our cities.

I cite the District of Columbia only as an example of what is being repeated in city after city across our land, and not just in our metropolitan areas but also in our supposedly safe and secure suburbs. The natural reaction of the man on the street, to what the FBI has called an avalanche of crime sweeping America, is utter shock. People ask, how does it happen, and what are we going to do about it?

We have in our country today an increasing disrespect not only for the law, but for all constituted authority. The policeman, as an instrument of the law, is scorned, ridiculed, and abused. His job is probably the most thankless in all the country. He is hamstrung by the courts, and weakened by public apathy. He is restrained by public policy, and very often set upon by mobs in the course of trying to make an arrest.

While criminal thugs roam the streets in search of a victim, our society is further plagued by another element that travels under the lofty banner of civil disobedience. These are the self-appointed judges of which laws are good and which laws are bad, and which ones ought to be obeyed and which disobeyed. These are people who make a mockery of our laws, and who believe they have a right to take to the street, and use or abuse the law as they see fit.

I concur wholeheartedly with FBI Director J. Edgar Hoover that this doctrine is very much responsible for the turmoil in our streets and for the increase of crime in America.

In attempting to get to the root of the crime problem, we must also seriously consider the effectiveness of law enforcement and judiciary systems in handling the criminal.

Unfortunately, the success of law enforcement officers in prosecuting crime is diminishing. And with it, the safety and security of our people have also greatly diminished. During the calendar year 1966, law enforcement agencies successfully solved an average of 24 percent of the serious crimes which came to their attention. This was a substantial 8 percent decline from the year before.

Contrary to the old saying, crime does pay in far too many cases.

Throughout the ages, society has assumed that the most effective deterrent to crime is knowledge on the part of the potential criminal that he will be apprehended and severely punished. It is just as true that the criminal mind derives encouragement from the knowledge or belief that his apprehension is not very likely, or that if he is caught he will be turned loose, with perhaps just a slap on the wrist.

We must also consider why law enforcement officers find it increasingly difficult to obtain convictions. It is not because police departments are inefficient. Nor is it because prosecuting attorneys are derelict in their duties.

The executive director of the International Association of Police Chiefs, Mr. Quinn Tamm, came straight to the point by declaring:

> 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 the Supreme Court's decisions. . . .

He was referring to such landmark cases as Mallory, Escobedo, and Miranda against Arizona, with which we are all familiar. During hearings held by the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee earlier this year, witness after witness produced testimony and evidence that Miranda and similar decisions have placed a severe handicap upon our judges, prosecutors, and policemen in the fight against crime.

We have more than ample evidence to support the warning that was issued by Justice White in his strong dissent when the Supreme Court handed down its 5 to 4 decision in the Miranda case in 1966. Said Justice White:

> In some unknown number of cases, the court rule will return a killer, a rapist, or other criminals to the streets or to the environment which produced him to repeat his crime whenever it pleases him.

In case after case across the country, convictions that were sound have been overturned, and criminals who have confessed to crimes, including murder, have been set free upon society. It appears that our high courts are more concerned with securing the alleged rights of criminals than with the safety and security of law-abiding citizens.

More concern is being shown for legal technicalities than with the vital issue of whether the defendant is guilty of the crime with which he is charged and whether he ought to be punished.

U.S. District Judge Alexander Holtzoff of the District of Columbia has stated:

> I must say that I sometimes feel, when I am trying a criminal case, as if I am in a topsy turvy world: I am not trying the accused, I am trying the policeman—did he break any rules? . . . The law has begun to lose sight of the rights of the public and the rights of the victim of the crime . . . I think that the way of our administration of criminal justice has recently developed, there is something radically wrong with it, and it needs correction.

I could not agree with Judge Holtzoff more. There is something radically wrong with the administration of justice. I submit that title II of the pending bill will go a long way toward correction of the situation.

Title II will give meaning to the fact that American courts are supposed to be courts of justice, and not just courts of mercy.

Because of the Miranda decision, the value of confessions in the conviction of a criminal has been minimized greatly. In fact, Miranda has virtually made voluntary confessions a thing of the past. The district attorney for the city of Philadelphia stated that the trend is toward the elimination of confessions completely. District Attorney Arlan Spectre based his warning upon a study on the effects of the Miranda decision that showed that the percentage of criminal suspects who gave statements to the police has been cut in half since the Miranda decision.

Title II of the pending bill would allow the trial judge to determine whether a confession is voluntary by examining all the circumstances surrounding the statement of the accused. Whether a confession is voluntarily rendered is a question of fact, not one of law, and it should be decided at the trial court level.

Facts which the trial court would take into account include the length of time between arrest and arraignment, whether the defendant knew the nature of the offense with which he was charged or suspected, whether he was aware that he was not required to make a statement, and whether he knew himself to be entitled to the services of counsel.

I submit that a trial judge, who is familiar with the facts of the case and the live testimony of witnesses, is better able to determine whether a confession is voluntary than an appellate court which must examine a cold record.

Another desirable feature of title II would free State courts from disruptive Federal court activity, and strengthen the State's powers to enforce their criminal laws. This is the provision to limit Federal jurisdiction to review a State's court decision regarding voluntary confessions, provided the decision had already been upheld by the highest appellate court of the State.

Mr. President, I urge the adoption of title II. It will restore some balance to our system of justice—a system which has become far too weighted in favor of the criminal.

Let us hope that it will also help counteract the lawlessness and the fear of lawlessness that plague America today.

I thank my distinguished friend from Arkansas for yielding to me, and I yield the floor.

Mr. McCLELLAN. Mr. President, I thank the distinguished Senator from Georgia for the very able presentation of his views on the issue now pending before the Senate.

It is very gratifying to know that the Senator is supporting the decision the Senate Judiciary Committee has taken in reporting the measure, and particularly with respect to title II that deals

with confessions and would undertake to establish a just rule for the admission of voluntary confessions—a rule that would return to reason the procedures required in criminal cases where a confession or incriminating statement is offered in evidence.

Mr. President, I am glad to yield 10 minutes to the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 10 minutes.

Mr. HOLLINGS. Mr. President, crime in the United States today has reached such phenomenal proportions that the peace and security of our citizenry is seriously threatened. The latest figures from the files of the FBI reveal that a serious crime—murder, forcible rape, aggravated assault, robbery, burglary, larceny, and auto theft—occurs every 6 minutes in this country. One murder is committed every 48 minutes, a forcible rape occurs every 21 minutes, an aggravated assault occurs every 2 minutes, one robbery occurs every 3½ minutes, a burglary occurs every 23 seconds, a larcency occurs every 35 seconds, and there is one auto theft every 57 seconds. For the last reported year property worth more than $1.2 billion was lost by robbery, larceny, and auto theft. There were more than 6,500 murders and 43,500 aggravated assaults against innocent citizens of our land.

These statistics are staggering to the imagination. It is almost inconceivable that this amount of crime and lawlessness exists in our country.

What is responsible for this? Who is to blame? These are questions being asked on every hand today. There is no easy answer. In a sense, we are all to blame—every man, woman, and child in America.

But there is yet a far more important question. What are we going to do about this problem—a problem that our national leaders proclaim as the No. 1 domestic problem of our Nation—the problem of crime and lawlessness. Seventy-five percent of the Governors of our States responded to a White House inquiry in February of this year that, of all the problems faced by them and their States, law enforcement was the gravest and most crucial problem. Something must be done to reverse this present trend of lawlessness or else we will, in a very short while, be in the grips of anarchy and chaos.

Title I of the bill before us is a first step in the right direction to curb this problem by providing much needed financial assistance to our police departments to strengthen and improve law enforcement throughout the Nation.

Title II is a most crucial piece of legislation directed towards returning our system of criminal justice to the rule of reason in admitting into evidence voluntary confessions.

Justice Frankfurter said years ago "the bite of the law is in its enforcement." But with 87 out of every 100 offenders in our country going free and escaping any punishment, the criminal knows there is very little bite to the law today. No longer can it be said that crime does not pay when there is now only a 13 percent chance that an offender will be caught and punished and the criminal knows this. There is no questioning the fact that the recent decisions of the Supreme Court have contributed greatly to this problem. The greatest of all deterrents of crime—the likely prospect of apprehension, prosecution, conviction, and just punishment of the offender—has been so weakened and impaired that it no longer is having much force or effect.

The problems in police procedure created by the exclusionary rules laid down in the *Miranda* case, 384 U.S. 436 (1966) are contributing to this crime problem. Prior to this decision the police were getting statements in some 80 out of every 100 cases, but following Miranda suspects made statements in only 41 percent of the cases. Often these statements were not incriminating on their face, but served very valuable purposes in investigating crime. The record is replete with sufficient data to convince any right thinking person that this and other Supreme Court decisions has greatly retarded the solution of crime.

Commissioner David H. Pine, of the President's Crime Commission in the District of Columbia in the Commission's report of 1966, stated:

> Crime increases when the law enforcement process is lax and uncertain. This premise . . . is axiomatic. Law violations must follow and be encouraged by loopholes and technicalities in the judicial process (p. 889).

And it is just these technicalities required of our police officials that result in self-confessed murders, rapists, arsonists, muggers and thieves being released back upon an unprotected and innocent society.

Title II returns us to the historical rule of reason in admitting into evidence confessions when voluntarily made. Any money that the Congress appropriates to strengthen law enforcement across the country will be wasted unless we also enact legislation to get the criminals off the streets and into the jails where they belong.

Mr. President, our distinguished colleague, the Senator from Maryland, cited quite a bit of the English common law. A moment ago the distinguished Senator from Arkansas pointed out the decision of Culombe against Connecticut, of some 6 years vintage. In Miranda against Arizona, of less than 2 years vintage, Justice White in his dissenting opinion said:

> As for the English authorities and the common-law history, the privilege, firmly established in the second half of the 17th century, was never applied except to prohibit compelled judicial interrogations.

Citing further from the dissenting opinion of Mr. Justice Harlan, joined in by Justice Stewart and Justice White:

> I believe the decision of the court represents poor constitutional law and entails harmful consequences for the country at large.

This has obviously been the result of the Miranda decison. And what is being attempted here in title II of the pending bill is to put the law back where it was 6 years ago in Culombe against Connecticut, or, more specifically that four Justices of the Supreme Court found to be constitutional in dissenting opinions of Miranda.

Mr. President, I ask unanimous consent that the dissenting opinions of Justices Clark, Harlan, and White be printed at this point in the RECORD in their entirety.

There being no objection, the dissenting opinions were ordered to be printed in the RECORD, as follows:

[June 13, 1966]

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

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, 400–491 (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 foregone 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

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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 *Braum* 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

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 (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 *Cicernia* 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 effective 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.

[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 indigent 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 objections, at the very time when judicial restraint is most called for by the circumstances.

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]

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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 warning 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.

[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. ——, ——.

[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.

[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

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 (quoted, *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 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 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,

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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.

[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: 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

[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.

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 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 judicial precedents turn out to be linchpins of the confesson 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 to counsel, *ante*, p. 33. All of 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. Foregoing discussion has shown, I think, how mistaken 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 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 though 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, let 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

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[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.

[10] Since the Court conspicously 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.

[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).

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 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 unjustice 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 Commonwealth 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 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 appearently 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 defendant's failure to take 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]

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[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.

[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 288; *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).

[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.

Studies are also being conducted by the District of Columbia Crime Commission, the 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 reasons 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 certiorari on the ground that no final judgment is before us, 28 U.S.C. § 1257 (1964 ed.); 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."

[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 Wignore, 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 offense. 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."

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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.

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 confession 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 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 advisabiilty 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.

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 person 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

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[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.

[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).

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 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.

Criticism of the Court's opinion, however, cannot stop at a demonstration that the factual and textural bases for the rule it propounds are, at best, less than conpelling. 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 the 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 way very relevant and important interests.

The most basic functions 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 if 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 it is not effective with respect to the great bulk of our citizens or for thinking that without the criminal 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

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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, 8, 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).

modern penology, 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 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 sense 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 confesions voluntary. I would therefore affirm in Nos. 759, 760, and 761 and reverse in No. 584.

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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 the 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.

Mr. McCLELLAN. Mr. President, I yield 25 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 25 minutes.

Mr. STENNIS. Mr. President, on a previous occasion during the consideration of the pending bill, it was my pleasure to address the Senate primarily with reference to the provisions of the bill concerning the appropriation of money.

It is my privilege today to address another principle feature of the bill, the provision that is known as title II. That title has reference to the admissibility of certain testimony related to confession.

Mr. President, I do not see any ground whatsoever, and I have little sympathy for, the charges that title II of the bill constitutes an assault on the Supreme Court.

The best possible answer to that is to read the dissenting opinions of the members of the Court in the very cases to which most of title II relates. I know of one dissenting opinion by a former Attorney General of the United States, who was a member of the Court when the case was decided, and another dissenting opinion by a former Deputy Attorney General of the United States.

So I believe that the concept of title II being an assault on the Court is totally false and without any foundation. I suspect that it is an argument that comes partly from the present Department of Justice in trying to make the Court an issue. The Court is not an issue here, as plainly shown by the decisions to which I have referred.

In my feeble way, I should like to try to get before the people of the United States the fact that this is an attempt to have a better chance to enforce the criminal law of this country, and it is contrary to an assault on the Court.

Mr. President (Mr. SPONG in the chair), I speak very meekly about my experience in this field. My small achievement in this field has not been more than average, either as a prosecuting attorney or as a judge of a trial court of unlimited jurisdiction. However, I do have the benefit of experience, and experience is worth something. I believe it is worth a great deal. I know what the situation was before these decisions were handed down, before this change of law, and I know what the situation is now. I have some

practical idea of the difficulties that police have in trying to live under these decisions.

I repeat that the sole purpose of this title is to try to enforce the law, to protect the public, not to convict anyone who is not guilty. The primary object is to protect the public.

Punishment is necessary, and discipline is necessary. I believe that the major cause of conditions today is the lack of discipline. It is the lack of end result to the wrongdoer, be he a law violator or one who is just violating a code of discipline in the family, a code of discipline in the miltary, or a code of discipline that applies to all of us.

The concept of penalty for wrongdoing has been swept under the rug, and the concept of having to comply with rigid rules has been diminished. Unfortunately, a looseness, a laxity, and a softness have pervaded our society for the past 20 years or more, and now the chickens have come home to roost.

I believe that everyone—almost everyone—who has his eyes open can see that something must be done about the situation—and more than just talk. Something more than merely passing a law must be done. I am not fooled into believing that this bill or any other bill that is passed is going to help very much in and of itself. There must be a will to enforce the laws we already have. I doubt that we need any more law, except some corrections in procedure. We must have a will, however—there was a time when we had that will—at least to try harder. But if everyone must be pleased and everyone must be satisfied and no group of voters is to be offended by anything that is done, we really will have chaos, and we are headed in that direction now.

I do not lose hope. I know that something can be done about it and will be done about it. And the people realize that something can be done about the happenings now. They are about to decide that they are the ones who will have to do it, and I know there is enough commonsense, willpower, and judgment left to the American people. If it takes a revolution at the polls, that is what we will get. But unless we change the attitude and have a better application of discipline and a better application of requiring all people, including me, to live up to rules, the road to chaos in human conduct will continue and go downhill.

I have heard the argument made on the floor of the Senate that chaos will result in the United States if title II is enacted. With all deference to those who make such an argument, how would chaos result and why would chaos result from tightening up on some rules of evidence that were in effect from the time this Nation was born until 1957 or 1966 or 1967, when the cases to which title II refers were decided? Did we have chaos before? Chaos has come about since then.

There is no particular legal problem here. The legal systems of the States and of the U.S. courts have lived for almost 200 years of our existence under the very rules that title II proposes to restore. It was born in the bosom of the common law of England, and it is the greatest instrumentality that has ever been devised by the human mind for the protection of human rights. It has evolved not over the decades but over the centuries. It was inherited by us and was developed by us over the decades to meet the circumstances of our time.

To say that chaos would result if we put the law back the way it was—when some members of the Supreme Court have said all the time that the laws should not have been changed originally—with all deference, is a ridiculous conclusion. I believe that our job is to find a practical rule—no one will find a perfect rule—that will make more likely the attainment of the ends of justice and the protection of society.

The present trend of major crime toward more and more crime cannot continue indefinitely unabated and this country remain free. Either we will be ruled entirely by lawless bands that can grow and will grow, or we will see the rise to power of ruthless men who can nevertheless restore order, and we are not going to let that happen.

The people of this country are compassionate and they cherish liberty, but they also have a good deal of commonsense, and they are not going to stand by and be killed and pillaged because of an undue and impractical regard, so-called, for the rights of those who commit crime.

It must not be forgotten that the vast majority of decent, law-abiding citizens still run this Government, and they ultimately have it within their power to change its course. They will accept some experimentation with the system of criminal justice, but they expect, at the same time, that a minimal degree of public order and personal security will be maintained.

Mr. President, if it is not provided under present leadership within the existing system, new leaders will provide it under a radically different system.

I want to say for emphasis again that in my humble opinion it is not more law that is needed and it is not more money that is needed. We pass too many laws and we appropriate too much money now. What we need is the will to enforce the laws we have now. This is a matter of determination and the will to act, regardless of political consequences, on the part of men charged with enforcing the law, leading the departments, and applying rules that are reasonable and modern enough to protect those charged with crime but strong enough also to protect the public.

Our legal and constitutional government will turn in a different direction unless something is done about this trend. Principles which have grown up and are capable of further growth in a peaceful and orderly society will be pruned back or rooted out completely in order to get at the increasing forces of crime.

Crime must be brought under control and the streets made safe again, but this will not be done by merely lavishing Federal funds in all sorts of long-range research projects or by putting every law enforcement official in the Nation in the pay of the U.S. Government and under the direction of the Attorney General.

The way to stop crime is to enforce the criminal laws against those who break them. We can have the most well-paid, highly trained, best equipped police force money can buy and it will not do one bit of good if the law violators they bring in cannot be convicted in the courts. For this reason I consider title II, relating to the admissibility of voluntary confessions and eyewitness testimony into evidence in State and Federal prosecutions, and the finality of State convictions, to be the heart and most important part of the crime bill.

Title II is a reasonable and realistic response to the urgent demand for more effective law enforcement. It is entirely consistent with our legal tradition. Indeed, title II, for the most part, was the law of the land until quite recently. It requires no vast outlay of Federal funds and its effects will not be delayed while we await the further study of the ellusive "causes" of crime. It does not tie local law enforcement to the desk of the Attorney General and it preserves to the State the necessary freedom to combat the variety of crime found at the community level.

I have followed closely the hearings, the debates, and comments of the press on the crime bill and I am amazed at the violent criticism that has been directed against title II. It has been represented, or rather misrepresented, as a throwback to the dark days of the torture chambers and as an attack on the Supreme Court. The specter of unconstitutionality has been raised. Mass confusion in the law and collapse of the Federal system have been prophesized. These are arguments of desparation hurled against proposals which are unassailable on the merits.

Title II provides first that—

> In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in the bill, shall be admissable in evidence if it is voluntarily given.

It is this reasonable, rational rule of evidence that has been likened to the reinstitution of the rack and the screw and the third degree.

This rule originated in the development of the common law of England and was the law in this country under the Bill of Rights of our Constitution before being reversed in 1966. Its long history has not been static and the rule admitting voluntary confessions has kept pace with changing times. Under the common law and the early law of this country, a confession was considered voluntary and was admissible in court if not obtained through threats, physical coercion, or promises of reward. The standards were gradually extended to include psychological coercion as well as threats, force, and promises and in modern times the test came to be whether, considering the "totality of circumstances" the defendant freely confessed or was pressured into doing so. This was the state of the law when, in 1966, five of the nine Justices of the Supreme Court declared voluntary confessions to be inadmissible unless the police officer receiving the confession first recited to the defendant a list of his constitutional rights and got from the defendant an ironclad waiver of his rights.

What the Court held specifically in this case, *Miranda* v. *Arizona*, 384 U.S. 436 (1966), was that—

> The defendant must be warned prior to any questioning that he has the 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.

This ruling creates, and then raises to the status of constitutional rights, an array of technicalities that would astound the most practiced common law pleader. Under the decision of the Court it is doubtful that even a constitutional lawyer could make a valid and admissible confession unless he were first specifically advised of all his rights and then made some positive and affirmative waiver of them. It is immaterial that he knew his rights and had no intention of claiming them. If the police officer failed to go through the set routine of enumerating them and obtaining a waiver, his statement could not be used against him in court. This is the worst kind of "mechanical jurisprudence."

The decision of the majority was entered over the strong dissent of Justices Clark, Harlan, Stewart, and White.

I refer to the fact that Justice Clark is a former distinguished Attorney General of this Nation; and Justice White is a former distinguished Deputy Attorney General of this Nation; they are both outstanding in this field, and they are both outstanding as members of the Court. Here are four of the nine members of that Court entering a strong dissent.

Then when the bill before us proposes to restore the very rules that Justices Clark, Harlan, Stewart, and White proposed, the word is sent out all over the Nation that this is an assault on the Court and that it is an attack upon the integrity of the Court. It is merely an effort to uphold what four members of the Court said should be the law.

It is ridiculous to try to put the proponents of title II in a position of attacking the Court. It is the old idea of a smokescreen that is always raised when a person cannot meet the arguments on their merits.

Mr. President, these Justices describe the new rules laid down by the majority as "hazardous experimentation" and as "going too far too fast." Those are the words of the members of the Court, not mine. However, I think it sums up the gist of all criticisms leveled against the Court in recent years. It is not an attack on the Court as an institution or any individual member of the Court.

It is simply a widespread and sincere belief that the Court is engaged in "hazardous experimentation" and going "too far too fast." It only confuses and obscures the important issues at stake to portray this deep and genuine concern as a malicious attack on the Court.

The Court has outrun the sentiments of the people and the needs of the times in efforts of some of its members to achieve what is to them a perfect system of criminal justice. Congress must step in and lay a steadying hand on the law; not as a slap at the Court but in aid of the Court. The Court, removed as it is from the currents that agitate society, can go too far for its own good. Congress which is peculiarly sensitive to these forces has a responsibility to the Court and to the people to see that the law gives due regard to practical realities. The public safety and the general welfare cannot be sacrificed to the logic and symmetry of a jurisprudential ideal.

The criminal law is not a perfect abstract system for the intellectual amusement of judges and lawyers and legal scholars, or even legislators. It is a rough compromise for the protection of the people. Some principles must be stopped short of their extreme logical development in order to prevent other equally important principles from being completely overridden. When the rights of the law violator are overemphasized at the expense of the rights of law abiding society, the compromise is upset and must be reestablished. This is exactly what title II attempts to do.

It is not a perfect abstract system of law we are writing. The best illustration of that that I know of is the jury system. If one were looking for perfect logic and depth of learning, legal or otherwise, one would never select the jury system to make many of the highly important decisions of this Nation. One would never turn to the jury as a group of specialized experts in anything. But contrary to what a few people may think, it has proved over the centuries—here and in other English-speaking nations—to be one of the wisest, soundest provisions of our legal system. Even though juries make mistakes, and I know they do, under the guidance of a judge well versed in the law, and under the principles of evidence and basic concepts of the law, and under the guidance and instruction of the court, the jury system is still the best means ever devised for reaching a just and sound verdict in our system, or in any other system in the civilized world. So we are not writing perfect laws. It cannot be done. We are trying to get something practical and realistic, as in the case of a jury.

Title II updates and restores the voluntary confession rule as it existed prior to the 1966 decision. Title II provides that before a confession is presented to the jury in the trial of a criminal case, the trial judge must determine, out of the presence of the jury, whether the confession was voluntarily made. Title II further provides that in determining the issue of voluntariness, he "shall take into consideration all the circumstances surrounding the giving of the confession," and he is particularly required to consider: first, the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment; second, 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; third, 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; fourth, whether or not such defendant had been advised prior to questioning of his right to the assistance, and, fifth, whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

What title II does, therefore, is substitute a reasonable and workable standard for the hard and fast rule laid down by the Court. It preserves the principles announced in Miranda, but it does not make a fetish of them or carry them to the ridiculous extreme. It focuses on what ought always to be the main question when the admissibility of a confession is challenged in a criminal case: did the defendant freely and voluntarily confess? and not whether the police officer was guilty of some lapse in lecturing the defendant on constitutional law. It protects the legitimate rights of the accused as carefully as the rigid rule in Miranda, but it does not provide him with a storehouse of technical objections to the introduction of reliable evidence freely given.

This seems to me to be an eminently fair and reasonable compromise between the rights of the accused and the rights of society. The accused is protected against being compelled and coerced into making a confession. All of the factors considered by the Court in the Miranda decision to have a bearing on this issue must be taken into account. The only difference is, that if none of these factors in fact influenced the defendant in making a statement, it could be used against him to convict him of the crime he admittedly committed. This would protect society against being needlessly and foolishly exposed to self-confessed criminals.

Title II also attempts to overcome a related problem by providing that in Federal and District of Columbia prosecutions a voluntary confession "shall not be inadmissible solely because of delay in bringing" the defendant "before a commissioner." This provision will counteract the so-called Mallory rule, and put an end to the practice of discarding voluntary confessions of guilt because the police officers were not hasty enough in getting the defendant before a committing magistrate. Delay in taking the defendant before a commissioner would continue to be a factor in determining whether his confession was voluntarily given but it would no longer be the overriding issue. Mere delay would cease to be an absolute and automatic cause for excluding valuable and often essential evidence.

The Mallory rule was announced by the Supreme Court in 1957 (*Mallory* v. *United States*, 354 U.S. 449) in a case where the defendant confessed to rape within 5 hours after his arrest. His confession was excluded from evidence, his conviction reversed, and Mallory released to stalk the streets of Washington, solely because of delay in carrying him before a judicial officer. There was

no doubt as to his guilt, no question as to the voluntariness of his confession, but this grave crime went unpunished, society unprotected, because of another inflexible rule imposed on the police.

The consequences of this narrow view of the purpose and function of the criminal law is revealed in Mallory's own life. Not long after he was freed by the courts, he committed another felonious assault in another city.

The significance of the Mallory decision does not stop at the crimes it enabled Mallory himself to commit. The rapid and unchecked extension of the Mallory rule has made possible the escape of hundreds more like him. The length of delay which invalidates a voluntary confession has been steadily reduced by the courts from 5 hours to 5 minutes and has been applied in countless cases to free self-confessed criminals of every kind including murderers.

Title II also undertakes to correct another arbitrary rule that has recently sprung up to vex law enforcement and obstruct justice. Last year in another split decision in the case of *United States* v. *Wade*, 388 U.S. 318 (1967), the Supreme Court held that the testimony of an eyewitness to a bank robbery identifying the defendant as the robber was inadmissible in evidence because the witness had also previously identified the defendant in a police lineup without his counsel being present. This is simply an intolerable waste of evidence for no justifiable purpose. Title II attempts to retrieve this valuable evidence to be put to good use in controlling crime and making the streets safe.

Title II provides that in Federal criminal prosecutions:

> The testimony of a witness that he saw the accused commit or participate in the commission of a crime for which the accused is being tried shall be admissible into evidence.

Such a rule is so fundamentally sound, so unquestionably right, so basic to the administration of criminal justice it is almost impossible to believe that at this stage of our legal development it is necessary to spell it out in a statute. That it has become necessary is cause for grave concern.

Decisions such as these reflect an unconscionable disregard for the public interest. During the 10-year period between the Mallory decision in 1957 and the Wade ruling last year, the crime rate increased an astronomical 126 percent. I do not attempt to attribute this staggering increase in crime directly to the decisions of the Court. The point is that in the face of this fantastic rise in crime the Court continues to hand down decision after decision making it more difficult for society to defend itself. Clearly these figures ought to be read by the Court as a warning that it is going "too far too fast" and, I might add, in the wrong direction at the wrong time. Certainly Congress cannot ignore the danger signs. We are fast approaching anarchy in this country. If the Court is not aware of the danger then Congress must act.

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired.

Mr. McCLELLAN. Mr. President, I yield 5 additional minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 5 minutes.

Mr. STENNIS. I thank the Senator from Arkansas.

Mr. President, I still believe that the plain provisions of the Constitution of the United States have that meaning. They plainly point out not only the power, but also the duty of Congress to set the jurisdiction and define the jurisdiction of the Supreme Court of the United States.

In order to assure to the States the benefits of the provisions regarding the admissibility of confessions and eyewitness testimony, title II denies the Supreme Court and the lower Federal courts jurisdiction to review the rulings of a State trial court admitting such evidence if the ruling has been upheld by the highest appellate court of the State having jurisdiction. A similar provision denies the Supreme Court and the inferior Federal appellate courts jurisdiction to review the admission of eyewitness testimony in the Federal trial courts. These provisions are based on the constitutional powers of Congress under section 2 of article III of the Constitution to define the jurisdiction of the Supreme Court and to create inferior Federal courts. It merely restores to the States, in this limited area, the authority which they originally possessed until the Court in recent years began extending purely Federal requirements to the States. It is particularly appropriate that the trial courts should exercise this power in this instance where the issue is simply one of fact and not of law. Factual questions such as the voluntariness of the confession are properly decided at the trial level where the witnesses can be observed and their credibility assessed firsthand rather than on the basis of a cold record. In any event the admissibility of evidence will continue to be reviewable by the appellate courts of the State.

In spite of all the innumerable obstacles to ever convicting a criminal even the first time, the States have been lately faced with the task of convicting them over and over again as a result of recent Supreme Court decisions greatly enlarging the rights of State prisoners to bring habeas corpus proceedings in Federal courts. The growing volume of this unnecessary litigation is sapping the resources of both the States and the Federal courts. Testimony before the committee revealed that 2 years before the "landmark" decision in this area, there were 981 habeas corpus petitions filed by State prisoners in Federal courts. Two years after the 1963 decision the number had grown to 4,664. Lest anyone jump to the conclusion that this vast increase in habeas corpus petitions indicates a wholesale miscarriage of justice in State court's requiring Federal correction, it is well to note that less than 3 percent of these petitions are successful.

These are all moderate but decisive measures to reduce crime and restore order. They are minor adjustments in the law which will bring the rights of society back into balance with the overweighted rights of the criminal without dislocating the system of criminal justice. For the most part these provisions merely restore rules and procedures which served adequately for most of our history and were in use until only recently.

They may not be perfect and they are certainly not the complete answer to the crime problem, but they will strengthen the hand of society in this life or death struggle with crime and help hold the country together long enough for better ways to be found.

Mr. President, the provisions operate in a limited way, and to a small extent, in withdrawing from the court the jurisdiction to decide matters of evidence in a very narrow area compared to all the other cases.

These matters have been fully discussed. I do not care to repeat the able arguments which have already been made. The points are practical. Their solution is relatively simple, so far as the law goes, in writing rules of evidence and providing more practical means to get at the heart of the problems.

I wish to make one other point, which is not a theory with me, concerning the problems of the law enforcement officer.

I served once as prosecuting attorney during the years when there were few investigators or assistants given to prosecuting attorneys.

I did most of that work myself. I had to go out and work—all night, sometimes—trying to help the sheriff gather the evidence, then work over the evidence, bring it in, present it to the grand jury, prepare indictments, prepare the case for trial, write the instructions for the State, present the evidence to the jury, argue the case to the jury, and do that in case after case, week after week.

I do not deserve any credit for that but it shows that I am familiar with the practical side and know the relevancy of the rules and the necessity for having them. I know, firsthand, the problems with which our law enforcement officials are confronted.

I think that these rules are a choke around their neck, a binding cord around their hands. They limit the activities of law enforcement officers as well as their efficiency and effectiveness.

Under the present rules, we cannot continue to get the right kind of qualified men to bare their breasts to the hazards of their calling, when they have to operate under limitations that increase the hazards rather than decrease them, and which lessens their chance to render valuable public service rather than increases it.

It is not a matter of money. It is a matter of backing by the law, by the courts, and by the people.

One of the most signal benefits that can possibly come from enactment of title II would be this encouragement, this backing, this "espirit de corps" that would uplift our police forces all the way from the village through the FBI.

I have talked to these men. I see them as they walk their beats. I know their problems from their practical side.

I thank the Senator from Arkansas for yielding this time to me.

Mr. McCLELLAN. Mr. President, I express my appreciation to the distinguished Senator from Mississippi for his able remarks. I think he will agree with me that the ingenuity of man in our day of civilization has devised no better, no fairer procedure or means for establishing the guilt or innocence of a defendant based upon his statements than to insist that the statements be voluntary and that the trial judge and jury determine the voluntariness of those statements, taking into account all factors that were present and all the circumstances that attended the situation at the time.

Mr. STENNIS. I commend the Senator for his clear, fine statement of the rule that has stood the test of time and has also proven to be necessary. I thank the Senator for the fine work he has done in the hearings, in the preparation of the bill, and in presenting it to the Senate. He is rendering the Nation a great service.

Mr. McCLELLAN. Mr. President, I yield to the distinguished Senator from North Carolina [Mr. ERVIN] such time as he may desire.

Mr. ERVIN. Mr. President, the men who drew our Constitution and the men who ratified that instrument had earth's most magnificent dream. They dreamed that they could enshrine in a written constitution the principles of the government which they wished to create and the rights of the citizens which they wished to secure and safely entrust the interpretation of that constitution according to its true intent to a Supreme Court composed of fallible men.

They knew that some dreams are realized and that other dreams vanish. They also realized that the constitutional system which they were attempting to create would vanish if that constitution was not interpreted by the Supreme Court according to its true intent.

To make it as certain as humanly possible that the Supreme Court would interpret the Constitution according to its true intent—that is, the intent expressed in it—they did three things. First, they provided that Supreme Court Justices should be carefully chosen by the President and then confirmed by a majority of the Senate. Second, they undertook to remove Supreme Court Justices from all of the pressures and all of the temptations which beset all other occupants of public office. To this end, they provided that Supreme Court Justices should enjoy life tenure. The third thing they did in that Constitution to make it as certain as humanly possible that the Supreme Court would interpret the Constitution according to its true intent is found in the requirement that every Supreme Court Justice shall be bound by oath or affirmation to support the Constitution.

A great law teacher, a great constitutional scholar, and a great jurist, Thomas M. Cooley, of Michigan, in his great book on constitutional limitations, said that a legislature or a court which would give to a provision of the Constitution an interpretation not warranted by the intention of its drafters is justly chargeable with neglect of official duty and disregard of official oath.

My good friend, the Senator from Maryland [Mr. TYDINGS], asserted on the floor of the Senate this morning that certain provisions of title II which undertake to restrict or limit the jurisdiction of the Supreme Court in respect to voluntary confessions and in respect to testimony of eyewitnesses to crimes are unconstitutional.

Mr. President, those provisions are constitutional, and will be constitutional, unless the majority of the Supreme Court as now constituted holds that the Constitution itself is unconstitutional. I say that for the reason that there is nothing in the Constitution plainer or expressed in more understandable English words than section 2 of article III. That section provides, in its first subdivision, that Federal courts have the capacity to take jurisdiction of certain specified cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under the authority of the United States. Then it provides that cases affecting Ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction.

This is what it says after that, in the words which deal with the appellate jurisdiction of the Supreme Court:

> 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.

For the constitutionality of the provisions of title II which undertake to limit the jurisdiction of the Supreme Court, I do not merely rely upon the McCardle case. There are many decisions of the Supreme Court which hold that Congress has power to prescribe, to limit, to change, or to abolish the appellate jurisdiction of the Supreme Court.

These cases lay down a doctrine interpreting section 2 of article III of the Constitution in plain words. They all hold, in substance, the same thing which was held by the Supreme Court of the United States in the case of Daniels against Railroad Company, which I cited on a previous occasion.

Here is what the Daniels case says about the appellate jurisdiction of the Supreme Court:

> To come properly before us, the case must be within the appellate jurisdiction of this court. In order to create such jurisdiction in any case, two things must concur: the Constitution must give the capacity to take it, and an act of Congress must supply the requisite authority.*
>
> The original jurisdiction of this court, and its power to receive appellate jurisdiction are created and defined by the Constitution; and the legislative department of the government can enlarge neither one nor the other. But it is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the manner prescribed by law. In these respects it is wholly the creature of legislation.†

It is no exaggeration, Mr. President, to say that the very existence of constitutional government in the United States is dependent upon the ability and the willingness of a majority of Supreme Court Justices to interpret the Constitution in accordance with its true intent. George Washington recognized this when he delivered his Farewell Address to the American people. He said in that great message:

> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates.—But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

So constitutional government cannot continue in America unless a majority of Supreme Court Justices are able and willing to subject themselves to the restraint inherent in the judicial process when that process is properly understood and applied. The restraint inherent in the judicial process consists in the ability and the willingness of a Justice to lay aside his personal notions of what the Constitution or statute ought to say, and to base his decision solely upon what the Constitution or the statute does say.

It does not come easy to me to criticize the decisions of Supreme Court Justices. When I was a teenaged boy, my father, who was a practicing lawyer at the North Carolina bar for 65 years, took me to the Supreme Court chamber, pointed out the busts of some of the great Jurists who had sat on our Supreme Court, and said to me in a tone of reverential awe:

> The Supreme Court will administer justice according to the Constitution, though the heavens fall.

In the course of these remarks, truth compels me to exercise a privilege vouchsafed to all Americans by this remark of Chief Justice Harlan F. Stone:

> Where the courts deal, as ours do, with great public questions, the only protection we have against unwise decisions and even judicial usurpation is careful scrutiny of their action and fearless comment upon it.

There is nothing sacrosanct about decisions of Supreme Court Justices. They are fallible human beings, just as the rest of us are. But the Constitution which they interpret does not belong to them. It belongs to the American people, and the Justices have no right to amend that Constitution while pretending to interpret it. The power to amend the Constitution is the power to change its meaning, and that power is vested by the Constitution itself in Congress and the States. The power to interpret the Constitution, which is the only power that belongs to the Supreme Court, is the power to interpret that Constitution according to its true intent, for the purpose of ascertaining and giving effect to its meaning.

Two of the provisions of title II undertake to free American citizens from newly invented rules which handicap officers of the law in the enforcement of the law, and which place limitations upon the use of the most convincing evidence known to mankind—namely, first, the voluntary confessions of the accused that they committed the crimes with which they stand charged; and, second, positive testimony of eyewitnesses that they saw the accused commit the crimes for which the accused are being tried.

Both of these types of evidence were admitted without question in the courts of the United States and in the courts of all the States until the Mallory case, the Escobedo case, the Miranda case, and the Wade case.

The Escobedo case and the Wade case represent attempts by five of the nine Justices of the Supreme Court to change the meaning of the words of the sixth amendment which say:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defense.

For 174 years before the Escobedo case was handed down and for 177 years before the Wade case was handed down, it was held that these words meant exactly what they said and that the right to counsel did not accrue until a criminal prosecution was initiated by a public official or public agency such as the prosecuting attorney or grand jury who had the right and power under the law to prefer a formal charge of crime against the accused.

In the Escobedo case the Court held for the first time in the history of the Supreme Court, and contrary to the decisions handed down during the 174 preceding years, that the right to counsel accrued not when a formal charge of crime was lodged against the accused, but when a law enforcement officer having an accused in custody began to suspect somewhere in the innermost recesses of his mind that the suspect might be guilty of a crime he was investigating.

The Court held in the Wade case that even an eyewitness to a crime who might perhaps be the last surviving victim of the crime could not even look at a suspect in custody for the purpose of determining whether he was or was not the person he saw commit the crime unless the suspect had his lawyer present.

In the Wade case, the Court laid down the rule that, when that happened, the eyewitness could not be permitted to take the stand on the trial on the merits and give positive testimony that he saw the accused commit the crime unless the judge first held a preliminary investigation and determined by clear and convincing evidence that the look the eyewitness took at the accused during the absence of his lawyer did not influence him in any way in his conviction that he saw the accused commit the crime for which he was being tried.

Manisfestly, that is, an impossible task for a trial judge to perform. He is required to turn himself into a psychologist and delve into the innermost recesses of the witness' mind and be able to say that there is clear and convincing evidence that the eyewitness was not influenced in any respect in his conviction that he saw the accused commit the crime by the look he had in the absence of the accused's lawyer.

It had always been a practice in this Nation until that time that the question of whether an eyewitness is worthy of belief is a question for a jury and not for a judge.

I have heretofore pointed out on the floor of the Senate that the majority opinion in that case admitted in substance that nobody in this Nation could have anticipated that such a decision would be handed down until it was handed down.

I say—and in saying this, I am corroborated by four of the able Justices of the Supreme Court, Justices Clark, Harlan, Stewart, and White—that there is no warrant to be found in the Constitution for the Escobedo case. And I say this—and in saying this, I am corroborated by Justices Black, Harlan, Stewart, and White—that there is no basis whatever in the Constitution for the rule announced in the Wade case.

And in respect to the Miranda case, which allegedly is based upon the words of the fifth amendment to the effect that no person shall be compelled in any criminal case to be a witness against himself, I say—and in so saying I am corroborated by Justices Clark, Harlan, Stewart, and White that the rule there created is not only contrary to those words, but it is also contrary to every decision and every practice followed by the Supreme Court of the United States and all of those officials operating under it during the preceding 176 years.

These decisions are not only incompatible with the words of the Constitution and incompatible with all of the interpretations placed upon the words of the Constitution by the Supreme Court and incompatible with all the practices of law-enforcement authorities in the history of this Nation, but they also constitute impediments which interfere with law-enforcement officers bringing violators of criminal laws of the State and Nation to justice.

When I did not object to a unanimous-consent request for a time limitation of the debate on title II, I did not anticipate that those who oppose title II would attempt to deny Senators an opportunity to vote on the real issue, and that is whether Senators are willing to do something to prevent self-confessed criminals from going unwhipped of justice and to permit eyewitnesses to identify the parties they saw commit crimes. But we have since had an amendment in the nature of a substitute offered by the distinguished Senator from Michigan [Mr. HART] followed by an amendment in the nature of a substitute for the substitute offered by the distinguished Senator from Maryland [Mr. TYDINGS] which are designed to prevent the Senate from having to face up to the square issues presented by title II and its various sections.

The substitute and the substitute for the substitute recite that we need some factual investigations to determine whether these recently invented rules have any impact upon crime or any impact upon the failure of the courts to bring criminals to justice.

I do not know of any better authority on that subject than the Federal Bureau of Investigation. We have in the Chamber a chart prepared under the supervision of the man whom I conceive to be the greatest law-enforcement officer this Nation has ever known—Director J. Edgar Hoover. This chart, which is based upon facts gathered by the FBI since 1944, discloses these startling facts:

It shows that while the population of the United States has increased 48 percent, serious crimes—murder, forcible rape, robbery, aggravated assault, burglary, larceny of property of the value of $50 or over, and auto theft—have increased 368 percent.

It shows that since the Mallory case, wherein a majority of the Ccurt took a rule of procedure to govern the action of an arresting officer and converted it into a rule of evidence, serious crimes have increased in this Nation 268 percent.

It shows that since the Escobedo case was handed down in 1964, serious crimes have increased in this Nation by 128 percent; that since the Miranda case was handed down in 1966, serious crimes have increased in this Nation by almost 68 percent.

These figures may not show to the opponents of title II that these newly invented judge-made laws are not having any impact upon crime or upon bringing criminals to justice, but they do show one thing, beyond the peradventure of a doubt—that this is no time for judges to be inventing new and artificial rules, contrary to the Constitution, to make it more difficult to enforce the criminal laws of this Nation.

I invite attention to another chart prepared by the FBI, for the year 1966. This chart shows that six serious crimes—the categories enumerated a moment ago—are committed every minute; that a murder or a forcible rape or an assault to kill is committed in this country every 2 minutes; that a murder is committed every 48 minutes; that a forcible rape is committed every 21 minutes; that an aggravated assault is committed every 2 minutes; that a robbery is committed every three and a half minutes; that a burglary is committed every 23 seconds; that a larceny of personal property of a value of $50 or over is committed every 35 seconds; and that an auto theft is committed every 57 seconds.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I am delighted to yield to the distinguished Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I understood the distinguished Senator from North Carolina to say a moment ago that a serious crime was committed every 6 minutes. I believe the Sentor meant to say that six serious crimes are committed every minute.

Mr. ERVIN. Yes. I thank the Senator for correcting my statement. The Senator is correct. According to the figures compiled by the FBI for 1966, six serious crimes are committed every minute, every time 60 seconds pass.

Mr. BYRD of West Virginia. One every 10 seconds.

Mr. ERVIN. The Senator is correct.

The substitute amendment and the substitute for the substitute say that we need some factual informaion. We do not need any factual information. The Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary conducted extensive investigations as to the impact of these decisions, and this information covers 1,205 pages of the report. I wish I had time to read the report extensively to the Senate, but I must go on.

One of the veteran Federal judges of this Nation, a man who has done a monumental job in trying to keep the Federal courts of this land faithful to the Constitution, Judge Alexander Holtzoff, testified before the subcommittee and made this statement, in substance: He said the courts in the District of Columbia have stopped trying to determine whether the accused in criminal cases are innocent or guilty of the crimes charged. He said the courts have to spend all their time trying to determine whether the police officers of the District have violated one or the other of these recently erected rules. He said that there were less pleas of guilty since these rules had been adopted, and that there were more trials in the courts because of that fact.

I invite attention to certain statements. Those who oppose title II rely in large part upon two articles—one entitled "Interrogations in New Haven; the Impact of Miranda," published in the Yale Law Journal of July 1967, and "Miranda in Pittsburgh, a Statistical Study," published in the University of Pittsburgh Law Review of October 1967.

Mr. President, I have had prepared an analysis of these two articles, which analysis shows that they do not prove the things which the opponents of title II assert that they prove.

In the interest of time, I ask unanimous consent to have printed in the RECORD at this point the analysis of the two articles.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

Opponents of Title II of the crime bill have leaned heavily on two Law Review articles purporting to show that the Miranda decision has not really hurt law enforcement. These articles are "Interrogations in New Haven: The Impact of Miranda," Yale Law Journal, July 1967, and "Miranda in Pittsburgh—a Statistical Study," University of Pittsburgh Law Review, October 1967.

A careful study of these two articles will make it quite apparent that the data reported within the articles hardly support the conclusions reached by the authors, and certainly not the conclusions drawn from the articles by the opponents of Title II.

The Yale Study: The Yale authors conclude, "Interrogations play but a secondary role in solving the crimes of this middle-sized city, both because serious offenses are relatively infrequent and because the police rarely arrest suspects without substantial evidence." The authors themselves carefully note that serious offenses in New Haven are relatively infrequent. New Haven's 1960 population was 152,048, 14.9 percent nonwhite. The interrogations monitored by the Yale researchers covered only 11 robberies in the cases they sampled. In 1965 New Haven had only 19 robberies, the lowest by far of 12 cities of comparable size. The next lowest of the comparable cities was Tacoma with 62 robberies. Bridgeport, Conn., had 78, Nashville, Tenn., 280; Savannah 155; Sacramento 434; Fresno 189. So the New Haven police department simply does not have the kind of "crime in the streets" that police in other cities the same size face, let alone the acute crime problems faced by the big metropolitan departments. And it is precisely the armed robbery, the mugging, the yoking and rape which are relatively rare in New Haven for which interrogation is necessary. New Haven is hardly representative of the crime problem in cities where most Americans live today.

Moreover, the Yale observers concluded interrogations were "important" or "essential" in 13 to 18 percent of the cases they observed. That is, no other investigative techniques could have solved the cases. (P. 1584.) So under the Miranda rule, potentially almost a fifth of the cases could not be solved without police interrogations. This, in a nation where fewer than 25 percent of the crimes are "cleared" in any case! How far are we willing to pare down the police capacity to clear crimes? It would seem that Miranda may be the straw that has broken the camel's back, as later statistics may indicate.

The University of Pittsburgh Study: This study shows that the Pittsburgh detective branch got confessions in 58.6 percent of its homicide cases before Miranda, only 31.3 percent after; in 62.4 percent of the robberies before, 36.7 percent after. Before Miranda, 61.2 percent of the robbery suspects confessed; 28.9 percent after; homicide suspects, 59.3 percent before, 31.6 percent after. The proportion of suspects making statements dropped about half (from 48.5 percent to 27.1 percent) in homicide, robbery, burglary, auto theft and rape.

The two law professors judged confessions necessary in 20 percent of the homicide cases they studied, 20 percent of the robberies, 21 percent of the burglaries, 16 percent of the auto thefts, and 23 percent of the rapes (p. 15).

In Pittsburgh in the 18 months before Miranda, the detective bureau was clearing robberies at a rate of 45.1 percent; after Miranda in the first 13 months that rate fell to 30.3 percent, a reduction of fully one third in the proportion of cases the police were able to clear. The detective bureau was clearing 45.1 percent of the robbery cases before Miranda, only 30.8 percent after. Thus, the effectiveness of the detective bureau was *slashed about one third!*

In view of these statistics, how can anyone conclude that the Miranda decision has not harmed law enforcement, particularly in the violent crimes that make it unsafe to walk the streets of America's cities?

* * * * *

Look what has happened nationally to police effectiveness in solving reported felonies. Historically the clearance rate had held about steady until 1961 when the Supreme Court handed down its Mapp ruling, applying the artificially strict federal exclusionary rule to the police in cases of search and seizure of evidence. Then a gradual decline in clearance rates began; and after the June 1966 Miranda ruling, the decline sharply accelerated.

For example, let us compare the six months of January-June 1967 against the January-June 1966 period, the last half-year before the Miranda decision. *In the post-Miranda period, the police rate of success in solving serious crimes dropped sharply, ten percent.* We might appreciate the seriousness of this impact on law enforcement by considering the outcry that would result if the entire nation's police forces were reduced by ten percent in one fell swoop.

Murder clearances went down 4.5 percent, rapes 3.6 percent, robbery 10.4 percent, burglaries 12.1 percent, larceny 7.1 percent, auto theft 12.3 percent.

No doubt other causes played some role in these decreases in police effectiveness. In the first nine months of 1967, robberies increased 28 percent. No doubt the police had a great deal more work to do, without commensurate manpower increases. But how much of this increase in robberies can be attributed to the prevailing opinion that the Supreme Court has rendered the police powerless? In any case, it would seem that the burden of proof would rest heavily upon those who contend that the Supreme Court's decisions have not had any detrimental impact on law enforcement!

Mr. ERVIN. Mr. President, I wish to summarize very briefly some of the testimony given before the Subcommittee on Criminal Laws and Procedures when it considered this proposed legislation.

Aaron Koota, the district attorney for Kings County, N.Y., said that prior to Miranda 10 percent of suspects involved in serious crimes declined to make statements or confessions. He said that after the Miranda decision was handed down the number of suspects who refused to make statements increased from 10 to 41 percent. His statement is based on accurate records kept by him or his office.

Charles E. Moylan, Jr., State's attorney for the city of Baltimore, Md., said:

We used to get confessions in 20 or 25 percent of our cases, and now we are getting them in 2 percent of our cases. The confession, as a law enforcement instrument, has been virtually eliminated.

Frank S. Hogan, New York County district attorney, reported that in the 6 months, prior to Miranda 49 percent of the nonhomicide, felony defendants in New York County made incriminating statements while in the 6 months after the Miranda case only 35 percent gave incriminating statements.

Arlen N. Specter, district attorney, Philadelphia, Pa., said that since Escobedo and Miranda, statements from suspects arrested for serious crimes have fallen by 49 percent.

The district attorneys around the Nation feel so strongly about the disastrous effects of the Miranda case on the administration of criminal justice that their association, the National District Attorneys Association, endorsed subsections 3501 and 3502 that deal with the Miranda case.

The district attorneys of this Nation are the men who daily face the grim realities of our rising crime rates. They know law and order is being undermined by recent Supreme Court decisions, and they know far better than the misty idealists who clamor for more and more restrictions being placed on our police.

These new rulings are handed down out of a misguided and unnecessary compassion for the accused. Those who advocate these new rules seem to think that society needs no protection from criminals but that criminals need protection from law-enforcement officers. They overlook the fact that society and the victims of crime are just as much entitled to justice as the accused; and they overlook the fact that some compassion is due the victim who is sleeping in the tongueless silence of the dreamless dust, to the widow whose husband was murdered, and to the children of the victim, who oftentimes are denied adequate education because of the slaying of their father.

As I have stated before, enough has been done by these decisions for those who murder, rape, and rob. It is time for Congress to do something for those who do not wish to be murdered, raped, or robbed.

I have spent a major part of my life in the administration of justice as a trial lawyer, as a trial judge, and as an appellate judge. While I was engaged in practicing law, I devoted my efforts to a very

considerable degree to the defense of men charged with crime. I have never held the office of prosecuting attorney. As a result of my experience as a practicing lawyer representing the accused, and my experience as a trial judge, I can truthfully say that in my humble judgment these new decisions, which are based upon a distrust of the character of law-enforcement officers, and on a distrust of the veracity of human beings as witnesses, have no substantial factual foundation.

Most law-enforcement officers are honorable gentlemen, who are just as much dedicated to the performance of their duties as any Member of the Senate or any member of the Supreme Court. The overwhelming majority of Americans, when they become witnesses in court testify truthfully.

Mr. President, I wish to call to the attention of the Senate a statement made by one of the greatest judges who ever lived on the North American Continent, Judge Learned Hand, while sitting as district judge in the case of United States against Garsson, 291 Federal Reporter 646. This opinion says some things which need to be said. He was discussing the application of the accused to compel the prosecution to reveal to him the entire case of the prosecution. He said:

> Finally, the defendants, recognizing that it is difficult to make a case for quashal by the scraps of evidence accessible, move for inspection of the grand jury's minutes. I am no more disposed to grant it than I was in 1909. U.S. v. Violon (C. C.) 173 Fed. 501. It is said to lie in discretion, and perhaps it does, but no judge of this court has granted it, and I hope none ever will. 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. Why in addition he should in advance have the whole evidence against him to pick over at his leisure, and make his defense, fairly or foully, I have never been able to see. No doubt grand juries err and indictments are calamities to honest men, but we must work with human beings and we can correct such errors only at too large a price—

Here is the passage to which I should particularly like to direct the attention of the Senate:

> 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.

That is the statement of Judge Learned Hand, one of the most experienced men who ever occupied judicial office in this country.

Let me repeat it:

> 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.

Our country has erected, without such artificial and unrealistic rules as those expounded in Mallory, Escobedo, Miranda, and Wade, a system for the trial of criminal charges which makes it as certain as is humanly possible that no innocent man will ever be convicted.

Under our system, every person is presumed to be innocent of the charge against him until the truth of the charge has been proved beyond a reasonable doubt to 12 jurors. The accused has the right to remain silent. He can testify or refrain from testifying, at his election. His failure to testify cannot be made the subject of comment by the prosecuting attorney or by the judge. He has the right to confront the witnesses against him, and to cross-examine them in person or through his attorney.

He has the right to compulsory process, to secure the attendance of witnesses to testify in his behalf. As I said a moment ago, as long as one of the 12 jurors has a fair doubt of his guilt, he cannot be convicted.

After he is convicted, he has the right to appeal to the highest court in the State having appellate jurisdiction of his case; and then to the Supreme Court of the United States if he claims he has been denied any right under the Federal Constitution, or under any act of Congress, or under any treaty of the United States.

Mr. President, I have already pointed out that the National District Attorneys Association has recently adopted a resolution endorsing certain of the provisions of title II.

I ask unanimous consent to have this resolution printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

> RESOLUTION 2: MCCLELLAN AMENDMENTS
>
> Be it resolved, that the National District Attorneys Association in convention assembled hereby endorses amendments offered by United States Senator John McClellan to the Safe Streets and Crime Control Act (S. 917) as follows:
>
> 1. An amendment authorizing wire-tapping and electronic interception of communication pursuant to court order.
>
> 2. An amendment making voluntariness the test for admissibility of any statement, admission or confession.
>
> 3. An amendment restricting the jurisdiction of the United States Supreme Court to review certain decisions of state supreme courts.

Mr. ERVIN. Mr. President, let me now proceed to another provision of title II, which is incorporated in section 702, on page 47 of the bill and which reads as follows:

> The judgment of a court of a State upon a plea or verdict of guilty in a criminal action shall be conclusive with respect to all questions of law or fact which were determined, or which could have been determined, in that action until such judgment is reversed, vacated, or modified by a court having jurisdiction to review by appeal or certiorari such judgment; and neither the Supreme Court nor any inferior court ordained and established by Congress under article III of the Constitution of the United States shall have jurisdiction to reverse, vacate, or modify any such judgment of a State court except upon appeal from, or writ of certiorari granted to review, a determination made with respect to such judgment upon review thereof by the highest court of that State having jurisdiction to review such judgment.

Mr. President, the Senator from Maryland declared this morning that this provision would deny a man tried in a State court the benefit of his rights under the Federal Constitution.

With all due respect to him, I assert my good friend is in error.

This provision would secure to every man the right to raise any point in his defense which may arise under either Federal or State law, the right to appeal to the highest appellate court of his State having jurisdiction of his case, and then to secure a review by the Supreme Court of the United States, if the Supreme Court of the United States finds there is reason to believe that he has been denied any right to which he is entitled under the Constitution of the United States, under any act of Congress, or under any treaty of the United States.

My friend from Maryland also intimated that it is unconstitutional. Well, I am moved to offer this amendment because the chief justices of the State courts of this country, by formal resolution on one or more occasions, have appealed to Congress to pass a statute of this character. I do not believe they would petition Congress to enact an unconstitutional law.

In a few moments, I shall ask to have included in the RECORD the concurring opinion of Justice Jackson in the case of *Brown* v. *Allen*, which is reported in 344 U.S. at 443.

On page 539 of that decision, Justice Jackson sets forth in his concurring opinion a footnote which incorporates in full a resolution adopted by the Conference of Chief Justices of the Courts of the States in 1952, and which makes this plea to the Congress of the United States:

> Now, therefore, be it resolved That it is the considered view of the Chief Justices of the States of the Union, in conference duly assembled, that orderly Federal procedure under our dual system of Government should require that a final judgment of a State's highest court be subject to review or reversal only by the Supreme Court of the United States.

Prior to making that request of the Congress, the Conference of Chief Justices of the States of this Union set forth certain whereases, in which they pointed out how the recent rulings of the Supreme Court in relation to writs of habeas corpus to inquire into the legality of the detention of persons held under the judgments of State courts were bringing about chaos in the administration of justice in this country.

As a result of some of these rulings, many States, such as my own State of North Carolina, have had to set up what are called postconviction proceedings. I might state as an absolute truth that where these postconviction proceedings are authorized by State law, we have a system under which in the original trial the court tries the accused, and in the postconviction proceeding the accused tries the court.

These rulings of the Supreme Court have absolutely nullified the words of the statute giving the court jurisdiction to issue writs of habeas corpus to inquire in-

to the legality of the detention of State prisoners.

I am sorry that my good friend the Senator from Maryland [Mr. TYDINGS] has left the floor, because he and I had a little colloquy about the writ of habeas corpus this morning. I find he and I are in substantial disagreement with respect to many aspects of the question. So I want to summon the Supreme Court of the United States to my side on this one occasion.

In England the writ of habeas corpus was originally used solely to inquire into the legality of the detention of the applicant by an executive officer or private citizen. It did not lie originally to inquire into the legality of the detention of any person held pursuant to the judgment of any court.

As time passed, however, it was modified and it was permitted to issue to inquire into the legality of the detention of a person under the order of the court, provided it was alleged and shown that the judgment of the court was void in that the court either had no jurisdiction of the person of the applicant or no jurisdiction of the case in which the applicant had been tried. It did not lie to inquire into whether or not errors of law had been committed by the trial court which had sentenced the applicant. In other words, it was not permitted to be used as a substitute for an appeal.

The United States of America has no common law. All of its laws must be found either in the Constitution or in an act of Congress or in a treaty made by it. So, as a result, much of the talk about what the common law permitted in England or in the States is not germane to our subject.

I pointed out on a previous occasion that except for the limited original jurisdiction of the Supreme Court, neither the Supreme Court nor an inferior Federal court has any jurisdiction other than that vested in it by Congress which must confine any jurisdiction granted by it to one of the cases or controversies named in article III.

I mentioned the fact that originally habeas corpus would lie only to inquire into the legality of the detention of a person held under the order of a court where the order was void for want of jurisdiction of the person of the applicant or the cause for which he was tried.

Now I would like to call attention to this point. The Supreme Court of the United States held, in *Bergemann* v. *Becker* (157 United States 655); *re Frederich* (149 U.S. 70, *Ex parte Carll* (106 U.S. 521), and *Ex parte Parks* (93 U.S. 18), that the well-settled rule that the only ground on which any court without some special statute authorizing it will give relief on habeas corpus to a prisoner under conviction and sentence of another court is the want of jurisdiction of the latter over the person or the cause applies to habeas corpus proceedings before the Supreme Court.

So even the Supreme Court of the United States, according to its own decisions, apart from special statutes, has no power to issue a writ of habeas corpus to inquire into the legality of the detention of the applicant under sentence of any court unless the court which imposed the sentence lacked jurisdiction of the person of the applicant or jurisdiction of the cause in which he was tried.

I stated this morning in my colloquy with the Senator from Maryland that the Federal courts had no jurisdiction by way of habeas corpus in respect to the detention of prisoners under State judgments prior to 1867. This was true because Congress did not so provide, and the Federal district courts—or circuit courts, as they were then called—had no jurisdiction except that conferred upon them by Congress.

The first act of Congress having any relation to this subject was the Judiciary Act of 1789. I am reading a passage from 25 American Jurisprudence, Habeas Corpus, Section 112, at pages 226 and 227;

> Under the Judiciary Act of 1789, the courts of the United States and any of the justices of the Supreme Court, as well as the judges of the District Courts, had power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment; but this extended in no case to prisoners in jail, unless they were in custody by color of the authority of the United States or had been committed for trial before some court of the United States, or unless it was necessary to bring them into court to testify. Under that act, no writ of habeas corpus, except ad testificandum, could be issued in the case of a prisoner in jail under commitment by a court or magistrate of a state. The law remained in this condition until the events connected with the nullification proceedings in South Carolina, by which officers of the United States engaged in collecting the revenue and performing other duties in that state were, for that reason, subjected by the laws of South Carolina to imprisonment. At that time, the power of the United States courts was extended to all cases of prisoners in jail or confinement, where committed or confined on or by any authority or law for any act done or omitted to be done in pursuance of a law of the United States or of any order, process, or decree of any judge or court thereof. In 1842 there was another extension of power, whereby the writ could be issued where the prisoner, being a subject or citizen of a foreign state and domiciled therein, was committed or confined under or by any authority or law of the United States or of any one of them, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption set up or claimed under the commission, order, or sanction of any foreign state or sovereignty, the validity and effect whereof depend upon the law of nations or under color thereof.

Outside of that, Federal trial courts had no jurisdiction whatsoever to inquire into the legality of the detention of any State prisoners by the writ of habeas corpus prior to 1867.

Surely, that would have been unconstitutional, too, if the Constitution had not provided that the jurisdiction of the Federal courts depends upon acts of Congress.

Among the greatest judges, greatest legal scholars, and most knowledgeable men in constitutional law who have ever adorned the Supreme Court of the United States is one of the present justices of that court, Justice John Marshall Harlan. In a recent case, the *Fay* case 372 U.S. 391, he outlined the history of the use of the writ of habeas corpus by Federal district judges. For the information of the Senate, I ask unanimous consent that a copy of his opinion—which is a dissenting opinion—be printed in the RECORD at this point.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

[October term, 1962]

HARLAN, J., DISSENTING

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

This decision, both in its abrupt break with the past and in its consequences for the future, is one of the most disquieting that the Court has rendered in a long time.

Section 2241 of the Judicial Code, 28 U.S.C. § 2241, entitled "Power to grant writ," which is part of the federal habeas corpus statute, provides among other things:

"(c) The writ of habeas corpus shall not extend to a prisoner unless—

* * * * *

"(3) He is in custody in violation of the Constitution or laws or treaties of the United States."

I dissent from the Court's opinion and judgment for the reason that the federal courts have no *power*, statutory or constitutional, to release the respondent Nola from state detention. This is because his custody by New York does not violate any federal right, since it is pursuant to a conviction whose validity rests upon an adequate and independent state ground which the federal courts are required to respect.

A full exposition of the matter is necessary, and I believe it will justify the statement that in what it does today the Court has turned its back on history and struck a heavy blow at the foundations of our federal system.

I. DEPARTURE FROM HISTORY

The history of federal habeas corpus jurisdiction, I believe, leaves no doubt that today's decision constitutes a square rejection of long-accepted principles governing the nature and scope of the Great Writ.[1]

Habeas corpus ad subjiciendum is today, as it has always been, a fundamental safeguard against unlawful custody. The importance of this prerogative writ, requiring the body of a person restrained of liberty to be brought before the court so that the lawfulness of the restraint may be determined, was recognized in the Constitution,[2] and the first Judiciary Act gave the federal courts authority to issue the writ "agreeable to the principles and usages of law." [3] Although the wording of earlier statutory provisions has been changed, the basic question before the court to which the writ is addressed has always been the same: in the language of the present statute, on the books since 1867, is the detention complained of "in violation of the Constitution or laws or treaties of the United States"? *Supra*, p. 448.

Detention can occur in many contexts, and in each the scope of judicial inquiry will differ. Thus a child may be detained by a parent, an alien excluded by an immigration

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[1] For a broad range of views, see the analytical discussions of the development of federal habeas corpus jurisdiction in Hart, Foreword, 73 Harv. L. Rev. 84; Reitz, Federal Habeas Corpus: Impact of an Abortive State Proceeding, 74 Harv. L. Rev. 1315; Brennan, Federal Habeas Corpus and State Prisoners: An Exercise in Federalism, 7 Utah L. Rev. 423; and Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441.

[2] U. S. Const., Art. I, § 9, cl. 2.

[3] Section 14 of the Judiciary Act of 1789, c. 20, 1 Stat. 73, 81–82.

official, or a citizen arrested by a policeman and held without being brought to a magistrate. But the custody with which we are here concerned is that resulting from a judgment of criminal conviction and sentence by a court of law. And the question before us is the circumstances under which that custody may be held to be inconsistent with the commands of the Federal Constitution. What does history show?

1. *Pre-1915 period.*—The formative stage of the development of habeas corpus jurisdiction may be said to have ended in 1915, the year in which *Frank* v. *Mangum*, 237 U.S. 309, was decided. During this period the federal courts, on applications for habeas corpus complaining of detention pursuant to a judgment of conviction and sentence, purported to examine *only* the jurisdiction of the sentencing tribunal. In the leading case of *Ex parte Watkins*, 3 Pet. 193, the Court stated:

"An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous." 3 Pet., at 203.

Many subsequent decisions, dealing with both state and federal prisoners, and involving both original applications to this Court for habeas corpus and review of lower court decisions, reaffirmed the limitation of the writ to consideration of the sentencing court's jurisdiction over the person of the defendant and the subject matter of the suit. *E. g., Ex parte Parks*, 93 U.S. 18; *Andrews* v. *Swartz*, 156 U.S. 272; *In re Belt*, 159 U.S. 95; *In re Moran*, 203 U.S. 96.

The concept of jurisdiction, however, was subjected to considerable strain during this period, and the strain was not lessened by the fact that until the latter part of the last century, federal criminal convictions were not generally reviewable by the Supreme Court.[4] The expansion of the definition of jurisdiction occurred primarily in two classes of cases: (1) those in which the conviction was for violation of an allegedly unconstitutional statute, and (2) those in which the Court viewed the detention as based on some claimed illegality in the sentence imposed, as distinguished from the judgment of conviction. An example of the former is *Ex parte Siebold*, 100 U.S. 371, in which the Court considered on its merits the claim that the acts under which the indictments were found were unconstitutional, reasoning that "[a]n unconstitutional law is void, and is as no law," and therefore "if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." 100 U.S., at 376–377.[5] An example of the latter is *Ex parte Lange*, 18 Wall. 163, in which this Court held that if a valid sentence had been carried out, and if the governing statute permitted only one sentence, the sentencing judge lacked jurisdiction to impose further punishment:

"[W]hen the prisoner . . . by reason of a valid judgment, had fully suffered one of the alternative punishments to which alone the law subjected him, the power of the court to punish further was gone." 18 Wall., at 176.[6]

It was also during this period that Congress, in 1867, first made habeas corpus available by statute to prisoners held under state authority. Act of February 5, 1867, c. 28, § 1, 14 Stat. 385. In this 1867 Act the Court now seems to find justification for today's decision, relying on the statement of one of its proponents that the bill was "coextensive with all the powers that can be conferred" on the courts and judges of the United States. Cong. Globe, 39th Cong., 1st Sess. 4151. But neither the statute itself, its legislative history, nor its subsequent interpretation lends any support to the view that habeas corpus jurisdiction since 1867 has been exercisable whether or not the state detention complained of rested on decision of a federal question.

First, there is nothing in the language of the Act—which spoke of the availability of the writ to prisoners "restrained of . . . liberty in violation of the constitution . . ."—to suggest that there was any change in the *nature* of the writ as applied to one held pursuant to a judgment of conviction. The language was that typically employed in habeas corpus cases, and, as we have seen, it was not believed that a person so held was restrained in violation of law if the sentencing court had personal and subject matter jurisdiction. Rather, the change accomplished by the language of the Act related to the *classes* of prisoners (in particular, state as well as federal) for whom the writ would be available.

Second, what little legislative history there is does not suggest any change in the nature of the writ. The extremely brief debates indicated only a lack of understanding as to what the Act would accomplish, coupled with an effort by the proponents to make it clear that the purpose was to extend the availability of the writ to persons not then covered; there was no indication of any intent to alter its substantive scope.[7] Thus, less than 20 years after enactment, a congressional committee could say of the 1867 Act that it was not "contemplated by its framers or . . . properly . . . construed to authorize the overthrow of the final judgments of the State courts of general jurisdiction, by the inferior Federal judges . . ."[8]

Third, cases decided under the Act during this period made it clear that the Court did not regard the Act as changing the character of the writ. In considering the lawfulness of the detention of state prisoners, the Court continued to confine itself to questions it regarded as "jurisdictional." See, *e.g., In re Rahrer*, 140 U.S. 545; *Harkrader* v. *Wadley*, 172 U.S. 148; *Pettibone* v. *Nichols*, 203 U.S. 192. And the Court repeatedly held that habeas corpus was not available to a state prisoner to consider errors, even constitutional errors, that did not go to the jurisdiction of the sentencing court. *E.g., In re Wood*, 140 U.S. 278; *Andrews* v. *Swartz*, 156 U.S. 272; *Bergemann* v. *Backer*, 157 U.S. 655.

At the same time, in dealing with applications by state prisoners the Court developed the doctrine of exhaustion of state remedies, a doctrine now embodied in 28 U.S.C. § 2254. In *Ex parte Royall*, 117 U.S 241, the prisoner had brought federal habeas corpus seeking release from his detention pending a state prosecution, and alleging that the statute under which he was to be tried was void under the Contract Clause. The *power* of the federal court to act in this case, if the allegations could be established, was clear since under accepted principles the State would have lacked "jurisdiction" to detain the prisoner. But the Court observed that the question of constitutionality would be open to the prisoner at his state trial and, absent any showing of urgency, considerations of comity counseled the exercise of discretion to withhold the writ at this early stage. In subsequent decisions, the Court continued to insist that state remedies be exhausted, even when the applicant alleged a lack of jurisdiction in state authorities which, if true, would have enabled the federal court to act on the application immediately. *E. G., Ex parte Fonda*, 117 U.S. 516; *Cook* v. *Hart*, 146 U.S. 183; *New York* v. *Eno*, 155 U.S. 89. As stated in *Cook* v. *Hart*, 146 U.S., at 195, "The party charged *waives no defect of jurisdiction* by submitting to a trial of his case upon the merits . . . Should . . . [his] rights be denied, his remedy in the Federal court will remain unimpaired." (Emphasis added.) The question whether the Constitution deprived the State of *jurisdiction*, in other words, would remain open under traditional doctrine, on collateral as well as direct attack.

There can be no doubt of the limited scope of habeas corpus during this formative period, and of the consistent efforts to confine the writ to questions of jurisdiction. But the cardinal point for present purposes is that in no case was it held, or even suggested, that habeas corpus would be available to consider any claims by a prisoner held pursuant to a state court judgment whose validity rested on an adequate *nonfederal* ground. Indeed, so long as the writ was confined to claims by state prisoners that the State was constitutionally precluded from exercising its jurisdiction in the particular case, it is difficult to conceive of a decision to detain in such cases resting on an adequate state ground. Even when the concept of jurisdiction was expanded, as in *Ex parte Siebold*, 100 U.S. 371, and other decisions, the matters open on habeas were still limited to those which were believed to have deprived the sentencing court of all competence to act, and which therefore could always be raised on collateral attack. It is for this reason that the *Royall* line of "exhaustion" cases, relied on so heavily by the Court, has no real bearing on the problem before us. For those cases dealt only with the *discretion* of the court to take action which, if the allegations of lack of state jurisdiction were upheld, it would have had *power* to take either before or after state consideration. The issue here, on the other hand, is one of *power*, and wholly different considerations are involved.

In those few instances during this early period when the Court discussed questions it did not regard as jurisdictional, it occasionally went so far as to suggest that a constitutional claim could not be raised on habeas even if the state decision to detain rested on an *inadequate* state ground—that the only avenue of relief was direct review. Thus in *Andrews* v. *Swartz*, 156 U.S. 272, where the claim made on federal habeas was the systematic exclusion of Negroes from a state jury, the Court held it "a sufficient answer to this contention that the state court had jurisdiction both of the offence charged and of the accused." *Id.*, at 276. It continued:

"Even if it be assumed that the state court improperly denied to the accused . . . the right to show by proof that persons of his race were arbitrarily excluded . . . it would not follow that the court lost jurisdiction of the case within the meaning of the well-established rule that a prisoner under conviction and sentence of another court will not be discharged on *habeas corpus* unless

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[4] The statutory development relating to review of criminal cases by the Supreme Court is discussed in Bator, *supra*, note 1, at 473, n. 75.

[5] See also, *e. g., Ex parte Jackson*, 96 U.S. 727; *Ex parte Yarbrough*, 110 U.S. 651; *Minnesota* v. *Brundage*, 180 U.S. 499.

[6] See also, *e. g., Ex parte Wilson*, 114 U.S. 417; *In re Snow*, 120 U.S. 274; *In re Bonner*, 151 U. S. 242. Compare *Ex parte Bigelow*, 113 U. S. 328.

In addition, there were a few cases during this period in which the Court rejected claims made in habeas corpus, apparently on their merits, without clearly limiting itself to questions of "jurisdiction." See *In re Converse*, 137 U. S. 624; *Felts* v. *Murphy*, 201 U. S. 123. See also Bator, *supra*, note 1, at 484. These cases were infrequent, however, and must be considered as exceptions to the general rules held to be applicable in this formative period.

[7] The remarks of Congressman Lawrence quoted by the majority, *ante*, p. 417, were in response to a suggestion by Congressman LeBlond that the bill would not cover certain civilians in military custody. Cong. Globe, 39th Cong., 1st Sess. 4151. See also *id.*, at 4229.

[8] H. R. Rep. No. 730, 48th Cong., 1st Sess. 5 (1884).

the court that passed the sentence was so far without jurisdiction that its proceedings must be regarded as void." *Ibid.*

2. *1915–1953 period.*—The next stage of development may be described as beginning in 1915 with *Frank* v. *Mangum*, 237 U.S. 309, and ending in 1953 with *Brown* v. *Allen*, 344 U.S. 443. In *Frank*, the prisoner had claimed before the state courts that the proceedings in which he had been convicted for murder had been dominated by a mob, and the State Supreme Court, after consideration not only of the record but of extensive affidavits, had concluded that mob domination had not been established.[9] Frank then sought federal habeas, and this Court affirmed the denial of relief. But in doing so the Court recognized that Frank's allegation of mob domination raised a constitutional question which he was entitled to have considered by a competent tribunal uncoerced by popular pressures. Such "corrective process" had been afforded by the State Supreme Court, however, and since Frank had received "notice, and a hearing, or an opportunity to be heard" on his constitutional claims (237 U.S., at 326), his detention was not in violation of federal law and habeas corpus would not lie.

It is clear that a new dimension was added to habeas corpus in this case, for in addition to questions previously thought of as "jurisdictional," the federal courts were now to consider whether the applicant had been given an adequate opportunity to raise his constitutional claims before the state courts. And if no such opportunity had been afforded in the state courts, the federal claim would be heard on its merits. The Court thus rejected the views expressed in *Andrews* v. *Swartz*, *supra*, p. 455, by holding, in effect, that a constitutional claim could be heard on habeas if the State's refusal to give it proper consideration rested on an *inadequate* state ground. But habeas would not lie to reconsider constitutional questions that had been fairly determined. And *a fortiori* it would not lie to consider a question when the state court's refusal to do so rested on an adequate and independent state ground.

In this connection, it is important to note the section of the opinion relating to Frank's separate constitutional claim that his involuntary absence from the courtroom at the time the verdict was rendered invalidated the conviction. Frank had failed to raise this point in his motion for a new trial; that state court held that it had been "waived"; and this Court decided that the state rule barring assertion of the point after failure to raise it in a motion for new trial was reasonable and did not violate due process.[10] Clearly, the significance of the Court's ruling was that as to *this* constitutional claim, whatever its merits if the point had been properly preserved, there was an adequate nonfederal ground for the detention.

In no case prior to *Brown* v. *Allen*, I submit, was there any substantial modification of the concepts articulated in the *Frank* decision. In *Moore* v. *Dempsey*, 261 U.S. 86, this Court did require a hearing on federal habeas of a claim similar to that in *Frank*, of mob domination of the trial, even though the state appellate court had purported to pass on the claim, but only by refusing to "assume that the trial was an empty ceremony." [11] The decision of this Court is sufficiently ambiguous that it seems to have meant all things to all men.[12] But I suggest that the decision cannot be taken to have overruled *Frank;* it did not purport to do so, and indeed it was joined by two Justices who had joined in the *Frank* opinion. Rather, what the Court appears to have held was that the state appellate court's perfunctory treatment of the question of mob domination, amounting to nothing more than reliance on the presumptive validity of the trial, was not in fact acceptable corrective process and federal habeas would therefore lie to consider the merits of the claim. Until today, the Court has consistently so interpreted the opinion, as in *Ex parte Hawk*, 321 U.S. 114, 118, where *Moore* was cited as an example of a case in which "the remedy afforded by state law proves in practice unavailable or seriously inadequate." See also *Jennings* v. *Illinois*, 342 U.S. 104, 111.

Certainly, there is no basis in the *Moore* opinion, whatever it may fairly be taken to mean, for concluding that the Court required consideration on federal habeas of a question which the state court had had an *adequate state ground* for refusing to consider. The claim of mob domination *was* considered, although apparently inadequately, by the state court, and it was only on this premise that the claim was required to be heard on habeas.

Subsequent decisions involving state prisoners continued to indicate that the controlling question on federal habeas—apart from matters going to lack of state jurisdiction in light of federal law—was whether or not the State had afforded adequate opportunity to raise the federal claim. If not, the federal claim could be considered on its merits. See, *e.g.*, *Mooney* v. *Holohan*, 294 U.S. 103; *White* v. *Ragen*, 324 U.S. 760; *Woods* v. *Nierstheimer*, 328 U.S. 211; cf. *Jennings* v. *Illinois*, 342 U.S. 104.[13]

A development paralleling that in *Frank* v. *Mangum* took place during this period with regard to federal prisoners. The writ remained unavailable to consider questions that were or could have been raised in the original proceedings, or on direct appeal, see *Sunal* v. *Large*, 332 U.S. 174, but it was employed to permit consideration of constitutional questions that could not otherwise have been adequately presented to the courts. *E.g.*, *Johnson* v. *Zerbst*, 304 U.S. 458; *Walker* v. *Johnston*, 312 U.S. 275; *Waley* v. *Johnston*, 316 U.S. 101. This limited scope of habeas corpus, and its statutory substitute 28 U.S.C. § 2255, in relation to federal prisoners may have survived *Brown* v. *Allen* and may still survive today. See, *e.g.*, *Franano* v. *United States*, 303 F. 2d 470, cert. denied, 371 U.S. 865. Compare *Jordan* v. *United States*, 352 U.S. 904.

To recapitulate, then, prior to *Brown* v. *Allen*, habeas corpus would not lie for a prisoner who was in custody pursuant to a state judgment of conviction by a court of competent juridiction if he had been given an adequate opportunity to obtain full and fair consideration of his federal claim in the state courts. Clearly, under this approach, a detention was not in violation of federal law if the validity of the state conviction on which that detention was based rested on an adequate nonfederal ground.

3. *Post-1953, Brown* v. *Allen, period.*—In 1953, this Court rendered its landmark decisions in *Brown* v. *Allen*, 344 U.S. 443, and *Daniels* v. *Allen*, reported therewith, 344 U.S., at 482–487.[14] Both cases involved applications for federal habeas corpus by prisoners who were awaiting execution pursuant to state convictions. In both cases, the constitutional contentions made were that the trial court had erred in ruling confessions admissible and in overruling motions to quash the indictment on the basis of alleged discrimination in the selection of jurors.

In *Brown*, these contentions had been presented to the highest court of the State, on direct appeal from the conviction, and had been rejected by that court on the merits, *State* v. *Brown*, 233 N. C. 202, 63 S. E. 2d 99, after which this Court had denied certiorari, 341 U.S. 943. At this point, the Court held, Brown was entitled to full reconsideration of these constitutional claims, with a hearing if appropriate, in an application to a Federal District Court for habeas corpus.

It is manifest that this decision substantially expanded the scope of inquiry on an application for federal habeas corpus.[15] *Frank* v. *Mangum* and *Moore* v. *Dempsey* had denied that the federal courts in habeas corpus sat to determine whether errors of law, even constitutional law, had been made in the original trial and appellate proceedings. Under the decision in *Brown*, if a petitioner could show that the validity of a state decision to detain rested on a determination of a constitutional claim, and if he alleged that determination to be erroneous, the federal court had the right and the duty to satisfy itself of the correctness of the state decision.

But what if the validity of the state decision to detain rested not on the determination of a federal claim but rather on an adequate non-federal ground which would have barred direct review by this Court? That was the question in *Daniels*. The attorney for the petitioners in that case had failed to mail the appeal papers on the last day for filing, and although he delivered them by hand the next day, the State Supreme Court refused to entertain the appeal, ruling that it had not been filed on time. This ruling, this Court held, barred federal habeas corpus consideration of the claims that the state appellate court had refused to consider. Language in Mr. Justice Reed's opinion for the Court appeared to support the result alternatively in

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[9] *Frank* v. *State*, 141 Ga. 243, 280–281, 80 S. E. 1016, 1032–1033.

[10] See 237 U. S., at 343. The dissenting opinion, 237 U. S., at 345, 346, did not take issue with this holding, but rather focused on the allegations of mob domination.

[11] *Hicks* v. *State*, 143 Ark. 158, 162, 220 S. W. 308, 310.

[12] Compare Hart, *supra*, note 1, at 105; Reitz, *supra*, note 1, at 1328–1329; Bator, *supra*, note 1, at 488–491.

[13] It has been suggested that language in such cases as *White* v. *Ragen*, 324 U.S. 760, 765, and *House* v. *Mayo*, 324 U.S. 42, 48, supports the result reached today by indicating that federal habeas will lie when an adequate state ground bars direct review by this Court. See Brennan, *supra*, note 1, at 431–432, n. 51; Reitz, *supra*, note 1, at 1359–1360. But these cases do not stand for this proposition. In each of them the state court appeared to have denied that the particular post-conviction remedy sought was available to redress a claim of federal right that could not have been adequately asserted in the original trial. In each of them, it remained possible that other state remedies might be open, in which event it seemed clear that the particular denial of relief rested on an adequate state ground. But if it was subsequently determined—either by further attempts to obtain state relief or by proof in a Federal District Court—that no state remedies of any kind were ever available in the state courts, then federal habeas would lie. For, "it is not simply a question of state procedure," and there is no truly adequate state ground, "when a state court of last resort closes the door to any consideration of a claim of denial of a federal right." *Young* v. *Ragen*, 337 U.S. 235, 238; cf. *Ward* v. *Love County*, 253 U.S. 17; *General Oil Co.* v. *Crain*, 209 U.S. 211. In other words, the proposition that cases such as *White* v. *Ragen* do stand for is that this Court will, as a matter of sound judicial administration, accept what *appears on its face* to be an adequate state ground because the Federal District Court remains open for more intensive consideration of the petitioner's claim of inadequacy. Cf. 28 U.S.C. § 2241(b).

[14] A third case, *Speller* v. *Allen*, was also reported at the same time but was not significantly different, for present purposes, from *Brown* v. *Allen*.

[15] *Brown* v. *Mississippi*, 297 U.S. 278, cited by the Court, *ante*, p. 414, arose on direct review of a state conviction, and did not suggest that a claim of a coerced confession, once determined by the state courts, could be redetermined on federal habeas.

terms of waiver,[16] failure to exhaust state remedies,[17] and the existence of an adequate state ground.[18] But while the explanation may have been ambiguous, the result was clear; habeas corpus would not lie for a prisoner who was detained pursuant to a state judgment which, in the view of the majority in *Daniels*, rested on a reasonable application of the State's own procedural requirements. Moreover, the issue was plainly viewed as one of *authority*, not of discretion. 344 U.S., at 485.

I do not pause to reconsider here the question whether the state ground in *Daniels* was an adequate one; persuasive arguments can be made that it was not. The important point for present purposes is that the approach in *Daniels* was wholly consistent with established principles in the field of habeas corpus jurisdiction. The problem, however, had been brought into sharper focus by the result in *Brown*. Once it is made clear that the questions open on federal habeas extend to such matters as the admissibility of confessions, or of other evidence, the possibility that inquiry may be precluded by the existence of a state ground adequate to support the judgment is substantially increased.

Issues similar to those in *Daniels* next came before the Court in *Irvin* v. *Dowd*, 359 U.S. 394. In that case, the state court's decision affirming Irvin's conviction for murder was ambiguous and it could have been interpreted to rest on a state ground even though Irvin's federal constitutional claims were considered. *Irvin* v. *State*, 236 Ind. 384, 139 N.E. 2d 898; see also the dissenting opinion of this writer in *Irvin* v. *Dowd*, *supra*, 412. This Court, in reversing a dismissal of an application for federal habeas corpus, concluded that the state court decision had rested on determination of Irvin's federal claims, and held that those claims could therefore be considered on federal habeas. The majority appeared to approach the problem as one of exhaustion,[19] but the basic determination was that the state court judgment, pursuant to which Irvin was detained, did not rest on an application of the State's procedural rules.

This brings us to the present case. There can, I think, be no doubt that today's holding—that federal habeas will lie despite the existence of an adequate and independent nonfederal ground for the judgment pursuant to which the applicant is detained—is wholly unprecedented. Indeed, it constitutes a direct rejection of authority that is squarely to the contrary. That the result now reached is a novel one does not, of course, mean that it is necessarily incorrect or unwise. But a decision which finds virtually no support in more than a century of this Court's experience should certainly be subject to the most careful scrutiny.

II. CONSTITUTIONAL BARRIER

The true significance of today's decision can perhaps best be laid bare in terms of a hypothetical case presenting questions of the powers of this Court on direct review, and of a Federal District Court on habeas corpus.

1. *On direct review.*—Assume that a man is indicted, and held for trial in a state court, by a grand jury from which members of his race have been systematically excluded. Assume further that the State requires any objection to the composition of the grand jury to be raised prior to the verdict, that no such objection is made, and that the defendant seeks to raise the point for the first time on appeal from his conviction. If the state appellate court refuses to consider the claim because it was raised too late, and if certiorari is sought and granted, the initial question before this Court will be whether there was an adequate state ground for the judgment below. If the petitioner was represented by counsel not shown to be incompetent, and if the necessary information to make the objection is not shown to have been unavailable at the time of trail, it is certain that the judgment of conviction will stand, despite the fact the indictment was obtained in violation of the petitioner's constitutional rights.[20]

What is the reason for the rule that an adequate and independent state ground of decision bars Supreme Court review of that decision—a rule which, of course, is as applicable to procedural as to substantive grounds? In *Murdock* v. *Memphis*, 20 Wall. 590, 632–636, it was concluded that under the governing statute (i) the Court did not have jurisdiction, on review of a state decision, to examine and decide "questions not of a Federal character," *id.*, at 633, and (ii) an erroneous decision of a federal question by a state court could not warrant reversal if there were:

"any other matter or issue adjudged by the State court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question." *Id.*, at 636.

But as the Court in *Murdock* so strongly implied, and as emphasized in subsequent decisions, the adequate state ground rule has roots far deeper than the statutes governing our jurisdiction, and rests on fundamentals that touch this Court's habeas corpus jurisdiction equally with its direct reviewing power. An examination of the alternatives that might conceivably be followed will, I submit, confirm that the rule is one of constitutional dimensions going to the heart of the division of judicial powers in a federal system.

One alternative to the present rule would be for the Court to review and decide any federal questions in the case, even if the determination of nonfederal questions were adequate to sustain the judgment below, and then to send the case back to the state court for further consideration. But it needs no extended analysis to demonstrate that such action would exceed this Court's powers under Article III. As stated in *Herb* v. *Pitcairn*, 324 U.S. 117, 126:

"[O]ur power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

Another alternative, which would avoid the problem of advisory opinions, would be to take the entire case and to review on the merits the state court's decision of *every* question in it. For example, in our hypothetical case the Court might consider on its merits the question whether the state court correctly ruled that under state law objections to the composition of the grand jury must be made prior to the verdict.

To a limited extent, of course, this procedural ruling of the state court raises federal as well as state questions. It is clear that a State may not preclude Supreme Court review of federal claims by discriminating against or evading the assertion of a federal right, and indeed that state procedural grounds for refusal to consider a federal claim must rest on a "fair or substantial basis."[21] Occasionally this means that a state procedural rule which may properly preclude the raising of state claims in a state court cannot thwart review of federal claims in this Court.[22] These principles are inherent in the concept that a state ground, to be of sufficient breadth to support the judgment, must be *both* "adequate" and "independent."

But determination of the adequacy and independence of the state ground, I submit, marks the constitutional limit of our power in this sphere. The reason why this is so was perhaps most articulately expressed in a different but closely related context by Mr. Justice Field in his opinion in *Baltimore & O. R. Co.* v. *Baugh*, 149 U.S. 368, 401. He stated, in a passage quoted with approval by the Court in the historic decision in *Erie R. Co.* v. *Tompkins*, 304 U.S. 64, 78–79:

"[T]he Constitution of the United States . . . recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the States is in no case permissible except as to matters by the Constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the State and, to that extent, a denial of its independence."

For this Court to go beyond the adequacy of the state ground and to review and determine the correctness of that ground on its merits would, in our hypothetical case, be to assume full control over a State's procedures for the administration of its own criminal justice. This is and must be beyond our power if the federal system is to exist in substance as well as form. The right of the State to regulate its own procedures governing the conduct of litigants in its courts, and its interest in supervision of those procedures, stand on the same constitutional plane as its right and interest in framing "substantive" laws governing other aspects of the conduct of those within its borders.

There is still a third possible course this Court might follow if it were to reject the adequate state ground rule. The Act of 1867, which in § 1 extended the habeas corpus jurisdiction to state prisoners detained in violation of federal law, in § 2 gave the Supreme Court the authority, in cases coming from the state courts, to order execution directly without remanding the case. 14 Stat. 385, 386–387. That authority, which has been exercised at least once,[23] remained unimpaired through the modifications of appellate and certiorari jurisdiction,[24] and

[16] See 344 U.S., at 486. See also Mr. Justice Frankfurter's separate opinion, 344 U.S., at 488, 503.

[17] "A failure to use a state's available remedy, in the absence of some interference or incapacity . . . bars federal habeas corpus. The statute requires that the applicant exhaust available state remedies. To show that the time has passed for appeal is not enough to empower the Federal District Court to issue the writ." 344 U.S., at 487.

[18] "[W]here the state action was based on an adequate state ground, no further examination is required, unless no state remedy for the deprivation of federal constitutional rights ever existed." 344 U.S., at 458.

[19] Analysis of the problem in terms of exhaustion of remedies no longer available has been severely criticized. Hart, *supra*, note 1, at 112–114. This "exhaustion" approach is today quite properly interred. *Ante*, pp. 434–435.

[20] See *Michel* v. *Louisiana*, 350 U.S. 91.

[21] *Lawrence* v. *State Tax Comm'n*, 286 U.S. 276, 282. See, *e.g.*, *Rogers* v. *Alabama*, 192 U.S. 226; *NAACP* v. *Alabama*, 357 U.S. 449. See also Hart and Wechsler, The Federal Courts and the Federal System, 501.

[22] See *Davis* v. *Wechsler*, 263 U.S. 22; *New York Central R. Co.* v. *New York & Pa. Co.*, 271 U.S. 124; *NAACP* v. *Alabama*, *supra*. See also the discussion in the dissenting opinion in *Williams* v. *Georgia*, 349 U.S. 375, 393, 399.

[23] In *Tyler* v. *Magwire*, 17 Wall. 253, 293, the Court issued a writ of possession and ordered its marshal to execute it against the state defendant in possession.

[24] The successive statutes are collected and set out in full in Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States (Wolfson and Kurland ed. 1951), Appendix A.

exists today.[25] Acting pursuant to that authority in our hypothetical case, this Court might grant certiorari, "ignore" the state ground of decision, decide the federal question and, instead of merely remanding the case, issue a writ requiring the petitioner's release from custody. By this simple device, the Court, it might be argued, would avoid problems of advisory opinions while at the same time refraining from consideration of questions of state law.

But apart from the unseemliness of such a disposition, it is apparent that what the Court would actually be doing would be to decide the state law question *sub silentio* and to reverse the state court judgment on that question. For if the petitioner is detained pursuant to the judgment, and his detention is to be terminated, that must mean that the state ground is not adequate to support the only purpose for which the judgment was rendered. The judgment, in other words, becomes a nullity.

Moreover, the future effect of such a disposition is precisely the same as a reversal on the merits of the question of state law. If noncompliance with a state rule requiring a particular constitutional claim to be raised before verdict does not preclude consideration of the claim by this Court, then the rule is invalid in every significant sense, since no judgment based on its application can ever be effective.

In short, the constitutional infirmities of such a disposition by this Court are the same as those inherent in review of the state question on its merits. The vice, however, is greater because the Court would, in actuality, be invalidating a state rule without even purporting to consider it.

2. *On habeas corpus.*—The adequate state ground doctrine thus finds its source in basic constitutional principles, and the question before us is whether this is as true in a collateral attack in habeas corpus as on direct review. Assume, then, that after dismissal of the writ of certiorari in our hypothetical case, the prisoner seeks habeas corpus in a Federal District Court, again complaining of the composition of the grand jury that indicted him. Is that federal court constitutionally more free than the Supreme Court on direct review to "ignore" the adequate state ground, proceed to the federal question, and order the prisoner's release?

The answer must be that it is not. Of course, as the majority states, a judgment is not a "jurisdictional prerequisite" to a habeas corpus application, *ante*, p. 430, but that is wholly irrelevant. The point is that if the applicant is detained *pursuant* to a judgment, termination of the detention necessarily nullifies the judgment. The fact that a District Court on habeas has fewer choices than the Supreme Court, since it can *only* act on the body of the prisoner, does not alter the significance of the exercise of its power. In habeas as on direct review, ordering the prisoner's release invalidates the judgment of conviction and renders ineffective the state rule relied upon to sustain that judgment. Try as the majority does to turn habeas corpus into a roving commission of inquiry into every possible invasion of the applicant's civil rights that may ever have occurred, it cannot divorce the writ from a judgment of conviction if that judgment is the basis of the detention.

Thus in the present case if this Court had granted certiorari to review the State's denial of *coram nobis*, had considered the coerced confession claim, and had ordered Noia's release, the necessary effects of that disposition would have been (1) to set aside the conviction and (2) to invalidate application of the New York rule requiring the claim to be raised on direct appeal in order to be preserved. It is, I think, beyond dispute that the Court does exactly the same thing by affirming the decision below in this case. In doing so, the Court exceeds its constitutional power if in fact the state ground relied upon to sustain the judgment of conviction is an adequate one. See pp. 472–476, *infra*. The effect of the approach adopted by the Court is, indeed, to do away with the adequate state ground rule entirely in every state case, involving a federal question, in which detention follows from a judgment.

The majority seems to recognize at least some of the consequences of its decision when it attempts to fill the void created by abolition of the adequate state ground rule in state criminal cases. But the substitute it has fashioned—that of "conscious waiver" or "deliberate bypassing" of state procedures—is, as I shall next try to show, wholly unsatisfactory.

III. ATTEMPTED PALLIATIVES

Apparently on the basis of a doctrine analogous to that of "unclean hands," the Court states that a federal judge, in his discretion, may deny relief on habeas corpus to one who has understandingly and knowingly refused to avail himself of state procedures. But such a test, if it is meant to constitute a limitation on interference with state administration of criminal justice, falls far short of the mark. In fact, as explained and applied in this case, it amounts to no limitation at all.

First, the Court explains that the test is one calling for the exercise of the district judge's *discretion*, that the judge may, in other words, grant relief even when a conscious waiver has been shown. Thus the Court does not merely tell the States that, if they wish to detain those whom they convict, they must revamp their entire systems of criminal procedures so that no forfeiture may be imposed in the absence of deliberate choice; the States are also warned that even a deliberate, explicit, intelligent choice not to assert a constitutional right may not preclude its assertion on federal habeas.

Second, the Court states (as it must if it is to adhere to its definition) that "[a] choice made by counsel not participated in by the petitioner does not automatically bar relief." *Ante*, p. 439. It is true that there are cases in which the adequacy of the state ground necessarily turns on the question whether the defendant himself expressly and intelligently waived a constitutional right. Foremost among these are the cases involving right to counsel, for the Court has made it clear that this right cannot be foregone without deliberate choice by the defendant. See *Johnson* v. *Zerbst*, 304 U.S. 458; *Carnley* v. *Cochran*, 369 U.S. 506. But to carry this principle over in full force to cases in which a defendant is represented by counsel not shown to be incompetent is to undermine the entire representational system. We have manifested an ever-increasing awareness of the fundamental importance of representation by counsel, see *Gideon* v. *Wainwright*, *ante*, p. 335, and yet today the Court suggests that the State may no more have a rule of forfeiture for one who is competently represented than for one who is not. The effect on state procedural rules may be disastrous.

Third, when it comes to apply the "waiver" test in this case, the Court then in effect reads its own creation out of existence. Recognizing that Noia himself decided not to appeal, and that he apparently made this choice after consultation with counsel, the Court states that his decision was nevertheless not a "waiver." Since a new trial might have resulted in a death sentence, Noia was, in the majority's view, confronted with a "grisly choice," and he quite properly declined to play "Russian roulette" by appealing his conviction. *Ante*, pp. 439–440.

Does the Court mean by these colorful phrases that it would be unconstitutional for the State to impose a heavier sentence in a second trial for the same offense? Apparently not, since the majority assures us that there may be some cases in which a risk of a heavier sentence must be run. What distinguishes this case, we are told, is that the risk of the death sentence on a new trial was substantial in view of the trial judge's statement that Noia's past record and his involvement in the crime almost led the judge to disregard the jury's recommendation against a death sentence.

What the Court seems to be saying in this exercise in fine distinctions is that no waiver of a right can be effective if some adverse consequence might reasonably be expected to follow from exercise of that right. Under this approach, of course, there could never be a binding waiver, since only an incompetent would give up a right without any good reason, and an incompetent cannot make an intelligent waiver. The Court wholly ignores the question whether the choice made by the defendant is one that the State could constitutionally require.

Looked at from any angle, the concept of waiver which the Court has created must be found wanting. Of gravest importance, it carries this Court into a sphere in which it has no proper place in the context of the federal system. The true limitations on our constitutional power are those inherent in the rule requiring that a judgment resting on an adequate state ground must be respected.

IV. ADEQUACY OF THE STATE GROUND HERE INVOLVED

It is the adequacy, or fairness, of the state ground that should be the controlling question in this case.[26] This controlling question the Court does not discuss.

New York asserts that a claim of the kind involved here must be raised on timely appeal if it is to be preserved, and contends that in permitting an appeal it has provided a reasonable opportunity for the claim to be made. The collateral post-conviction writ of *coram nobis*, the State has said, remains a remedy only for the calling up of facts unknown at the time of the judgment. See *People* v. *Noia*, decided *sub nom. People* v. *Caminito*, 3 N.Y. 2d 596, 601, 148 N.E. 2d 139, 143. In other words, the State claims that it may constitutionally detain a man pursuant to a judgment of conviction, regardless of any error that may have led to that conviction, if the relevant facts were reasonably available and an appeal was not taken.

Under the circumstances here—particularly the fact that Noia was represented by counsel whose competence is not challenged—is this

[25] 28 U.S.C. § 2106 authorizes the Court to vacate, as well as reverse, affirm or modify, any judgment lawfully brought before it for review. 28 U.S.C. § 1651(a) provides that the Court "may issue all writs necessary or appropriate" in aid of its jurisdiction. See also 28 U.S.C. § 2241(a), giving this Court specific authority to issue writs of habeas corpus. Such writs are to be executed, under 28 U.S.C. § 672, by the marshal of this Court, who is authorized by 28 U.S.C. § 549, when acting within a State, to "exercise the same powers which a sheriff of such state may exercise in executing the laws thereof." The power to enter judgment and, when necessary, to enforce it by appropriate process, has been said to be inherent in the Court's appellate jurisdiction. *Stanley* v. *Schwalby*, 162 U.S. 255, 279–282. See also Hart and Wechsler, *supra*, note 21, at 420–421.

[26] In view of the concession by the State, I assume in this discussion that Noia's confession was coerced. A confession, of course, may be coerced and yet still be a wholly reliable admission of guilt. See *Rogers* v. *Richmond*, 365 U.S. 534. Whether or not Noia was guilty of the crime of felony murder, and whether the evidence of his guilt was accurate and substantial, are matters irrelevant to the question of coercion and also irrelevant here.

a reasonable ground for barring collateral assertion of the federal claim? Certainly the State has a vital interest in requiring that appeals be taken on the basis of facts known at the time, since the first assertion of a claim many years later might otherwise require release long after it was feasible to hold a new trial. And although in *Daniels* v. *Allen* it might have been argued that the State's refusal to entertain an appeal actually received on time amounted to an evasion of the federal claim, no such argument can be made here, since no appeal was *ever* sought.

Moreover, we should be slow to reject—as an invalid barrier to the raising of a federal right—a state determination that one forum rather than another must be resorted to for the assertion of that right. A far more rigid restriction of federal forums was upheld in *Yakus* v. *United States*, 321 U.S. 414. In that case, the Court sustained a federal statute permitting an attack on the validity of an administrative price regulation to be made only on timely review of the administrative order, and precluding the defense of invalidity in a later criminal prosecution for violation of the regulation. What the Court there said bears repetition here:

"No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." 321 U.S., at 444.

But is there some special circumstance here that operates to invalidate the nonfederal ground? Certainly it cannot be that the claim of a coerced confession is of such a nature that a State is constitutionally compelled to permit its assertion at any time even if it could have been, but was not, raised on appeal. Many federal decisions have held that a federal prisoner held pursuant to a federal conviction may not assert such a claim in collateral proceedings when it was not, but could have been, asserted on appeal. *E.g., Davis* v. *United States*, 214 F. 2d 594, cert. denied, 353 U.S. 960; *Smith* v. *United States*, 88 U.S. App. D.C. 80, 187 F. 2d 192, cert. denied, 341 U.S. 927; see *Hodges* v. *United States*, 108 U.S. App. D.C. 375, 282 F. 2d 858, cert. dismissed, 368 U.S. 139.

Is it then a basis for invalidating the nonfederal ground that Noia's two codefendants are today free from custody on facts which Noia says are identical to those in his case? Does the nonfederal ground fall when the federal claim appears to have obvious merit? There may be some question whether the facts in Noia's case and those in Bonino's and Caminito's are identical,[27] but assuming that they are, I think it evident that the nonfederal ground must still stand.

Again, there is highly relevant precedent dealing with federal prisoners. In *Sunal* v. *Large*, 332 U.S. 174, Sunal and Kulick had been prosecuted for violation of the Selective Service Act, and both had sought to raise a defense the court had refused to consider. Both were convicted and sentenced to imprisonment but took no appeal, quite evidently because such an appeal would have been to no avail under the existing state of the law. Subsequently, in another case, this Court held on comparable facts that the defense in question must be permitted. *Estep* v. *United States*, 327 U.S. 114. Sunal and Kulick then sought relief on habeas corpus, and this relief was denied. The opinion of the Court observed that there had been no barrier to the perfection of appeals by these prisoners and no facts which were not then known. That an appeal may have appeared futile at the time (indeed, far more futile than was the case here) was held not a sufficient basis for collateral relief. The present case, I submit, would be less troublesome than *Sunal* even had it involved a federal prisoner.

Surely, the state ground is not rendered inadequate because on a new trial for the same offense, Noia might have received the death sentence. The State is well within constitutional limits in permitting such a sentence to be imposed. Of particular relevance here is the decision in *Larson* v. *United States*, 275 F. 2d 673. Two criminal defendants had been tried and sentenced to imprisonment by a federal court. One defendant, Juelich, had moved for a continuance or a change of venue, on the ground of community prejudice, and his motion had been denied. Both defendants were convicted; Juelich appealed from his conviction; and the Court of Appeals reversed, *Juelich* v. *United States*, 214 F. 2d 950, holding that the constitutional requirement of a fair trial had been violated by the refusal to grant a change of venue or a continuance. Larson, the other defendant, had chosen not to appeal, apparently because he feared that the death sentence might be imposed in a new trial, but after his codefendant's success, he sought collateral relief under § 2255. That relief was denied by the District Court, and the Court of Appeals affirmed, stating:

"We do not say . . . that in every instance, before resort can be had to Section 2255 there must be an appeal. We say only that, in the circumstances of this case, Larson, taking a calculated risk, made a free choice not to jeopardize his life, and he is bound by that decision. . . . Whatever errors there were in his trial were known to Larson and to his counsel—for the same errors formed the basis for Juelich's appeal. Manifest justice to an accused person requires only that he have an opportunity to correct errors that may have led to an unfair trial. The orderly administration of justice requires that even a criminal case some day come to an end." 275 F. 2d, at 679–680.

This Court denied certiorari. 363 U.S. 849.

Decisions such as *Sunal* and *Larson* are reasoned expressions by the federal judiciary of its views on the fair and proper administration of federal criminal justice. We cannot turn around and tell the State of New York that it is constitutionally prohibited from being governed by the same considerations.

I recognize that Noia's predicament may well be thought one that strongly calls for correction. But the proper course to that end lies with New York Governor's powers of executive clemency, not with the federal courts.[28] Since Noia is detained pursuant to a state judgment whose validity rests on an adequate and independent state ground, the judgment below should be reversed.

Mr. ERVIN. I call attention to the opening of Justice Harlan's dissenting opinion, which was concurred in by Justice Clark and Justice Stewart. He said:

This decision, both in its abrupt break with the past and in its consequences for the future, is one of the most disquieting that the Court has rendered in a long time.

I expect to elucidate very briefly on the matter which prompted that statement from Justice Harlan in a moment.

The only authority a Federal district court has to issue a writ of habeas corpus to inquire into the legality of holding a person in custody pursuant to the judgment of a State court is found in 28 U.S.C. 2254. I invite the careful consideration of Senators to the wording of that statute:

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

It is to be noted that there are only two alternative cases in which a writ of habeas corpus may issue in behalf of a person in custody pursuant to the judgment of a State court. Those cases are as follows: It must appear, in the first alternative, that the applicant has exhausted the remedies available in the courts of the State; or it must appear, in the second alternative, that there is either an absence of available State corrective process, or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

I wish to show the necessity for the passage of this provision of title II, which would make State judgments final on matters that have been litigated, unless they are reversed on appeal either to the State's highest appellate court having jurisdiction, or to the Supreme Court of the United States. It is very well illustrated by the case of *Townsend* v. *Sain* (372 U.S. 293).

In that case, the petitioner, back in 1955, 8 years before the Supreme Court handed down its decision, was convicted of murder in the criminal court of Cook County, Ill. At his trial, he objected to the admission of his confession on the ground that it was involuntary. The trial court heard all of the evidence bearing on this point in the absence of the jury, found that the confession was voluntary, and admitted it in evidence.

After his conviction of murder and his sentence to death, the petitioner appealed to the Supreme Court of Illinois which gave full consideration to his case and affirmed the judgment.

He then asked the Supreme Court of the United States to grant certiorari: to review the decision of the Supreme Court of Illinois, and the Supreme Court of the United States refused to grant certiorari, thereby denying the petitioner a review of the Illinois decision.

The petitioner then went into the State court of Illinois in a postconviction proceeding. In that proceeding, the Illinois trial court reviewed the record in the case and found on the basis of the record of what transpired at the original trial that the prisoner had been accorded all of his rights under the Constitution and laws of the United States and for that reason denied relief.

The petitioner then appealed to the Supreme Court of Illinois, and the Supreme Court of Illinois a second time reviewed the case and found that all of the rights of the petitioner had been

[27] See *People* v. *Noia*, 4 App. Div. 2d 698, 163 N.Y.S. 2d 796.

[28] At the oral argument the State District Attorney advised us that his office would support an application for clemency once the case had been disposed of in this Court.

fully protected at his original trial, and it refused to grant him relief.

The petitioner then for a second time asked the Supreme Court of the United States by a writ of certiorari to review the judgment and rule on the same question which had already been passed on twice by the trial court in Illinois and twice by the Supreme Court of Illinois. The Supreme Court denied the application for the writ and refused to review the decision of the Illinois court.

The petitioner then went into the U.S. district court, and the district court considered the pleadings filed in the matter and refused to grant him the writ of habeas corpus.

The petitioner then applied for a third time to the Supreme Court of the United States to review his case on an appeal from the district court. The Supreme Court of the United States then for the first time did so and remanded the case back to the district court with direction that it conduct an evidentiary hearing in the case and determine anew the question already twice decided in the trial courts of Illinois and twice adjudged in the Supreme Court of Illinois. In other words, the Supreme Court ordered the U.S. District Court to try and determine anew a question already judicially determined four times.

I respectfully submit that both the majority opinion and the minority opinion in the Townsend case make it as clear as the noonday sun in a cloudless sky that all of the applicant's Federal rights had been fairly and fully protected on his original trial in the Illinois trial court.

This applicant had been convicted of murder, and the authorities in Illinois had to go into court time and time again merely because he made an oath contrary to everything which had transpired on his original trial.

The Court laid down this rule in the Townsend case:

> Where the facts are in dispute, the Federal Court on habeas corpus must hold an evidentiary hearing if the habeas corpus applicant did not receive a full and fair hearing in a State court, either at the time of the trial or in a collateral proceeding.

Since the applicant has to allege in his application facts militating against the State court's hearing, the facts are virtually always in dispute.

The majority opinion further holds:

> In all other cases where the material facts are in dispute, the holding of such a hearing is in the discretion of the district judge. If he concludes that the habeas applicant was afforded a full and fair hearing by the State court resulting in reliable findings, he may, and ordinarily should, accept the facts as found in the hearing. But he need not.

By these words, the Court laid down the rule that even though the record of the State court shows that the applicant had received a full and fair hearing in the State court on his original trial, the Federal district court nevertheless can put the State to the trouble and expense of litigating again the question whether the constitutional rights of the applicants were protected in the previous hearing or hearings.

This startling doctrine appears on page 319:

> So also, there may be cases in which it is more convenient for the district judge to hold an evidentiary hearing forthwith rather than compel the production of the record. It is clear that he has the power to do so.

That is a strange holding—that a U.S. district judge may hold a hearing without the record of applicant's conviction in the State court, and make a determination in the absence of the record with respect to the question of whether the applicant has or has not had a full and fair hearing in the State court on the Federal question which he seeks to raise.

As I have observed, the statute provides that it must appear before the writ can be granted that the applicant has exhausted the remedies available in the courts of the State. This provision for a long time prevented the chaos that now exists in the administration of justice in the State courts as a result of writs of habeas corpus issued by Federal district judges. Where it appeared that the applicant had failed to exhaust his State remedies, the district judge refused to issue the writ just as the statute commanded they should do.

However, those who are so solicitous about the accused were not satisfied with that. So they altered the statute by judicial fiat in the case of *Fay* v. *Noia*, which is reported in 372 U.S. 391.

In this case, a majority of the Supreme Court changed the meaning of the statute. They held that the statutory provision requiring an exhaustion of State remedies does not refer to the exhaustion of State remedies existing at the time the applicant was tried and sentenced, but applies only to State remedies which might be available to him at the time he applies to the Federal district court—an event which may not occur for 5, 10, 15, 20, or more years. As in the case in respect to the Supreme Court, State appellate courts are not permitted by law to entertain appeals unless they are taken within the time limited by law or rule. As a consequence of the majority decision in Fay against Noia no State in the Union can now have any procedural rule governing appeals which is binding on State prisoners when they apply for habeas corpus in Federal district courts.

Let me read the law as it was announced before that time. Prior to the decision in Fay against Noia, the interpretation placed upon this statute, which is evidently the interpretation intended by Congress, was:

> To exhaust the State remedies, it is not sufficient for a prisoner to present his claim of violation of his Federal rights to a State trial court. In the absence of extraordinary circumstances, his failure to appeal or to perfect his appeal within the time prescribed by State law precludes his resort to habeas corpus in a Federal court.

There was plainly the interpretation which Congress intended to be placed upon this statute.

In *Brown* v. *Allen* (344 U.S. 443), Justice Reed, writing the opinion of the Court, had this to say on the subject, at page 486:

> Finally, federal courts may not grant habeas corpus for those convicted by the state except pursuant to § 2254. See note 17, *supra*. See also note 2, *supra*. We have interpreted § 2254 as not requiring repetitious applications to state courts for collateral relief, p. 447, *supra*, but clearly the state's procedure must be employed in order to avoid the use of federal habeas corpus as a matter of procedural routine to review state criminal rulings. A failure to use a state's available remedy in the absence of some interference or incapacity, such as is referred to just above at notes 32 and 33, bars federal habeas corpus. The statute requires that the applicant exhaust available state remedies. To show that the time has passed for appeal is not enough to empower the Federal District Court to issue the writ.

That was a sound interpretation of the statute. So the practical result of the majority opinion in the Fay case, which was handed down 20 years after the applicant had been tried and sentenced for murder, is that an applicant can fail or refuse to appeal his case to the State appellate court, wait until the witnesses against him have died or otherwise become unavailable and until his right of appeal has expired, and then apply to the Federal district court to try the same question anew on the theory that his State remedies no longer exist.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Geisler, one of his secretaries.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (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.

Mr. LONG of Louisiana. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. Mr. President, I was much impressed by the statement put into the RECORD on Friday to the effect that the criminal section of the American Bar Association was opposed to title II of this bill. It sounded like a very impressive statement. So I discussed the matter with a man I have known for many years whom I regard as one of the finest and most courageous judges in America. I asked him why the criminal section of the American Bar Association would be against this title if they really thought that it might have had something to do with the fact that crime has increased by 380 percent.

He said:

> I don't know. I'll call you back after I think about it.

He called me back and said:

> Senator, can't you figure that one out? Do you know who is the criminal section of the American Bar Association? Those are lawyers who defend criminals. Don't you realize that if crime has increased by 400 percent, their income has increased by 400 percent?

They have a vested interest in crime, and, naturally, they would be in favor of striking title II, because they are in favor of crime—not that they are particularly in favor of all criminals going free. But why should they give up the tools which liberate all the guilty criminals and turn them loose on society? They make money out of that. That is their business.

Now, point No. 2: Why does the American Bar Association take that position? Because they appoint the different sections. You appoint the international law section, and they are supposed to know about international law, and you take their judgment. You appoint the criminal section. They defend criminals. You take their judgment about crime. Naturally, they would have you believe that the criminal section of the American Bar Association is against crime, but a closer look would better tell you that their pocketbooks are the nearest objects to their hearts.

He went on to say:

> Senator, about the American Law Institute, that leaves me a little bit in doubt. Let me think about that for a few minutes, to see how they come to be in favor of crime.

Mr. ERVIN. I thank the Senator for mentioning the American Law Institute. I had inquiry made of the Institute and learned that it had taken no action whatever on this matter, but had merely postponed consideration of it.

Mr. LONG of Louisiana. There are a number of law schools that do not want a blessed thing done about crime. I just cannot understand it. Why would any law school be in favor of a 400-percent increase in criminality? It does not make sense.

Well, I look down the list and, fortunately, it is in alphabetical order. I do not see Louisiana State University on the list. It is strange that Louisiana State University would not be among all this distinguished company. But there is Southern University, which is a good law school, a Negro law school, on the north side of the city. Louisiana State University is on the south side of the city of Baton Rouge, my hometown, and Southern University, also a very fine institution is on the north side.

This good judge said:

> Senator, I don't know why it is. You can read these law suits about how you choose the jury. They reverse themselves and reverse the reversal and reverse the reversal about how you select the jury. It has gotten so that if you are going to write something to try to satisfy the Fifth Circuit Court about how the jury should be chosen, you cannot afford to guide yourself by their last case, the one which reversed yesterday's decision because they are likely to reverse that one tomorrow.

There is only one thing those cases have in common—that no person who murdered or raped and murdered somebody will suffer a death sentence, even if the victim survived long enough to testify as to who did it. The criminal will not be put to death, because there seems to be an irrebuttable presumption to the effect that any time someone is convicted before a jury in the South, though that jury be 50 percent Negro or 100 percent Negro, and all the Negroes and all the whites agree that the culprit is guilty and he swears the same himself, if a death sentence comes forth, the appellate court will send it back for a certainty even if that requires that the judge reverse the decision which reversed the prior decision.

So now we have 32 convicted people at the State penitentiary in Louisiana awaiting execution. And that is how it is all over America.

But the one thing which seems apparent is that some circuit courts will find a way to prevent you from imposing a death sentence. The difficulty is that you cannot even appeal to the Supreme Court to see whether they are responsible for this or not. You cannot even get that far.

I wish to say this, in the event anybody has any doubt about it: In my judgment, whether people will admit it or not, 99 percent of the Negroes are good citizens. Some people may not agree, but I believe it is true. Their criminal element is small, just as the white criminal element is small. Ninety-nine percent are good citizens. And they are just as worried about this breakdown in law and order as are the 99 percent of white citizens.

Mr. ERVIN. I am sure the Senator from Louisiana will agree with me that, as a matter of fact, they suffer the most from it.

Mr. LONG of Louisiana. I believe they do. Where did all the burning occur in Washington, D.C., when all this mischief broke out? It was in the part of town where the Negro citizens live. And they are more terrified and worried about this situation, if they are good people, than are the white people.

The 1 percent like to call the other 99 percent vicious names—"You're an Uncle Tom; you're old-fashioned"—because the 99 percent happen to believe in law and order.

The best I can make of the situation is that we have been moving in the wrong direction, and that is why we have experienced a 400-percent increase in crime. Frankly, if it continues this way, the figure will double again next year. As the Senator from Arkansas [Mr. McCLELLAN] said, the line will go up to the point where there will be 100 percent a year increase in crime because of the people who do not have the courage to stand up against a criminal. If someone does not begin to measure up, sooner or later this country could be destroyed.

I have tried to learn why people do these things, and about the best explanation I can get would be to say that it is impossible to conceive why—conceivably, it might be a Communist plot to destroy America.

Can the Senator from North Carolina explain one rational reason why people want to support 400-percent increase in crime, with the certainty that 10 years from now it will be an 800-percent increase in crime?

Mr. ERVIN. Frankly, I cannot understand why any Senator would oppose any bill, the object of which is to prevent self-confessed murderers, rapists, arsonists, burglars, and thieves from going unwhipped of justice.

Mr. LONG of Louisiana. Does the Senator have any doubts that the courts have found enough technicalities to turn loose murderers, rapists, and burglars, besides this matter of throwing out the voluntary confession? For example, is the Senator aware of the fantastic mental gyrations the Court proved itself capable of with respect to the choice of the jury?

Mr. ERVIN. Justice Jackson declared in his concurring opinion in Brown against Allen that the Supreme Court rulings on habeas corpus permitted Federal courts to interpret anew the same evidence formerly interpreted by State courts. He made this wise observation.

> But the Constitution does not prevent the State courts from determining the facts in criminal cases. It does not make it unconstitutional for them to have a different opinion than a federal judge about the weight to be given to evidence.

In his concurring opinion in the Brown case, Justice Jackson said that virtually all of these habeas corpus hearings are merely a review of testimony formerly weighed in State courts; and that the reason they cause so much chaos in the administration of criminal law is that the Supreme Court insists that the Federal court should review the facts and see whether or not the State jury and judges decided the facts correctly. Most of them do not involve any law. All they ordinarily involve is a review of the facts in the case.

As Justice Jackson also said:

> But call it *res judicata* or what one will, courts ought not to be obliged to allow a convict to litigate again and again exactly the same question on the same evidence. Nor is there any good reason why an identical contention rejected by a higher court should be reviewed on the same facts in a lower one.

Mr. LONG of Louisiana. Mr. President, will the Senator yield further?

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. One reason we have such a fantastic increase in crime is that certain people, who constitute the criminal element, are incapable of obeying the law; and some of these people spend most of their lifetime in the penitentiary. That is how it used to be.

I have represented some of those people and I know the kind of people I am talking about. When one represents them he gets to know them and understand them. I can look back on cases of obviously guilty people whom I represented.

Mr. ERVIN. I wish to ask the Senator a question with respect to the Miranda case. I wish to ask the Senator if it was not his practice to tell his clients not to say anything to anybody.

Mr. LONG of Louisiana. Yes. May I just illustrate by giving one case that I handled when I was a young practicing lawyer. I had gone to the courthouse a little early to file some papers, and the judge assigned me to represent a man who had no lawyer. The man was a confessed burglar.

I did the best I could with the case and I would have been proud to get him off had I been able to do so. Unfortunately, he had confessed and there was all sorts of evidence to support the confession. Therefore, I looked into his criminal record. He had spent most of his life in the penitentiary for various offenses of burglary, breaking and entering, armed robbery, and things of that

sort. Even so, as a young lawyer, it would have been a matter of pride to me to have been able to get the man off.

If a lawyer is able to clear a guilty defendant he feels he has proved himself to be a real lawyer. When they have as clear a case against the defendant as is possible and the lawyer is able to get him off on a technicality, that is when a lawyer really proves he is good and has earned his fee, or if working for nothing, has improved his reputation.

As much as I searched around there was no possibility of proving this man had not committed the crime, which he had told me he had committed. I cannot recall his real name but his alias was Bullgator. He was well nourished, even though he was somewhat poor. They feed prisoners well in the State penitentiary in Louisiana. He had not been out of the penitentiary for a long time before committing another burglary.

This man was very much concerned that he had been dragged in and asked questions down at the sheriff's office. What happened was that a very serious crime had been committed, a crime much more serious than old Bullgator had committed. The sheriff's office had put out a dragnet for suspicious characters and they came up with Bullgator. They asked him questions and he admitted that he broke into and entered the back of a garage and had stolen some property, which was not of great value but, unfortunately, there was involved the habitual criminal statute.

The habitual criminal statute is a sort of doubling-up proposition. They are entitled to double up, and double up, and double up, and this man would have owed the State about 70 years in the penitentiary if convicted. He was clearly guilty and he had told me he was.

About the best that I, as a lawyer, could do against the set of facts existing at that time was to tell this man that if I were going to look after his interest I better go before that district judge and plead him guilty.

Then, if I could, I would try to make a deal with the district attorney so that they would not invoke the habitual criminal statute because under that statute he would spend the rest of his life in the penitentiary; otherwise, he might get out in 3 or 4 years.

I looked at his record. At one time he had owed the State about 7 years in the penitentiary. He had served the whole 7 years. I said to him, "Why did you not get out for good behavior after 3 or 4 years?" He said, "To tell you the truth, lawyer, I spent so much time in the penitentiary by that time I did not want to have all that stuff hanging over me and then reporting to the parole officer, so I thought I would just like to stay there where I was and get it over."

Under the rule which we are being asked to vote upon, if we agree to the Tydings proposal they would have to get old Bullgator if he is still there and take him out of the penitentiary because, he found himself there because after all, he talked before he had a lawyer.

He was a pretty fair lawyer himself.

He told me, "When I went inside that place I remembered that the last time I was caught for stealing chickens." He said, "When I went in that coop, I had to push the door open, and that is why they got me, for breaking and entering; so this time I was careful not to touch that door. In that way, if you get caught, it will be simply stealing and not breaking and entering, or burglary."

Unfortunately, the legislature had changed the law to say that even though the defendant did not push the door open, if he entered a building, it became a more serious degree of theft.

It sort of amused the judge and it put him in a good frame of mind, and the defendant got off lightly.

Can the Senator see any reason why an obviously guilty man should be turned loose when he has made a voluntary confession and when his guilt is just as certain as that the sun shall rise tomorrow, and there is no doubt whatever? Is the Senator aware of the fact—and if one talks to these judges, he is aware of the fact—that the penitentiaries are being emptied these days because of this foolish rule? They will tell you that 99 percent of the people being turned loose freely admit that they are guilty, in fact most of them are habitual, professional, dedicated criminals who could not live by a rule of law if their lives depended on it.

It is just that someone develops a technicality and because of that technicality people claim that they are entitled to be free and, indeed, if the district judge will not free them, then the appellate court will.

Mr. ERVIN. All I can say is that the majority of the Supreme Court, in the Miranda case, that is, 5 out of the 9, evidently wedded themselves to the strange theory that no man should be allowed to confess his guilt, even though the Bible says, even though psychiatrists assert, and even though those interested in the rehabilitation of prisoners declare that an honest "confession is good for the soul." Hence, they invented rules in the Miranda case to keep people from confessing their crimes and sins. The wisest of men could not have devised more efficacious rules to accomplish this object had he pondered the question a thousand years. These rules require the police to summon a lawyer to the station house hurriedly to give advice to a suspect about a case of which he knows nothing. The lawyer is certain to tell the suspect, unless he is an idiot, "Keep your mouth shut."

Justice White intimated in his dissenting opinion in the Escobedo case, and also in his dissenting opinion in the Miranda case, that that was exactly what a majority of the Court was trying to do, to put an end to confessions, regardless of whether they were voluntary or involuntary.

Mr. LONG of Louisiana. We are told that if we make it impossible to use the confession or the admission, that law enforcement officers will be better law enforcement officers and that they will have to work harder. Maybe so. I am sure that is correct, because it will make it more difficult for us all. But a Federal judge with whom I have discussed this matter told me that FBI agents are telling them that about nine out of every 10 convictions they achieve are due in some measure to the fact that the criminal, by some of his words, somewhere along the line, either by admission or confession, or some words that came from his lips, gives them some hint as to where to go to look for evidence. So, if we follow the liberal trend, we might make better and more diligent workers out of the FBI, deputy sheriffs, and policemen, but we are also going to liberate 90 percent of the few criminals we are convicting.

It has been said in this Chamber, and not contradicted, that seven out of the eight criminals we catch are turned loose, anyway. Now we are asked to run up the percentage until 71 out of 72—almost 99 out of 100 criminals—even when they are caught, will be turned free.

Mr. ERVIN. Let me refer to what Justice Jackson said concerning applications for habeas corpus by State prisoners on page 540 of his concurring opinion in Brown against Allen:

> It really has become necessary to plead nothing more than that the prisoner is in jail, wants to get out, and thinks it is illegal to hold him. If he fails, he may make the same plea over and over again.

In other words, the Court holds, in effect, that a State prisoner is entitled to have a writ of habeas corpus issued and the case tried again and again, so far as the alleged Federal right is concerned, if he just makes an affidavit, which may be contradictory to everything in the court records, and everything in the decision of the appellate court passing on his case. Yet, if he merely makes an affidavit, which may be contrary to everything which has happened, the Federal judge will have to issue a writ of habeas corpus and inquire into the legality of his detention.

Mr. LONG of Louisiana. Yes, as the Senator so well knows, that is only a part of the impediment the Supreme Court, and the appellate courts working under the Supreme Court, have succeeded in placing in the path of effective law enforcement, so that the fact is, the scales of justice have been completely weighted in favor of the criminal and against society by the so-called new liberal thinkers. I am not talking here about economic liberals. I mean those who have this strange, new idea that there is a new society which someone has created. I am not criticizing the Great Society. I am talking about the new society the liberal thinkers would have, where it would be absolutely impossible to convict a murderer, arsonist, rapist, or assassin. In fact, it would be utterly impossible to convict anyone.

Mr. ERVIN. I think that instead of inventing new rules to make it difficult to convict people, the Court should manifest more concern for protecting society from the criminal element. As we all know about 240 robberies have been committed on buses in the shadow of the Nation's Capitol since the first of January this year.

Mr. LONG of Louisiana. Well now, once again, one might suggest, or infer, that in view of the fact that these young punks who killed the busdriver last Friday were Negro delinquents, it has something to do with race, when as a practical matter, there are not many Negro citizens out there who have killed busdrivers. It

is a very, very small percentage of the population.

The way things are going, there is not going to be any bus service in Washington pretty soon. Let me ask the Senator, how are members of the Negro race going to make out when they have to walk to work and no buses are around to take them? I suppose the rioters are going to burn down the city in protest, if they do not have enough automobiles or enough parking spaces made available.

Mr. ERVIN. One might maintain that a majority of the Supreme Court may be more concerned by the possibility that someone who robbed a busdriver may voluntarily confess that he did so.

My experience has been that people do not go around making voluntary confessions that they committed crimes they did not commit.

Mr. LONG of Louisiana. The appellate court should take a look at whether a man is guilty, as to the 99 percent of those who voluntarily admit their guilt, and it is a matter of turning them loose for a technicality or inventing new technicalities to turn them loose. Much of this mischief arises because of the newly contrived rules that turns those people loose. They will not let a person suffer the death penalty. They will find some way to overrule the trial court. Having done that, they show up again with some ridiculous proposition which if applied generally would mean that it would be an accident if anyone were ever convicted of a crime. Having contrived a rule to save a murderer from a death sentence case, when the same silly logic is applied to a burglary or a theft, but we cannot do anything about it because in the supreme effort to see that the criminals do not suffer the death penalty when they deserve it, new rules have been invented, prior decisions have been invented, also, in cases which have been reversed, and then re-reversed to make them apply to protect the criminal from the death penalty for his crime until no one on earth would know how to go about convicting a common thief.

I ask the Senator, would it not be a lot better for the Supreme Court to say, "Look, we have made up our minds as to our goal, that there will not be any capital punishment. We are not going to respect any sentences that demand it. It is not going to be inflicted by any court in this land. Even though Congress may reverse it, we are going to do it. We have satisfied ourselves on that score. So, let us go the rest of the way. We will then reverse our own reversal."

To save this Nation we must put the law back to where it was, so we can enforce the law and make criminals behave themselves.

Mr. ERVIN. I will say I think what the majority of the Supreme Court should do is to begin to interpret the Constitution according to the language of the Constitution, and quit substituting their personal notions for things in the Constitution, and quit doing what they did in the Escobedo, Miranda, and the Wade cases, that is, adding things to the Constitution which are not only not in the Constitution, but which are incompatible with its words.

Mr. LONG. of Louisiana. I thank the Senator. I think basically that is the answer to it—to have some respect for those who went before and to recognize what the Constitution was intended to mean, to begin with. If that cannot be done by the Court, perhaps we can make some headway by enacting the kind of law the Senator is advocating.

Mr. ERVIN. In the case of *Townsend* v. *Sain*, 301 U.S. 441, it appears, both from the opinion of the majority of the court, which required the district judge to hear the petition, and from the dissenting opinion that the applicant's rights were fairly and fully protected by the original trial in the trial court of Illinois. Notwithstanding, the majority ordered the Federal district to grant him another hearing, and thrash all the old facts anew.

And, in the Fay case, although the act of Congress, which gave the Federal court the only power it had to issue a writ to inquire into the legality of the detention of the State prisoner, provided that the State prisoner must have exhausted his State remedies, and although all the preceding decisions construing that act had held that, in the absence of the most extraordinary circumstances, the court could not issue the writ if the prisoner had failed to perfect his appeal to the State appellate court in the time fixed by law, the Supreme Court held, in substance, that the act of Congress no longer meant what it had meant theretofore and no longer meant what Congress intended it to mean, but that, on the contrary, it meant that the applicant could fail to perfect his appeal until the time for taking it had expired and then apply to the Federal court for a habeas corpus on the ground that he then had no State remedies available to him. The majority of the Supreme Court made this ruling for the first time 20 years after the victim of the murder had been sent to his grave and after the witnesses may have disappeared or their memories of the occurrence may have vanished.

As the dissenting judges noted in that case, the majority of the Court did not even apply its new rule to the facts. The majority had ruled that the writ of habeas corpus could be denied where the applicant had deliberately bypassed State procedures and had deliberately failed to avail himself of his right to appeal.

I want to ask Senators to remember the words concerning "deliberately bypassing State procedures." After laying down the rule that no longer does he have to exhaust State remedies and is entitled to the writ unless he deliberately bypassed State procedures, the Court said:

> The application of the standard we have adumbrated to the facts of the instant case is not difficult. Under no reasonable view can the State's version of Noia's reason for not appealing support an inference of deliberate by-passing of the state court system. For Noia to have appealed in 1942 would have been to run a substantial risk of electrocution. His was the grisly choice whether to sit content with life imprisonment or to travel the uncertain avenue of appeal which, if successful, might well have led to a retrial and death sentence. See, *e.g.*, *Palko* v. *Connecticut*, 302 U.S. 319. He declined to play Russian roulette in this fashion. This was a choice by Noia not to appeal, but under the circumstances it cannot realistically be deemed a merely tactical or strategic litigation step, or in any way a deliberate circumvention of state procedures.

Evidently the word "deliberate" meant something to those who joined in the majority opinion which it does not mean to those who compile dictionaries. Mind you, Mr. President, the applicant had been convicted of murder. The jury had fixed his punishment at life imprisonment instead of death. He did not appeal because he realized that he might get a new trial and on a new trial he might be convicted and sentenced to death. He weighed the reasons for and against appealing. He did so carefully. He considered his situation and what might happen to him. He studied the matter and he took a choice which was intentional. The only conclusion one can draw is that he deliberately decided not to appeal and for that reason failed to appeal and thereby, as far as Congress has legislated, lost his right to obtain a writ of habeas corpus to have another inquiry made.

My dictionary says the word "deliberate" means "carefully weighed or considered; studied." If Noia did not study the advisability of appealing and did not carefully weigh it and did not, after such careful weighing and consideration, reach the conclusion that he did not want to appeal, and if that was not a deliberate failure on his part to avail himself of the remedies the State had provided, I do not know anyone with a vivid enough mind to explain what a deliberate failure or refusal to utilize State procedures would be.

That may be playing Russian roulette; but it is judicial roulette that society has to play and that victims of crime have to play when an accused who has State remedies for his alleged complaint willfully fails to pursue such remedies, lets 20 years go by in the hope that witnesses may die or become otherwise unavailable, and then seeks discharge by a Federal district court habeas corpus upon a ground he was unwilling to permit a State appellate court to consider.

As is pointed out by three of the Justices in the dissenting opinion, the majority of the Supreme Court in the Fay case nullified the provision of the act of Congress which had theretofore prevented abuse of habeas corpus and virtual chaos in the administration of justice by State courts.

It is not only the Senator from North Carolina who says that the majority of the Court changed the statute in that case. This assertion is made by the writer of the cumulative supplement to volume 25, American Jurisprudence, 1967, on page 50:

> Attention is called to the fact that the law requiring exhaustion of legal remedies available in state courts as a condition of issuance by a federal court of a writ of habeas corpus for release of a petitioner held by state authorities has been changed—

Mark these words—

> has been changed by the United States Supreme Court in a case (citing the Fay case).

What authority does the majority of the Supreme Court have to change a

statute? None whatever. Yet that is precisely what was done in the Fay case. This is a serious matter. In the year 1955, 660 applications for habeas corpus were filed with Federal district courts by prisoners held under judgments of State courts. This number had soared to 5,948 by 1967, last year.

Justice Jackson points out, in his concurring opinion in Brown against Allen, that in virtually none of these cases is there any merit, and that all an applicant has to do to get a hearing is make an oath contradicting everything that has transpired in the State court. He says that looking for a meritorious case among the cases where writs of habeas corpus are applied for by State prisoners is like looking for a needle in a haystack.

He points out that the facts show, how unjustified the Federal procedure is, which permits thousands of State prisoners, who in virtually every case have been fairly tried and justly convicted, to file petitions and get another hearing on habeas corpus on factual questions already rightly decided by State courts.

Justice Jackson further points out in a footnote a case in which the Supreme Court reversed a lower Federal court because it denied a State prisoner a fourth application for a habeas corpus writ.

Mr. President, I ask unanimous consent to have printed in the RECORD figures which I obtained from the Administrative Office of the U.S. Courts, showing the increase, year by year, in the number of applications by State prisoners to Federal courts for writs of habeas corpus from 1955 through 1967.

There being no objection, the figures were ordered to be printed in the RECORD, as follows:

Petitions by State prisoners to Federal district courts for habeas corpus to review State trials

Year:	
1967	5,948
1966	5,162
1965	4,664
1964	3,531
1963	1,903
1962	1,115
1961	984
1960	871
1959	822
1958	755
1957	778
1956	734
1955	660

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. ERVIN. I am happy to yield.

Mr. LONG of Louisiana. Mr. President, some time ago Mr. Truman Capote, who wrote the famous novel "In Cold Blood," describing a very heinous murder of five innocent persons in a Midwestern State, made a study of some murderers.

We are not talking about the case where a man, in a fit of passion, might have killed his wife, or vice versa, but a case where someone did the kind of thing that was described in that book—went and murdered someone who had done him no harm and had no ill will toward him, in fact, someone whom he hardly knew.

After having interviewed various murderers, he was asked if he could make any suggestions about capital punishment. What he said was that it did not bother him to think of the prospect of a man who had murdered someone in cold blood being subjected to capital punishment, but it did rather concern him that someone who was guilty of murder would be kept in the death house for 15 or 20 years, waiting to see what was going to happen to him.

We in Louisiana know something about that. At our State penitentiary, we have about 32 prisoners who have been sentenced to death. Some of them have been found guilty of murder, some of rape, some of a combination of murder and rape. They have been around for a long time now. No such sentences have been executed in the last 7 years, at least; and I believe the last sentence of that sort executed was in 1959.

That is quite a long time for people to wait—15 or 20 years, or until their natural death—to find out what is going to happen.

All this confusion and doubt occurs because of these overzealous appellate court judges, who seem to be so anxious to protect the rights of a criminal even though he is guilty beyond any shadow of a doubt, and admits he is guilty. They still seem to feel that there is something of an irrebuttable presumption that there must be something that can be said for a murderer that has not been said—or for a man who rapes a woman and then murders her—that there still must be something to be said, or some possible hint of criticism from somewhere that the Federal Government should bring back the 82d Airborne Division if necessary, and liberate the person who had committed the crime.

The situation which exists in Louisiana is not unusual, where we have 32 people, sentenced to death, waiting around, I would say, for an average of about 10 years, after their cases were tried, then the fifth circuit finds some excuse to throw the convictions out and honest law officers and honest elected officials proceed to convict the perpetrators of the heinous crimes again.

It eventually gets to be a contest between the murderer, or the murderer-rapist, and the witnesses, as to who is going to outlive the other; and one begins to wonder which will survive. It gets to be rather like the case Charles Dickens described in his famous novel "Bleak House," where this sort of thing went on for generations, generation after generation, until finally, even though the case originally involved a large sum of money, it had to be dismissed because, while the matter was still in dispute, the entire estate had been dissolved in court costs. I believe that case was named "Jarndyce against Jarndyce."

Mr. ERVIN. I understand it was based historically on an actual will contest, which was litigated for 17 years, and when they got through, they did not have enough left to pay the court costs.

Mr. LONG of Louisiana. As I understand, the Jarndyce case was one in which there was a large amount of money, and after two centuries, the entire estate had been used up in expenses, so there was nothing left to litigate about.

Mr. ERVIN. The trouble is that now the defendant can litigate and relitigate the same old question on the same old evidence, and the taxpayers have to pay the lawyers for doing it for him.

Mr. LONG of Louisiana. Yes, that seems to be a great deal of the problem: the taxpayers and the element of the population that believes in trying to obey the law and do right have become like the Frenchman at the time of the French Revolution who was forced to carry his own basket to the guillotine, so that his head could be carried away in it. The responsible members of society are forced to pay all of the taxes and all the expenses of those who now can forever frustrate the purposes of the law and prevent it from being enforced, while, as shown on the chart there prepared under the supervision of the Senator from Arkansas, the crime rate is going up at a 90° angle, and has almost reached the perpendicular which would show it going up at about the rate of 10,000 percent a year. That is about all there is left for it to do, to improve over the way it is moving.

Then we are told by the Criminal Law Association, the members of which represent all these criminals and are paid by the Government, part of the money coming out of the poverty program, whereas they used to do it free, that they are against any measures to try to achieve efficient law enforcement, to try to convict some of these criminals, or do something constructive about it.

Just from looking at that chart, I would suppose that it must be one of the most profitable businesses in the world, or will soon be, to be a criminal lawyer representing all those criminals, because, at the rate that crime is increasing, with the Federal Government now moving in to pick up a large part of the check, one could become enormously wealthy just representing them on a volume basis.

Mr. ERVIN. One would need only one client to have a great law practice, just litigating the same case over and over again.

Mr. LONG of Louisiana. He could litigate the same case from the time he hung his shingle up until God called him home, at Government expense. The only worry he would have would be that his client might die a natural death somewhere along the line.

Mr. ERVIN. Mr. President, I have pointed out that the relevant statute, 28 United States Code 2254, clearly intended to put a limit on the abuse of the writ. It did this by denying the writ to applicants who refuse or fail to use State remedies to redress their alleged grievances, and by recognizing it is not proper, in our Federal system, for a Federal district judge to nullify trials conducted by State courts without giving such courts a prior opportunity to correct their mistakes, if any, by appeal. As I have pointed out, however, in the Fay case the majority, over the protests of three judges, nullified the statute. I have already placed in the RECORD the dissenting opinion of Justice Harlan in the Fay case, which he rightly says is a decision that constitutes an abrupt break with the past and has disquieting consequences for the future.

Mr. President, I ask unanimous consent that the concurring opinion of Justice Jackson in Brown against Allen, in which Justice Jackson discloses in most eloquent language the practical evil results arising out of the abuse of the writ of habeas corpus, be printed at this point in the RECORD.

There being no objection, the concurring opinion was ordered to be printed in the RECORD, as follows:

MR. JUSTICE JACKSON, concurring in the result.

Controversy as to the undiscriminating use of the writ of habeas corpus by federal judges to set aside state court convictions is traceable to three principal causes: (1) this Court's use of the generality of the Fourteenth Amendment to subject state courts to increasing federal control, especially in the criminal law field; (2) *ad hoc* determination of due process of law issues by personal notions of justice instead of by known rules of law; and (3) the breakdown of procedural safeguards against abuse of the writ.

1. In 1867, Congress authorized federal courts to issue writs of habeas corpus to prisoners "in custody in violation of the Constitution or laws or treaties of the United States."[1] At that time, the writ was not available here nor in England to challenge any sentence imposed by a court of competent jurisdiction.[2] The historic purpose of the writ has been to relieve detention by executive authorities without judicial trial.[3] It might have been expected that if Congress intended a reversal of this traditional concept of habeas corpus it would have said so. However, this one sentence in the Act eventually was construed as authority for federal judges to entertain collateral attacks on state court criminal judgments.[4] Whatever its justification, it created potentialities for conflict certain to lead to the antagonisms we have now, unless the power given to federal judges were responsibly used according to lawyerly procedures and with genuine respect for state court fact finding.

But, once established, this jurisdiction obviously would grow with each expansion of the substantive grounds for habeas corpus. The generalities of the Fourteenth Amendment are so indeterminate as to what state actions are forbidden that this Court has found it a ready instrument, in one field or another, to magnify federal, and incidentally its own, authority over the states. The expansion now has reached a point where any state court conviction, disapproved by a majority of this Court, thereby becomes unconstitutional and subject to nullification by habeas corpus.[5]

This might not be so demoralizing if state judges could anticipate, and so comply with, this Court's due process requirements or ascertain any standards to which this Court will adhere in prescribing them. But they cannot. Of course, considerable uncertainty is inherent in decisional law which, in changing times, purports to interpret implications of constitutional provisions so cryptic and vagrant. How much obscurity is inevitable will be a matter of opinion. However, in considering a remedy for habeas corpus problems, it is prudent to assume that the scope and reach of the Fourteenth Amendment will continue to be unknown and unknowable, that what seems established by one decision is apt to be unsettled by another, and that its interpretation will be more or less swayed by contemporary intellectual fashions and political currents.

We may look upon this unstable prospect complacently, but state judges cannot. They are not only being gradually subordinated to the federal judiciary but federal courts have declared that state judicial and other officers are personally liable to federal prosecution and to civil suit by convicts if they fail to carry out this Court's constitutional doctrines.[6]

2. Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles.

A manifestation of this is seen in the diminishing respect shown for state court adjudications of fact. Of course, this Court never has considered itself foreclosed by a state court's decision as to the facts when that determination results in alleged denial of a federal right. But captious use of this power was restrained by observance of a rule, elementary in all appellate procedure, that the findings of fact on a trial are to be accepted by an appellate court in absence of clear showing of error. The trial court, seeing the demeanor of witnesses, hearing the parties, giving to each case far more time than an appellate court can give, is in a better position to unravel disputes of fact than is an appellate court on a printed transcript. Recent decisions avow no candid alteration of these rules, but revision of state fact finding has grown by emphasis, and respect for it has withered by disregard.[7]

3. The fact that the substantive law of due process is and probably must remain so vague and unsettled as to invite farfetched or borderline petitions makes it important to adhere to procedures which enable courts readily to distinguish a probable constitutional grievance from a convict's mere gamble on persuading some indulgent judge to let him out of jail. Instead, this Court has sanctioned progressive trivialization of the writ until floods of stale, frivolous and repetitious petitions inundate the docket of the lower courts and swell our own.[8] Judged by our own disposition of habeas corpus matters, they have, as a class, become peculiarly undeserving.[9] It must prejudice the occasional meritorious application to be buried in a flood of worthless ones. He who must search a haystack for a needle is likely to end up with the attitude that the needle is not worth the search. Nor is it any answer to say that few of these petitions in any court really result in the discharge of the petitioner.[10] That is the condemnation of the procedure which has encouraged frivolous cases. In this multiplicity of worthless cases, states are compelled to default or to defend the integrity of their judges and their official records, sometimes concerning trials or pleas that were closed many years ago.[11] State Attorneys

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[1] 28 U.S.C. § 2241(c)(3).

[2] *Ex parte Ferguson*, [1917] 1 K. B. 176, 179; *Ex parte Lees*, El. Bl. El. 828, 120 Eng. Rep. 718; *In re Dunn*, 5 C. B. 215, 136 Eng. Rep. 859; Habeas Corpus Act of 1679, 31 Car. II, c. 2; *Ex parte Watkins*, 3 Pet. 193, 202.

[3] *Darnell's Case*, 3 How. St. Tr. 1 (1627). For this purpose, the writ has not been conspicuously successful in the United States. I have reviewed its failures, especially in wartimes, in Wartime Security and Liberty under Law, 1 Buff. L. R. 103; *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537.

[4] See the equivocal discussion of the question in *Frank* v. *Magnum*, 237 U.S. 309, 326–332, and the more explicit assumption of the dissent, *id.*, at 348. An earlier case, *Ex parte Royall*, 117 U.S. 241, contained a dictum to the effect that legislative jurisdiction—the validity of the statute under which conviction was had in the state court—could be challenged on habeas corpus in the federal courts. While this represents a certain expansion of traditional notions of jurisdiction in the judicial sense, it by means supports the broad reach given to federal habeas corpus by recent cases. See also *Moore* v. *Dempsey*, 261 U.S. 86; *Mooney* v. *Holohan*, 294 U.S. 103.

[5] An idea of the uncertainty and diversity of views in this field may be gleaned from a comparison of *Rochin* v. *California*, 342 U.S. 165, with *Wolf* v. *Colorado*, 338 U.S. 25, and *Adamson* v. *California*, 332 U.S. 46.

[6] This Court's decision in *Screws* v. *United States*, 325 U.S. 91, as the dissenters anticipated, has led a Federal Court of Appeals to hold that federal law enforced in federal courts imposes personal liability upon state judicial officers, though that court admits that "The result is of fateful portent to the judiciary of the several states." *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 250. Contrast to this absolute immunity from suit enjoyed by federal officials, even in administrative capacities. *Gregoire* v. *Biddle*, 177 F. 2d 579. While the *Screws* decision held out promise of protection for state officials by requiring that any denial of constitutional right must be proved to be willful in the sense of knowing and intentional, that protection has since been withdrawn. Another Court of Appeals upheld a conviction based on a charge that wilfulness and intent are "presumed and inferred from the result of the action." 189 F. 2d 711, 714. This Court, against my written dissent calling attention to its effect, refused review. *Koehler* v. *United States*, 342 U.S. 852.

[7] See, *e.g.*, *United States* v. *Oregon State Medical Society*, 343 U.S. 326, for a recent example of the application of the presumption in favor of a lower federal court's finding of fact. Compare *Watts* v. *Indiana*, 338 U.S. 49; *Turner* v. *Pennsylvania*, 338 U.S. 62; *Harris* v. *South Carolina*, 338 U.S. 68; and *Malinski* v. *New York*, 324 U.S. 401, with the above for illustrations of cases in which this salutary presumption in favor of state court findings was disregarded in fact if not in theory.

[8] There were filed in federal district courts during 1941 one hundred twenty-seven petitions for habeas corpus challenging state convictions; in 1943 there were two hundred sixty-nine; in 1948 five hundred forty-three; in 1952 five hundred forty-one. Speck, Statistics on Federal Habeas Corpus, 10 Ohio St. L. 337, shows that during the period from 1943 through 1945 there were a high number of petitions filed by those convicts who had filed at least one such petition in *federal* court before. In federal courts in New Hampshire and South Dakota, the percentage of the total petitions made up by repeaters was 50%. The percentages for the larger states on which statistics were then available are as follows: California, 12%; Illinois, 19%; Massachusetts, 20%; Missouri, 21%; New Jersey, 17%; New York, 18%; Pennsylvania, 22%; Texas, 25%. These figures show an unnecessary burden on the federal courts by quantitative as well as dramatic tests.

[9] See Speck, *supra*, Table 3, p. 349.

[10] Statistics of the Administrative Office of the United States Courts for the period 1946–1952 show that, in 1946, 2.8% of the petitioners were successful; in 1952, 1.8% were successful.

[11] Pages full of numbers fail to indicate what the states must contend with as vividly as the history of particular litigation. The *Wells* litigation in California is an object lesson in conflict. Wells was sentenced to death by the California trial court, and this judgment was affirmed by the Supreme Court of California in an opinion which gave extended consideration to the appellant's contentions. *People* v. *Wells*, 33 Cal. 2d 330, 202 P. 2d 53. This Court denied certiorari, *Wells* v. *California*, 338 U. S. 836. Wells, without seeking habeas corpus in state court, then petitioned a federal district judge in Cali-

General recently have come habitually to ignore these proceedings, responding only when specially requested and sometimes not then. Some state courts have wearied of our repeated demands upon them and have declined to further elucidate grounds for their decisions.[12] The assembled Chief Justices of the highest courts of the states have taken the unusual step of condemning the present practice by resolution.[13]

It cannot be denied that the trend of our decisions is to abandon rules of pleading or procedure which would protect the writ against abuse. Once upon a time the writ could not be substituted for appeal or other reviewing process but challenged only the legal competence or jurisdiction of the committing court.[14] We have so departed from this principle that the profession now believes that the issues we *actually consider* on a federal prisoner's habeas corpus are substantially the same as would be considered on appeal.[15]

Conflict with state courts is the inevitable result of giving the convict a virtual new trial before a federal court sitting without a jury. Whenever decisions of one court are reviewed by another, a percentage of them are reversed. That reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.

As to the pleading requirements in habeas corpus, what has happened may best be learned by comparison of the meticulously pleaded facts and circumstances relied upon by this Court's opinion in *Moore* v. *Dempsey*, 261 U.S. 86 (1923), and in *Mooney* v. *Hollohan*, 294 U.S. 103 (1935), with condonation of their absence in *Price* v. *Johnston*, 334 U.S. 266 (1948). It really has become necessary to plead nothing more than that the prisoner is in jail, wants to get out, and thinks it is illegal to hold him.[16] If he fails, he may make the same plea over and over again.[17]

Since the Constitution and laws made pursuant to it are the supreme law and since the supremacy and uniformity of federal law are attainable only by a centralized source of authority, denial by a state of a claimed federal right must give some access to the federal judicial system. But federal interference with state administration of its criminal law should not be premature and should not occur where it is not needed. Therefore, we have ruled that a state convict must exhaust all remedies which the state affords for his alleged grievance before he can take it to any federal court by habeas corpus.

The states all allow some appeal from a judgment of conviction which permits review of any question of law, state or federal, raised upon the record. No state is obliged to furnish multiple remedies for the same grievance. Most states, and with good reason, will not suffer a collateral attack such as habeas corpus to be used as a substitute for or duplication of the appeal. A state properly may deny habeas corpus to raise either state or federal issues that were or could have been considered on appeal. Such restriction by the state should be respected by federal courts.

Assuming that a federal question not reachable on appeal is properly presented by habeas corpus and decided adversely by the highest competent court of the state, should the prisoner then come to this Court and ask us to review the record by certiorari or should he go to the district court and institute a new federal habeas corpus proceeding? *Darr* v. *Burford*, 339 U.S. 200, as I understand it, held that in these circumstances the prisoner must apply to this Court for certiorari before he can go to any other federal court, because only by so doing could he exhaust his state remedy. Whatever one may think of that result, it does not seem logical to support it by asserting that this Court's certiorari power is any part of a state's remedy. An authority outside of the state imposes a duty upon the state to turn the case over to it, in a proceeding which makes the state virtually a defendant. To say that our command to certify the case to us is a state remedy is to indulge in fiction, and the difficulty with fictions is that those they are most apt to mislead are those who proclaim them.

But now it is proposed to neutralize the artificiality of the process and counterbalance the fiction that our certiorari is a state remedy by holding that this step which the prisoner must take means nothing to him or the state when it fails, as in most cases it does.

The Court is not quite of one mind on the subject. Some say denial means nothing, others say it means nothing much. Realistically, the first position is untenable and the second is unintelligible. How can we say that the prisoner must present his case to us and at the same time say that what we do with it means nothing to anybody. We might conceivably take either position but not, rationally, both, for the two will not only burden our own docket and harass the state authorities but it makes a prisoner's legitimate quest for federal justice an endurance contest.

True, neither those outside of the Court, nor on many occasions those inside of it, know just what reasons led six Justices to withhold consent to a certiorari. But all know that a majority, larger than can be mustered for a good many decisions, has found reason for not reviewing the case here. Because no one knows all that a denial means, does it mean that it means nothing? Perhaps the profession could accept denial as meaningless before the custom was introduced of noting dissents from them. Lawyers and

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fornia for habeas corpus. That judge took the unusual step of passing on the merits of the case in spite of the fact that state remedies had not been exhausted and the prisoner had to be remitted to the state courts. The district judge held on the merits that the California courts had misapplied California law. *Ex parte Wells*, 90 F. Supp. 855. When the petitioner applied to the Supreme Court of California for a writ of habeas corpus, as he was instructed to do by the district judge, that court adhered to its prior view as to what the law of California was. *In re Wells*, 35 Cal. 2d 889, 221 P. 2d 947. This Court again denied certiorari. *Wells* v. *California*, 340 U.S. 937. Thereafter the same federal judge, although now conceding that he must take California law from California courts, voided the conviction on a federal ground not even mentioned in his earlier opinion. *Ex parte Wells*, 99 F. Supp. 320. The opinions of the district judge show that he was well aware of the difficulties presented by the procedure, but felt he had no alternative in the light of this Court's decisions. Indeed, he has contributed the lessons of his own experience in this field in Goodman, Use and Abuse of the Writ of Habeas Corpus, 7 F. R. D. 313. Another caricature of the great writ in action is the *Adamson* litigation in California. Adamson was sentenced to death in the California trial court in 1944. The Supreme Court of California affirmed the judgment of conviction in 1946. *People* v. *Adamson*, 27 Cal. 2d 478, 165 P. 2d 3. This Court *granted* certiorari, heard the case on the merits, and *affirmed*, *Adamson* v. *California*, 332 U.S. 46. On January 30, 1948, just one week before the date set for his execution, Adamson petitioned the Supreme Court of California for habeas corpus, and this petition was denied. This Court denied application for a stay and denied certiorari to the Supreme Court of California. *Adamson* v. *California*, 333 U. S. 831. Later on the same day that this Court denied certiorari, a judge of the United States District Court for the Northern District of California issued a stay of execution of the sentence. Then the District Court denied the writ and denied a certificate of probable cause to appeal. In *Ex parte Adamson*, 167 F. 2d 996, a judge of the United States Court of Appeals denied an application for a certificate of probable cause. This Court again denied certiorari. *Ex parte Adamson*, 334 U. S. 834. Even this was not the end, however, for in 1949 we find Adamson appealing to the Supreme Court of California from a denial of an application for a writ of *coram nobis*. That court then took occasion to question the good faith of the proceedings. 34 Cal. 2d 320, 338, 210 P. 2d 13, 22. Certainly the use of the federal courts as aids in such delaying tactics as are evidenced here does not elevate the stature of the writ of habeas corpus. We have no mythical abuse here but a very real problem of harassment of the state.

[12] *Dixon* v. *Duffy*, 344 U.S. 143.

[13] Conference of Chief Justices—1952, 25 State Government, No. 11, p. 249 (Nov. 1952):

"Whereas it appears that by reason of certain principles enunciated in certain recent federal decisions, a person whose conviction in a criminal proceeding in a State Court has thereafter been affirmed by the highest court of that State, and whose petition for a review of the State Court's proceedings has been denied by the Supreme Court of the United States, may nevertheless obtain from a Federal district judge or Court, under a writ of habeas corpus, new, independent, and successive hearings based upon a petition supported only by the oath of the petitioner and containing only such statement of facts as were, or could have been, presented in the original proceedings in the State Courts;

"And whereas the multiplicity of these procedures available in the inferior Federal Courts to such convicted persons, and the consequent inordinate delays in the enforcement of criminal justice as the result of said Federal decisions will tend toward the dilution of the judicial sense of responsibility, may create grave and undesirable conflicts between Federal and State laws respecting fair trial and due process, and must inevitably lead to the impairment of the public confidence in our judicial institutions;

"Now therefore be it resolved that it is the considered view of the Chief Justices of the States of the Union, in conference duly assembled, that orderly Federal procedure under our dual system of government should require that a final judgment of a State's highest court be subject to review or reversal only by the Supreme Court of the United States.

"Be it further resolved that the Chairman of the Conference of Chief Justices be authorized, and he is hereby directed, to appoint a special committee to give study to the grave questions and potential complications likely to ensue if the power to review or void state court judgments continues to be recognized as lying in any courts of the Federal judicial system, save and except the Supreme Court of the United States: and that said special committee report its findings and recommendations at the next regular meeting of the Conference."

[14] *Ex parte Watkins*, 3 Pet. 193, 202.

[15] Such was the view expressed by the Solicitor General of the United States at the Bar of this Court during argument of *Martinez* v. *Neelly*, affirmed by an equally divided Court, 344 U.S. 916. His adversary agreed.

[16] *Price* v. *Johnston*, *supra*.

[17] In *Price* v. *Johnston*, *supra*, the lower federal courts were reversed for dismissing the convict's fourth petition. See also statistics as to repeaters in note 8, *supra*.

lower judges will not readily believe that Justices of this Court are taking the trouble to signal a meaningless division of opinion about a meaningless act.[18] It is just one of the facts of life that today every lower court does attach importance to denials and to presence or absence of dissents from denials, as judicial opinions and lawyers' arguments show.

The fatal sentence that in real life writes *finis* to many causes cannot in legal theory be a complete blank. I can see order in the confusion as to its meaning only by distinguishing its significance under the doctrine of *stare decisis*, from its effect under the doctrine of *res judicata*. I agree that, as *stare decisis*, denial of certiorari should be given no significance whatever. It creates no precedent and approves no statement of principle entitled to weight in any other case. But, for the case in which certiorari is denied, its minimum meaning is that this Court allows the judgment below to stand with whatever consequences it may have upon the litigants involved under the doctrine of *res judicata* as applied either by state or federal courts. A civil or criminal judgment usually becomes *res judicata* in the sense that it is binding and conclusive even if new facts are discovered and even if a new theory of law were thought up, except for some provision for granting a new trial, which usually is discretionary with the trial court and limited in time.

It is sometimes said that *res judicata* has no application whatever in habeas corpus cases and surely it does not apply with all of its conventional severity. Habeas corpus differs from the ordinary judgment in that, although an adjudication has become final, the application is renewable, at least if new evidence and material is discovered or if, perhaps as the result of a new decision, a new law becomes applicable to the case. This is quite proper so long as its issues relate to jurisdiction. But call it *res judicata* or what one will, courts ought not be obliged to allow a convict to litigate again and again exactly the same question on the same evidence. Nor is there any good reason why an identical contention rejected by a higher court should be reviewed on the same facts in a lower one.

The chief objection to giving this limited finality to our denial of certiorari is that we pass upon these writs of habeas corpus so casually or upon grounds so unrelated to their merits that our decision should not have the weight of finality. No very close personal consideration can be given by each Justice to such a multiplicity of these petitions as we have had and, as a class, they are so frivolous, so meaningless, and often so unintelligible that this worthlessness of the class discredits each individual application. If this deluge were reduced by observance of procedural safeguards to manageable proportions so that it would be possible to examine the cases with some care and to hear those that show merit, I think this objection would largely disappear. The fact is that superficial consideration of these cases is the inevitable result of depreciation of the writ. The writ has no enemies so deadly as those who sanction the abuse of it, whatever their intent.

If a state is really obtaining conviction by laws or procedures which violate the Federal Constitution, it is always a serious wrong, not only to a particular convict, but to federal law. It is not probable that six Justices would pass up a case which intelligibly presented this situation. But an examination of these petitions will show that few of them, tested by any rational rules of pleading, actually raise any question of law on which the state court has differed from the understanding prevailing in this Court. The point on which we are urged to overrule state courts almost invariably is in their appraisal of facts. For example, the jury, the trial judge, and one or more appellate courts below have held that conflicting evidence proves a confession was voluntary; the prisoner wants us to say the evidence proves it was coerced. The court below found that the prisoner waived counsel and voluntarily pleaded guilty; he wants us to find that he did not. The jury and the trial judge below believed one set of witnesses whose testimony showed his guilt; he wants us to believe the other and to hold that he has been convicted by perjury. That is the type of factual issue upon which this Court and other federal courts are asked to intervene and upset state court convictions. There are plenty of good reasons why we should rarely do that, and even better reasons why the district court should not undertake to do it after we have declined to.

My conclusion is that whether or not this Court has denied certiorari from a state court's judgment in a habeas corpus proceeding, no lower federal court should entertain a petition except on the following conditions: (1) that the petition raises a jurisdictional question involving federal law on which the state law allowed no access to its courts, either by habeas corpus or appeal from the conviction, and that he therefore has no state remedy; or (2) that the petition shows that although the law allows a remedy, he was actually improperly obstructed from making a record upon which the question could be presented, so that his remedy by way of ultimate application to this Court for certiorari has been frustrated. There may be circumstances so extraordinary that I do not now think of them which would justify a departure from this rule, but the run-of-the-mill case certainly does not.

Whether one will agree with this general proposition will depend, I suppose, on the latitude he thinks federal courts should exercise in retrying *de novo* state court criminal issues. If the federal courts are to test a state court's decision by hearing new evidence in a new proceeding, the pretense of exhaustion of state remedies is a sham, for the state courts could not have given a remedy on evidence which they had no chance to hear. I cannot see why federal courts should hear evidence that was not presented to the state court unless the prisoner has been prevented from making a record of his grievance, with the result that there is no record of it to bring here on certiorari. Such circumstances would seem to call for an original remedy in the district courts which would be in a position to take evidence and make the record on which we ultimately must pass if there develops a conflict of law between a federal and state court.

If this Court were willing to adopt this doctrine of federal self-restraint, it could settle some procedures, rules of pleading and practices which would weed out the abuses and frivolous causes and identify the worthy ones. I know the difficulty of formulating practice rules and their pitfalls. Nor do I underestimate the argument that the writ often is petitioned for by prisoners without counsel and that they should not be held to the artificialities in pleading that we expect in lawyers. But I know of no way that we can have equal justice under law except we have some law. I suggest some general principles which, if adhered to, would reduce the number of frivolous petitions, make decision upon them possible at an earlier time and alleviate some of the irritation that is developing over ill-considered federal use of the writ to slap down state courts.

First, habeas corpus shall not (in absence of state law to the contrary) raise any question which was, or could have been, decided by appeal or other procedure for review of conviction. In the absence of showing to the contrary, habeas corpus will be deemed to lie only for defects not disclosed on the record, going to the power, legal competence or jurisdiction of the committing state court.

Second, every petition to a federal court is required, and those to a state court may be required, by state law to contain a plain but full statement of the facts on which it is based. Unless it states facts which, if proved, would warrant relief, the applicant is not entitled as of right to a hearing. Technical forms or artificialities of pleading will not be required.

Presumably a federal court will not release a convict until he proves facts which show invalidity of his conviction. If proof is to be required, it is no hardship to require a simple statement of what it will be. A petitioner should be given benefit of liberal construction, of all usual privileges of amendment, and, if the court finds a probably worthy case, appointment of counsel to aid in amending the petition and presenting the case.

Third, petitions to federal courts are required, and those to state courts may be required, to set forth every previous application to any court for relief on any grounds. If the current petition is made upon the same grounds as an earlier one, it should state fully any evidence now available in its support that was not offered before and explain failure to present it. On the jurisdictional questions appropriate for habeas corpus, the petitioner may not be barred from proof by newly discovered evidence, but it is not asking too much that his petition disclose that he has it and a basis for appraising its relevance and effect. He should not be precluded from raising new grounds of unconstitutionality in a later petition, especially in view of the unsettled character of our constitutional doctrines of due process. But the facts that make the new grounds applicable should appear. If federal relief is sought on the grounds that state law affords no remedy, or his resort thereto has been obstructed and he has been unable to present his case to a state court, the facts relied on should be clearly and fully set forth.

Much probably may be said in criticism of my statement of these principles but nothing, I am convinced, against their historical authenticity as part of the traditional law of habeas corpus or against their application now to stop abuses so grave that they foreshadow legislative restriction of the writ. They do not foreclose worthy causes but earmark them for the serious treatment they deserve. They will not even wholly eliminate frivolous petitions but will discourage them by exposing their frivolity at an earlier stage.

Society has no interest in maintaining an unconstitutional conviction and every interest in preserving the writ of habeas corpus to nullify them when they occur. But the Constitution does not prevent the state courts from determining the facts in criminal cases. It does not make it unconstitutional for them to have a different opinion than a federal judge about the weight to be given to evidence. My votes in the cases under review and on other petitions and reviews will be guided as nearly as I can by the principles set forth herein.

I concur in the result announced by MR. JUSTICE REED in these three cases.

Mr. ERVIN. Mr. President, the chief justices of the States of the Union by a formal resolution adopted in conference assembled have asked the Congress of the United States to pass legislation in the form of section 702 of S. 917 requiring that the final judgment of the highest courts of the State in criminal cases be subject to review only by the Supreme Court of the United States.

[18] When petitioner in *Brown* v. *Allen* sought certiorari here after his appeal to the state court failed, two Justices dissented from the denial of certiorari. *Brown* v. *North Carolina*, 341 U.S. 943.

I ask the Senate to vote for this section which the chief justices of the States of the Union have asked Congress to pass and which it is necessary for Congress to pass if the States are going to be allowed effectively to try their own citizens in their own courts for violation of their own laws.

If we are to prevent chaos in the administration of criminal justice in the States, which are charged with the primary responsibility for law enforcement in our system of government, we must adopt a provision of this character.

Mr. McCLELLAN. Mr. President, I think I can say without any reservation or hesitation on my own part with respect to the truthfulness of this statement that, if one talks to the Federal and State judges, more than three out of four of them in private conversation will say that the Miranda decision is devastating to law enforcement.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. LONG of Louisiana. Mr. President, I think the Senator would find if he were to make a more careful selection and check the judges who know best—for example, the trial judges in the districts where the State and Federal penitentiaries are located, since they are the ones who have the problem right in their own lap and who understand the exact facts about each one of these people who have committed very serious crimes and have been sentenced either to death or to very long prison terms—the Senator would be talking then to the ones who really know what this is all about. I believe he would then find that they would be almost unanimous.

Mr. McCLELLAN. Mr. President, I said more than 3 out of 4, because I wanted to be very conservative. And I say that without any reason to believe at all that anyone could successfully challenge that statement.

Mr. President, the argument is made that insufficient time has elapsed since the Miranda decision to determine its demoralizing and devastating effect upon law enforcement; that there is no "empirical data" to demonstrate the need for congressional action; and that there is no evidence to justify title II.

Mr. President, nothing could be more erroneous and further from the facts. If one will take the time to read the transcript of hearings conducted by the Subcommittee on Criminal Laws and Procedures, one will find convincing, irrefutable and overwhelming evidence as to the disastrous effect of this ill-advised majority decision. We have now had 2 years of the costly experience of seeing law-enforcement officers handcuffed in investigating crime, prosecutors handicapped in prosecuting cases and being compelled to either dismiss cases or accept pleas to lesser offenses.

The transcript is replete with the testimony of police officials, prosecuting attorneys and judges, and with letters from such officials who were unable to testify in person. Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a number of letters which are printed in the transcript, beginning at page 663 and continuing through page 784.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCLELLAN. Mr. President, these are representative of letters in the subcommittee files. Some give statistics and many of them give specific examples of cases that have been lost as a result of this 5-to-4 decision. They are almost unanimous in urging action by Congress to remedy this constant miscarriage of justice.

Mr. President, at page 619 of the hearings, we will see the resolution placed in the RECORD which was adopted by the National District Attorney Association when Mr. Moylan, the district attorney of Baltimore, was testifying. The National District Attorneys Association in convention this year endorsed amendments to the Safe Streets and Crime Control Act, S. 917, as follows:

First. An amendment authorizing wiretapping and electronic interception of communication pursuant to court order.

Second. An amendment making voluntariness the test for admissibility of any statement, admission, or confession.

Third. An amendment restricting the jurisdiction of the U.S. Supreme Court to review certain decisions of State supreme courts.

The record contains letters from 122 chiefs of police in 37 States; letters from nine district attorneys in nine States; and letters from nine judges in seven States. This is in addition to the testimony of seven district attorneys in seven States and seven judges in seven States.

Mr. President, every Senator received a letter inviting him to come before the committee and testify and offer counsel and offer suggestions and offer amendments and help us get a crime bill.

Today we find amendments that have been submitted to provide for a little old investigation or something of that kind. I do not know what it amounts to. It does not set up a committee. It does not authorize anything and does not directly report anything.

It is a subterfuge to try to avoid the real issue.

I hope that the Members of the U.S. Senate, the elected representatives of the people—and they are not appointed—will hear the voice of the people and, I hope on tomorrow, instead of accepting the subterfuge and dodge, face up like Senators should on the real issue and vote the matter up or down.

We are either for these court decisions and their consequences or we want to do something about them.

We will give an answer tomorrow to that question. Tomorrow is a day of decision, and it is also the day of opportunity to do something about the crime wave that is sweeping America. And the crime wave is getting worse and worse by the hour.

One of the most contributing factors to that deplorable situation is the attitude of the courts and the rulings they have made as reflected in the letters I have just referred to. Those decisions are turning criminals loose by the dozens and the hundreds across the country. Why? It is simply because the law is not being enforced. It is simply because the Supreme Court has undertaken to amend the Constitution and to throw precedent, tried, tested, and true, into the ashcan.

I hope we do something about it.

Mr. LONG of Louisiana. May I say to the distinguished Senator from Arkansas that I was somewhat troubled about this matter over the weekend, because I read both sides of the argument in the RECORD. Over the weekend and this morning I telephoned a number of distinguished people whom I know personally, men whom I regard highly, judges, district attorneys and sheriffs who have the problem of trying to protect the public and to defend society from the outrages of crime. Of course, those I have called have been a rather select group, people I know personally, and in whom I have the utmost confidence. Without exception, everyone said, "JOHN McCLELLAN is right 100 percent."

Mr. McCLELLAN. I wish each Senator would call a representative group of the judges and prosecuting attorneys he knows, and a representative number of the chiefs of police he knows, and ask them the question, "What is Miranda doing to you? How does it help you enforce the law? How does it prevent you from enforcing the law? How does it handicap you?"

I guarantee that what I said earlier will be sustained, and more than three-fourths of them will say that they are handicapped and that not only is it causing confusion but also is devastation to law enforcement.

Mr. LONG of Louisiana. Typical of the explanations given to me was that of a sheriff who told me that he has no more jail space, that these people have been in jail all this time, and he now needs two courthouses and two jails; because the impediments placed in the way of moving forward and convicting a guilty man and getting it over with, and moving on to the next case, have been so tremendous that he cannot complete these cases. They just go on and on forever. The lawyers advise the people not to admit anything. And if they do confess, it cannot be used; or if they admit something, it cannot be used; or the Federal appellate court will find some technicality to send it back every time a major case is concluded. That has been the result in our part of the country, and it is probably true in Arkansas and all over the country. Jails are being filled with people, who are being done no favor by being kept in jail, forever awaiting trial. Many of these people would be done a big favor, if they are guilty, to be found guilty, serve a year or so, and turned loose, rather than being kept in jail for a lifetime while people haggle over the technicalities.

Mr. McCLELLAN. I thank the Senator.

Mr. President, I understand that tomorrow the time will be divided—4 hours of debate. I shall expect tomorrow to dwell at some length upon the crux of the issue before the Senate, because this is a vital matter. Congress is going to correct this situation, or the situation will worsen until it becomes intolerable.

EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF THE ATTORNEY GENERAL,
Harrisburg, Pa., April 14, 1667.

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 Presidents' 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 anticrime 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 the 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 demon-

strate 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 additional 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 adopted 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 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 able to use a confession 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,
15TH 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 confession 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 Court's 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 suppress 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 identificaton 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 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 toward 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 enclosure, 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 "vountariness" 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 3, 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 right 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 at 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 cirme 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 unles 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 on the Judiciary,
Washington, D.C.

DEAR SENATOR MCCLELLAN: I apologize for having taken so long to answer your letter of February 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 pretrial 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 accomplished 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 appellant 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 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 overturned 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 necessarily 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 McKibben's 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 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 dedendants 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 wrongdoings, 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 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 Commissioner 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 criminals 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 murder, 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 Court 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 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 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 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,
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 Subcommittee 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 circumstances.

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 No. S. 674, which is a Bill to amend Title 18, U.S. Code, with respect to the admissibility of 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 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" in 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 right 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 apprehended 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 particularly those in command and administrative positions where their undesirable philosophy contine 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 problems 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 Rafferty, 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?

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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.

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.

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 lid 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 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 fathers 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 incriminating 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 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, 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 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 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 percent)	2,042	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 preceding year.*

It may appear rather trite to reiterate that the Supreme Court has contributed immeasurably to the above facts, but I am conpelled 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.

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 Buiding, 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 Association meetings who have been 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 admissible 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, MASS.,
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 you and 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 the 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 facetious 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 analogy, 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 enforcement.

The Miranda decision has had far-reaching effects on law enforcement particularly in the field of interrogation, 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 enforcement 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 Escobedo 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 be-

lieve 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 themselves 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 acquitted 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 him 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 admissibility 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.

Your truly,

CLAUDE A. ARMOUR,
Commissioner of Fire and 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.

Yours 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 an 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 scene 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 it 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 hear-

ing 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 admissions 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 on 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 anything 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 was 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 Code 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 calendar. 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, Homicide 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 Maryland 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. After 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 the 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 welcome this opportunity to express our views and experiences in dealing with the various Supreme Court decisions and their effects of 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 decisions, 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 YARBOROUGH,
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 perpetrators 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 megalopolic that make up Los Angeles County, California. In progressing through the ranks via promotion examinations my experience has covered the many facets of a police officer, 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 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 its 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 hearing 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 professional criminal is quick to exercize 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.

K. C. ALVAREZ,
Chief of Police.

MARIPOSA, CALIF.
March 1, 1967.

Hon. JOHN 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 committe initiate the ratification of an amendment to the U.S. Constitution that will include proce-

dures along the lines of those parts of the California Constitution that read:

Art. I, Sec. 3, 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 the 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 understandable desire of the framers of this Constitution to escape oppression at the hands of a foreign king with the right of the 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 buglary. 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 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 commonsense 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, persons 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 one of the most basic principles of police procedure to endeaver 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	404	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 relatively 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 he 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 officer was met by the two motorists involved. One of the motorists immediately said to the policeman, "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 the 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 years,

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 the day will come when no confessions will be admissible under any circumstances. He said new scientific ways of prosecuting 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 has not changed the rules, he said, "These are rights created by the courts 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 officer 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, Dis. 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 re-

cent 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 only way that law enforcesidering 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 Navigation.

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 decision would directly hinder their capability 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,

EDWARD MCCONNELL,
Administrative Director of the Courts.

FEBRUARY 9, 1967.

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.

Your 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 right 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 thought 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, 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: 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 possibly 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 than 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 month 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 en-

forcement, the Supreme Court has in 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 juries. 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 justice 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, draped 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 32 years 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 unanimous 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 super-legislature 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 conscientiously 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 ideologi-

cal 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 enforcement.

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 cannot 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 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 be 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 releasing 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 indigent 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, coercion 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 atttorney was not present during the interrogation and all the guidelines 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, coercion 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 commited 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 and 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. BARCELINE.

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, 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 amending 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, notwithstanding 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 has 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, 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 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 No. 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 decisions 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 are 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 nol-pros 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 nationwide. 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 perti-

nent 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. BROWNER,
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 Court 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 Vernon, 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, Washingon, D.C.

DEAR SENATOR MCCLELLAN: We have recently received a letter from the Executive Director of the International Asociation of Chiefs of Police, which indicates that your committee will hold hearings on proposed changes in the laws of admissibility of confesions 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 committe. 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 that have been lost because of court decision, but the Police Officer will be able to testify to the actual difficulties 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 Detective 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 great deal of speculation, and I am quite sure that you would be able to secure much better cases to illustrate 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 wholehearted 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 J. 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 redefined 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 Law 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, Ridegway, 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 high 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., 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 fact 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. 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, 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 rights 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 precedence 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 Municipal 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 burglarly. 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-arraignment 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., February 25, 1697.

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.

Acknowledgment of this is not necessary.

Most Sincerely,

Chief JAMES F. MULCAHY.

DEPARTMENT OF POLICE,
Virginia Beach, Va., 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: 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., 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 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 St, 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. MCLELLAN,
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 endorse 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 a 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 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 investigation 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 accusatory 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.

Your 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 him, 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 efforts 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, 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 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 Office 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 weren'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, VA.,
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. Therefore 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 have 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 investigations. 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 permissible."

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 an estimated $100,000.00—plus the unmeasured grief for the families most dramatically involved—and no person has dared ask the suspect whether he committed 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 harassment than the person being tried.

Actually, the most serious effect 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 officer 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 effects 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 addi-

tional 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 judgment 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 millions to try to convict them and more millions to incarcerate and rehabilitate them. Nothing 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 CHIEF 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 home 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 communities.

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 with 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 Criminal 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 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 Teaxs 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 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 communities 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 offense 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 convict 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. CHAIRMAN: 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 pro-

fession, 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.

POLICE DEPARTMENT,
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 elements. 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.

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 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 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	47
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 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 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.

FOUR PARADOXES OF TITLE II

Mr. TYDINGS. Mr. President, much has been said in these debates on the constitutional and policy issues surrounding the validity of title II. I would like to speak briefly at this time of four amazing paradoxes that I find in the provisions of title II.

The first paradox is that the provisions of title II overruling the Supreme Court's constitutional decisions in the Miranda and Wade cases apply only to trials in Federal courts. Title II leaves completely intact, for State trials, the rules elaborated by the Supreme Court in Miranda with respect to the voluntariness of confessions, and in Wade with respect to the admissibility of eyewitness testimony. All that title II accomplishes with respect to State trials is to prohibit the Supreme Court from reviewing on appeal State determinations of these issues.

Thus, in every State trial that takes place in the future, title II is inapplicable and State judges will be obliged to continue to follow the requirements of Miranda and Wade. No confessions may be introduced in evidence in a State trial unless the procedures required by Miranda have been obeyed. No eyewitness testimony may be admitted in a State trial unless the procedures required by Wade have been obeyed. And, intermediate State appellate courts and State Supreme Courts must continue to apply the strict requirements of Miranda and Wade to all cases within their jurisdiction.

All that title II accomplishes, therefore, is to overrule Miranda and Wade with respect to Federal trials. But, as the Supreme Court clearly recognized in Miranda, the decision had little or no impact on Federal law enforcement, because Federal investigative officers were already following essentially the same requirements established by the Supreme Court in Miranda. The paradox of title II is that, when stripped of the rhetoric that has obscured it the title fails to accomplish what we might have expected to be the prime goal of this attack on the Supreme Court—the overruling of Miranda with respect to State courts and State law enforcement officers, where the impact of Miranda is alleged to have been most severe.

Title II still contains, however, the extremely undesirable provisions prohibiting Supreme Court review of State court decisions. Although the effect of title II is to require State courts to continue to follow Miranda, title II is likely to be used by the States as an invitation to bypass Miranda on their own, since no Federal court will be looking over their shoulders.

The second paradox of title II lies in the curious difference in treatment between the provisions limiting the appellate jurisdiction of the Supreme Court in cases involving the voluntariness of confessions, and the provisions limiting such jurisdiction in cases involving the admissibility of eyewitness testimony. Section 3502 of title II abolishes the appellate jurisdiction of the Supreme Court in cases involving confessions admitted in evidence in the State courts. The Supreme Court remains free to review the decisions of the lower Federal courts admitting confessions as voluntary.

By contrast, section 3503 of title II goes much further. Not only does it abolish the jurisdiction of the Supreme Court to review the determination of a State trial court that eyewitness testimony was admissible, it also abolishes the jurisdiction of the Supreme Court to review such determinations by the lower Federal courts.

The anomalous results that will be produced by these provisions on appellate jurisdiction are obvious. If the goal of the proponents of title II is to prohibit the Supreme Court from passing on the constitutionality of the provisions of title II overruling Miranda, they will fail, because title II does not affect the jurisdiction of the Supreme Court to review the application of title II by the Federal trial courts. The question of the validity of title II, therefore, will surely reach the Supreme Court for decision. To be sure, the provisions of title II repealing the Wade decision do purport to completely insulate those provisions from Supreme Court review. Here, however, title II creates another anomaly, in that every Federal trial court—each of the 94 Federal district courts throughout the Nation—is made into a miniature Supreme Court, able to promulgate its own final interpretation of the meaning of title II and its own final interpretation of the complicated factors that must be given weight under title II in determining whether a confession is "voluntary."

The third paradox of title II is the highly ambiguous language of section 702, which—at the very least—seeks to abolish the habeas corpus jurisdiction of the Federal courts over State criminal convictions. But section 702 does not stop with this result—its broad language will also prohibit any State from fashioning its own similar remedies for convicted defendants. So long as a State conviction has been affirmed by the highest court of the State and certiorari has been denied, title II preaches that the conviction cannot be overturned by any State or Federal court, no matter how egregious may have been the denial of the defendant's constitutional rights at his trial, and no matter how dispositive any newly discovered evidence may be.

For my own part, I confess I am sympathetic to the plea that the Federal district courts have been a little too quick in the past to hold habeas corpus hearings for State prisoners. But surely this provides no support for title II, which prohibits even the States themselves from holding such hearings and inquiring into the validity of the convictions of their own defendants. The evidence of recent years indicates that the States have been extremely active in this area, and that there is less and less incentive to the Federal courts to interfere through habeas corpus proceedings.

I submit that title II exalts beyond all reason the principle of finality in criminal cases. Our legal system simply must contain a safety valve—whether it be called habeas corpus or some other name—to permit gross miscarriages of justice to be remedied, even though the injustice is uncovered long after the conviction has been affirmed by a State's highest court and certiorari has been denied. The burden of the courts is small in comparison to the basic rights that are preserved. We must always remember that it is not a needle we are looking for in the stacks of paper filed by State prisoners, but the rights of a human being.

The fourth and final paradox of title II that I would like to discuss is the very curious contrast I find between the attitude toward the Supreme Court in title II and the attitude in title III. During these debates, we have heard the proponents of title III go to great lengths to tell us that the provisions on wiretapping and eavesdropping in title III faithfully adhere to the basic decisions of the Supreme Court. Indeed, we have been told that in the Berger and Katz decisions, the Supreme Court laid down a blueprint for a statute authorizing electronic surveillance, and that title III conforms to this blueprint in every significant detail. How, then, can the architects of title II exhibit such a remarkable disregard for the equally clear blueprint laid down by the Supreme Court in the Miranda and Wade decisions with respect to the voluntariness of confessions and the conduct of police lineups?

In the long debate on title II, I have heard no serious contention that the provisions of title II seeking to overrule the Miranda and Wade decisions of the Supreme Court are constitutional. At the most, we are told that these decisions were decided by a one-vote margin of the Supreme Court five to four and that it is always possible that one of the Justices of the Court may change his mind, and the law will be upheld. But, I submit, that possibility is even more remote now than it was even at the time Miranda was decided. In the recent decision of the Supreme Court in Mathis against United States, decided only 2 weeks ago, the court reaffirmed its Miranda decision in clear and unmistakable terms.

Even more significant, I would like to point out what must be obvious to all Members of the Senate—that the personnel of the Court have changed by one member since the date of the Miranda decision. The change in personnel, however, is hardly propitious for the proponents of title II. Almost a year ago, Justice Tom C. Clark, one of the four dissenting Justices in Miranda, resigned from the Supreme Court. His seat on the bench is now occupied by Justice Thurgood Marshall. None of us, I think, believes that Justice Marshall would dis-

sent from the holding of the Court in Miranda. To be sure, as the proponents of title II have pointed out, Justice Marshall, when he was Solicitor General of the United States, argued the Miranda case on behalf of the Government and took a position against the result reached by the Court in its decision. Surely, however, the position espoused by Justice Marshall in his Miranda argument is best read as the argument of an advocate, not the independent judgment of a Justice of the Supreme Court. The tally of votes of the Justices now sitting on the Supreme Court is six to three in favor of Miranda, not five to four. A change in the vote of one Justice will no longer change the result of the case.

My remarks have been brief, but I urge the Members of the Senate to ponder carefully the paradoxes of title II that I have mentioned. To me they demonstrate, whatever the merits of the constitutional and policy objections made against its provisions, that the path of wisdom lies in rejecting title II.

AMERICAN LAW INSTITUTE REPORT ARGUES AGAINST ADOPTION OF TITLE II

Mr. President, I wish to draw attention to the recent "Study Draft on Prearraignment Procedures," published last month by the prestigeous American Law Institute. As I am sure Senators are aware, the American Law Institute is one of the most potent forces in America today in the development and revision of legal doctrine. Over the past decades, through the publication of the many restatements of the law and model code, their stature has risen to unparalleled heights. The institute's membership includes not only many distinguished legal scholars, but also lawyers of outstanding reputation from both private practice and public service.

The American Law Institute's interest in the area of prearraignment procedure dates back at least to 1959. In 1962 the institute made application for a grant from the Ford Foundation, noting that—

> The problems of pre-arraignment, concerned with the suspect in the hands of the police . . . have not yet received the kind and scope of attention and thinking that have been applied to substantive criminal law, to the criminal trial process, and to sentencing and treatment of offenders.

The Ford grant was made in 1963.

The first tentative draft was presented to the May 1966 meeting of the institute after two meetings of the advisory committee and two meetings of the council. Among the many outstanding members of the advisory committee are such distinguished law-enforcement personnel as Thomas Lynch, attorney general of California, Frank S. Hogan, district attorney of New York County, John B. Layton, Chief, Metropolitan Police Department, District of Columbia, and Howard R. Leary, police commissioner of the city of New York. One of the two reporters for the study draft is James Vorenberg, formerly the Executive Director of the President's Commission on Law Enforcement and the Administration of Justice.

Although the in-custody investigation, including interrogation, proposals were "warmly debated at the 1966 meeting" of the institute, no votes were taken because of the time limitations and because Miranda against Arizona was pending in the U.S. Supreme Court.

In June 1966 the Miranda decision came down. At the December 1966 meeting of the council, the reporters expressed the view that the decision made it advisable to propose several legislative models for possible adoption by the institute until some experience and information was accumulated to give a sense of just how the prearraignment system would operate under Miranda. Accordingly, the reporters recommended that further work on in-custody investigation take the form of:

> (a) exploring some of the major alternatives which might be available after Miranda, *and*
>
> (b) concurrently seeking to gather information on the factual situation and needs that might be helpful as background to a future decision about various alternative models and that might suggest what lines of further empirical research should be pursued.

The present study draft is the product of work performed along these lines. The proposals contained in the study draft are the product of a lengthy and serious consideration of the need to accommodate the requirements of effective law enforcement and the rights of the accused. They are, in large part, based upon the various empirical studies which have been made by agencies and institutions around the country. Included among these studies are the Yale study, conducted in New Haven, Conn.; the Vera Institute of Justice project in New York City; the Georgetown Institute study, conducted in Washington, D.C.; the Pittsburgh study; and studies in Chicago, New Orleans, Detroit, and Los Angeles.

Briefly stated, the recently released ALI study draft is a document for the consideration of institute members to aid them in their efforts to draft a model code which would meet the Supreme Court's requirements that any legislative solution be "at least as effective" as the safeguards laid down in Miranda, Wade, and Stovall. The study draft consists of four different statutory procedures which might be followed by the police during the period prior to presentation of the accused before a magistrate. Although I do not propose to discuss the details of these four models, I should like to point out that all of them are completely consistent with the Supreme Court's decisions in Miranda, Wade, and Stovall. All of the proposals are examples of what the Supreme Court was talking about when it invited legislative action in this area. All of the proposals, in sharp contrast to the proposals in title II, provide an effective means of protecting the constitutional rights of accused persons.

Although all four of the models proposed were consistent with the constitutional safeguards prescribed by the Supreme Court in Miranda, Wade, and Stovall, the ALI reporters concluded that—

> Present empirical knowledge makes it difficult to predict with confidence how various models will operate in practice and what their impact on law enforcement and the protection of individuals will be.

The draft concludes with a recommendation of research techniques and lines of inquiry which would be helpful in further evaluating the desirability of the four recommended procedures. The conclusion of the ALI makes clear that enough time has not elapsed since the Court's decisions in Stovall, Wade, and Miranda to assess their impact on the effectiveness of law enforcement. The ALI reports reviewed many of the empirical studies that have already been made. They found that these studies were seriously inadequate in many respects. The ALI reporters therefore concluded that any crystalization of prearraignment procedures by adoption of a model code would be premature. I submit to you that action on the proposed title II would likewise be premature.

Title II, unlike the four model procedures put forth by the ALI reporters, is not as "fully effective" in protecting individual rights as the safeguards prescribed by the Court in Miranda, Wade, and Stovall. Title II is an attempt to cut back on individual rights in order to promote the needs of effective law enforcement. The reporters clearly recognized that such a goal could be accomplished only by constitutional amendment, not by statute. The reporters specifically addressed themselves to the desirability of a constitutional amendment, but rejected it in the following terms as premature:

> More broadly, it seems to the Reporters that prior to any serious consideration of a system that would be inconsistent with *Miranda*, it is of the utmost importance to evaluate what the results are of seeking the fairest and most effective procedures within the scope of that decision. It is only as experience accumulates and is carefully evaluated that the appropriateness of more sweeping changes can be fairly judged.

I believe their point is well taken. If we are to act upon a rational basis in the area of criminal procedure, we must first examine and carefully evaluate the impact of the Court's decisions on law enforcement. To date, the three most complete empirical studies of the Miranda problem—the Yale, Pittsburgh, and Georgetown studies—indicate that Miranda has had no significant adverse impact on law enforcement. There has, of course, been insufficient time to study the impact of Wade and Stovall. If, on further examination it is found that the safeguards prescribed in these three cases do have a deleterious effect on law enforcement, then we should devise a legislative solution consistent with the decisions of the Supreme Court. Any such legislative solution should be carefully designed to meet the specific problems that are found to exist.

Only after the alternative legislative solutions consistent with present constitutional requirements have been evaluated should the Congress consider placing restrictions on individual rights. Moreover, such action should—indeed must—as the reporters of the American Law Institute suggest, take the form of a constitutional amendment.

Title II is nothing more than an obvious and hasty attempt to restrike the balance between the rights of the individual and the needs of law enforcement. I submit to you, and the reporters of the American Law Institute concur, that at the present time there is no adequate factual basis to support the conclusion that title II is either necessary or wise. I urge support of the motion to strike title II.

AMERICAN BAR ASSOCIATION RESOLUTION CONDEMNS TITLE II OF CRIME BILL

Mr. President, I would like to announce to the Members of the Senate the substance of an important resolution approved unanimously this afternoon by the board of governors of the American Bar Association at the annual meeting of the association. That resolution deals specifically with the provisions of title II of S. 917. It unequivocably condemns each of the provisions of title II. It opposes all legislation at this time that would in any way abrogate the constitutional rights of our citizens or restrict the jurisdiction of the Supreme Court.

As I have emphasized the resolution of the American Bar Association was adopted without a dissenting vote. The board of governors was acting on a draft resolution that had been carefully studied and drawn up by the criminal law section of the association.

Mr. President, I strongly agree with the resolution adopted by the American Bar Association today. I urge all Members of the Senate to follow this strong recommendation by the most prestigious bar association in the United States. At the very least, the provisions of title II deserve careful and exhaustive study before such fundamental changes in our American system of government are enacted into law. I urge you to vote against adoption of title II.

I ask unanimous consent that the resolution adopted by the board of governors of the American Bar Association be inserted at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION OF THE AMERICAN BAR ASSOCIATION

Whereas, Title II of Senate Bill 917 (90th Congress) purports to deal with the conduct of federal and state criminal prosecutions and directly bears on the constitutional rights of defendants in the administration of state and federal criminal laws;

Whereas, Title II substantially restricts and in effect, eliminates the availability of the federal writ of habeas corpus as a means of protecting rights guaranteed to defendants in state criminal cases by the Constitution of the United States;

Whereas, Title II would restrict and eliminate the jurisdiction of the Supreme Court of the United States to decide significant issues concerning rights now protected by the Bill of Rights and the Fourteenth Amendment to the Constitution of the United States;

Whereas, In addition to the general limitation on the function of federal courts in protecting constitutional rights, Title II is directed to specific Supreme Court decisions construing and implementing the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution and purports to overrule the decisions through legislative enactment;

Whereas, There is serious doubt about the constitutionality of each of the provisions of Title II and there are serious questions about the meaning and effect of some of its provisions;

Whereas, Even if Congress has the constitutional power to deal with the issues by providing alternative effective remedies for unconstitutional wrongs, it may not properly overrule a judicial determination that the Constitution requires that the individual be protected from those wrongs;

Whereas, Although Title II strikes down the protections afforded by the Supreme Court decisions under attack, it fails to deal with or provide remedies for the wrongs disclosed;

Whereas, A complete denial of access to federal courts for the determination and protection of rights guaranteed by the federal constitution is contrary to the spirit of our federal system;

Whereas, No basic change in a judicial system or in the relationship between the federal judiciary and the states should be made without a thorough consideration of the consequences and the availability of less radical alternatives;

Whereas, The orderly processes of deliberate, reflective and reasoned legislative judgment and when necessary, constitutional amendment, can better accomplish results which will (a) satisfy both the defenders and critics of the judicial decisions presently under attack, (b) in the process, improve the administration of justice for the benefit of the entire nation, and (c) avoid unnecessary strains on the relationship between the legislative and judicial branches of the federal government;

Whereas, There is presently no adequate factual basis for determining the effects on law enforcement from adherence to the safe guards required by the Supreme Court decisions under attack;

Whereas, Several studies are now pending on the effects on law enforcement of those decisions and of alternative means of dealing with the wrongs at which the decisions are directed, and any changes such as those proposed in Title II should await and be based upon objective and informed assessment of the facts in the light of traditional constitutional principles: Now, therefore, be it

Resolved, That the American Bar Association opposes Title II of Senate Bill 917 and opposes in principle any legislation similar thereto which (a) restricts the jurisdiction of the United States Supreme Court to decide all federal constitutional issues on direct review of state and federal court decisions in criminal cases, and (b) effectively eliminates or substantially restricts any federal court consideration of federal constitutional issues in a state criminal case by limiting such consideration to review by the Supreme Court by writ of certiorari or appeal from the highest court in a state with jurisdiction to review the judgment and precludes resort to federal writs of habeas corpus in state criminal cases.

Mr. LONG of Louisiana. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. LONG of Louisiana. Mr. President, there are two items in the calendar which I understand have been cleared. For fear that there might conceivably be some misunderstanding, I will not move to reconsider these measures if they are passed. In fact, I agree to unanimous consent to reconsider them in the event that a Senator on tomorrow might find that there is some second thought about the matter. I understand that there is no disagreement as to these measures.

I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 1116 and 1118.

The PRESIDING OFFICER. Without objection, it is so ordered.

AN ACT TO EXTEND THE AUTHORITY TO GRANT A SPECIAL 30-DAY LEAVE FOR MEMBERS OF THE UNIFORMED SERVICES WHO VOLUNTARILY EXTEND THEIR TOURS OF DUTY IN HOSTILE FIRE AREAS

The Senate proceeded to consider the bill (H.R. 15348) to amend section 703(b) of title 10, United States Code, to make permanent the authority to grant a special 30-day period of leave for members of the uniformed services who voluntarily extend their tours of duty in hostile fire areas which had been reported from the Committee on Armed Services, with an amendment, on page 1, line 4, after the word "out", strike out "the last sentence" and insert "June 30, 1968, and inserting in lieu thereof June 30, 1970".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1133), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

This bill as amended would extend for 2 years the authority to grant an extra 30 days of leave and round trip transportation to the United States or another place of the member's choosing to those members of the uniformed services who voluntarily extend their service in a hostile fire area.

EXPLANATION

Public Law 89-735 provided authority for members of the uniformed services who voluntarily extended their tour of duty in a hostile fire area for at least 6 months to be granted an extra period of 30 days of leave and round trip transportation to the United States or to another place that the member selects. Unless extended, this authority would expire on June 30, 1968.

A tour of this length is not sufficient from the standpoint of manpower utilization, but it has been retained for equitable reasons. There are many advantages to the Government when members of the uniformed services voluntarily extend their tour of duty.

The experience under the authority that would be extended by this bill has been highly satisfactory. Almost 60,000 members of the uniformed services have taken advantage of this program since the authority was approved in November 1966; 97.4 percent of the persons who have extended their tours were enlisted members and 2.6 percent were officers.

The committee recommends that the authority be continued. It believes, however, that the authority should not be made permanent because the justification for use of this authority in Vietnam might not necessarily exist in other areas where a permanent authority could apply.

COST

The average transportation cost for a member of the uniformed services who extends his tour of duty under the authority this bill would extend is approximately $570. This cost is offset by reductions in the transportation of replacements and in the relocation of dependents of replacements. The Department of Defense considers that this authority pays for itself in savings on replacement costs. If two persons extend for 6 months each and are paid their transportation and are given their leave, the cost is approximately the same as to send one person to Vietnam, to resettle his family, and to return him to the United States 1 year later.

The title was amended, so as to read: "An act to extend the authority to grant a special 30-day leave for members of the uniformed services who voluntarily extend their tours of duty in hostile fire areas."

ARMY MEDICAL DEPARTMENT

The bill (H.R. 15863) to amend title 10, United States Code, to change the name of the Army Medical Service to the Army Medical Department was considered, ordered to a third reading, read the third time, and passed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended by striking the words "Army Medical Service" wherever they appear in sections 711a, 3064, 3067, 3210, 3296, 3579, and 4624, and in the text of the catchlines and corresponding analyses to sections 3067 and 3579, and inserting the words "Army Medical Department" in place thereof.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1135), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

This bill would change the name of the Army Medical Service to the Army Medical Department.

EXPLANATION

The Army Organization Act of 1950 changed the name of the Medical Department of the Army to the Army Medical Service. The purpose of the change was to eliminate the possible confusion that might result from use of the term "Department" when this term was also used in connection with the Department of Defense and the military departments.

The 1950 change has had an opposite effect from the one intended. The term "medical service" is used within the Army to refer to parts of a hospital that provide care in specific fields of medicine. Another source of confusion is that one of the six corps constituting the Army Medical Service is called a Medical Service Corps.

Returning to the name of the Army Medical Department that was used for 132 years before 1952 is intended to eliminate misunderstandings about the terminology for medical personnel and units of the Army.

CONVENTION ESTABLISHING A CUSTOMS COOPERATION COUNCIL—REMOVAL OF INJUNCTION OF SECRECY

Mr. LONG of Louisiana. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from Executive G, 90th Congress, second session, the Convention Establishing a Customs Cooperation Council, together with the protocol concerning the European Customs Union Study Group, signed in Brussels on December 15, 1950, transmitted to the Senate today by the President of the United States, and that the convention, together with the President's message, be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message from the President is as follows:

To the Senate of the United States:

Today I ask the Senate to give its advice and consent to accession by the United States to the Convention Establishing a Customs Cooperation Council.

The Council is the major international organization for improving and simplifying customs procedures. It started out as largely a European organization. Now 53 countries are members. Almost all our major trading partners participate in its work.

The objectives of the Convention are to assist international trade by working for:

—uniformity and simplicity in the customs systems of its members;
—solutions to customs administration problems;
—cooperation among governments in these matters.

The Council's recommendations are not binding but they are widely accepted by most of our major trading partners. They have an increasing importance for United States trade.

The United States sends observers to meetings of the Council and its Committees. I believe that accession to the Convention would be of clear advantage to the United States. We would have increased opportunities to participate in the Council's recommendations and to benefit from its work.

As the world's largest trading nation, we would be better able to do our part in helping to improve customs procedures so as to expand international trade.

I recommend that the Senate give favorable consideration to United States accession to this Convention.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *May 20, 1968.*

(Enclosures: 1. Report of the Acting Secretary of State, 2. Certified copy of the Convention Establishing a Customs Cooperation Council, together with the Protocol concerning the European Customs Union Study Group, signed in Brussels on December 15, 1950.)

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. LONG of Louisiana. Mr. President, in accordance with the order previously entered, I move that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to; and (at 6 o'clock and 5 minutes p.m.) the Senate recessed until tomorrow, Tuesday, May 21, 1968, at 9:30 a.m.

EXTENSIONS OF REMARKS

STUDENTS EDIT BURLINGTON HAWK-EYE FOR A DAY

HON. FRED SCHWENGEL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 20, 1968

Mr. SCHWENGEL. Mr. Speaker, on Friday, May 10, the senior members of the Purple & Gray Burlington High School student newspaper, helped edit their city's newspaper, the Burlington Hawk-Eye.

The experience was educational and worthwhile. The students were up to the challenge. Editorials by Gretchen Funck and Kathy McAllister were particularly good.

I commend their reading to my colleagues:

GENERATION GAP

(By Gretchen Funck of the P. & G.)

"Generation gap" . . . For centuries youth and adults have disagreed. Socrates complained that young people had "bad manners, contempt for authority, and disrespect for their elders." Yet many sociologists feel the gap is wider and deeper now than ever before.

As the folk song "The Times They Are A-Changin'" says ". . . better start swimming or you'll sink like a stone, for the times they are a-changin'." Later, the song tells mothers and fathers ". . . your sons and your daughters are beyond your command" and "please get out of the new one (road) if you can't lend a hand."

While there are many aspects to a generation gap, the communication gap plays an important part. Much depends upon understanding, and this can't come about without some type of exchange of ideas. The more discussion, the greater the understanding and the narrower the rift.

Today many families seem to be afraid to talk to each other. "They wouldn't listen or pay attention anyway" or "I'd just be laughed at and considered and old fogey" are two widely-used excuses.

This lack of communication has been criticized by many popular songwriters. Simon and Garfunkel in "The Sounds of Silence" see communication as existing on only the most superficial level. "She's Leaving Home" by the Beatles discusses parents' lack of understanding as to why their daughter left after they had given her everything money could buy.

Yet the outlook is not all bad. Parents must realize that, because of TV and radio, their views must contend with news from all over the country and world. Besides parents, these two mass media are strong influences for teenagers.