

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 of 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 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.

Third, we oppose title III of the bill, which would reinstate the plainly unconstitutional system of arrests for investigation which the District Commissioners, after the most careful deliberation, ordered 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