

of the District of Columbia. It did say that it was so cumbersome that it could not be used. We take that to mean that the phrase requiring that material witnesses be held in separate premises—the word “premises” I emphasize—apart from criminals, or people accused of crimes, is the difficulty here.

What part of section 302 would do, would allow them to be kept in a separate room, but on the same premises; namely, in the jail, or in the lockup, or in a precinct lockup, wherever it proves fruitful to hold them.

If this is the question, if this is the proposal, the problem with the material witness statute as we now have it, and the proposal is to change it for this reason alone, then we think it can be done a great deal more narrowly, and it doesn't present the kind of problems which I am about to talk about.

I want to call your attention to the fact that Mr. McLaughlin said that while there is this statute for the detention of material witnesses, there is in their opinion, the opinion of the Crime Commission, no authority to stop them in the first instance, to hold them. But there is. There is Federal rule of criminal procedure 46(b), which flatly, specifically allows the detention of a material witness during the pendency of a case.

This is the limitation which we think should be imposed on any statute for allowing the detention of material witnesses. It must be tied to a case which is pending.

The CHAIRMAN. At that point, Mr. Heller, I assume you would agree very largely with the official position of the Department of Justice on section 302. They say it in two or three sentences.

While for these reasons we must oppose section 301—which is the investigative arrest section—

We fully recognize the necessity for securing the appearance of material witnesses which is the subject of section 302. In this connection, we call your attention to S. 1148, a bill prepared by the District of Columbia Commissioners to amend the law relating to material or necessary witnesses to crimes committed in the District of Columbia. We believe that bill represents a sounder approach to the problem of material witnesses than does section 302.

I don't know whether in the course of your preparation, speaking on section 302, you have examined S. 1148 or not.

Mr. HELLER. I believe, Mr. Chairman, that I did look at it sometime in the past, and I am frank to tell you that I cannot now recall whether it is limited to the detention of witnesses in a case which has already been begun in court. If that is so, this is a basic limitation.

The real danger of section 302 is that it is wholly directed to the detention of witnesses during police investigations. And Mr. Harris just told you about several investigations that have gone on for years in a technical sense because the crime has never been solved.

This, in other words, allows the police to hold up to 6 hours, and without court approval, and thereafter with court approval during the pendency of a police investigation—a wholly vague and unlimited concept.

It seems to me that it is an element of—I hate to use drastic language in a very polite hearing—police state methods, that men can be picked up off the street, or women, and held for 6 hours, with nobody knowing about it and then thereafter by a judge if they cannot