

trict of Columbia, and by many others concerned with crime, civil liberties, and man's relation to his fellow man, and the problems of controlling crime.

The technical aspects of this bill are already detailed at length in the majority and minority reports in the House of Representatives (H. Rept. 479, 88th Cong.), and in the letters of the District Commissioners and the Department of Justice opposing the bill which are printed in the Congressional Record of August 12, 1963, which the House debated the bill; and many witnesses have commented on these technical aspects in their testimony before this committee.

Our concern does not rest on technicalities. Rather, we believe that the overall effect of this bill would abridge the constitutional rights of many people, and would not achieve its professed purpose of alleviating or preventing crime in the District of Columbia.

First, we oppose title I of the bill, which would repeal, solely for the District of Columbia alone among all Federal jurisdictions, the uniform Federal rule (known as the *Mallory* rule) which makes inadmissible the confession of an arrested person who has not been taken before a committing magistrate without unnecessary delay as required by rule 5(a) of the Federal Rules of Criminal Procedure.

We believe that title I weakens the rights and liberties of every American. It opens the door to unrestrained detention and intimidation of suspects by the police for prolonged periods of time, and encourages the use of "third degree" methods to extract confessions. The Deputy Attorney General recently advised the Congress that this provision "Fails to provide even minimum safeguards for the accused."

It is no answer to say that title I would exclude involuntary confessions extracted by intimidation, because an arrested person whose confession has been obtained in the confines of illegal police detention will almost never be able to prove that he was coerced, or that the police engaged in more than "polite inquiry."

It is argued that the *Mallory* rule hampers effective law enforcement because it is often difficult to show "probable cause" for the arrest prior to securing a confession. The difficulty with this argument is that the Constitution prohibits any arrest except upon probable cause. If there is no probable cause at the time of arrest, the accused should not have been arrested at all. A civilized society like ours, whose basic Constitution prohibits arrests without probable cause, should not water down that guarantee by destroying the protection furnished to arrested persons under rule 5(a) and the *Mallory* rule.

Second, we oppose title II which would make radical and far-reaching changes in the highly complex and controversial law of criminal responsibility. We regard the *Durham* rule, which focuses attention on the question of mental disease or mental defect as a causal factor in criminal conduct as a great step forward toward bringing the legal test of criminal responsibility into harmony with modern medical and psychiatric knowledge concerning mental disorder.

Under the present law, a person acquitted on the ground of insanity must be confined in a mental institution until such time as he can prove that he is sane. The community is protected, and the accused receives treatment for his mental disease. The use of the *Durham* rule by the District courts has not loosed a flood of criminals upon the public. On the contrary, it has afforded greater protection to the