into question by evidence, the prosecution always has to show sufficient mental power to be able to entertain that specific intent as a part of the case for the prosecution.

The CHAIRMAN. Thank you.

Title II follows the ALI test closely, except for the addition of the words "to know," and the substitution of the word "wrongfulness" for "criminality." Title II as the House passed it reads as follows:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to know or appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Now, the House saw fit to have the words "to know" added to the standard ALI definition. And there seemed to be some variance among legal experts who appeared before us as to whether this created a substantial variance with the ALI test.

Senator ERVIN. It would strike me that it does not substantially alter its meaning. In other words, if you substitute that word "know"—the words "or know"—in the American Law Institute draft, and substitute the word "wrongfulness" instead of "criminality."

The CHAIRMAN. That's correct—"wrongfulness" replaces "criminality" contained in the ALI test. Some of the lawyers simply thought the use of the words "to know" simply broadened the test, and that it made no material change to the ALI test.

Senator ERVIN. With reference to the provisions of title III, I have grave misgivings about the right to hold people for any definite period of time for the purpose of investigation. And I doubt whether you can square that with the Constitution.

In other words, it seems to me that it is a rather dangerous practice to allow a man to be held for any period of time merely for the purpose of investigating him and ascertaining whether there is reason to believe he is guilty or not. For that reason, I have misgivings about that provision.

I do think there are instances, referring to the part about material witnesses, where you do have to make some provision for the detention of a material witness when you have reason to think that he may flee the jurisdiction and not be available for trial. And I think the part of title III which deals with that subject is probably about as good a way to handle it as can be devised.

The CHAIRMAN. I certainly appreciate your views.

One of the witnesses, I believe it was the professor of criminal law at Northwestern, who testified this morning, seemed to indicate that the investigative arrest provision now in the first part of title III is very close to the Uniform Arrest Act, which has been held constitutional, he indicated, in a number of States. But many lawyers share with you your expressions that an investigative arrest is unconstitutional—very close to being unconstitutional.

Senator ERVIN. Yes. I take that view notwithstanding the fact of my own practice which, as far as criminal law was concerned, consisted of defending people charged with crime and not prosecuting them. I think that as a matter of fact that probably more people get turned loose without trial and without having great expense when the officers do certain questioning of them. That was one reason that always seemed to me unfortunate about the *Mallory* case from a prac-