

community, and has been more just to the individual, than the usual criminal sanctions.

The *Durham* rule has been warmly approved by eminent judges, legal commentators, psychiatrists, and others who have carefully studied the problems of criminal responsibility. The Department of Justice and the U.S. attorney, who are charged with the duty of prosecuting criminal cases, have repeatedly stated that the court decisions in this field are "working out" and that their task in the administration of justice would be disrupted by enactment of title II. We think that no adequate basis has been shown to override their views, and we urge that title II not be enacted.

We are opposed to title III of the bill which, in effect, reinstates investigative arrests which were discontinued in March 1963, only 8 months ago.

Not one lawyer has disputed the outright illegality of arresting persons for investigation or on suspicion. Not one lawyer has claimed that it could be constitutionally continued. The report of the Horsky committee explodes every legal and factual justification for investigative arrests, and demonstrates their pragmatic vice. Despite the assertion in section 301(c) of the bill that the detention is not an arrest, it clearly deprives a person of his liberty and violates the fourth amendment to the Constitution which specifically prohibits any arrest except upon probable cause. Title III strikes at the heart of the Bill of Rights and abrogates the very protections which distinguish us from a police state. It should be rejected by the Congress.

Fourth, we oppose the provisions of title V which provide for mandatory minimum sentences and disrupt the rehabilitation procedures of existing parole laws.

High mandatory minimum sentences do not deter crime. They produce bad results by depriving prosecutors of the ability to secure cooperation from some criminals in exposing and helping convict other criminals, by making it more difficult to obtain convictions because juries often will not convict a criminal when they think the penalty is too high, and by depriving prisoners of effective incentives for good behavior. Thus, the enactment of title V will tend to result in more acquittals and will not protect the District against crime.

Fifth, we oppose section 507, which would amend the District's obscenity laws. We do not favor obscenity. However, we think the ex parte methods proposed in that section would violate constitutional limitations.

The Nation's Capital should lead in protecting, rather than destroying, freedom of speech, press and other expression of ideas. We abhor obscene materials and agree that there are some kinds of materials which are so obscene that they deserve no place in a civilized community. But there is the widest disparity of views as to what is truly "obscene" or "indecent" and what constitutes the exercise of expression protected under the first amendment's guarantee of freedom of speech and press. In such an area, there should be the greatest care taken to avoid having constitutional rights abrogated on the basis of individual whim or caprice.

Under the present District law, the sale of obscene or indecent material is subject to criminal penalties of fine and imprisonment which are imposed after a trial. Section 507 of this bill, however, would impose censorship through the technique of ex parte restraining orders issued