yet it is proposed to give them a new one without any comparable protection to the individual.

Section 302, like criminal rule 46(b), contemplates that the arrested person may be released on bail, which is a severe hardship to the poor who cannot secure bail. But even if this were construed to allow personal recognizance there would be no possibility of release during the first 6 hours, before the man was brought to court. Beyond this, consider the idea of requiring a man to post bail because the police are investigating a crime and think he may be a material witness someday. This could go on for years if a court did not release him on habeas corpus or invalidate section 302 itself. Of course, we believe that courts would either invalidate both these provisions or else construe them as going no further than existing arrest authority. This committee, we believe, should not approve laws which are either unconstitutional or merely redundant.

It is small wonder that last April one of the largest membership meetings of the Bar Association of the District of Columbia ever held overwhelmingly condemned the very kind of proposals which now go to make up title III of this bill. Actually the proposals put before the bar association contained guarantees which this bill does not incorporate. The committee is already aware of the opposition of the Justice Department and the District Commissioners to these provisions.

To put it simply, these provisions are anathema to our rights. They are surely unconstitutional for the largest part. They import a statutory authorization of police-state methods into our local laws. They use semantic devices to relabel illegal arrests. They have nothing at all to commend them to such good protectors of our rights as the members of this committee have shown themselves to be. We ask the committee to reject them in toto.

Thank you very much.

The CHAIRMAN. That is a very effective statement, Mr. Heller.

The Justice Department indicates Senate 1148 is patterned after rule 46(b) of the Federal Rules of Criminal Procedure. I am advised by Mr. McIntyre 46(b) is a section that was very seldom used in the past in the District of Columbia, as a section for the detention of a material witnesses.

Now, are you in favor of section 46(b)?

Mr. HELLER. We are in favor, with one limitation, Mr. Chairman.

We dislike, and most of the organized bar of the District of Columbia Bar, I think, is beginning to suspect that the problem of bail in the traditional sense is a tremendous hardship on poor people. If this is construed to allow personal recognizance when a man is to be released, if the magistrate or judge thinks this is satisfactory, then we believe there is a proper rule, rule 46(b). It may be construable that way today.

Secondly, let me say we think there ought to be some maximum time limitation on detention, because calendar delays ought not to keep an innocent man who is merely a witness in jail.

We are a Federal jurisdiction. A man who flees this jurisdiction can be brought back from almost anywhere under a Federal subpena.

Now, there is the problem that rule 46(b) doesn't cover the general sessions court. We recognize that. We are in favor of a similar rule in the general sessions court, and we are in favor of amending the detention statute, section 4144 of the code, so it is not quite as cumbersome to hold a man.

However, once again, the fact that rule 46(b) is not much used suggests to me one of two answers to that problem. Either the detention statute itself is too cumbersome, although I doubt it applies in the Federal district court over rule 46(b) itself, or the police really don't want this for witnesses, and really don't need it for witnesses—they want it for potential defendants. I am forced to say that.