

Section 302 of the same title III purports to insure the availability of material witnesses in felony cases.

It is clearly a detention device. It permits up to 6 hours of detention by the police during which time interrogation can be pursued without recourse to a presentation before a judicial officer. Release of the witness does not preclude another detention, or let's say it—arrest. It is an arrest, notwithstanding the bill's assurance otherwise. What is more, this arrest of a material witness can be had even in a matter where another person is being held as a suspect and is being investigated under section 301. The Federal Rules of Criminal Procedure now demand the sanction of a judicial officer to detain material witnesses in these cases.

While the material witness held under section 302 can be released when brought before a judge or commissioner, he must post bond or collateral—another imposition on the impoverished if he is not released on his personal recognizance. And where is his right to counsel protected? And where is his right to not be detained unreasonably if he cannot meet bond or collateral requirements? And where is his protection against the use in a criminal prosecution against him of incriminating statements made by him during this so-called detention.

I would like to digress a moment here, Mr. Chairman.

We are concerned about the casual way that some witnesses have treated 302, claiming that it is a necessity to insure that witnesses needed for criminal prosecutions won't abscond.

It is clearly to our mind an arrest, no matter what you call it and we do not believe that section 302 adequately protects people from the possibility of use of information in a future criminal prosecution, and also blemishing their record, as one of the ACLU men mentioned earlier—it was unavoidable that one must include such detention in a form 57 application for the Government.

Gentlemen, I am hopeful that the considerable volume of testimony you have heard so far will convince you that H.R. 7525 resorts to tinkering with the criminal law of the District of Columbia in a way which can lead to disastrous results.

Broad statements that the "innocent have a right to be protected from vicious criminals" or that "criminals are released on mere technicalities" or the "Supreme Court's decisions hamper effective police work" tend to obfuscate the true issues and, to me, evidence an inadequate understanding of the democratic society and of the constitutional principles which support our way of life.

Encroachments upon constitutional individual rights by the police, as I said in my introductory remarks, are intolerable even if encroached upon to a slight degree. Even if the individual in reality is guilty, the situation is not different, because the only way to prevent illegal affronts to our rights by the police is to impress the police with the idea that where they act unconstitutionally, whether such acts be arrest, seizure of evidence, or acquisition of a confession, the fruits of such acts shall not be admissible in a criminal prosecution.

Through this stringent restraint upon the great potential powers possessed by the man with a badge, we are enhancing the sanctity of each person and his property against the eagerness of the police acting on less than probable cause. We cherish the certainty that we will not be molested, interfered with, or oppressed without good reason by the