

FEDERAL BAIL REFORM

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HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 3576, H.R. 3577, H.R. 3578, H.R. 5923, H.R. 6271,

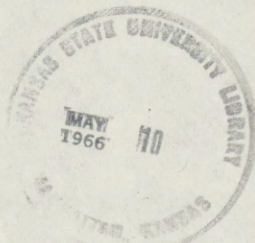
H.R. 6934, H.R. 10195; AND S. 1357

BILLS TO REVISE EXISTING BAIL PRACTICES IN COURTS
OF THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 9-16, 1966

SER. No. 13

Printed for the use of the Committee on the Judiciary



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FEDERAL BAIL REFORM

WEDNESDAY, MARCH 9, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE No. 5,
Washington, D.C.

The subcommittee met, pursuant to notice, and at the call of the Chair, at 10:06 a.m., in room 2226, Rayburn Building, Hon. Emanuel Celler (chairman) presiding.

Present: Messrs. Celler, Rogers, Donohue, Corman, McCulloch, Mathias, and MacGregor.

Also present: William R. Foley, Esq., general counsel, and Martin R. Hoffmann, Esq., associate counsel.

The CHAIRMAN. The meeting will come to order. The Chair wishes to place into the record a statement which is submitted.

(S. 1357, H.R. 10195, H.R. 3576, H.R. 3577, H.R. 3578, H.R. 5923, H.R. 6271, H.R. 6934, and the statement of the chairman follow:)

[S. 1357, 89th Cong., 1st sess.]

AN ACT To revise existing bail practices in courts of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bail Reform Act of 1965".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) Present Federal bail practices are repugnant to the spirit of the Constitution and dilute the basic tenets that a person is presumed innocent until proven guilty by a court of law and that justice should be equal and accessible to all;

(2) Persons reasonably expected to appear at future proceedings should not be deprived of their liberty solely because of their financial inability to post bail;

(3) Respect for law and order is diminished when the attainment of pre-trial liberty depends solely upon the financial status of an accused;

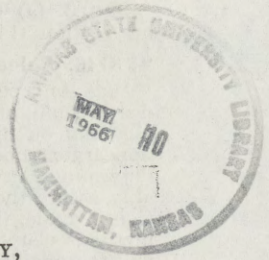
(4) Bail practices which rely primarily on financial consideration inevitably disadvantage persons and families of limited means;

(5) The high costs of unnecessary detention impose a severe financial burden on the taxpayers and deplete public funds which could be better used for other public purposes;

(6) Family and community ties, a job, residence in the community, and the absence of a substantial criminal record, are factors more likely to assure the appearance of a person than the posting of bail; and

(7) Accused persons should not be unnecessarily detained and subjected to the influence of persons convicted of crimes and the effects of jail life; nor should their families suffer needless public derision and loss of support.

(b) The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.



AMENDMENTS TO CHAPTER 207 OF TITLE 18, UNITED STATES CODE

SEC. 3. (a) Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

"§ 3146. Release in noncapital cases prior to trial

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

"(1) place the person in the custody of a designated person or organization agreeing to supervise him;

"(2) place the person under the supervision of a probation officer;

"(3) place restrictions on the travel, association, or place of abode of the person during the period of release;

"(4) require the person to return to custody after daylight hours on designated conditions;

"(5) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(6) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(7) impose any other condition deemed reasonably necessary to assure appearance as required.

"(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

"(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

"(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on condition numbered (4) of subsection (a) shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the condition of release is amended, the judicial officer shall set forth in writing the reasons for requiring the condition. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

"(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided*, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on condition number (4) of subsection (a), the provisions of subsection (d) shall apply.

"(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

"§ 3147. Appeal from conditions of release

"(a) A person who is detained, or whose release on condition number (4) of section 3146(a) is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

"(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3146(a). The appeal shall be determined promptly.

"§ 3148. Release in capital cases or after conviction

"A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either waiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided*, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

"§ 3149. Release of material witnesses

"If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"§ 3150. Violation of conditions of release

"Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"§ 3151. Contempt

"Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

"§ 3152. Definitions

"As used in sections 3146-3150 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to release a person for trial or sentencing or pending appeal in a court of the United States, and any judge of the District of Columbia Court of General Sessions; and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military

tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

- "3146. Release in noncapital cases prior to trial.
- "3147. Appeal from conditions of release.
- "3148. Release in capital cases or after conviction.
- "3149. Release of material witnesses.
- "3150. Violation of conditions of release.
- "3151. Contempt.
- "3152. Definitions."

CREDIT FOR TIME SPENT IN CUSTODY

SEC. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows:

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. Any such person shall be given credit toward service of his sentence for any days spent in custody in connection with the offense for which sentence was imposed, and, in the case of any person convicted of an offense who is required to pay a fine, there shall be deducted from the amount of such fine a sum equal to the wages for an eight-hour workday at the Federal minimum wage multiplied by the number of days that such person spent in custody prior to his conviction, and pending certiorari or appeal with respect thereto, for the offense for which such fine was imposed: *Provided*, That no such credit shall be given if the judge, in imposing such person's sentence of imprisonment or fine, takes into consideration the number of days such person has spent in custody in connection with the offense for which such sentence of fine is imposed, and so records in his judgment. As used in this section, the term 'offense' means any criminal offense, other than an offense triable by court-martial military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

TECHNICAL AMENDMENTS

SEC. 5. (a) The first sentence of section 3041 of title 18, United States Code, is amended by striking out "or bailed" and inserting in lieu thereof "or released as provided in chapter 207 of this title".

(b) Section 3141 of such title is amended by striking out all that follows "offenders," and inserting in lieu thereof the following: "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death."

(c) Section 3142 of such title is amended by striking out "and admitted to bail" and inserting in lieu thereof "who is released on the execution of an appearance bail bond with one or more sureties".

(d) Section 3143 of such title is amended by striking out "admitted to bail" and inserting in lieu thereof "released on the execution of an appearance bail bond with one or more sureties".

(e)(1) The heading to chapter 207 of such title is amended by striking out "**BAIL**" and inserting in lieu thereof "**RELEASE**".

(2) The table of contents to part II of such title is amended by striking out "207. Bail" and inserting in lieu thereof "207. Release".

Passed the Senate September 21 (legislative day, September 20), 1965.

Attest:

FELTON M. JOHNSTON,
Secretary.

[H. R. 10195, 89th Cong., 1st sess.]

A BILL To revise existing bail practices in courts of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bail Reform Act of 1965".

SEC. 2. Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

"SEC. 3146. DEFINITIONS.—

"(a) JUDICIAL OFFICER.—The term 'judicial officer' as used in this chapter means, unless otherwise indicated, any person or court authorized by section 3041 of this title, or by the Federal Rules of Criminal Procedure, to detain or bail or otherwise release a person at the proceeding in connection with which the term is used.

"(b) OFFENSE.—The term 'offense' as used in this chapter means an offense against the United States other than a violation of the District of Columbia Code which is prosecuted in the District of Columbia Court of General Sessions."

SEC. 3147. RELEASE IN NONCAPITAL CASES PRIOR TO TRIAL.—(a) A person charged with an offense, other than an offense punishable by death, shall be ordered released on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines that such a release will not reasonably assure the appearance of the person. When such a determination is made, the judicial officer shall—

"(1) impose one or more of the following nonfinancial conditions of release:

"(i) place the person in the custody of a designated person or organization agreeing to supervise him;

"(ii) place the person under the supervision of a probation officer;

"(iii) place limitations on the travel, association, or place of abode of the person during the period of release; or

"(2) impose one of the following financial conditions of release or one of the financial conditions together with one or more nonfinancial conditions or release specified in subsection (1) of this paragraph, if nonfinancial conditions will not reasonably assure the person's appearance:

"(i) require the execution of a bond in a specified amount and the deposit with the clerk of the court in cash or other security as directed of a sum not to exceed 10 per centum of the bond, such deposit to be returned upon the satisfaction of the conditions of release; or

"(ii) require the execution of a cash bond, or a bond with sureties, as directed.

"(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence, the defendant's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of convictions, and record of flight to avoid prosecution or failure to appear at court proceedings.

"(c) A judicial officer may at any time upon hearing amend an order of release to impose additional or different conditions of release pursuant to this section.

"(d) A judicial officer shall inform a person who is released as provided in this section of the penalties applicable to a failure to comply with any of the terms of his release.

"(e) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed.

"(f) Information stated in, or offered in connection with, any hearing conducted under this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

SEC. 3148. APPEAL FROM CONDITIONS OF RELEASE.—(a) A person who is detained after review of his application pursuant to section 3147(e) by a judicial officer, other than a judge of a United States district court or court of appeals, or a Justice of the Supreme Court, may move the United States district court for the district in which the judicial officer sits to amend the order. Said motion shall be determined promptly.

"(b) In any case in which a person is detained after (1) a district court denies a motion to amend an order imposing conditions of release, or (2) a district court has imposed or amended conditions of release, an appeal may be taken to the United States court of appeals for the circuit in which the district court is located. The order of the district court shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may with or without additional evidence order the person released pursuant to section 3147(a). The appeal shall be determined promptly.

SEC. 3149. RELEASE IN CAPITAL CASES OR AFTER CONVICTION.—A person (1) who is charged with an offense punishable by death, or (2) who has been

convicted of an offense and is either awaiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in the manner prescribed in section 3147 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3148 shall not apply to persons described in this section: *Provided*, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

"SEC. 3150. RELEASE OF MATERIAL WITNESSES.—If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may be come impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3147. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"SEC. 3151. VIOLATION OF CONDITIONS OF RELEASE.—Whoever having been released pursuant to this chapter willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"SEC. 3152. CONTEMPT.—Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

SEC. 3. The analysis of chapter 207 of title 18, United States Code, is amended, by striking out the last item and inserting in lieu thereof the following.

"3146. Definitions.

"3147. Release in noncapital cases prior to trial.

"3148. Appeal from conditions of release.

"3149. Release in capital cases or after conviction.

"3150. Release of material witnesses.

"3151. Violation of conditions of release.

"3152. Contempt."

SEC. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows.

"The sentence of imprisonment of any person convicted of an offense in any court of the United States shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. *Provided*, That the Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense for which he was arrested or for which sentence was imposed."

SEC. 5. This Act shall take effect thirty days after the date on which it is enacted.

[H. R. 3576, 89th Cong., 1st sess.]

A BILL To implement further the constitutional right to bail by authorizing in appropriate cases the release on a personal recognizance of persons otherwise eligible for bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 3147. Release on personal recognizance

"(a) Any person otherwise eligible to be admitted to bail for appearance before any court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States shall be released on his personal recognizance subject to such reasonable conditions as the court, commissioner, or other officer may prescribe. Any person so released shall be fully informed by the court, commissioner, or other officer of the penalties

provided for failure to comply with the terms of his recognizance (the furnishing of such information being made a matter of record), and, upon a failure of compliance, a warrant for the arrest of such person shall be issued forthwith.

"(b) As used in this section the term 'personal recognizance' means an obligation of record, not conditioned upon the posting of financial security, which is entered into by an individual before a court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States, and under which such individual obligates himself to appear at such time and place as may be required by such court, commissioner, or officers."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting at the end thereof the following:

"3147. Release on personal recognizance."

SEC. 2. The first paragraph of section 3146 of title 18, United States Code, is amended to read as follows:

"Whoever (1) having been admitted to bail for appearance before any court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, or (2) having been released as provided in section 3147, willfully fails to comply with the terms of his personal recognizance and such failure continues for a period of thirty days, shall (A) if the bail was given or the release was obtained in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or (B) if the bail was given or the release was obtained in connection with a charge of committing a misdemeanor, be fined not more than the maximum fine provided for such misdemeanor, or imprisoned for not more than the maximum period provided for such misdemeanor, or both; or (C) if the bail was given or the release was obtained for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both."

SEC. 3. (a) Section 704 of title 16 of the District of Columbia Code (D.C. Code sec. 16-704) is amended by—

(1) inserting "; release on personal recognizance" after "collateral security" in the heading thereof;

(2) redesignating subsection (b) as subsection (c); and

(3) inserting after subsection (a) a new subsection as follows:

"(b)(1) Any person otherwise eligible to be admitted to bail for appearance before the criminal division of the court of general sessions shall, upon a showing satisfactory to the court that he can reasonably be expected to appear when required, unless good cause be shown to the contrary, be released on his personal recognizance subject to such reasonable conditions as the court may prescribe. Any person so released shall be fully informed by the court of the penalties provided for failure to comply with the terms of his recognizance (the furnishing of such information being made a matter of record), and, upon a failure of compliance, a warrant for the arrest of such person shall be issued forthwith.

"(2) As used in this subsection, the term 'personal recognizance' means an obligation of record, not conditioned upon the posting of financial security, which is entered into by an individual before the court of general sessions, and under which such individual obligates himself to appear at such time and place as may be required by such court."

(b) The analysis of chapter 7 of title 16 of the District of Columbia Code is amended by inserting "; release on personal recognizance" after "collateral security" in the fourth item.

SEC. 4. Whoever (1) having been admitted to bail for appearance before the criminal division of the District of Columbia court of general sessions, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, or (2) having been released as provided in section 704(b) of title 16 of the District of Columbia Code, willfully fails to comply with the terms of his personal recognizance (as defined in such section) and such failure continues for a period of thirty days, shall (A) if the bail was given or the release was obtained in connection with a charge of felony or pending appeal after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or (B) if the bail was given or the release was obtained in connection with a charge of committing a misdemeanor, be fined not more than the maximum fine provided for such misdemeanor, or imprisoned for not more than the maximum period provided for such misdemeanor, or both; or (C) if the bail was given or the release was obtained for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both.

[H.R. 3577, 89th Cong., 1st sess.]

A BILL To assure that convicted persons will receive credit toward service of their sentences for time spent in custody for lack of bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of section 3568 of title 18, United States Code, is amended to read as follows:

"The sentence of imprisonment to any person convicted of an offense in any court of the United States (including the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia) shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence: *Provided*, That such person shall be given credit toward service of his sentence for any days spent in custody in connection with the offense for which sentence was imposed."

[H.R. 3578, 89th Cong., 1st sess.]

A BILL To further implement the constitutional right to bail by permitting persons admitted to bail to make a cash deposit with the court in lieu of providing securities or other collateral security

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 3147. Cash deposit

"(a) Whenever the amount of bail has been fixed in the case of any person charged with an offense against the United States, such person shall execute a bond for his appearance, and may, except for good cause shown to the contrary, in lieu of providing such collateral security or sureties as might otherwise be required, deposit in the registry of the court a sum equal to 10 per centum of the amount of bail so fixed. Upon the deposit of such sum such person shall be released subject to the conditions of his bond.

"(b) If there is no breach of condition of a bond given by any person as provided in subsection (a), the court shall release such person from the obligation of the bond, but may retain 10 per centum of the sum deposited by such person to defray bail bond costs. The balance of such deposit shall, no judgment for court costs or fine being entered against such person, be returned to him. In the event a judgment for court costs or fine, or both, is entered against such person, the balance of such deposit shall be first applied to the payment of such judgement.

"(c) If there is a breach of condition of a bond given by any person as provided in subsection (a), the court shall declare a forfeiture of the full amount of the bail fixed in the case of such person. Notice of the forfeiture shall be mailed to such person at his last known address, and, if such person does not appear as required within thirty days after the mailing of such notice and the forfeiture is not set aside by the court, the court shall render judgment of default against such person in the full amount of the bail. The court may direct that any such forfeiture be set aside if, under all the circumstances, it appears that justice does not require the enforcement thereof. Any judgment of default against such person shall be enforced by all available processes of the court, and the amount deposited by such person in the registry of the court shall be applied to the payment of costs and the balance thereof shall be applied to the judgment.

"(d) Nothing in this section shall limit in any way the application of section 3146 of this title to any person."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting at the end thereof the following:

"3147. Cash deposit."

[H.R. 5923, 89th Cong., 1st sess.]

A BILL To implement further the constitutional right to bail by authorizing in appropriate cases the release on a personal recognizance of persons otherwise eligible for bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 3147. Release on personal recognizance

"(a) Any person otherwise eligible to be admitted to bail for appearance before any court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States shall, unless good cause be shown to the contrary, be released on his personal recognizance subject to such reasonable conditions as the court, commissioner, or other officer may prescribe. Any person so released shall be fully informed by the court, commissioner, or other officer of the penalties provided for failure to comply with the terms of his recognizance (the furnishing of such information being made a matter of record), and, upon a failure of compliance, a warrant for the arrest of such person shall be issued forthwith.

"(b) As used in this section the term 'Personal recognizance' means an obligation of record, not conditioned upon the posting of financial security, which is entered into by an individual before a court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States, and under which such individual obligates himself to appear at such time and place as may be required by such court, commissioner, or officer."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting at the end thereof the following:

"3147. Release on personal recognizance."

SEC. 2. The first paragraph of section 3146 of title 18, United States Code, is amended to read as follows:

"Whoever (1) having been admitted to bail for appearance before any court of the United States, United States commissioner, or other officer empowered to commit persons charged with offenses against the United States, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, or (2) having been released as provided in section 3147, willfully fails to comply with the terms of his personal recognizance and such failure continues for a period of thirty days, shall (A) if the bail was given or the release was obtained in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or (B) if the bail was given or the release was obtained in connection with a charge of committing a misdemeanor, be fined not more than the maximum fine provided for such misdemeanor, or imprisoned for not more than the maximum period provided for such misdemeanor, or both; or (C) if the bail was given or the release was obtained for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both."

SEC. 3. (a) Section 704 of title 16 of the District of Columbia Code (D.C. Code sec. 16-704) is amended by—

(1) inserting "; release on personal recognizance" after "collateral security" in the heading thereof;

(2) redesignating subsection (b) as subsection (c); and

(3) inserting after subsection (a) a new subsection as follows:

"(b)(1) Any person otherwise eligible to be admitted to bail for appearance before the criminal division of the Court of General Sessions shall, upon a showing satisfactory to the court that he can reasonably be expected to appear when required, unless good cause be shown to the contrary, be released on his personal recognizance subject to such reasonable conditions as the court may prescribe. Any person so released shall be fully informed by the court of the penalties provided for failure to comply with the terms of his recognizance (the furnishing of such information being made a matter of record), and, upon a failure of compliance, a warrant for the arrest of such person shall be issued forthwith.

"(2) As used in this subsection, the term 'personal recognizance' means an obligation of record, not conditioned upon the posting of financial security, which is entered into by an individual before the Court of General Sessions, and under which such individual obligates himself to appear at such time and place as may be required by such court."

(b) The analysis of chapter 7 of title 16 of the District of Columbia Code is amended by inserting “; release on personal recognizance” after “collateral security” in the fourth item.

SEC. 4. Whoever (1) having been admitted to bail for appearance before the criminal division of the District of Columbia Court of General Sessions, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, or (2) having been released as provided in section 704(b) of title 16 of the District of Columbia Code, willfully fails to comply with the terms of his personal recognizance (as defined in such section) and such failure continues for a period of thirty days, shall (A) if the bail was given or the release was obtained in connection with a charge of felony or pending appeal after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or (B) if the bail was given or the release was obtained in connection with a charge of committing a misdemeanor, be fined not more than the maximum fine provided for such misdemeanor, or imprisoned for not more than the maximum period provided for such misdemeanor, or both; or (C) if the bail was given or the release was obtained for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both.

[H.R. 6271, 89th Cong., 1st sess.]

A BILL To authorize release on a personal recognizance of persons otherwise eligible for bail, to credit time spent in custody for lack of bail toward service of sentence, and to further implement the constitutional right to bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Bail Reform Act of 1965”.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds—

(1) Federal bail practices are repugnant to the spirit of the Constitution and dilute the basic tenets that a person is presumed innocent until proven guilty by a court of law, and that justice should be equal and accessible to all;

(2) Persons reasonably expected to appear at future proceedings should not be deprived of their liberty solely because of their financial inability to post bail;

(3) Respect for law and order is diminished when the attainment of liberty depends solely upon the financial status of an accused;

(4) Federal bail practices, which rely primarily on financial considerations, inevitably disadvantage persons and families of limited means;

(5) Family and community ties, a job, residence in the community, and the absence of a criminal record, are considerations more likely to assure the appearance of a person than the posting of bail;

(6) The high costs of unnecessary detention impose a severe financial burden on the taxpayers, and deplete public funds which could be better used for other public purposes; and

(7) Accused persons should not be unnecessarily detained and subjected to the influence of persons convicted of crimes and effects of jail life; nor should his family suffer needless public derision and loss of support.

(b) The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not be needlessly detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

AMENDMENTS TO CHAPTER III OF TITLE II, UNITED STATES CODE

SEC. 3. (a) Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

“§ 3146. Release

“(a) Any person (1) charged with an offense against the United States or with a violation of the District of Columbia Code, (2) convicted and awaiting sentencing for such offense or violation, (3) who has petitioned for a writ of certiorari or filed an appeal, which is not frivolous or dilatory, in connection with such offense or violation, or (4) required as a material witness in connection with a trial for such offense or violation and it is impracticable to secure his appearance by subpoena, shall be released on one or more of the following conditions:

“(1) The execution of a written promise to appear as required.

"(2) The execution of an unsecured appearance bail bond in an amount specified by the judge.

"(3) The execution of an appearance bail bond in an amount specified by the judge, coupled with the deposit in the registry of the court, in cash or other security, of a sum equal to 10 per centum of the amount of bail so fixed, which shall be returned upon the performance of the conditions of release.

"(4) Supervision by a probation officer.

"(5) Return to custody after daylight hours on conditions designated by the judge.

"(6) In the custody of a third person.

"(7) Reasonable restrictions as to associations with persons or movement.

"(8) Any other condition which the judgment may reasonably require to insure appearance as required.

"(b)(1) A judge authorizing the release of any person shall issue an appropriate order containing a statement of the evidence upon which his decision is made and the conditions imposed. No such order is required for the execution of a written promise to appear.

"(c) A judge shall inform a person released as provided in this section of the penalties applicable to a failure to comply with the terms of his release with intent to avoid prosecution, service of a sentence, or the giving of testimony, and shall advise him that a warrant for his arrest will be issued for such failure.

"(d) The judge ordering the release of a person on any condition specified in subsection (a) may at any time amend his order to impose additional or different conditions of release. The amended order shall contain a statement of the evidence on which the decision is made.

"(e) Evidence for any order entered pursuant to this section need not be governed by the rules pertaining to the admissibility of evidence in a court of law.

"§ 3147. Appeal from conditions of release

"(a) Any person aggrieved by an order of a judge, other than a judge of a United States district court or court of appeals, or a Justice of the Supreme Court, imposing or amending conditions of release under section 3146, may appeal from the order to the district court of the United States for the district in which the judge sits.

"(b) The district court shall consider the order in the prior proceeding and, if that order is supported by substantial evidence, as shown by the statement of evidence contained therein, it shall be affirmed. If the order is not supported by substantial evidence, the court may receive additional evidence and order the person released on any of the conditions provided in subsection (a) of section 3146. The evidence considered by the court need not be governed by the rules pertaining to the admissibility of evidence in a court of law.

"(c) An appeal taken under this section shall be determined within ten days of the date on which it was filed.

"§ 3148. Violation of conditions of release

"(a) Whoever, having been bailed or otherwise released as provided in this chapter, fails to comply with the terms of his release with intent to avoid prosecution, the service of his sentence, or the giving of testimony, shall incur a forfeiture of any security which was given for his bail or release, and (1) if he was bailed or released in connection with a charge of felony, or while awaiting sentencing or pending appeal or certiorari after conviction of any offense, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of committing a misdemeanor, shall be fined not more than the maximum fine provided for such misdemeanors or imprisoned not more than the maximum period provided for such misdemeanor, or both, or (3) if he was released for appearance as a witness, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Nothing in this section shall interfere with or prevent the exercise by any court of its power to punish for contempt.

"§ 3149. Definition

"As used in sections 3146-3147 of this chapter, the term 'judge' means any person authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to release a person for trial or sentencing in a court of the United States, and, with respect to criminal offenses under the District of Columbia Code, such term shall include any judge of the District of Columbia court of general sessions."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3146. Release.

"3147. Appeal from conditions of release;

"3148. Violation of conditions of release.

"3149. Definition."

CREDIT FOR TIME SPENT IN CUSTODY

SEC. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows:

"The sentence of imprisonment of any person convicted of an offense in any court of the United States shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence: *Provided*, That the Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense for which sentence was imposed: *Provided further*, That in the case of any person convicted of an offense in any court of the United States who is required to pay a fine, there shall be deducted from the amount of such fine a sum equal to the average cost per day to the United States of detaining any person in custody multiplied by the number of days that such person spent in custody prior to his conviction, and pending certiorari or appeal with respect thereto, for the offense for which such fine was imposed."

TECHNICAL AMENDMENTS

SEC. 5. (a) The first sentence of section 3041 of title 18, United States Code, is amended by striking out "or bailed" and inserting in lieu thereof "or released as provided in chapter 207 of this title".

(b) Section 3141 of such title is amended by striking out all that follows "offenders," and inserting in lieu thereof the following: "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death."

(c) Section 3142 of such title is amended by striking out "and admitted to bail" and inserting in lieu thereof "who is released on the execution of an appearance bail bond with one or more sureties".

(d) Section 3143 of such title is amended by striking out "admitted to bail" and inserting in lieu thereof "released on the execution of an appearance bail bond with one or more sureties".

(e)(1) The heading to chapter 207 of such title is amended by striking out "BAIL" and inserting in lieu thereof "RELEASE".

(2) The table of contents to part II of such title is amended by striking out "207. Bail" and inserting in lieu there "207. Release".

[H. R. 6934, 89th Cong., 1st sess.]

A BILL To authorize release on a personal recognizance of persons otherwise eligible for bail, to credit time spent in custody for lack of bail toward service of sentence, and to further implement the constitutional right to bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bail Reform Act of 1965".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds—

(1) Federal bail practices are repugnant to the spirit of the Constitution and dilute the basic tenets that a person is presumed innocent until proven guilty by a court of law, and that justice should be equal and accessible to all;

(2) Persons reasonably expected to appear at future proceedings should not be deprived of their liberty solely because of their financial inability to post bail;

(3) Respect for law and order is diminished when the attainment of liberty depends solely upon the financial status of an accused;

(4) Federal bail practices, which rely primarily on financial considerations, inevitably disadvantage persons and families of limited means;

(5) Family and community ties, a job, residence in the community, and the absence of a criminal record, are considerations more likely to assure the appearance of a person than the posting of bail;

(6) The high costs of unnecessary detention impose a severe financial burden on the taxpayers, and deplete public funds which could be better used for other public purposes; and

(7) Accused persons should not be unnecessarily detained and subjected to the influence of persons convicted of crimes and effects of jail life; nor should his family suffer needless public derision and loss of support.

(b) The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not be needlessly detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

AMENDMENTS TO CHAPTER 207 OF TITLE 18, UNITED STATES CODE

SEC. 3. (a) Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

"§ 3146. Release

"(a) Any person (1) charged with an offense against the United States or with a violation of the District of Columbia Code, (2) convicted and awaiting sentencing for such offense or violation, (3) who has petitioned for a writ of certiorari or filed an appeal, which is not frivolous or dilatory, in connection with such offense or violation, or (4) required as a material witness in connection with a trial for such offense or violation and it is impracticable to secure his appearance by subpoena, shall be released on one or more of the following conditions:

"(1) The execution of a written promise to appear as required.

"(2) The execution of an unsecured appearance bail bond in an amount specified by the judge.

"(3) The execution of an appearance bail bond in an amount specified by the judge, coupled with the deposit in the registry of the court, in cash or other security, of a sum equal to 10 per centum of the amount of bail so fixed, which shall be returned upon the performance of the conditions of release.

"(4) Supervision by a probation officer.

"(5) Return to custody after daylight hours on conditions designated by the judge.

"(6) In the custody of a third person.

"(7) Reasonable restrictions as to associations with persons or movement.

"(8) Any other condition which the judge may reasonably require to insure appearance as required.

"(b)(1) A judge authorizing the release of any person shall issue an appropriate order containing a statement of the evidence upon which his decision is made and the conditions imposed. No such order is required for the execution of a written promise to appear.

"(c) A judge shall inform a person released as provided in this section of the penalties applicable to a failure to comply with the terms of his release with intent to avoid prosecution, service of a sentence, or the giving of testimony, and shall advise him that a warrant for his arrest will be issued for such failure.

"(d) The judge ordering the release of a person on any condition specified in subsection (a) may at any time amend his order to impose additional or different conditions of release. The amended order shall contain a statement of the evidence on which the decision is made.

"(e) Evidence for any order entered pursuant to this section need not be governed by the rules pertaining to the admissibility of evidence in a court of law.

"§ 3147. Appeal from conditions of release

"(a) Any person aggrieved by an order of a judge, other than a judge of a United States district court or court of appeals, or a Justice of the Supreme Court, imposing or amending conditions of release under section 3146, may appeal from the order to the district court of the United States for the district in which the judge sits.

"(b) The district court shall consider the order in the prior proceeding and, if that order is supported by substantial evidence, as shown by the statement of evidence contained therein, it shall be affirmed. If the order is not supported by substantial evidence, the court may receive additional evidence and order the person released on any of the conditions provided in subsection (a) of section 3146. The evidence considered by the court need not be governed by the rules pertaining to the admissibility of evidence in a court of law.

"(c) An appeal taken under this section shall be determined within ten days of the date on which it was filed.

"§ 3148. Violation of conditions of release

"(a) Whoever, having been bailed or otherwise released as provided in this chapter, fails to comply with the terms of his release with intent to avoid prosecution, the service of his sentence, or the giving of testimony, shall incur a forfeiture of any security which was given for his bail or release, and (1) if he was bailed or released in connection with a charge of felony, or while awaiting sentencing or pending appeal or certiorari after conviction of any offense, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of committing a misdemeanor, shall be fined not more than the maximum fine provided for such misdemeanors or imprisoned not more than the maximum period provided for such misdemeanor, or both, or (3) if he was released for appearance as a witness, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) Nothing in this section shall interfere with or prevent the exercise by any court of its power to punish for contempt.

"§ 3149. Definition

"As used in sections 3146-3147 of this chapter, the term 'judge' means any person authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to release a person for trial or sentencing in a court of the United States, and, with respect to criminal offenses under the District of Columbia Code, such term shall include any judge of the District of Columbia court of general sessions."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3146. Release.

"3147. Appeal from conditions of release.

"3148. Violation of conditions of release.

"3149. Definition."

CREDIT FOR TIME SPENT IN CUSTODY

SEC. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows:

"The sentence of imprisonment of any person convicted of an offense in any court of the United States shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence: *Provided*, That the Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense for which sentence was imposed: *Provided further*, That in the case of any person convicted of an offense in any court of the United States who is required to pay a fine, there shall be deducted from the amount of such fine a sum equal to the average cost per day to the United States of detaining any person in custody multiplied by the number of days that such person spent in custody prior to his conviction, and pending certiorari or appeal with respect thereto, for the offense for which such fine was imposed."

TECHNICAL AMENDMENTS

SEC. 5. (a) The first sentence of section 3041 of title 18, United States Code, is amended by striking out "or bailed" and inserting in lieu thereof "or released as provided in chapter 207 of this title".

(b) Section 3141 of such title is amended by striking out all that follows "offenders," and inserting in lieu thereof the following: "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death."

(c) Section 3142 of such title is amended by striking out "and admitted to bail" and inserting in lieu thereof "who is released on the execution of an appearance bail bond with one or more sureties".

(d) Section 3143 of such title is amended by striking out "admitted to bail" and inserting in lieu thereof "released on the execution of an appearance bail bond with one or more sureties".

(e)(1) The heading to chapter 207 of such title is amended by striking out "BAIL" and inserting in lieu thereof "RELEASE".

(2) The table of contents to part II of such title is amended by striking out "207, Bail" and inserting in lieu thereof "207. Release".

OPENING STATEMENT OF REPRESENTATIVE EMANUEL CELLER

Reform of the Federal bail system is long overdue. While much progress has been made in reforming the bail system in the Federal Courts in recent years, much remains to be done and more rapid progress can only be made by changes in existing law. This is an area which has been neglected too long. Equality under the law means also that justice shall not be measured by the size of the purse, nor should we lose sight of the fundamental premise of American jurisprudence—the presumption of innocence until proven guilty.

The reform legislation before us, including Senator Ervin's and my bill, which though not identical are basically similar, by no means disregard public safety and there is ample provision to assure public protection. Among the most significant features of the Bail Reform Act proposed is the emphasis on non-financial conditions of release for persons charged with Federal crimes. The types of release and a system of priorities are as follows:

1. A defendant can be released on his personal recognizance or on the execution of a nonsecured appearance bond, unless the judicial officer at a bail hearing finds that such a release will not reasonably assure the defendant's appearance. In case of such a finding the judicial officer will consider the second type of release conditions.

2. The secondary release conditions are also nonfinancial. A defendant can be placed in the custody of another person or organization or under the supervision of a probation officer and limitations may be imposed on his travel and associations. If the judicial officer determines that one or more of these conditions will not reasonably assure the defendant's appearance, he may require the execution of a cash bond or a bond with sureties.

3. A new type of cash bond will be authorized under which the defendant can be required to post cash or other security in a sum not to exceed 10 percent of the amount of the bond, to be returned if the defendant appears as required. Cash and surety bonds as authorized by present law can still be used. If a judicial officer deems it necessary both nonfinancial and financial conditions of release can be imposed.

Those of us who sponsor bail reform believe that personal responsibility, not financial ability, should be the major factor in determining whether a defendant will be released before trial. The proposal requires that judicial inquiry be made into the background of each accused person prior to setting conditions of release. This inquiry must take into account the nature and circumstances of the offense charged, the weight of the evidence, and the defendant's family ties and employment, as well as his financial resources, character and mental condition, length of residence in the community, record of convictions, and record of flight to avoid prosecution or failure to appear at previous court proceedings.

The proposals also provide the Federal judiciary and the Department of Justice with the necessary authority to release those who are entitled to release pending trial, regardless of their financial resources, and to set strict conditions, including the posting of money bail, on those who may be a menace to society if released before trial.

The release procedure will also be applicable to a material witness who, under present law, can be held in jail before trial if he is unable to post bail while the defendant who can post bail is released.

Another significant change in existing law is proposed. It provides that a defendant shall receive credit against his sentence for time spent in custody before trial. Existing law gives such credit only in connection with mandatory sentences.

Since this committee is studying bail reform we have included in these hearings proposals which concern themselves with bondsmen who travel across State lines to seize so-called bail-jumpers.

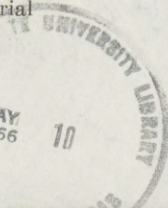
The present system smacks too much of the old debtors' jail. It is clear that there is excessive reliance on money in dealing with the problem of release of defendants.

STATEMENT OF HON. WILLIAM M. McCULLOCH, U.S. REPRESENTATIVE FROM OHIO

Mr. Chairman, I am happy to add to yours a few observations at the outset of what I consider to be historic hearings. The purpose of the bill before us today is a particularly praiseworthy one. It is a proposal to modernize the pretrial

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release system in our Federal courts, in particular, and in larger perspective to continue in the great work of assuring equal justice under law for all our citizens.

I repeat that these are historic hearings. The system of bail by which Federal defendants charged with crime are released prior to trial has been a part of our criminal process since the founding of the Nation.

The evolution of the bail system finds its origins in the earliest recorded history of our Anglo-Saxon jurisprudence. In times immediately following the Dark Ages in England, those accused of crime were simply put in jail, there to await resolution of the charges against them. Trial of those cases most often awaited the visit of a traveling court. Due to the infamous conditions of the English gaols of the times, disease or despair often prevented the court from doing justice in the matter.

The statute of Westminster in 1275 first defined certain bailable offenses. The defendant or his friends were allowed to guarantee his appearance for trial. This was done initially by securing agreement of someone else to stand in place of the accused at trial, should he not appear. Gradually, the pledging of security which would be forfeited upon nonappearance of the accused became the practice. Succeeding statutes refined the procedures for obtaining bail. All the while the stringent sanctions of confiscation and outlawry well served to discourage flight.

In our own country, despite the presence of the great western frontier and the absence of rapid communications between the States, the Judiciary Act of 1789 established a right to bail in all except capital cases. This enactment preceded ratification of the eighth amendment's safeguard against "excessive bail," and is continued in our present day in rule 46(a)(1) of the Federal Rules of Criminal Procedure.

Under this "right to bail," a bail bonding system has grown up which is the subject of our present concern. Instead of a defendant posting security which is returned to him when he returns for trial, in most instances an accused must buy a bond, paying to the bondsman a percentage of the amount set by the judge. The system as it operates in our present day has shifted the responsibility for the appearance of criminal defendants to the professional bondsmen who in return for a set fee—which in every case represents a loss to the defendant—writes the bond which allows the defendant pretrial freedom. Yet, the penalty for bail-jumping under 18 U.S.C. 3146 requires forfeiture of the bond, and a 30-day waiting period before the absconder can be prosecuted.

Consider the change in circumstances since 1789. The country—and the world—have been greatly reduced in size by modern communications means. It now is nearly, if not virtually, impossible for an individual to flee the law and assume and maintain a new identity in some other place. The rapidity and effectiveness of our law enforcement means of tracing and locating fugitives are truly remarkable, as I am sure these hearings will show.

The need to continue to require defendants to buy pretrial release would appear, as a practical matter, to be unnecessary. But the situation is no mere practical matter: the injustice of predicating pretrial release on a man's ability to pay for it is—in the context of our present, enlightened jurisprudence—an anomaly. A man should not be penalized prior to trial in a system of laws which cloaks him in a substantial presumption of innocence.

Freedom between arrest and criminal trial is a safeguard which cannot, in my judgment be seriously questioned. Other witnesses doubtless will detail these beyond my brief remarks here. Most immediately, however, the necessity for freedom within which to prepare a defense to criminal charge, in the matter of locating witnesses and establishing evidence, may be more important to ascertainment of truth in the case than provision of counsel or a free transcript of trial on which to appeal. An indigent's right to counsel is absolute, as is the transcript; yet pretrial freedom is all too often needlessly denied.

Of considerable additional importance are the effects on the defendant's situation if he is not free to provide for his family pending trial, and to continue in his job—if that be possible—until such time as he is convicted. The advantages of a system which allows such freedom to the man who is ultimately proved as innocent as he was presumed before trial are not only obvious but unassailably sound. The advantages of pretrial freedom to the man who is proved guilty, but then is allowed probation (which is more probable if he has kept job and family intact) cater to the best interests and high purposes of society's requirement to rehabilitate as well as punish those who break its laws.

In many of the district courts of the land, bail procedures have developed apace of the continued refinement of enlightened criminal jurisprudence. In many such districts, release on a defendant's recognizance is the rule rather than the exception.

A judge, taking into consideration a defendant's ties with his community, the nature of his offense, and the probability of his fleeing the jurisdiction, are able to secure the return of the bulk of defendants without reliance—as a practical matter—on the single criteria of the defendant's means.

The legislation which we have before us will require all district courts to consider release on personal recognizance and to consider these other conditions of release to assure defendant's presence at his trial before the bail bond procedure is invoked. It will strengthen the present law to allow more effective prosecution of those who willfully fail to appear at their trials. In my judgment these measures will go a long way to more fully assure the objectives of equal protection under law.

Mr. Chairman, while I am in agreement with the basic aims of this legislation, and while I agree wholeheartedly with the principles upon which it is advanced, I feel it would serve a useful purpose to comment on several general considerations which are deserving of our most careful attention as we address ourselves to the proposals before us.

First, while I hold no brief for the bail bond system, it unquestionably performs a necessary service in the administration of our laws. As I am sure the witnesses for the various projects will agree, proper application of conditions of release on recognizance require investigation of each individual defendant's background so that the judicial officer may be properly informed. Once he is released, at least a minimum of supervision is required in many cases to assure that he is kept aware of the date of his court appearance and reminded shortly before his appearance is required. Those functions—which in many jurisdictions will be extensive—will needs be performed either by means already available or by creation of an organization similar to the present bail projects which can perform the necessary services.

Secondly, there has been a tendency on the part of some courts of appeals to assume that they are more capable than the district judges of imposing appropriate conditions of release in any particular case. I am anxious to emphasize that we intend to do no violence to the discretion of the district judges who, having the man in question before them, are in the best position to assess proper conditions of release in most cases.

Thirdly, a clear distinction must be made between release pending trial and release pending appeal. To suggest that after conviction in a Federal district court of the United States, a man should be presumed entitled to release pending an appeal of his case is to ignore the realities of the judicial process. Not only has the presumption of innocence been completely overborne, but a strong presumption of regularity has attached to the process of the district court.

The present rule 46(a)(2) makes bail purely discretionary on appeal. While I am in full agreement that substitution for money of other conditions of release is entirely appropriate in those cases where, in the court's discretion, release is warranted, I would regret to see the Congress adopt the view that a man is not really guilty of an offense until his case has been reviewed by a court of appeals.

Our present system exacts a toll from many defendants, poor or even rich, who are charged with crimes. It does so whether or not they attempt to flee. Simple justice requires, and the presumption of innocence demands, that every defendant be given the opportunity to enjoy pretrial freedom regardless of his wealth. In our modern times, reliance should be shifted from this defendant-supported system of insured appearances to rigid enforcement of penalties which will be available immediately when a defendant fails to live up to the conditions of his release.

I welcome these hearings and look forward to enactment of sound, enlightened legislation to accomplish these ends.

The CHAIRMAN. The Chair wishes also to place in the record a statement of Senator Ervin, of North Carolina, and a statement of Representative Don Edwards, of California.

(The statements referred to follow:)

STATEMENT OF HON. SAM J. ERVIN, JR., U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Chairman Celler and members of the subcommittee, I am pleased to have this opportunity to present my views on S. 1357, the Omnibus Bail Reform Act. It is, I believe, an extremely important measure. I earnestly hope that the House of Representatives will conclude, as has the Senate, that the need for a reform of the Federal bail system is so pressing that this bill warrants expeditious consideration and passage.

This bill was passed unanimously by the Senate on September 21 of last year. It is the product of several years of study by the Constitutional Rights Subcommittee, of which I am chairman, and has been the subject of hearings in 1964 and 1965. During these hearings the subcommittee carefully considered a number of bills and individual proposals designed to make changes in the bail system. The omnibus bill amends the law in a coordinated manner and contains the best of these proposals. The bill reflects the results of conferences with representatives of the Justice Department and incorporates the suggestions of the Department and many other experts who contributed to the consideration of bail reform.

It is the considered opinion of most knowledgeable observers that the existing bail procedures in the Federal system are unjust, discriminatory, and in large measures ineffective. The system relies upon the threat of financial loss—the imposition of money bail—as the exclusive means for insuring the presence of defendants at trial. As such, it ignores the stronger factors which induce a defendant to remain on hand. In doing so, it works needless hardship upon the poorer citizen, who may be unable to secure the resources required to obtain a bail bond or unable to convince a bondsman to write bail. As a consequence, these individuals are forced to remain in jail, sometimes for many months, until their trial. In jail—in essence, imprisoned for poverty—they are severely handicapped in the preparation of their defense. They may not secure evidence, locate witnesses, or aid their attorneys. They are separated from their families, ostracized by their neighbors, stigmatized by society whatever the outcome of their case, forced to associate with proven criminals, and in all likelihood, deprived of the employment which serves to support their dependents and pay for their defense. Studies have shown that the defendant who appears in court in the custody of the marshal fares worse than his counterpart who has retained his freedom prior to trial.

These hardships faced by the person unable to raise bail have nothing to do with his guilt or innocence. Each man is, under our criminal law, equal before the law and innocent unless the Government removes all reasonable doubt of his guilt from the minds of 12 citizens. The existing system is unjust because of its sole reliance upon dollars and cents for bail. It is discriminatory because it provides a different test for the man of means and the poor.

The system is also inefficient. It relies upon loss of funds to secure the defendant's presence at trial. Commonsense and careful study, however, tell us that community ties, family, employment, and like factors operate more effectively than forfeiture of bail to discourage flight from justice. The rate of success with experimental projects in the District of Columbia, New York City, and other communities has shown that the use of pretrial release procedures, when carefully administered, results in a no worse record—and, in fact, a better one—than the old system of exclusive reliance on money bail.

Certain other reasons support this reform; I shall mention them only briefly. Pretrial confinement needlessly imposes upon the public treasury a drain of millions of dollars yearly. In this country we have never been inhibited by financial cost in seeing that the individual's constitutional rights are protected—nor should we ever be. It should be noted, however, that in this instance the bail reform which this bill will achieve will not only improve the administration of justice but concurrently will diminish the cost to the Government while doing so. For under present procedures there are needless expenditures which result from an inefficient system, and which exist as a consequence of injustice and discrimination. The funds which the Government would save under the bill could very well be used to better advance the cause of due process by supporting counsel for indigent defendants.

Another consideration supporting this reform is the place that the professional bail bondsman has attained in the administration of justice. The Federal judge sets the amount of bail on the basis of “* * * the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail, and the character of the defendant” (Fed. R. Crim. Proc. 46 (c)).

But despite the formal rules, it is the professional bail bondsman who really sets bail. The power to determine pretrial freedom is in his hands and not the court's. If the bondsman cannot, or will not, write bail, the accused has no appeal. In practice, the present system has abdicated in favor of a private businessman. So important an aspect of criminal law should not be dependant upon free enterprise like the sale of foodstuffs.

Besides changing the bail system to establish a series of priorities for release under conditions which must be considered by the judge before money bail is set, S. 1357 also provides for rapid appeal from the conditions which may be

imposed. This will insure that the true objectives of the reform are carried out, and will prevent bail from being used as a weapon to imprison for unproven guilt.

The omnibus bill also makes other changes which have been suggested from time to time, and which are critically needed in the bail laws. S. 1357 provides that any pretrial confinement which does occur will be credited to the defendant if he is fined or sentenced to imprisonment. At present the law in this regard is not complete, and is confusing in many respects. Section 4 of the bill establishes rules which will cure the current inequities and eliminate existing confusion.

Suggestions have also been made to allow defendants to deposit cash or other security to satisfy bail in lieu of paying the premium for a bail bond. The bill incorporates this proposal, allowing a deposit of 10 percent of the amount of bail set. By this means, it is hoped that the opportunity to recover the deposit which is not possible with the premium for a private bail bond, will work further to insure the return of the accused at trial.

One matter which the omnibus bill does not cover should also be mentioned. Of late there has been much discussion of the problem of preventive detention—the refusal of bail to defendants because of the possible danger that their pretrial freedom has for the general public. Suggestions have been made to consider the accused's potential for future crime as a factor in the right to bail. Such a change would go counter to our whole tradition of bail. Although the Eighth Amendment does not by its terms prohibit preventive detention, this is a controversial and constitutionally uncertain proposal. S. 1357 does not deal with it in any way. Because of the urgent need for reform of the bail system, it was decided in the Senate that the difficulties in the preventive detention problem should not delay the institution of general bail reform. It is my hope that the committee and the House also will decide to separate these two issues, which are not by their terms so interrelated as to require joint consideration.

In conclusion, S. 1357, therefore, is a reform measure designed to work a major overhaul—the most significant in our history—of the Federal bail system. It is a pressingly needful reform which deserves your close and sympathetic study and your support. The bill was sponsored by 20 Senators—all but 3 of the members of the Senate Judiciary Committee. It received the support of all but one witness at the 1965 hearings. It is recommended by the Justice Department, and it passed the Senate unanimously. I hope that your committee, and the House of Representatives, will speedily pass this bill so that the administration of our Federal criminal laws may come closer to its ideal of equal justice before the law for all men.

STATEMENT BY HON. DON EDWARDS, U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. Chairman and fellow members of the committee, the hearings we begin today will result in a major change in our laws and in our philosophy about those who break the law. We are considering a group of bills to change the whole thrust of our bail system. These bills do not abolish bail; they do substitute the concept of recognizance as the key to our system of pretrial release.

Our concept of bail is centuries old. Bail bonding is both a busy business and an established institution of Anglo-American law. But the injustices of the bail system are clear to all of us. Those who cannot afford to buy their freedom must await trial in prison. Persons may therefore be confined in jail even if they have never been convicted in a court of law. The New Republic of March 5 carried an article by Ronald Goldfarb about our own District of Columbia jail. "On most days," the article found, the prisoner population of 1,200 includes about 700 persons convicted of no crime, but merely awaiting trial. An additional 100 are sentenced but awaiting further court action. Throughout the Nation, 13 million Americans buy their pretrial freedom every year, but 1.5 million Americans cannot—they must remain in jail until they are tried, and perhaps acquitted. I propose in H.R. 6271 to make it possible for persons accused of crimes to await their trial outside of jail, without requiring the payment of bail. I also propose to credit the time spent in custody for lack of bail toward service of sentence.

Why is it that we can now take this new path which has not been taken for centuries in the administration of criminal justice? Because two factors crucial to the acceptance and viability of social change are present here. These two conditions which make a change in our bail system possible are, first, our true goals have been made clear, and second, a better alternative has been found to achieve these goals.

The true purpose of a bail system is not to force an accused person to give money to the court; it is to treat an accused person justly without endangering the society in which he lives. We do not want to keep an accused person in prison until he has been convicted of a crime. On the other hand, we do not want to free an accused person if it means that he can avoid trial, or could constitute a danger to the society.

Is a bail system the only way to do this? Experiments such as the bail project in Manhattan have not only shown that bail is not the only way to guarantee safety and justice, but that it is not even the best way. Proper screening and supervision by our courts can be more successful in protecting both the accused and his fellow citizens than our established system of bail.

Therefore it is possible for us not merely to make a tentative inquiry about possible changes in our system of pretrial release. It is possible to change the central feature of that system from bail to recognizance.

The efforts of the Justice Department and many private organizations have laid a strong foundation for legislative action. The Justice Department particularly deserves praise for focusing public attention on bail practices, and carrying their proposals for reform to the Congress. Our committee now has the opportunity to take the next step and enact strong and reasoned remedial legislation. I am confident that we will act in the best tradition as the law committee of this House.

The CHAIRMAN. We will be glad to hear from you, Mr. Clark. It is always a pleasure to welcome you here. I am sure you will give us a great deal of enlightenment on this very difficult subject of bail. So you may proceed, Mr. Clark.

STATEMENT OF RAMSEY CLARK, DEPUTY ATTORNEY GENERAL

Mr. CLARK. Mr. Chairman, Mr. McCulloch, members of the committee, the Department of Justice urgently recommends the bail reform envisioned by H.R. 10195 and S. 1357.

It is incredible that a people dedicated to liberty and justice, as are we, unfairly detain thousands in jail each year through corrosion of the Constitutional protection against excessive bail.

Whatever its conception and earlier value, we have awakened to the realization that bail practice has for decades imposed intolerable injustice, meaningless deprivations of liberty and harmful losses to individuals and society.

The eighth amendment was intended to confer a right. More frequently, it has come to impose a burden.

The occasions on which we have discovered such a glaring malpractice in American jurisprudence are happily rare. A prompt, vigorous and effective remedy is called for.

Recent hearings mark the first time in 175 years that the Congress has undertaken a close look at the operation of the Federal bail system. Not since the First Congress enacted the Judiciary Act of 1789 and several months later approved the eighth amendment has there been a detailed study by the Congress of the bail system's impact on the release or detention of criminal defendants in the Federal courts.

A new awareness is illuminating the basis and technique for correcting bail abuses and protecting society from the flight of those accused of crime.

The last lament of the American minstrel, " * * * with one old shirt * * * and no one to go my bail" can be relegated to history.

This goal can be achieved by the bills which are now before you. They codify the best of our recent learning and experience. They should go far to redirect the focus of a system which up to now has centered on money.

Though the bills differ in several respects, the purpose of each is to encourage selective pretrial release without money bail in Federal criminal cases. Emphasis is placed on furnishing facts to judicial officers who preside at bail hearings. A wide range of release conditions would be authorized, and a preference for nonfinancial conditions specified. Revised and strengthened provisions to penalize bail jumping would be enacted to deter flight by persons who are released. Procedures for prompt review of bail conditions, and for credit against sentence for time spent in custody, would be provided for defendants who are detained.

These reforms are badly needed and long overdue. They will discourage unwarranted reliance on money as a prerequisite to release. By complementing the bail amendments to the Federal Rules of Criminal Procedure issued by the Supreme Court last week, they will lead to further reduction in unnecessary pretrial detention. Their principal goal is to produce individualized bail consideration on a case-by-case basis, so that information concerning the character and reliability of each accused can lead to fashioning conditions of release appropriate to the risk he presents. The failure of the traditional bail system in this country to require such information constitutes a major impediment to rational decisionmaking at the vital pretrial stage of criminal procedure. Bail is often fixed by reflex or habit. The enactment of this legislation will be a major step forward.

Mr. McCULLOCH. Mr. Chairman, could I interrupt Mr. Clark at this point?

Are there statistics available to show the number of bail-jumping cases? What is the final number of accused persons who do not come to trial or who are not ultimately found?

Mr. CLARK. We have some statistics that are not entirely adequate, and they indicate that approximately 3 percent of people released on bail fail to appear at trial.

Mr. McCULLOCH. Do your statistics show the type of offenses for which people are charged, in those instances where the defendant is not finally brought to trial?

Mr. CLARK. You are talking about the person, the individual who jumps bail and who is not thereafter apprehended?

Mr. McCULLOCH. Yes.

Mr. CLARK. I would say they are very rare.

Mr. McCULLOCH. Do we not have now in this country the means to locate and apprehend almost any person in the continental United States if we really want to apprehend him?

Mr. CLARK. I think that is absolutely correct, and the best fact to demonstrate it that I know of is the recent testimony of Mr. James V. Bennett, who has said that in the history of the Federal Bureau of Prisons, there have been only 12 individuals, out of hundreds of thousands incarcerated, who have escaped and not thereafter been accounted for by either apprehension or recovery in some fashion. It is pretty incredible.

Mr. McCULLOCH. That is a remarkable record, and I think it has a very important bearing on this much needed reform in behalf of which you are testifying.

Mr. CLARK. I agree completely with you, sir.

The traditional system has failed to achieve the ends of justice because it is a collection of outmoded, unfair and ineffective parts.

Although intended as a means of enabling accused persons to be released with assurance that they would appear at trial, bail hearings actually rarely inquire into facts which bear on the accused's likelihood to return for trial if released.

The inquiry today, such as it is, seems concerned only with the nature of the alleged offense and seldom looks into the character of the accused offender. Bail is typically expressed in terms of amounts of money instead of conditions tailored to degrees of the risk involved. And judicial officers, instead of deciding whether the accused should be released or detained, often, as a practical matter, delegate that critical determination to a bondsman. His action, as a private businessman, is understandably based on considerations of profit, not concerns about justice.

The CHAIRMAN. He not only becomes his client, but he becomes something more than that, does he not, because the man, the bailor, can arrest him, can he not, and we have had a recent case where they went into a State and sort of kidnaped him.

Mr. CLARK. The power of a bondsman over the individual for whom he made bond is unquestionably immense, and that individual's liberty is dependent in some measure upon the good faith and the good will of his bondsman.

The result is that defendants with resources pay the bondsman's premiums, become his clients and are released, irrespective of the risk they present. Defendants who lack adequate funds go to jail, however reliable they may be and likely to appear for trial. In large part, the traditional system achieves its goal of assuring appearance by denying release.

Such a system would be quite reasonable if all defendants who were good risks had money, and only the poor were bad risks. This we know is not so. The bail studies of recent years have demonstrated it beyond doubt. Bail projects in dozens of cities throughout the country have shown clearly that the poor with community roots can safely be released prior to trial without money bail. These projects and related studies also show that failure to release often has significant adverse effects on the accused's preparation for trial, his retention of employment, his relations with his family, his attitude toward social justice, outcome of trial and severity of sentence. These must be reduced to the minimum as should, also, the high costs communities bear for detention facilities.

Recognizing this need, the Department of Justice began steps in the direction of bail reform several years ago. In March 1963, a directive was issued urging U.S. attorneys—

to take the initiative in recommending the release of defendants on their own recognizance when they are satisfied that there is no substantial risk of the defendant's failure to appear at the specified time and place.

In March 1964, we ran a survey to see the results of that policy and in April 1965 we conducted a 1-day followup study. The results are highly encouraging. The average rate of release on recognizance in the Federal system prior to March 1963 had been 6 percent. By March 1964 it had nearly tripled, to 17.4 percent. By April 1965, as a result of continued emphasis on release, release on recognizance doubled again and stood at 39 percent. Thirty-one districts were releasing at least half of their pretrial defendants in this manner.

The lowering of pretrial detention in the Federal system has been equally striking. In March 1964, our study showed 37.7 percent of all Federal defendants were being held in detention prior to trial, amounting to some 12,000 people annually. On the date of our study in April 1965, the rate appeared to have been cut to less than 10 percent.

The average period of pretrial detention in the Federal system is 41 days. It follows that if the reduction in detention disclosed by our 1-day survey last April is typical, we are now avoiding 41 jail days for nearly 9,000 defendants each year. This represents the staggering total of 369,000 days of liberty, or 1,000 man-years saved in a year.

Most significantly, the increased use of release on recognizance or unsecured personal bond has not increased the default rate. The rate of bail jumping in the Federal system has been approximately 3 percent. This has not changed with the advent of release on recognizance. As a matter of fact, in the Eastern District of Michigan, where release on recognizance has been in use the longest, 84 percent of defendants were being released on recognizance according to the last survey. Only 1 out of 711 defaulted. In the District of Connecticut, the default rate was 1 out of 99 so released.

Despite the improved picture in the Federal system as a whole, there continue to be wide variations among districts in release on recognizance and detention. As of April 1965, 19 districts had release on recognizance rates of 60 percent or more, yet in 22 districts the rate was 20 percent or less. The range went from 3 percent in eastern Tennessee to 91 percent in Hawaii. In terms of detention in April 1965, 27 districts detained 5 percent or less of all defendants, while 9 districts jailed 30 percent or more. The range was from 0 in five districts to 80 percent in the Canal Zone. And despite the success of release on recognizance in many places, 52 percent of all Federal defendants were still being released only by posting money bail.

The figures to date reflect not only a large measure of voluntary improvement in Federal bail practices but a considerable opportunity for further progress. The pending bills will make more progress possible. In addition to the badly needed procedures described, they express a firm congressional commitment to bail reform. This is needed.

Let me comment briefly on S. 1357 since it represents, for the most part, a revised version of H.R. 10195, amended to reflect refinements resulting from Senate consideration. The major revisions were designed to bring bail practices in the District of Columbia Court of General Sessions within the coverage of the bill. We endorse those changes.

There are, however, two sets of amendments to S. 1357 which we strongly recommend.

The first concerns daytime release, which is not mentioned in H.R. 10195. S. 1357 proposes an inclusion in new section 3146(a) of title 18, as the fourth priority method of release, a condition which would "require the person to return to custody after daylight hours on designated conditions." As S. 1357 is now worded, a judicial officer would be required to consider imposing that condition in preference to conditions numbered (5), (6) and (7), which provide for the setting of money bail in the form of a 10 percent cash deposit, a

surety bond, or any other reasonable condition. Because the bill requires the judicial officer to impose the first condition "which will reasonably assure the appearance of the person for trial," money bail would be outlawed by S. 1357 in the case of any person whose appearance could be assured by the daytime release condition. This means that a person who wanted to post money bail could not do so if day time release would also assure his appearance.

But daytime release means nighttime custody. It is a form of detention, not a condition of release. Therefore, while we endorse the use of daytime release as an alternative to detention for want of bail, we recommend that it be made the condition of lowest priority.

The second major area requiring amendment is section 4 of S. 1357, which would amend 18 U.S.C. section 3568 to broaden the credit against sentence for time spent in custody. We agree with its intent but recommend three changes to make it fully effective. The changes are already incorporated in the text of section 4 of H.R. 10195. S. 1357 now gives credit only for time spent in jail in connection with "the offense for which * * * sentence * * * is imposed." We suggest adding language to give credit also for detention based on the offense for which the person "was arrested." Without this amendment a person might receive no credit for time spent in custody if he were arrested on a serious charge but convicted and sentenced only for a lesser included offense.

In addition, we urge removal of S. 1357's proviso to section 3568, which would eliminate any credit "if the judge, in imposing * * * sentence * * * takes into consideration the number of days such person has spent in custody * * * and so records in his judgment."

This proviso would leave open the door to precisely the kind of uneven and inequitable credits against sentence that have given rise to the need for the legislation. The type and term of sentence should remain in the complete discretion of the trial court; but the amount of credit against sentence should automatically be fixed at 100 percent of the time spent in custody. This can best be accomplished administratively by placing responsibility to record appropriate credit for each sentenced offender by the Attorney General.

Finally, we think it should be made clear that the new credit provisions of section 3568 are not to apply retroactively to sentences imposed prior to the effective date of the statute. We suggest this because a number of Federal judges have long taken preconviction custody into account at the time of sentencing. S. 1357 seeks to make this practice uniform. But if the new provision were made retroactive, it would undoubtedly result in double credit for detention time in many cases, because of the impossibility of determining in every past case the extent to which credit had already been allowed.

We shall submit separately the text of amendments which would carry out the recommendations we have made here, plus some minor technical amendments as well.

In conclusion, abuses of the present bail procedures are clear. H.R. 10195 and S. 1357 provide the means for remedying them. We urge your prompt and favorable action.

Before closing, I would like to say that several of our people in the Department of Justice have worked long and hard on bail reform, and I think certainly I and the Attorney General and the Department owe them a great debt. Among these people who worked on bail

problems a good part of the last several years are: Dan Freed, who is with me this morning. Harry Subin, Herbert Hoffman, also with me, Dorothy Pendergast, and Harold Koffsky.

The CHAIRMAN. Mr. Clark, these bills do not apply to capital offenses?

Mr. CLARK. There are provisions in the bills that relate to capital offenses. They do not significantly change the present treatment accorded to capital offenses. At present, under rule 46 of the Federal Rules of Criminal Procedure, the judge in his discretion can grant bail if he so chooses. That remains the concept of this bill.

The CHAIRMAN. What about a denial of this freedom involved in this bill, is there an appeal? Can the defendant or the prisoner appeal anywhere if the judge denies his right to be released in custody, or what you call an r.o.r.? Is there any appeal from that judgment of the court?

Mr. CLARK. Yes.

The CHAIRMAN. Just how would that work?

Mr. CLARK. Section 3148 contemplates that a person who is detained after review of his application for release under section 3147 by a judicial officer other than a district judge or judge of the court of appeals may move the district judge to amend the order. The court shall then determine that appeal, so to speak, promptly, or the judicial officer—

The CHAIRMAN. Who is the judicial officer other than the judge? Would that be the commissioner?

Mr. CLARK. The judge himself.

The CHAIRMAN. What about the violations of release on recognizance; what happens then?

Mr. CLARK. The bill prescribes penalties for violation of conditions of release, in section 3151 in the House bill.

The CHAIRMAN. Is the violation made a separate offense?

Mr. CLARK. It is a separate offense, but it does not interfere with the contempt powers of the court.

The CHAIRMAN. In other words, the contempt powers are preserved intact?

Mr. CLARK. Yes, sir.

The CHAIRMAN. But you do make a violation of the conditions of release a separate and distinct offense for which he could be fined and an additional imprisonment, is that it?

Mr. CLARK. That is it, and it is quite an important element of the bill. For the individual who has been released to fail to appear is a very serious matter.

The CHAIRMAN. How many States, if any, have provisions similar to the factors embodied in these bills, do you know? Do any States have this?

Mr. CLARK. I would say that many States have somewhat similar concepts. But no State, to my knowledge, has anything that would be comparable to this overall scheme.

Mr. FOLEY. Is not something similar used in New York City?

Mr. CLARK. Similar to the entire bill?

Mr. FOLEY. Similar to it.

Mr. CLARK. I am not really familiar with New York City.

The CHAIRMAN. I think it is used in minor offenses.

Mr. CLARK. Certainly release on recognizance, if that is what we are talking about, is used in many jurisdictions throughout the country.

Mr. HOFFMANN. Did the Manhattan bail project originate in New York?

Mr. CLARK. Yes.

Mr. HOFFMANN. So that is the program.

The CHAIRMAN. I think it only applies to minor offenses, does it not? That goes into what we call the court of general sessions.

Mr. CLARK. I think it applies to nearly all offenses.

Mr. FOLEY. It applies to felonies in New York.

Mr. CLARK. There are new bail programs now in well over 100 cities in various parts of the country. I know in Texas there have been eight considered.

Mr. ROGERS. What do you do in the instance where the crime may be both a State crime and a Federal crime and is filed on in each instance? The State may not be as lenient as you would be here, and you let him out and then the State keeps him in jail, and 3 months later you try him. Does he get credit under this setup if he is detained as a result of a State action?

Mr. CLARK. My reading of the bill would be that unless he were detained for the Federal crime, he would not get credit.

In other words, he would not get credit toward a sentence imposed for a Federal crime for time spent in a State jail in connection with State charges.

Mr. CORMAN. Mr. Chairman.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Do you have any problem with courts releasing people sometimes on very high bail, but then the released person becomes a problem in the community? The Attorney General mentioned last night that they really want to solve both of these problems; one is keep the fellow in who really should not be out regardless of how much money he has.

Is there anything with relation to this problem?

Mr. CLARK. This legislation brings an intelligent and considered judgment to individual cases, by emphasizing the need for information bearing on whether, and under what conditions, the persons accused should be released.

Under the present system, for example, people involved in organized crime, with vast financial resources, are going to make money bail. It does not matter, really, how high you set it. They will be at large. This bill will cause the courts to focus on the question of the probability of the accused being present at the trial.

Mr. CORMAN. Does that take into consideration what his conduct may be prior to trial; that is, the pursuit of his illegal activities during the interval that he is awaiting trial?

We have problems in California relating to narcotics, particularly, where, if a fellow can get out for a few days he can make some pretty good arrangements. I wanted to make it impossible for him to get out if his interim conduct may be socially undesirable.

Mr. CLARK. It is not my understanding that the purpose of this bill would be to provide a power in the courts of preventive detention. We assume a person innocent until convicted of a crime. The problem of deterring the type of conduct while on bail that you describe,

in my judgment, is not most effectively met by in a sense presuming the person guilty and holding him in jail even though he has not been convicted. It is accomplished by a variety of other techniques.

Mr. CORMAN. I may have misunderstood the Attorney General. That question came to my mind last night, as to how do you decide immediately whether his conduct is such that you want to release him.

Thank you.

Mr. HOFFMANN. Suppose a man is released on his own recognizance in a robbery case, and he goes out and a week later is arrested for another robbery. Is it your statement that there is no criteria in this bill whereby the judge in the second case can take cognizance of the first robbery? Similarly, can the judge in the first case impose additional conditions on the release as a result of the second robbery?

Mr. CLARK. The circumstances of the second robbery could be a key consideration either in reviewing the conditions of release on the first robbery charge, or in setting different conditions of release in connection with the second robbery charge.

Mr. HOFFMANN. On what criteria in the bill?

Mr. CLARK. I would relate it to the probability of being present at trial. There may often be a relationship between the commission of crime and the probability of appearance at trial.

Mr. HOFFMANN. But how do we get him committing a crime? The presumption of innocence attaches to the second one, does it not, as well as to the first?

Mr. CLARK. He is not convicted of the crime, but after all, the information on which the judgment of the judicial officer in setting bail is based is not adjudicated either. The additional information concerning a subsequent charge may be of the same quality and character as the information on which he originally set bail. When this additional information comes to him, the judicial officer can then take cognizance of it, and if in his judgment it affects the probability of the individual being present at trial, he could set further conditions.

If it is a capital case, other considerations enter in.

Mr. HOFFMANN. So in your view, it would not have to do with the presumption of innocence. It would simply be another charge pending, which in and of itself—regardless of the merits—would allow the judicial officer to consider it under this bill?

Mr. CLARK. Another charge based on the conduct of the individual while on release could be considered some evidence by the judicial officer. Call it instability, or whatever you want, but if it suggests an improbability of appearing at trial, it might cause him to impose further and more stringent conditions.

Mr. HOFFMANN. That would have nothing to do with the presumption of innocence in either case, would it?

Mr. CLARK. The individual would still be presumed innocent, but if the judicial officer determined that his probability of appearance at trial was not high, he would have to impose additional conditions.

Mr. McCULLOCH. In this connection, I would like to ask Mr. Clark a question. In some, if not most States, the question of bail is a continuing question and is reviewable by the court at any time, either on motion of the State's attorney, or prosecuting attorney, or the defendant's attorney, is it not?

Mr. CLARK. I think that is the law in most jurisdictions. I think the theory of bail necessarily implies that.

Mr. McCULLOCH. Is that the rule in the Federal court system?

Mr. CLARK. That is the rule today in the Federal court system.

Mr. McCULLOCH. Therefore, if a person were apprehended in any kind of reprehensible conduct, that in itself would be a matter which could properly be reviewed by the judge in determining whether or not additional conditions should be imposed, or bail imposed or increased.

Mr. CLARK. I think that is correct.

Mr. McCULLOCH. I would like to ask this question, because we have been plagued in the District with so many rapes:

Under this legislation, is the person who is charged with rape bailable on his own recognizance?

Mr. CLARK. Let me say first that rape in the District of Columbia is a capital offense, and that therefore the court can detain the individual in custody without bail.

Section 3149—

Mr. ROGERS. May I interrupt? Did I understand you to say in in the District of Columbia it is a capital offense; that rape is?

Mr. CLARK. Yes, sir.

Mr. McCULLOCH. I repeat my question: Is it an offense which is bailable by the accused's own personal recognizance under this legislation?

Mr. CLARK. I believe that the first sentence of section 3149—

Mr. ROGERS. No, that is a material witness.

Mr. McCULLOCH. In the Senate bill—

Mr. CLARK. I am in the House bill.

Mr. HOFFMANN. It is 3149 in the Senate bill.

Mr. CLARK. He could be released on recognizance. It is a matter of discretion for the court.

Mr. McCULLOCH. It would be my opinion that this needs the studied consideration and reconsideration of the Justice Department and the members of this committee. I think that rape is such a heinous offense that if one is released on one's own recognizance and that offense is recommitted, it is simply beyond excuse.

I think this whole problem needs reappraisal not only in the District of Columbia, but elsewhere in the country.

Mr. CLARK. I might say that when we think of rape, we think of the very horrible acts that we read so frequently in the newspaper. Rape is a crime that can be charged against an individual, however, with very little evidence. It can be—we are talking about possibilities—a decent person from a good background. I am not sure that we have any reason to believe that judges will be likely to abuse their discretion in a case like this.

I think an arbitrary rule that under no circumstances can anyone charged with rape be released might work great hardship on certain individuals in some cases.

Mr. McCULLOCH. I agree in part with your statement, Mr. Clark. But all judges have not all been without error in all times, and there have been persons mentally affected who are released on society only to repeat this offense. I must repeat, I cannot think of a worse offense.

Mr. CORMAN. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. CORMAN. I take it in the Senate bill, page 7, 3148, the court must take into account the probability of the person returning for trial, and if the nature of the capital offense is such that the death penalty may be imposed, then the probability of its not coming back would be greatly increased, and the court would have to take that into consideration.

In other words, a rape case, where the facts would indicate a possibility of the death penalty, would certainly carry different weight with the judge from that which at the most would involve a minor sentence because of the nature of the offense.

The CHAIRMAN. If he is out on bail, a rapist could still be free to commit another rape.

Mr. McCULLOCH. There is no question about that, Mr. Chairman. I brought the matter up because in my opinion, it needs careful study.

The CHAIRMAN. Much depends upon the discretion of the judge here.

Mr. CLARK. I think that is right.

The CHAIRMAN. May I ask, Mr. Clark, is this new law? Forgive my ignorance. On page 6 of the House bill, line 10:

No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice.

Is that new?

Mr. CLARK. I believe that the language is new. It puts much greater emphasis on release. As a practical matter this has been in the discretion of the court anyway.

This, in effect, would say that the Congress feels that you should ordinarily not detain material witnesses. They have committed no crime, except to have been at the wrong place at the wrong time, and we have had some recent instances I am particularly familiar with, in El Paso, Tex., where apparently material witnesses were unhappily detained for several months to testify in connection with the crime that no one felt they had any connection with—except knowledge.

And the idea here is that the Congress would feel that it should be the exceptional case where a material witness should be detained, and that unless for some reason the testimony cannot be adequately secured by deposition, the individual should be released.

The CHAIRMAN. Illustrate for me the case where there would be inability of the material witness to comply with the conditions of release. What kind of a case would that be?

Mr. CLARK. Take, for example, a laborer, no money at all, with a wife and three children, earning a daily wage. One day he is walking down in front of the First National Bank. Just as he goes by, three fellows with guns smoking come running out, and he sees them. The investigation shows he is an eye witness to a bank robbery. His company transfers him, or for some reason he is moving out. It is felt, to secure his presence, that \$10,000 bail should be set. He cannot raise \$10,000 bail. He would, therefore, be held, in effect, as a prisoner, pending his giving testimony as a witness.

The CHAIRMAN. I see.

Mr. FOLEY. How often is a material witness committed in the Federal system?

Mr. CLARK. It is fairly infrequent. However, particularly in connection with an area like organized crime, where there may be some overall complicity of the people, but they are not involved or charged with the same crime, it has been felt necessary.

Mr. FOLEY. In the particular field of organized crime, is the commitment primarily for the protection of the witness himself?

Mr. CLARK. It frequently is.

The CHAIRMAN. Any other questions?

Mr. HOFFMANN. I have one or two, if I may.

Mr. Clark, your statement at page 3 indicates by the figures you cite that the Federal court system has already made significant progress in the field of release on recognizance.

Do you think in view of those figures that the finding that is proposed in section 2 of the Senate bill is a little strong? It states under subparagraph 1 that "Present Federal bail practices are repugnant to the spirit of the Constitution * * *."

Mr. CLARK. First, I would say that we did not propose those findings, but I would not be very concerned about the strength of that statement. I think the progress we have made is encouraging, but it is spotty, as these statistics indicate, and there are still abuses that are repugnant to our ideals.

Mr. HOFFMANN. But is not the thrust of the bill to carry those advances that are present in some districts into all districts?

Mr. CLARK. And also to carry advances in districts where we have been successful beyond where we presently are.

Mr. FOLEY. Do you feel those findings in the Senate bill are necessary?

Mr. McCULLOCH. They are not in the House bill. I want to note that, Mr. Chairman.

The CHAIRMAN. That is just a declaration.

Mr. CLARK. I am not a findings man, as a matter of taste, I guess.

Mr. HOFFMANN. On page 3 of the Senate bill, release on recognizance is couched in terms of "exercise the court's discretion."

When we get over to page 7, section 3147, it appears that the standard for review is somewhat different. I quote:

Any order so appealed shall be affirmed if it is supported by the proceedings below.

Is what is meant there "No decision of the court below shall be reversed unless abuse of discretion is shown"? Is that what that language is designed to do?

Mr. CLARK. "Supported" might more nearly mean substantial evidence than abuse of discretion. I really have not analyzed that particular point, but my immediate reaction would be a substantial evidence rule rather than an abuse-of-discretion rule.

Mr. HOFFMANN. In the Court of Appeals?

Mr. CLARK. In the reviewing court; yes.

Mr. ROGERS. Mr. Chairman, along another subject, I understand that U.S. commissioners are ones who are authorized to approve bonds, or release them under this provision. Is that right?

Mr. CLARK. Yes, sir; "judicial officer" refers primarily, or most significantly, you might say, to the U.S. commissioners.

Mr. ROGERS. Are some of the U.S. commissioners on a fee basis?

Mr. CLARK. That is true.

Mr. ROGERS. Would this affect the amount of fees they may get in connection with their judicial work because they have a set schedule fee that is so much for this and so much for that and so on down the line until I am wondering if this would fit into that schedule.

Mr. CLARK. Let me say first, that we hope by the grace of this committee and Congress that we will have the fee system out of the picture at about the same time we will have this bill enacted into law. But I do not offhand see that any additional fee would attach.

I do not think the fee would be related to the conditions set by the commissioner.

Mr. ROGERS. Under this, you bring a man before the commissioner and he says, "I am a good citizen, I won't run off," and the commissioner believes him, so he says, "Go ahead," but under the present system he brings him in, and there is probable cause and he conducts a hearing, and then he sets a bond.

Now, he has got to approve that bond. For each act he takes there is a fee schedule that helps build up the amount he gets in salary. Or at least that is the way it used to be, and the more acts that he has performed, the greater would be his fees, and then you would send somebody from the Justice Department now, or the auditor would come down, and say, "Has the U.S. commissioner charged too much?"

The point I am getting at is that you may have some difficulty here as it relates to the U.S. commissioner if he just says, "Yes, I have had one hearing and I don't have to approve a bond. He can be turned loose," or, "I don't have to issue a warrant to bring him back in," and all of those are fee items.

Mr. CLARK. Let me say again that, first, I would hope that we would abolish the fee system. I think that is an urgent piece of business, too. Second, I think the opportunity for a U.S. commissioner, if he is so inclined to run up a series of charges by holding separate hearings and whatnot, may be just about as great under the present law as it would be under this bill. So I do not really see that this will give them a greater opportunity to charge more fees to a significant degree.

The CHAIRMAN. Mr. Clark, I understand the Judicial Conference has approved these bills, have they not?

Mr. CLARK. I am not sure that they have, sir. I think they have approved earlier bills that are similar to this in concept.

The CHAIRMAN. But the general idea they have approved, if I remember correctly.

Mr. CLARK. I believe that is correct.

The CHAIRMAN. Are there any questions of Mr. Clark?

Mr. HOFFMANN. May I inquire?

The CHAIRMAN. Certainly.

Mr. HOFFMANN. With regard to the present bail project here in the District and also the Manhattan project, the impressive figures on releases and returns are based on a good amount of spadework by someone besides the defendant, to determine the element of risk of nonreturn involved in each individual case.

Who do you envision doing this work under this bill if enacted?

Mr. CLARK. We hope that the Criminal Justice Act and other new emphasis on the right to counsel will tend to provide defense counsel that will to a very considerable degree assume this responsibility. From the standpoint of effectiveness of the system, that is the best way.

It will, in addition, in many instances unquestionably impose some burden or responsibility on the assistant U.S. attorneys, on Federal investigators of the several investigative agencies, on probation officers, on perhaps the commissioner himself.

Mr. HOFFMANN. Do you think the forces of the probation officers ought to be augmented for this purpose?

Mr. CLARK. I feel that the forces of the probation service are in great need of augmentation. Los Angeles County has more probation officers than the Federal Government. As I understand it, our probation officers are spending 70 percent of their time on presentence reports. That means they do not have much time to look after their people.

But bail by itself would not be a substantial item calling for the augmentation of the Federal probation service.

Mr. HOFFMANN. On page 7, section 3148, which is entitled, "Release in capital cases or after conviction," could you describe with a little more particularity the difference in the consideration for release after a defendant is convicted as opposed to pretrial release?

Mr. CLARK. Well, the first and most significant difference is that after conviction, the presumption of innocence is somewhat diminished. The law, I believe, is pretty clear now that the rights you have to bail before conviction do not fully and automatically carry over on appeal from conviction.

Mr. HOFFMANN. This seems to say that if he has been convicted of an offense he shall be treated in accordance with the provisions of 3146.

Mr. CLARK. Yes.

Mr. HOFFMANN. Unless the court has reason to believe—that is the language of 3146 itself.

Mr. CLARK. The sense of this is we do not want to needlessly and harmfully keep people in jail after conviction any more than we do before. But I think clearly after conviction the risks of flight are different than they are before conviction. If a fellow has had a long sentence imposed on him, he might feel differently about Mexico or some other place than he did before that. So the judge would need to look at the question of bail on appeal quite particularly and quite carefully, and that is what this bill would provide.

I think it is also important to point out the differences between S. 1357's requirements for the setting of release conditions in non-capital cases, and its requirements for capital cases and bail on appeal. In the latter instances, the judicial officer is not required to impose conditions of release at all. He may order the defendant detained, or he may impose conditions of release as specified in section 3146. In making his determination, he must consider not only the risk that the defendant may flee, but also the risk of danger that he may present to the community. The judicial officer's determination in these cases is not subject to a 24-hour review. It does not require a statement of reasons to support the order of release or detention. And it is not accorded any new rights of appeal either to the district court or the court of appeals.

The CHAIRMAN. Thank you very much, Mr. Clark.

Mr. DONOHUE. Just a moment, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. DONOHUE. What do these bills do as far as our courts are concerned and their powers that they do not now have?

Mr. CLARK. They provide procedures that, as closely as our judgment can bring us, apply directly to the problem, particularly of pretrial release.

Mr. DONOHUE. Can judges now in the exercise of their discretion release a person or set a certain amount of bail for their release?

Mr. CLARK. Yes, sir.

Mr. DONOHUE. And does this give them additional authority, or—in other words, are these provisions in these different bills mandatory upon the judge?

Mr. CLARK. When the Congress speaks in this way, these provisions would give guidance to the judiciary as to how they shall proceed. The judges can actually do much of this themselves if they could clearly see everything that you will see from your hearings. But it seems to me that the judgment and the guidance of the Congress by itself in an area of such great need is of immense value. In addition, you can give clear authority to judges today where there could be some doubt as to their individual power or as to their rulemaking authority.

Mr. DONOHUE. In other words, they do not have that power or that authority now?

Mr. CLARK. The individual judge has much of the authority that is vested here if he wants to take it upon himself to consider these matters in this way. But we have hundreds of judges all over the United States who are terribly busy individuals. This is the way to provide uniformity in terms of indicating to judges what they ought to consider in a bail hearing. This is the way to tailor their practice to the need. This is the way to show that the Congress is committed to bail reform.

Mr. DONOHUE. Will it not be discretionary with the individual judge to follow the guidelines that are spelled out in these different bills? Or is it mandatory upon him to follow them?

Mr. CLARK. The judge is commanded to follow the procedures set out in this bill. In so doing, he has a very broad discretion. He has to exercise his individual judgment in the individual case.

Mr. DONOHUE. The same as he does now?

Mr. CLARK. In accordance with the bill. We assume, of course, the good faith of the judges, and I think that is a most reasonable assumption. But we have no reason to believe that district judges across the Nation are today considering bail in terms of priorities of release or the seven conditions that are spelled out in the Senate bill.

Should those provisions become law, the courts will be directed to do that. We assume, of course, that they will.

Mr. DONOHUE. In other words, it removes the discretionary power that they now have and imposes mandatory procedures upon them?

Mr. CLARK. I would think of it more as channeling and directing their discretion.

Mr. DONOHUE. How do you differentiate directing them from making it mandatory upon them?

Mr. CLARK. It is mandatory that they follow these provisions, but in following them, they have to use their individual judgment. They have to look at the facts and see where the facts fit within this direction that the Congress has given them.

Mr. DONOHUE. When you impose mandatory direction upon a person, you remove from him, do you not, the use of his discretion?

Mr. CLARK. It depends upon the scope of the mandate. We have not told a judge, "You must release every defendant on recognizance." We have not told him, "You must release a certain defendant in daylight hours."

Mr. DONOHUE. What do you tell him?

Mr. CLARK. We tell him, in the Senate bill, that in considering release there are seven kinds of release. They should look at the priority of their listing, and they should then make a judgment in terms of priority as to the first one which will be adequate to secure the presence of the defendant at trial.

Mr. DONOHUE. Am I correct in assuming that these bills have for their objectives the broadening of the discretionary powers that the judges now have?

Mr. CLARK. In some areas, I think they give the judge perhaps more discretion than he now has, but I think that more significant than that, they give the judge direction as to how he should exercise that discretion.

The CHAIRMAN. Thank you very much, Mr. Clark. Your explanations are very cogent and they are very valuable to us.

Mr. CLARK. Thank you, Mr. Chairman.

Mr. McCULLOCH. I join in the chairman's statement. We thank you, sir.

The CHAIRMAN. The Chair wishes to read into the record a statement received from Mr. William E. Foley. I will read the last paragraph:

The purpose of this legislation is to improve present bail practices and to correct certain defects therein. At its session on September 22-23, 1965, the Judicial Conference voted to approve a substantially similar bill—

that is, similar to the House bill—

as S. 1357 in the form which it passed the Senate.

I take it from that that the purposes of the bill and the import of the bill will have approval of the Judicial Conference.

Thank you, Mr. Clark.

Mr. CLARK. Thank you, sir.

The CHAIRMAN. The Chair wishes to place in the record a statement of our distinguished colleague, the Representative from Colorado. Roy H. McVicker.

(The statement referred to follows:)

STATEMENT OF HON. ROY H. McVICKER, U.S. REPRESENTATIVE FROM THE
STATE OF COLORADO

Mr. Chairman, I appreciate the opportunity to present testimony on behalf of my bill, H.R. 6934, concerning bail reforms.

This measure is an attempt to modify Federal bail procedures so that they are more equitable and consistent with attaining a more just and efficient system of criminal justice.

Specifically, the bill would authorize the release on personal recognizance of persons otherwise eligible for bail, would credit time spent in custody for lack of bail toward service of sentence and would otherwise implement the constitutional right to reasonable bail.

The need for such legislation is demonstrated, in my judgment, by a look at the purpose of bail as provided in the Constitution and by a look at what the bail system has become today.

The purpose of bail in America is to assure that the accused be present to stand trial. Going hand in hand with that, of course, is the basic tenet that the accused is innocent until he does stand trial and is convicted.

Practical application, unfortunately, perverts the first tenet and seriously jeopardizes the second.

At any given moment across this land, thousands of citizens are confined not because they are guilty of the commission of a crime, but because they cannot afford to post bond. Mr. Chairman, I am afraid the facts gathered from countless police blotters and court records show that the administration of criminal justice as been deposited into the hands of professional bondsmen, or depends on the financial status of the accused.

There are three key provisions to my proposed legislation. The first is to provide our Federal courts with additional methods of releasing persons accused of criminal offense. The second is to provide credit for pretrial confinement against any fine imposed by the sentencing of the courts. And the third is to provide an appeal for persons aggrieved by the conditions of release imposed upon the court—for example, appeal from an unduly harsh bail setting.

The bill would give the court express authority to release an accused person on his personal recognizance, including a written promise to appear as required by court.

Results of a project known as the Manhattan bail project in New York over a 3-year period indicate that this is a sensible measure. Of 2,195 defendants released during that period solely on their promise to return, only 15 failed to do so. At the same time the rate of default for those freed on bail was three times as great.

That study and similar ones being carried on in about a dozen other cities indicate that such things as consideration of community ties, rather than just financial ability, might release perhaps half of all the criminal defendants with little or no bail and at no greater risk than in the present system. At the same time, poor defendants would not be dependent on the whims of professional bondsmen for freedom.

Mr. Chairman, in my judgment, the inability to meet bail requirements severely handicaps the accused in the preparation of his defense. Persons unable to afford bail are often confined and subject to the influence of persons already convicted of crimes and serving their jail sentences.

Being confined before being proven guilty by a court of law subjects the accused and his family to needless public derision.

Basically, then, the key problem which I am attempting to solve is the situation that has evolved whereby bail decisions rely primarily upon financial inducements to insure the presence of the accused at trial. I would have the law emphasize more relevant considerations, such as a defendant's character, employment, residence, or other community ties.

The U.S. Constitution prohibits excessive bail. However, as you know, that document does not appear to confer an absolute right to bail, and, of course, the Supreme Court has ruled that the eighth amendment does not accord a right to bail in all cases.

Mr. Chairman, my bill does not seek to change that ruling. It does seek a more equitable mechanism within the established framework.

Thank you very much, Mr. Chairman, for the opportunity to offer testimony.

The CHAIRMAN. Statements will be received subsequently from our colleague, Representative Farbstein, of New York.

(The statement referred to follows:)

STATEMENT OF HON. LEONARD FARBEINSTEIN, U.S. REPRESENTATIVE FROM THE
STATE OF NEW YORK

The present Federal bail procedures are repugnant to the spirit of the Constitution. One cannot equate the Federal bail procedures with the basic belief that an individual is innocent until he is proven guilty. One cannot argue that the existing bail structure provides to all citizens—rich and poor alike—equal and accessible justice for all. It is time for Congress to act to correct this situation.

Persons are often confined to jail awaiting trial because they are unable to raise bail or because they do not have the means to obtain bondsmen. This incarceration leaves families without means of support. Although a person may be proven innocent of a crime for which he is charged, the fact that he spent time in jail leaves a strong deleterious scar and subjects his family to needless public derision. This hardly supports the American tenet—an individual is innocent until proven guilty.

Federal bail procedures rely primarily upon financial considerations which by their very nature deny equal protection to persons of limited means. How can law be respected when justice turns on the financial status of the accused?

I urge the committee to favorably report H.R. 5923 which would permit defendants in criminal cases to be released on their own recognizance while awaiting trial on criminal charges, if they are otherwise eligible for bail. The bill is intended to correct the gross abuses in the bail procedures which have developed. It will remove the administration of criminal justice from the bonds of professional bondsmen and replace it in the hands of society.

FEDERAL BAIL REFORM

WEDNESDAY, MARCH 16, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE NO. 5,
Washington, D.C.

The committee met, pursuant to notice and at the call of the Chair, at 10:10 a.m., in room 2226, Rayburn Building, Hon. Emanuel Celler presiding.

Present: Messrs. Celler, Rogers, Corman, McCulloch and MacGregor.

Also present: William R. Foley, Esq., general counsel, and Martin R. Hoffmann, Esq., associate counsel.

Mr. CELLER. We will come to order, resuming hearings on the Bail Reform Act, and our first witness is Mr. Rufus King, representing the American Bar Association.

Mr. King, we are very happy to hear from you.

Mr. KING. It is a pleasure to be back, Mr. Chairman. And I want to note at the outset—I was just talking to Mr. Foley about how interesting it is to see how many of these things that have been vexing problems for a long time are now receiving attention; I think a lot of us feel that the wood we chopped many years ago is now starting fires.

This is a good illustration, the attention this bail matter is receiving. And I want to say personally, before I put on my American Bar Association hat, that I don't think any subject has been more important, and I congratulate everyone who has had a hand in developing this legislation.

I am Rufus King. I am appearing for Mr. James V. Bennett, who is the chairman of the criminal law section of the American Bar Association. I am a former chairman of the section and former section delegate, and I was requested by Mr. Bennett to testify briefly on this bill because he is unavoidably out of town.

What I shall do, Mr. Chairman, is simply read a brief resolution which was passed by the house of delegates of the American Bar Association on February 9, 1965, in New Orleans. This is a resolution on bail reform legislation.

(The resolution referred to is as follows:)

BAIL REFORM LEGISLATION

Resolution adopted by American Bar Association House of Delegates,
February 9, 1965

Be it resolved, That the American Bar Association support Federal legislation (1) to encourage Federal courts to release defendants awaiting trial upon their personal recognizance, if they are otherwise eligible for bail and except for good cause shown to the contrary; and (2) in the discretion of the court to permit persons admitted to bail to deposit with the court 10 percent of the amount of

bail fixed in lieu of providing securities or other collateral security, of which 90 percent will be returned if there is no breach of the bail conditions; be it further

Resolved, That the Section of Criminal Law be authorized to present the views of the American Bar Association to the appropriate committees of Congress on such proposed legislation.

Mr. KING. By way of further testimony, what I am going to do is simply allude briefly, Mr. Chairman, to two or three points that I think Mr. Bennett would have wished to stress. But with your permission, I would like to ask that the record be kept open a reasonable time so that Mr. Bennett may submit some material that he is preparing, elaborating some of these.

Mr. CELLER. You have the approval.

Mr. KING. One tiny thing at the outset—I probably am misreading this, but on page 9, line 21, of the House printed bill, it seems to me that word should be “before” instead of “for.”

Mr. CELLER. Which bill is that?

Mr. KING. Senate bill 1357. I was sent a copy of Senate 1357 in the House print.

Mr. CELLER. S. 1357?

Mr. KING. Yes. Page 9, line 21. Definition of “judicial officer” means, unless otherwise indicated, any person authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to release a person *for* trial or sentencing.”

Isn’t that “before” or a person “being held for” trial?

Mr. CELLER. Being held for what?

Mr. KING. “To release a person for trial or sentencing.” I think that should be either to release a person “before” trial or sentencing, or else “being held for.”

Mr. CELLER. It would be more exact, I am sure.

Mr. FOLEY. In Mr. Celler’s bill, House bill 10195, the term “judicial officer” is defined as follows:

The term “judicial officer” as used in this chapter means, unless otherwise indicated, any person or court authorized by section 3041 of this title, or by the Federal Rules of Criminal Procedure, to detain or bail or otherwise release a person at the proceeding in connection with which the term is used.

Mr. KING. Splendid. That clears it up, then.

Mr. FOLEY. Mr. Celler’s definition clarifies the very point you are raising.

Mr. KING. I was troubled by the other language. Now, the ABA resolution I have read makes brief reference to this 10 percent deposit provision, which I believe is contained in the present bill. Prof. Alfred Kamin of Loyola University made a study of this for our section, which was later published in the Illinois Bar Journal. I am sure your committee is already aware of the very successful experience that Illinois has had with a similar 10 percent deposit provision. Professor Kamin develops that. I just wanted to note that that feature does have a specific favorable reference in the Bar Association resolution, and that this was its origin.

Then very briefly—and as I say again, I am speaking for Mr. Bennett, and this is paraphrasing his thinking principally—obviously, first, this bill recognizes that bail has only one primary purpose and that is to assure the attendance of person who are caught up in our criminal processes. The right to bail arises out of the presumption of innocence and for that reason—although I think these preambles can sometimes cause difficulty—the recital of purposes here seems very

important. I think this is a desirable statement to stimulate thinking down the line on the fundamental nature of the reform that is being sought here.

The second point: incarcerating people before trial goes against all of our current efforts to separate the innocent from the guilty and to assure every person who is caught up in the machinery of justice a fair trial. And as Mr. Bennett has said and published repeatedly, with all his great authority, our jails at very best are deplorable places, and to put an accused person for long periods into one of these institutions so that he cannot defend himself, so that he suffers all the humiliation and the disabilities of being incarcerated, is a totally unworkable alternative if there is any other.

I am sure, Mr. Chairman, that you are aware of the study that was just done by the Washington Post, illuminating conditions in our own jail here. And I think a lot of us living right on top of this problem, seeing the spotlight turned there, have the feeling, "Where could we have been? How can this go on?" And yet our jail is probably representative of many such institutions around the country.

Third, the objective sought to be accomplished by this measure obviously will produce important economies. Again in Mr. Bennett's estimate, something over 300,000 people a year get into custody who are in a bailable condition. Some 300,000 people, who, from serving one day to serving literally years, are incarcerated in lieu of being able to make cash bail. In the Federal system—again a loose estimate—something around 30,000 people a year are incarcerated with as you know, many of them being farmed out by the Federal authorities to local jail systems.

If you attempt to put a dollar tag on that, \$4, \$5 a day, times 300,000, it is somewhere between one and two million dollars. Although it is a vague figure, there is no question that a more rational administration of the bail system would, in addition to all the moral improvements in the situation, actually increase the efficiency of our penal system and result in economies.

Also, the next point, and this is obvious and I know it has been expressed on this record, but it is pretty clear now that liberalized bail procedures work. We are not feeling our way in the dark any more. There has been this splendid work pioneered by the Vera Foundation, the pilot project here in the District of Columbia, the pilot project in Los Angeles, the American Bar Foundation studies, and the American Law Institute is now engaged in an extensive study of this subject in connection with its prearrestment code.

So, it seems perfectly safe to go forward on the basis that this has been demonstrated to be an area where changes such as this legislation seeks can be effectively worked. Of course, also, there is the remarkable work that Judge Christenberry did in Louisiana, working within the present system but experimenting in his jurisdiction on releasing people on their own recognizance and so forth.

Another point. This sort of reform is particularly appropriate, and has a high promise of working in the Federal system because of the peculiar and somewhat limited nature of Federal criminal jurisdiction. A large majority of the defendants in Federal criminal prosecutions are defendants accused of nonviolent, nonpredatory kinds of crime, so that it is particularly valuable to try this sort of bail reform on an extensive basis in the Federal system.

And, finally—a point again from Mr. Bennett that I think is worth noting at least—we are all particularly delighted to see this measure drawn in a very flexible manner and specifically that it is not limited to the indigent defendant at the bottom of the scale. The variety of devices which are provided to solve the individual problem of each person who is confronted with this problem of seeking his release on bail seems highly commendable, because it does take into account many things besides indigence. And in spite of all the difficulties that persons of very limited means have encountered in the past in obtaining equal justice, most of the problems—and this one is a good example—are not limited, by any means, to the man at the bottom of the scale. The same sort of considerations play a large part in the administration of justice in the middle range. And this bill amply takes that into account.

In conclusion, I will just quote Mr. Bennett. I am very honored to be able to paraphrase him because of his great prestige in the field, and he has said of this bill on several occasions that it is “already a generation too late”. This reform cannot now be effected too fast, in the terms of the present needs of our society.

(Exhibit A is as follows:)

EXHIBIT A

THE WHY AND HOW OF BAIL REFORM

(By James V. Bennett, Director (Retired), U.S. Bureau of Prisons)

It is probably safe to assume that each of you in attendance at this session on bail practices is asking himself several questions. Why, you wonder, has this hoary and time-honored system of setting monetary bail for every arrested person—be he rich or poor, drunkard or murderer, shoplifter or gunman—continued without substantial change as a part of our legal system since the days of the stocks, the pillory, and the ducking stool.

Why are there not some better standards for measuring what is excessive bail? Why is it necessary, you ask, to hold every arrested person who cannot afford the bondsman's 10 percent fee in an expensive tool-proof steel cell and then letting at least half of them off on probation or placed in an open institution. No doubt there are other equally baffling questions that occur to you.

The reason, I believe, we haven't done something to reform this out-of-sight, out-of-mind system is because there has been no awareness of its costliness, its injustice, and its frequently corrupting influences. It has, of course, a dozen other shortcomings. It has been, I am afraid, a case of beaten men following a beaten path.

But, fortunately, times are changing and answers being found to some of these hard questions and we are developing facts to show how far we can go in doing away with the bondsman or the pretrial detention of persons arrested for some suspected violation of the law.

The pioneer effort in this search for an alternative to the bail bondsman or jail was the Manhattan bail project. This was predicated on the assumption that most courts would be willing to release an arrested person on his own promise to appear for trial if they had sufficient information about his reliability, his family, his employment, his assets, and his roots in the community.

How to get this information speedily and accurately was the crux of the problem. The Vera Foundation, which drew its support mainly from the generosity of Mr. Louis Schweitzer, made available some funds to employ an executive director and get the so-called Manhattan bail project started. Mr. Herbert Sturz, who was selected for this purpose, obtained the cooperation of New York University School of Law. A carefully trained group of students interviewed arrested persons in various police stations. They developed an inquiry form which in addition to containing detailed biographical data about the arrested person also elicited facts about his employment, his criminal record if any, his family resources, and the names of persons who could be called on the telephone to verify his statements or vouch for him. A system of weighing affirmatively and negatively the different

factors was developed. These prediction tables were changed as experience indicated but have now been pretty well standardized.

If an arrested person obtained a certain score and he had not committed certain really unbaillable offenses like drug addiction or murder or a serious crime of violence, or was mentally disturbed or nomadic or otherwise unreliable, he was recommended favorably to the committing judge for release on his own recognizance.

At the end of the action phase of the Manhattan bail project, on August 31, 1964, 3,505 accused persons had been released on recognizance in New York City's criminal court. Of these 3,505 persons, 98.6 percent returned to court when required. Only 50 persons—or 1.4 percent—willfully failed to appear. This compares with a 30 percent forfeiture rate on bail bonds. Included in the 98.6 percent who returned are those defendants who did miss a first court appearance, had released on recognizance revoked and a bench warrant issued; but, in most of these cases, a telephone call from Vera revealed some mishap or misunderstanding; and the official process was reversed. The high rate of returns in the Manhattan bail project—and incidentally other projects around the country as well—suggests that verified information about a defendant is a more reliable criterion upon which to base release than ability to buy a bail bond.

To date, of 2,634 cases released, 48 percent have won acquittals or had their cases dismissed; 52 percent were convicted. Of those found guilty, 70 percent received suspended sentences while 7 percent were given prison terms. The remaining 23 percent of those found guilty were given the alternative of fine or jail. Of the 2,634 dispositions of persons who were released on recognizance only 99 ultimately ended up behind bars. All of which tends to show the person released while awaiting trial has a better chance for acquittal or probation than he who waits in jail.

As to fears that persons released on recognizance would go out and commit crimes, records show that only 23 persons were rearrested on new charges while awaiting trial.

There are several ways to undertake these pretrial release projects. Sometimes a private organization with the use of law student interviewers can be utilized. Sometimes the cooperation of the police can be obtained and sufficient information provided the court to enable release. Where there is a public defender he can be utilized as in Chicago, San Francisco, and some other places.

It is always nice, of course, to have a grant to finance these projects but where there is a will there is a way as various bar associations and committing judges have proved. Sometimes a college or university will provide the manpower. Sometimes a public welfare agency will be interested in the possibility of keeping families of arrested persons off the relief rolls by obtaining their cooperation in supplying the committee magistrate with the necessary information.

Sometimes individual judges can conduct release programs by interviewing and verifying the information themselves. This has been done by persons like Judge Owens of California or Judge Nixon of Missouri or Judge Sever of New Jersey who are sparking one-man programs of their own. Several judges, incidentally, will permit the release of the defendant in the custody of his own lawyer now that counsel must be supplied to every individual who may be in danger of being deprived of a substantial part of his liberty. The whole program as a matter of fact is closely bound up with the problem of supplying counsel to indigent defendants.

There are, of course, some other hard questions to answer in connection with these programs but they are not, I believe, beyond the capacity of judges, lawyers, and interested public citizens. The problem of what to do with the compulsive alcoholic, the petty forger, or the smalltime numbers player or gambler who tend to continue operations if trial is too long delayed is not an insurmountable one, if one bears in mind that many of these can be in effect probated or paroled to their attorney or some members of their family. Also, means can be found to speed up the trial since upward of 90 percent will plead guilty in any event.

The proposal to permit the defendant to pay the cost of the bond into the court for later recovery less administrative expenses at the conclusion of the trial has many advantages. It is now being used in Illinois with great success I understand. Defense counsel especially like this system since the defendant is readily available for consultation and the defendant can continue to hold his job and support his family; always an important factor when sentence is considered. Also, it keeps out of the picture the commercial bail bondsman who is seldom a help. Whatever money is paid for a bond can never of course be used for lawyer's fees or expenses should it be needed. Not an unmitigated evil in the eyes of lawyers you no doubt realize.

It may not be far distant when diagnostic clinics may be substituted for the present jail and the administrator will get the necessary information about the arrested person and submit it to the court for review as to the need for continued confinement.

As a former prison director, I have long hoped diagnostic or classification centers could be established in every court district so we could do away with the jail as presently conceived and operated. Such centers could be useful to the courts and to the whole process of justice in a hundred different ways including speeding the early conditional release of proper cases while awaiting trial. It would save millions of dollars nationwide now spent on these institutions, salvage human values and greatly improve the administration of criminal justice through making possible sentencing and disposition procedures based on an analysis of the training and rehabilitative needs of the defendant and the needs of society for protection as well.

Perhaps my hopes in this regard are a little utopian and so meanwhile we can do away with all of the awkward, time-consuming, and expensive procedure of arresting an individual, booking him in a police station, staffing and maintaining detention facilities, arraigning him, and setting bail, by more effective use of the summons process in lieu of arrest. A look at the number of offenses for which summonses may and should be issued would pay any police department, sheriff's office, or correctional system, high dividends.

A rule of court to the effect that summonses should be issued rather than arrests made for misdemeanors punishable by fines or imprisonment not exceeding say \$100 or 60 days could, for instance, be put in this category. So, also, many other violations as a study of present policies would show. Where summonses are substituted for immediate arrest procedures, the savings are in terms not only of dollars but in human values. That, fundamentally, is why I am here.

During my many years of experience as head of the Federal Prison Bureau I learned to appreciate the devastating and shocking effect upon a man and his family of arrest and incarceration in the ordinary city or county jail. I agree in large measure with those who say it is a crime to use most of America's 3,000 jails for anyone other than the most hardened offender. But the traumatic effects of being exposed to present-day jail conditions are not limited to the hours or days the individual is incarcerated. It carries over its embittering and galling effects into the afterlife of the unfortunate victim especially, of course, if he was innocent. It is in such angry soil that lawlessness, hostility against the social order, and rankling feelings of injustice are nurtured. We can begin to cut this toll and do something practical about preventing crime by modernizing and reforming bail procedures. Thus, it is, incidentally, that you can serve your Nation and help build the Great Society to which your fellow citizen President Johnson has dedicated himself.

All power to you.

Mr. KING. Therefore, on behalf of the American Bar Association, I urge the committee to give prompt and favorable consideration to the bill, and I hope the Congress will pass it as soon as possible.

Mr. CELLER. During the colloquy between one of the members of the committee and the witness, one of the members asked this question: Is there a need for this bill since the judges now have the discretionary power to do practically what this bill implies?

Mr. KING. Well, I believe the work that has been done—and Judge Christenberry's experiments are a good example—(see exhibit B attached) has indicated that there is much improvement that could be made in the present system. But I think the bill goes much further in a number of its provisions in clarifying problems and powers that are very sketchily developed under rule 46, Mr. Chairman.

(Exhibit B is as follows:)

EXHIBIT B

U.S. DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA—DECLARATION OF
POLICY WITH RESPECT TO PRETRIAL RELEASE OF DEFENDANTS

The unnecessarily large number of defendants who are detained in jail prior to trial for want of bail is a matter of increasing concern to the judges of the U.S. District Court for the Eastern District of Louisiana.

Over the past 2 years, the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, the National Conference on Bail and Criminal Justice, and the Chief Justice of the U.S. Supreme Court have focused public attention on the detrimental effects of pretrial detention upon the chances of defendants for favorable disposition of their cases and the harsh economic effects upon their employment and family status. In addition, the expense to the Federal Government of maintaining large numbers of accused persons in prison prior to disposition of their cases has been a matter of increasing concern to the Congress.

Although legislation now pending in Congress would substantially improve Federal bail practices, existing statutes and rule 46 of the Federal Rules of Criminal Procedure already vest wide discretion in the courts and commissioners as to the kind and character of security required to assure a defendant's appearance to answer the charges against him.

1. PRESENT POLICIES GOVERNING PRETRIAL RELEASE

The court has taken note of the fact that of the approximately 516 defendants against whom criminal proceedings were filed in 1963, only a small percentage were released on personal recognizance. It further notes that of the 327 defendants tried and convicted, 37 percent were given probation, 5.5 percent were fined or acquitted, and the remainder were committed to prison. The data available to court also shows that many of those who were given no prison sentence, or whose cases were eventually dismissed, were held in jail an average of 60 days each pending trial or court action.

From these statistics, from reports on the experience in other districts, and from other observations by the court, it seems clear that a more detailed and careful screening of defendants at their initial appearance before a commissioner or at the time bail is considered would make possible the release of a considerably greater percentage of defendants on their own recognizance. This being so, it is the purpose of this directive to urge each U.S. commissioner of this district to avoid setting monetary bail for accused persons whenever there is small risk of nonappearance at trial.

2. TYPES OF CASES ELIGIBLE FOR RELEASE WITHOUT BAIL

Generally, the characteristics of a good risk defendant have been found to vary with factors such as the length of his continual residence in the same area, his employment record, his family ties, his age and health, and the nature of any prior criminal record. For example, if a defendant has lived for several years in the same community, is married or is a member of a closely knit family, and has a regular job or a health problem which requires frequent medical attention, he is not likely to default in his obligation to appear. In fact, there has never been any serious problem with defaults among defendants in either district of Louisiana.

Release on personal recognizance may be effected in any appropriate case, where a careful consideration of all relevant factors indicates that the defendant will voluntarily appear at future proceedings. It goes without saying, of course, that the more serious the crime the more careful the scrutiny should be. In less serious felonies and misdemeanors such as auto theft, liquor violations, larceny, forgery, tax violations, and wagering stamp tax cases, the commissioner should be able to release a substantially greater number of defendants. Approval by a district judge should, however, be sought by the commissioner prior to release on personal recognizance in cases involving capital crimes, narcotics offenses, bank robberies, serious sex crimes, and such other categories as may hereafter be designated by this court.

3. PROCEDURES FOR FACTUAL INVESTIGATION OF DEFENDANTS PRIOR TO RELEASE

The necessary information about a defendant's background may be ascertained by the commissioner in one or a combination of several possible ways. Pertinent information is generally contained in the report of the agency investigating the offense. Where the investigative agent makes the arrest or seeks a warrant, he should be asked to prepare a brief report on the defendant's background for use by the commissioner in deciding the terms of pretrial release. The agent need not be urged to make any recommendation for or against release on personal recognizance. An officer making an arrest will frequently have information concerning the defendant's prior criminal record. Where deemed advisable, inquiry may also be made of the probation officer, the U.S. marshal, or his deputy, to elicit information relevant to the defendant's trustworthiness. The marshal will frequently have this kind of information or can obtain it from the local police or sheriff.

The defendant himself may be asked to fill out a preliminary questionnaire about his background and submit to questioning under oath at the hearing to supplement or confirm other data available to the commissioner. Where counsel represents a defendant at the preliminary hearing, he should be called upon to assist in the compilation and verification of the background information. Where the U.S. attorney or his representative is present at the hearing he may have useful data at hand. A defendant may also be released in the custody of his defense counsel if that appears to afford an appropriate guarantee of appearance. The Commissioner's hearing may be recessed so the court may be consulted in doubtful cases.

Release on personal recognizance should not be limited to defendants who are financially unable to afford a bail bond. In any case where a defendant can afford to post bond but wishes to be released on his own recognizance, he should be given the opportunity to present facts bearing on his eligibility for personal recognizance. He may offer in his behalf the names of such persons as his employer, his clergyman, or other reliable person through whom quick verification can be made. In all cases, a defendant should be notified that a personal recognizance procedure exists for qualified persons.

4. FORM OF RECOGNIZANCE

At least for the present, a defendant released on his own recognizance should be required to sign a recognizance bond in an amount deemed sufficient by the commissioner. In this way, the criminal penalties provided by the bail-jumping statute, 18 U.S.C. 3146, may be invoked in case of default. The defendant should be specifically informed of these penalties and advised that a willful violation means automatic conviction regardless of his guilt or innocence of the offense for which he was arrested.

Where personal recognizance is used, the amount should be set at a nominal sum such as \$100 where the defendant is an indigent. If personal recognizance is used for a defendant who has means to post bond but who can be trusted to return without professional sureties, the amount may be set higher in order to enhance the deterrent value of potential forfeiture. In addition to the bond, the commissioner may attach terms to the defendant's release which are reasonably related to the objective of securing his return to court. In appropriate cases, these may take the form of periodic reporting to a Federal probation office, the commissioner's office, or the U.S. marshal, or limitations may be placed on travel outside the district.

At the time of his release, it is vitally important to insure that the defendant understands precisely how he will be notified when to appear for future proceedings, and that he be given the best estimate of the date of his next required appearance as is possible under the circumstances of the case. If the defendant is illiterate or cannot understand English, special care must be taken to make the instructions clear. Notice of the date, place, and time for a defendant's next required court appearance should be sent by certified mail, with return receipt requested, as is presently done in the western district of Louisiana.

5. RECORDS

In order to evaluate the effectiveness of this pretrial release policy, each commissioner should fill out the enclosed form for every case in which he admits a defendant to bail or releases him on his own recognizance. Supplementary information may be recorded in any case where it appears desirable. A copy of each executed form should be sent to the clerk of this court within 1 week after the initial determination governing release, and notice of any subsequent defaults in appearance should be promptly given. Commissioners are invited to submit their recommendations at any time for revision of the form, or for guidelines governing release, on the basis of their experience in administering this policy.

The procedures and policies set forth herein shall become effective on February 1, 1965, and shall remain in effect for a 6-month period. During that time, the U.S. marshal will be requested to furnish each Monday to the clerk of this court, after consultation with the commissioner or the U.S. attorney, the names of all defendants who have been detained for more than 15 days for failure to make bail and the reasons for their continued imprisonment. This information will be reviewed by the court as part of its continuing assessment of the detention situation, and of this and related attempts to eliminate the unnecessary pretrial incarceration of accused persons.

U.S. District Judge.

U.S. District Judge.

Date: -----

United States District Court - New Orleans, Louisiana PRE-TRIAL RELEASE OF DEFENDANTS			
1. Docket Number & Charge		2. Arresting Officer or Agency	
3. Full Name of Defendant		4. Age	5. Sex
7. Address Where Now Living		8. How Long	
9. Last Previous Address		10. How Long	
11. MARRIED ☐ SINGLE ☐		12. First Name of Spouse	
14. How Many Children & Ages		13. Living Together YES ☐ NO ☐	
15. Social Security Number		16. Auto License or Drivers Permit No.	
17. Auto MAKE _____ VALUE _____		18. EMPLOYMENT HISTORY	
PRESENT EMPLOYER		JOB	
LAST PREVIOUS EMPLOYER		WAGES	
19. ARRESTS: Previous arrests, Charges, Disposition of Charges, Sentence or Fine (Use back of sheet if necessary)			
20. Attorney for Defendant (if any)		21. REMARKS	
NAME & ADDRESS OF PERSONS CALLED INFORMATION SUPPLIED BY ARRESTING OFFICER			
IMPRESSIONS OF DEFENDANT		SERIOUSNESS OF CHARGE ETC.	
22. ACTION TAKEN		AMOUNT OF BOND	
DATE _____ SIGNATURE _____			

INFORMATION SHEET
for use in considering

PRE-TRIAL RELEASE OF DEFENDANTS

It is suggested that the information about a defendant being considered for release on bond or own recognizance be tabulated as indicated plus any remarks noted below or typed on separate sheet. The data thus collected will be useful in analyzing experience, follow up on defendants who may default, and for information of court..

Note here any additional remarks about defendant, opinion of those knowing defendant and reasons for granting or refusal to grant release on own recognizance.

MAY 5, 1965.

Hon. HERBERT W. CHRISTENBERRY,
Chief Judge, U.S. District Court,
Eastern District of Louisiana,
New Orleans, La.

MAY IT PLEASE YOUR HONOR: The following is a brief statistical report of an interim nature setting forth the results of the application of the policy of releasing all suitable defendants on their own recognizance. These figures represent the results of the application of that policy in the New Orleans division from March 1, 1965, the effective date of the plan, through April 30, 1965. The figures include all defendants who have appeared before the commissioner, whether for an arraignment or for the purpose of bail only.

Total number of defendants appearing before commissioner.....	91
Defendants released on their own bond.....	56
Defendants released on personal surety bonds.....	5
Defendants released on professional surety bonds.....	10
Defendants committed in lieu of bond.....	20

As far as can be determined by a check of the bench warrants that have been issued by the court from March 1, 1965, to date, it appears that no person who was allowed to sign his or her own bond from the date of adoption of this policy has failed to appear in court thus far.

Respectfully submitted.

FRITZ H. WINDHORST,
U.S. Commissioner,
Eastern District of Louisiana.

Cc: Hon. Robert A. Ainsworth, U.S. district judge, eastern district of Louisiana, New Orleans, La.; Hon. Frank B. Ellis, U.S. district judge, eastern district of Louisiana New Orleans La.

Mr. KING. I think further that as, for instance, in the development, of our probation and parole system, a strong statement by Congress, and I refer to the preamble, the statement again, but a strong statement by Congress defining the area in this fashion, setting forth the intent of Congress and setting up this machinery, would make a very important step forward.

Mr. CELLER. You mean that the bill would provide something in the nature of criteria or guidelines for the judge to act and might make for uniformity throughout the country and would emphasize the need for the judges to exercise their discretion in release on recognizance, especially for the indigent? It would emphasize the need to do that?

Mr. KING. Oh, yes. Reforms of this magnitude don't just happen, Mr. Chairman. As you well know, many things could have been done and many things have already been done in this direction, but a clear, strong affirmation of this policy, and a statement of this new pattern, and a change in the law, and I would assume a proper change in the Federal rules, will move us ahead in years where otherwise it would take decades.

Mr. CELLER. What would be the changes in the rules as envisioned in this bill?

Mr. KING. Well, I don't have rule 46 here before me, but I think that some new provisions would have to be made in the rules. For example, some of the machinery of this appellate review procedure, where a person who is unable to make bail has an opportunity to go back for a review, would have to be spelled out.

Mr. CELLER. The appeal provisions are new?

Mr. KING. Yes, that is not spelled out in the rules. Again—just what we were talking about—otherwise, it probably won't be very

effectively enjoyed. When I said changes in the rules, what I meant was specifying the machinery for implementing this. And that would be an example of it.

Mr. CELLER. Are there any other changes that you know or can conjure up?

Mr. KING. Well, I took a quick look at the rules yesterday. I didn't mean to imply by my testimony that there is anything inconsistent with rule 46, that is, that the purpose of rule 46 would have to be revised. After all, this springs from a constitutional provision. I could make another examination of the rule, but I am sure it has been done by other witnesses.

Mr. CELLER. I wish you would make an examination and drop me a line on that, where you see the differences between the bill contemplated and the present situation with reference to releases.

Mr. KING. Under rule 46?

Mr. CELLER. Under rule 46. Just drop me a line on it, will you, please?

Mr. KING. I would be glad to.

(The information referred to is as follows:)

AMERICAN BAR ASSOCIATION,
Chicago, Ill., March 17, 1966.

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives,
Rayburn Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I respond to your request at the hearings yesterday on S. 1357, H.R. 10195, and related bills, that I clarify my statement to the effect that enactment of this legislation would require appropriate modification in rule 46 of the Federal Rules of Criminal Procedure.

Rule 46 is the subject of a proposed revision recommended by the advisory committee and recently ordered by the court and now pending before the Congress. This revision, affecting subparagraphs (e), (d), and (h), purports to introduce into the rule substantially the principal which would be effectuated by the bail legislation. Rule 46 also spells out in some detail matters of definition and procedure which would be governed in equal detail by the proposed legislation.

If the new bail legislation is enacted, I think it will be necessary for the advisory committee to rewrite rule 46, making appropriate references to the provisions of the statute and adjusting procedure to fit the altered mechanics of review, etc. But I did not intend to imply that there was any conflict in substance or underlying principle between the two.

I take this opportunity to thank you for the courtesies extended to me during my appearance.

Respectfully,

RUFUS KING.

Mr. ROGERS. Mr. Chairman, could I ask Mr. King a question? Now, in H.R. 10195 and S. 1357, in the House bill section 3147, which is also section 3146 of the Senate bill, do you read those provisions to mean that if the magistrate is of the opinion that the person who has been arrested can give him assurance, and he is satisfied that he will be there for trial, and that after he has that assurance, it is the obligation of the magistrate or the U.S. commissioner, or the judge, to release him, unless it is a death penalty?

Mr. KING. Well, with very substantial discretion, Mr. Rogers.

Mr. ROGERS. Well, they say that he can place certain limitations on it. That is to say he can designate that he be in custody of some organization, that he be placed under supervision of a probation officer, and place limitation upon his travel and associations as provided in this bill.

But the point is that once having been served with a warrant and brought before the magistrate, or the U.S. commissioner, and as it says in here on line 11 "shall be ordered released on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines that such a release will not reasonably assure the appearance of the person."

Now, he is convinced that here is Joe Blow who has been a criminal in this community all his lifetime. He has his family here and is not likely to run. But if we turn him loose today, he is going to be out committing a crime before the sun goes down.

Now, if the commissioner is convinced that he will be here, he won't run off, is he obligated to turn him loose?

Mr. KING. Well, isn't that the present law, Mr. Rogers? This does not change anything. At present, my understanding is that the doctrine has evolved in this country that everyone is entitled to bail except in capital cases. Now, you can put the bail so high that it is an unrealistic remedy. But we don't accept the English notion of the danger of tampering with the evidence, and so forth, the preventive notion of bail. Technically, a lipservice, at least.

As a practical matter, of course, these are going to be factors anyway, because with a person with a long criminal record it seems to me obvious he is not a good risk on his own recognizance.

Mr. ROGERS. That is just exactly the point. As this is drawn, if a man has been a criminal all his life, been in and out of jail and that is about all, and he is not likely to run off because he has not run off before, either because he didn't want to forfeit bond or what not, he stayed here. He is not going to run off this time. The U.S. commissioner or the judge is convinced why, you couldn't get Joe out of town if you wanted to. He would rather stay here.

Now, he is convinced that the defendant is not going to run off. He is convinced if they give him orders to appear at such and such a place at such and such a time he is going to be there. Now, that being true, isn't he obligated to release him under this bill?

Mr. KING. Well, if he makes such a finding. And I say again, Mr. Rogers, if you were the commissioner and you were satisfied that this man wasn't going to run away and also you were satisfied—let's face it—you were satisfied he is not going to go out and rape anybody, and a few other things—

Mr. ROGERS. That is exactly the point that I am getting at. Where is there anything in this bill that says when he makes this showing—he may be arrested for rape this morning and appear before the commissioner this afternoon, and the commissioner is convinced he is not going to run off, and he rapes someone tonight?

Mr. KING. Well, in the Senate version of the bill—and I don't have the House version, Mr. Chairman—but on page 4 of the Senate version, it sets forth standards:

The judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character, and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Now, just the one word "character." If I were a judge or a commissioner and felt responsibility for being sure that this person who is in the dock in front of me is kept in and is made to answer for the offense for which he is charged, just the one word "character" would, to me, authorize and require me to take into account the things you are considering.

I see what you are driving at, Mr. Rogers. And again I am speaking for Mr. Bennett and others who have studied this more carefully than I have, but I believe that we are very hopeful that these standards will be left as they are in terms of the offender, rather than the offense.

And if you are driving at the possibility of reducing or increasing the nonbailability, or restricting the bailability of other offenses besides capital offenses, we hope the Congress does not do this.

Mr. ROGERS. The point that I am trying to get, you have pointed out as you say on page 4 of the Senate bill, which is what you have read from, that is 3146(b). All right. Now, this says:

The judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character, and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings, or of flight to avoid prosecution or failure to appear at court proceedings.

Now, I get back to my original question. Suppose that the U.S. commissioner does take all of those things into consideration, and he does arrive at a conclusion that the man is not going to run off. Now, is he dutybound under this proposal to release him on his own recognizance? Is it a duty of the officer?

Mr. KING. I don't think ingenious legal scholars could write very much more discretion into a bill than this one has. And you are saying if in his discretion he decides he has to do it, does he have to? Yes, sir, the statute says "shall." But I think there is an ample protection there, Mr. Rogers.

Mr. ROGERS. The statute says:

At his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion that such a release will not reasonably assure the appearance of the person as required.

Now, in order to arrive at whether or not it will assure his appearance at the time required, he is authorized under section (b) to consider all of these things. But he does consider those things and he arrives at a conclusion that he is not going to run off. And I think he is a good risk and he will be there.

Now, regardless of his criminal record, and regardless of what his crime may have been, my question is: Is the officer when he is convinced that he is not going to run off and that he will appear at trial, obligated then to release him on his personal recognizance?

Mr. KING. Well—

Mr. CELLER. Mr. Rogers, may I interject here. You have the Senate bill on page 3, lines 15 and 16, "in the exercise of his discretion." That does not make it mandatory.

Mr. ROGERS. But it says on line 10, page 3, on the Senate bill, S. 1357:

Any person charged with an offense, other than an offense punishable by death, shall—

Now, see this word "shall"—

at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specific—

Mr. CELLER. And the condition subsequent, "unless the officer determines, in the exercise of his discretion."

Mr. ROGERS. Now, that is not in here, Mr. Chairman.

Mr. CORMAN. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. CORMAN. I think you are trying to inject into this something which should not go through the mind of the judicial officer who is holding the hearing. It is not his prerogative to fix conditions which retain the man in custody pending trial because of fear of his conduct. His sole discretion is to insure his presence at the time of trial.

Now, just on a straight bond, he may fix the bond at \$5,000 and know that that will get the man to come back. But if he wants to keep him in jail he would have to set it at \$100,000. I don't think even under the present system, the court would go along with \$100,000 bail where the \$5,000 would reassure his appearance.

Mr. CELLER. Is there anything mandatory here? It is all discretion.

Mr. CORMAN. Yes, sir; except I think he must exercise his discretion on what it takes to get the man back to trial, not what it takes to keep the man in jail pending trial.

Mr. ROGERS. I have gone a little further than that. When it says on line 11, S. 1357, under paragraph 3146, "shall." They use the words "shall, at his appearance before a judicial officer, be ordered released pending trial."

Mr. CELLER. Well, if it gives comfort to the gentleman from Colorado, we can change "shall" to "may."

Mr. CORMAN. Just a minute.

Mr. ROGERS. Don't misunderstand me, Mr. Chairman. You know and I know if we want to place this on the floor, we are called upon to explain what we mean. Don't misunderstand me in asking the questions of the gentleman; it is my position on the particular bill, but I want to know if he is of the opinion that this word "shall" does not mean that the commissioner is obligated to turn him loose.

Mr. CELLER. No. If there is any doubt I can clear it up in the record. I don't think the language means that. Nothing is mandatory.

Mr. KING. Might I say, for example, that a judicial officer or Federal judge at the close of the Government's case, in every criminal trial—I don't know if there is a statute or rule on it—but the judge shall dismiss the case if there isn't enough evidence to go to the jury. There is no question that if the judge makes a finding in his discretion that there is inadequate evidence, the judge has to dismiss the case.

Now, this is an exercise of discretion in a similar way. The judge has enormous discretion to reach that finding. When he reaches the finding, then what follows is automatic.

Mr. ROGERS. This is the point I am trying to get at. What discretion does the U.S. commissioner have in this case if he is convinced that the man will appear at the trial? Has he any discretion but to release him under this proposed bill as written?

Mr. CORMAN. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. CORMAN. Let us make the case real simple. The commissioner writes down his findings as to why he won't release him, release on recognizance, because he is afraid he will go out and commit another crime. He says in his findings he must submit to the court or judge, "I know Joe would be back for a trial but was afraid he would go out and commit another crime."

Now, what would the judge do under this bill?

Mr. KING. Make a pretty good argument, because if he is going to commit another crime, he is likely to get locked up and not come back.

Literally and seriously, carrying things that far, I believe you encounter questions that have as much leeway as that. If the commissioner says character, if the commissioner gets reversed once by the judge for saying tendency to commit another crime, the next time he will say character and exercise the same discretion.

Mr. CORMAN. All the commissioner has to do is say I am keeping him because I am afraid he won't come back to trial, and we have no argument. But I don't think that the releasing officer can consider anything other than his requirements to come back to trial. Because if he does that, then he is not only prejudging him on the alleged offense, he is prejudging him on an offense he thinks he is going to commit. And he keeps him in jail pending that. I don't think that is within the discretion of the judicial officer. Would you agree with that?

Mr. KING. I do, and I think furthermore, that is consistent with the underpinnings of the constitutional origins of this right to bail and consistent with everything that has developed. Consistent with the entire background in which this legislation will be enacted.

Mr. ROGERS. Of course, the Constitution says "unreasonable bail" or words to that effect.

Mr. KING. Excessive bail; yes, sir.

Mr. ROGERS. But what we are trying to do here is to make sure that we don't even have that. We are not going to have any officer, be it a U.S. commissioner or a judge, putting any bail in his first appearance. So we are not bothered with the constitutional question.

The only question is, How are we writing the statute and are we writing it so that if I am practicing law and a man comes in and says they have got a warrant for me, I say, "Well, look, we will go down to the U.S. commissioner and say you are a good boy and you have never been in trouble before, and the U.S. commissioner has got to release you." So I take him down there. The U.S. commissioner says, "No, I don't think I will release him," and doesn't make any findings one way or the other. What is the obligation of the commissioner?

Mr. KING. Well, then, isn't it reviewable? You can go back and he has to make findings and those findings are reviewable.

Mr. ROGERS. Well, now——

Mr. CORMAN. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. CORMAN. I think it is at that point you get at how he exercises his discretion. I think he might violate it in one or two ways. Either the facts might be so strong in support of the man's release you say he violated the discretion by not releasing him, or he might say "I think he will be back for trial but I don't want him to commit any more offenses so I want to leave him in jail."

And I am confident under any interpretation, that would be a violation of the law.

Mr. FOLEY. Even today.

Mr. KING. May I ask for my own information, is this review a two-way thing? Is the prosecutor entitled to review on these findings too? Does the bill now provide that?

Mr. FOLEY. No, it does not.

Mr. CELLER. Is there anything else, Mr. King?

Mr. KING. No, thank you, very much, Mr. Chairman.

Mr. MACGREGOR. I have no questions.

Mr. CELLER. Thank you very much, sir. I appreciate your coming.

STATEMENT OF LAWRENCE SPEISER, AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. Mr. Chairman, I understand the committee today is also receiving testimony on the bail bond bill of Congressman Schweiker who testified previously before the committee, H.R. 12442, and accordingly, I brought Charles Halpern with me, an attorney who will testify on that proposal. But I will cover the bail reform bill first.

Mr. CELLER. Have you a statement, Mr. Speiser?

Mr. SPEISER. I do not have copies of a prepared statement for distribution to members of the committee, but I will attempt to get one to the committee before your record closes. Do you have any indication of how long you will leave the record open for the submission of statements?

Mr. CELLER. Not too long.

Mr. SPEISER. Very well, I will try to get it in as soon as I can, Mr. Chairman.

The American Civil Liberties Union is in favor of the passage of S. 1357 or H.R. 10195, with amendments. There are differences between the two. We think that both bills represent a giant step forward in alleviating the injustices which have occurred under present bail practices, and I think even without the changes that I am going to suggest, that they are to be heartily endorsed.

The work of the Justice Department I think is to be particularly commended, as well as the work that has been done by two Senate subcommittees previously on S. 1357 and some prior bills.

These bills, by no means solve all problems connected with the bail system, because there are some outstanding problems which still would exist. For example, there are some very interesting and worthwhile projects and studies which are being undertaken to expand the systems of summons, citations, and notifications to appear, which may very well alleviate many of the unnecessary hardships which exist at the present time. It seems strange that we still seem to be wedded to an archaic procedure requiring the arrest of individuals, taking them down to police stations, determining whether they can be released at that point, rather than utilizing the system that we developed, because of our rather mobile society in traffic offenses, in which a notification to appear is given by a police officer. This system operates perfectly well after many years of experience.

Therefore, although these bills are a giant step forward, they do not resolve all of the problems of inconvenience and unnecessary deprivation of liberty associated with our administration of criminal justice.

The provisions of S. 1357 providing for an order of priority or preference as the basis for release, is excellent, with the most preferable being a release on personal recognizance.

I would like to suggest, however, some additional language in the provision requiring a 10-percent deposit, which is under subsection (a)(5) of the proposed section 3146, page 4, of S. 1357. Judges are notoriously slow to change. That is one of the reasons for this bill—to spell out the kinds of choices that they might consider in releasing people. It doesn't say anywhere in the bill that someone might be released on posting a personal check.

Our economy is run by checks. Few people carry cash in any substantial amounts with them. Therefore, I would like to suggest that along with stating "in cash or other security"—security seems to have a fairly technical meaning—that "personal check" also be included.

Mr. CELLER. Since the judge would release on recognizance without any bond, don't you think he could post any condition he wanted?

Mr. SPEISER. I think he could, Mr. Chairman, but when you get down to subsection (a)(5) which provides for the 10-percent deposit, which has had a 2-year experimental trial in Illinois and apparently has worked very well, it only says "cash or other security." Most judges and most clerks think of security in terms of a bail bond.

They don't think in terms of personal check in lieu of cash, for example, and considering the fact that most people have their money in banks; banks are generally closed on Friday afternoon until Monday. If this provision is kept in its present form as one of the alternatives, it will simply push people to the bail bondsman to pay money to him to get the 10 percent cash to post.

One of the features of the whole bill, it seems to me, is to get away from bail bondsmen. If a judge permits the posting of a personal check, he obviously may want to consider whatever factors he has in determining the accused's release that are set forth in the bill—including whether the personal check is good. I think it is unlikely that people are going to post personal checks that have insufficient funds and face a criminal charge based on that posting it with the court.

So I don't see any reason why we couldn't put that in there and leave it to the judge in his discretion to determine whether to accept a personal check in lieu of cash.

Mr. CELLER. I don't think it is very important.

Mr. SPEISER. Very well.

Mr. ROGERS. Could I inject the same question?

Mr. CELLER. Surely.

Mr. ROGERS. As I understand from what you said, Mr. Speiser, you believe that the House bill H.R. 10195, introduced by the chairman, which says it shall be ordered released "unless the officer determines that such a release will not reasonably assure the appearance of the person. When such a determination is made, the judicial officer shall," and then they impose all these conditions.

Now, do you interpret that if the first part of this, if the officer believes that he will be present for trial, that the commissioner should not thereafter impose any of these conditions and he must automatically release him if he is convinced that he will appear?

Mr. SPEISER. Yes, I do, Mr. Rogers. If he is convinced that the person will reappear without any of the other conditions being imposed, then I would interpret the bill in that fashion.

Mr. ROGERS. But, however, should he make the determination that possibly he will not appear, then he may impose the conditions as outlined in 1, on down to line 16 on page 3. Any one of those conditions?

Mr. SPEISER. That is correct. Going down the list of priorities.

Mr. ROGERS. In other words, there are two functions that may be performed by the U.S. commissioner: one is that if he makes a determination that in his opinion he will appear, then he must automatically release him. If he is of the opinion that he will not appear, he may then impose these conditions?

Mr. SPEISER. Yes. He would go down the line of conditions.

Mr. ROGERS. Surely.

Mr. SPEISER. Each of them, to determine which will cause the person to appear.

Mr. ROGERS. Yes.

Mr. SPEISER. I might respond to your prior colloquy with Mr. King, which raises the troublesome problem which I think has bedeviled the whole bail question in the past. I think under present law and decisions of the Supreme Court, it is improper to consider possibility of commission of crime in release. Admittedly, it is done. This came out at the Bail Conference that was held here in Washington in 1964, that this was done and was responsible for setting high bail.

But I think in the question posed by Mr. Corman, that if a judge put down that "I am not releasing this person on personal recognizance because I believe he is going out to commit another crime," that this would obviously have to be reversed. That is not a proper factor under present law.

Now, the question of preventive detention was specifically excluded from consideration in the Senate bill. It is a troublesome question and the Senate committee has announced it is going to hold hearings on that matter. I think that all this bill has done is to set forth the present allowable of factors to be considered in determination of release.

The fact that you use personal recognizance rather than bail is something that Congress can, I think, set out. But Congress cannot put into the equation that in noncapital cases, that the determination of whether another crime will be committed can enter into the equation on whether a person is to be released.

Mr. ROGERS. Congress has heretofore made a provision that when a person is arrested he may be released on reasonable bail.

Mr. SPEISER. The Constitution.

Mr. ROGERS. Well, the Constitution.

Mr. SPEISER. The Constitution has said that.

Mr. ROGERS. But we have provided statutes, a method of where a man is brought before a U.S. commissioner and permitted to make bail or brought before a judge and permitted to make bail. Now, what we are doing is amending those statutes?

Mr. SPEISER. That is correct. But you are doing it because of the practices which have existed. Admittedly, judges have had the power to release people on personal recognizance, but in the past very few have done so. The eastern district of Michigan has been doing it for the vast majority of people who come before it, even though it is 5 minutes away from Canada.

Mr. ROGERS. And if a man was caught robbing a bank in the morning, he would be entitled to and was given his release and went

out in the afternoon and robbed another bank the next morning, he could still be entitled to his release?

MR. SPEISER. You don't have to rely on hypothetical cases. There are specific cases and they were referred to in the Bail Conference that was held here under the aegis of the Justice Department 2 years ago. Admittedly, that is a tough problem. But this law does not touch that problem, and I think that it should be reserved for another time.

MR. ROGERS. Then would I be safe if we brought this to the floor and say that that problem doesn't arise in this? It is something we can meet in the future?

MR. SPEISER. What you can say on the floor is that this does not change the law on right to release.

MR. ROGERS. Oh, it doesn't?

MR. SPEISER. I am using release broadly, in how a person is released. I equate release on personal recognizance and release on cash bond. I am saying that it is a right of a person to be released. This does not change the legal factors that can be considered in determining whether a person should be released.

MR. ROGERS. Then why the legislation?

MR. SPEISER. Because you are trying to eliminate the inequities and injustices which have occurred because judges haven't utilized their discretion in a more humane fashion. You are trying to say the first thing judges ought to consider is can you release the accused without posting any kind of bail, when the presumption has always been that they should impose a cash bail.

MR. ROGERS. But if we pass this, how are we going to make those judges exercise the discretion any better?

MR. SPEISER. You have review. There is right of appeal.

MR. ROGERS. Well, you have that now.

MR. SPEISER. You do, but the review now is whether the bail imposed is excessive. And I think perhaps the appellate courts, as well, have been deficient here. The appellate courts have not considered, except for that opinion by Justice Douglas in the *Bandy* case, whether any bail at all should be imposed. They have merely considered whether the bail set was excessive. This bill gives the appellate courts the power to review that kind of determination—whether any bail should be required.

MR. ROGERS. Thank you, Mr. Speiser. Pardon me for the interruption.

MR. SPEISER. In section (d) of section 3146, on page 5, the judge is required, upon application, to review the cases of those who have been kept in jail for 24 hours, to determine whether the conditions which have been imposed should be changed.

I would like to suggest eliminating the words "upon application." There have been instances of people who have been in jail awaiting trial who have been literally lost. They have been there for months. Their attorneys have not performed the task they should have, and there have been cases of not only months, but also of years where people have been awaiting trial.

They don't know what their rights are. It would never occur to them to contact a judge. I would like to suggest that there be an automatic review of conditions of release if a person is in jail 24 hours, by the judge who made the determination.

MR. CELLER. How would the judge be apprised of the need to act?

Mr. SPEISER. Merely by the fact the person is there and has not been released, which would indicate to the judge, if the judge had set the bail or conditions on the accused that he was unable to meet, that the judge ought to reconsider them. The purpose of bail is not to keep people in jail.

Mr. CELLER. So, in other words, you would eliminate the condition that the one to be bailed or released must make an application?

Mr. SPEISER. That is right.

Mr. CELLER. The judge being more or less under a duty to reexamine this case if the conditions of release were not complied with?

Mr. SPEISER. That is right, Mr. Chairman.

Mr. MACGREGOR. If the chairman will permit and you will pardon the interruption, so we understand precisely what it is you are recommending, do I understand correctly that you recommend the deletion of the two words "upon application" as they appear in lines 13 and 14 on page 5 of S. 1357?

Mr. SPEISER. That is right. If a person is kept in jail 24 hours after he has had his release hearing, the judge who imposed the conditions is bound to review those after that to determine whether or not those conditions are keeping someone in jail. If he has set bail, presumably the bail is set so the person can be released. If the accused is unable to meet it, then the judge ought to review it at that point.

Mr. MACGREGOR. And is it your feeling the deletion of those two words will be sufficient to accomplish the purpose that you have just outlined?

Mr. SPEISER. I am not sure, but I believe so. I cannot say flatly, but I believe it will. Although the term "be entitled to have the conditions," raises a question and perhaps that ought to be reconsidered as well.

Mr. MACGREGOR. What I wondered, Mr. Speiser, wouldn't your purpose better be met by deleting not just the two words "upon application" but the five words "upon application be entitled to"?

Mr. SPEISER. I think you are right, Mr. MacGregor. I accept your amendment.

Mr. MACGREGOR. I am not sure that the subcommittee will, but I just wanted to make sure that we understood your complete intent and that we found the best vehicle to accomplish it, if that should be.

Mr. CORMAN. Would the gentleman yield?

Mr. MACGREGOR. If I have the floor, I do.

Mr. CORMAN. On H.R. 10195, page 4, lines 10 and 11, I would think we should change the wording on that.

Mr. SPEISER. Yes, the same words appear on page 4 in that as well.

Mr. CORMAN. I think there is much to be said for requiring review after 24 hours. I don't think there would be any great imposition to the officers.

Mr. SPEISER. On page 6, on S. 1357, section 3146(e), it states:

A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release.

It says nothing at all about a hearing. I would like to raise the question of whether a hearing should be provided. Should a judicial officer be permitted to do this, without the opportunity of the indi-

vidual to counter, to present evidence, as to why the condition should not be changed? It seems to me there is a due process question involved here. I am not prepared to say that the judicial officer may not change these conditions prior to a hearing. But at some reasonably close time after the conditions are changed, I think that the individual involved ought to have an opportunity to a hearing and to counter the change.

Mr. CELLER. Suppose expeditious action is required. There may be some information received that the man who is released on his own recognizance may be threatening to do something and a hearing might impede justice in that regard.

Mr. SPEISER. Well, that was the reason for my comment, Mr. Chairman, that I am not prepared to say that the hearing must always precede the change of conditions or the notice of change of conditions. I can foresee a problem like that where the judicial officer may want to have the man brought into custody, but I think that at some fairly close time subsequent to take into custody, that he ought to have a hearing. This does not indicate a hearing is required to change conditions.

Mr. CORMAN. Is that part (d)?

Mr. SPEISER. Part (e) of S. 1357.

Mr. CORMAN. That refers back to subsection (d), which it seems to me provides.

Mr. FOLEY. It does provide.

Mr. SPEISER. Well, I am not sure.

Mr. CORMAN. If he can't meet the additional requirements and he stays in jail, then (d) goes back into effect for him.

Mr. SPEISER. But there is no clear statement in (d), that he is entitled to a hearing there. It says that the judicial officer reviews it, but it doesn't say there is a hearing required there. Now, he has already had a hearing, so I can't argue really that he ought to have another hearing at the time the judicial officer reviews this, although, I think it is desirable. But it is not clearly stated in (d) that a hearing is required there.

If the assumption is that the word "review" includes a hearing, then I will withdraw my objection, but I don't think it is that clear. I might point out, I made a similar point when I appeared before the Senate committee, and they didn't choose to clarify it then. And my concern still exists because they did not clarify it.

Mr. CELLER. The clerk can take note that that can be clarified in the report.

Mr. SPEISER. Perhaps.

Mr. CELLER. Not perhaps; absolutely.

Mr. SPEISER. Very well.

Mr. HOFFMANN. If I may interject at this point, the report makes it clear that in amending the release order, the judge must include a statement of the reasons requiring a change in the conditions. Whether the defendant actually has a hearing or not, he has still got a record to take up on review, does he not?

Mr. SPEISER. Yes, but I would think it is preferable not to have an appeal to an appellate court, if you can have an opportunity to a hearing before the individual judge who is going to impose these conditions. Sure, you have an appeal, but let us recognize how long appeals take and what happens in the interim.

Mr. HOFFMANN. Do you contemplate the man would be represented by counsel?

Mr. SPEISER. Yes.

Mr. HOFFMANN. Wouldn't you say that the present state of the law in the context of this bill which requires application of the judge's discretion—requires, upon a proffer of additional proof to counter the judge's finding, that the application to the court require the judge to hold a hearing?

Mr. SPEISER. I believe so. I am just raising the question. I made the point before, it is not clear in the bill as written. And as the chairman suggested, it may be taken care of by proper legislative history in the report. I agree it should be. All I am suggesting is that it is not clear in the language of the bill itself.

Mr. CELLER. Is there anything else, Mr. Speiser? We want to get along.

Mr. SPEISER. Yes, I will try to cover the points that I have. On the question of release in capital cases or after conviction, in section 3148, I recognize the fact that the courts have made a distinction between capital cases and noncapital cases as far as the right to bail is concerned. The ACLU National Board has voted that it does not consider the denial of right to bail proper for a person even though charged with a capital offense, because this doesn't square with the presumption of innocence. If our concern is determining that he should be present at his trial, then to deny him release in a capital offense while he is presumably clothed with the presumption of innocence just doesn't make sense.

This point, however, doesn't follow in the case of a person who has been convicted of an offense, because at that point his presumption of innocence has been wiped out and you can have a different standard, presumably, in determining whether a person is entitled to bail or not. I grant you the Supreme Court doesn't recognize this distinction but I bring it to your attention.

Section 3150, on the violation of conditions of release on pages 8 and 9 provides for the imposition of a \$5,000 fine or imprisonment for not more than 5 years for anyone who fails to comply to the terms of this release, with the intent to avoid prosecution if he was bailed or released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense. You will find that on lines 3 and 4, page 9 of S. 1357. This would be in addition to the forfeiture of any security which was given for his bail or release.

Now, what this does is to permit the imposition of a fairly severe penalty for everyone released on a felony charge, but it also permits the imposition of \$5,000 or 5 years for anyone who fails to show while awaiting sentence or pending appeal or certiorari after conviction of even a petty offense or a misdemeanor in which the maximum possible sentence which would be imposed would be a matter of days or months.

Now, in the misdemeanor section, it is true that if a defendant is released on a charge of a misdemeanor, that is presumably before he has been tried and convicted, under subsection (2) the punishment is limited to the maximum provided for that crime. But above that, if he has already been convicted of a misdemeanor or a petty offense, as I read this, and fails to show, then he can be fined \$5,000 or 5 years.

Mr. CELLER. You are creating a new crime.

Mr. SPEISER. But I think the penalty you are proposing on it is way out of proportion. If someone fails to show at a disorderly conduct trial, they are——

Mr. CELLER. It says not more than \$5,000 and imprisoned not more than a year.

Mr. SPEISER. I understand it is not more than, but it is \$5,000 or 5 years that could be imposed upon someone who fails to show up, after he fails to show up on a disorderly conduct at some point while his case is on appeal or certiorari is pending. I see no reason why you couldn't have the same maximum penalty that might be imposed for the misdemeanor or something less than that. You may not want to accept my judgment that there should be the maximum that might be imposed on that misdemeanor.

Mr. CELLER. What would you impose?

Mr. SPEISER. The maximum which might be imposed for the misdemeanor from which the appeal is taken.

Mr. CELLER. Instead of a thousand and one years, what would you say?

Mr. SPEISER. Whatever the maximum is for the misdemeanor or petty offense on which he is appealing or petitioning or certiorari, which is what you have under (2). All I am saying is we have under (2) if he is released in connection with a charge of a misdemeanor or while an appeal is pending or petition or certiorari is pending for an appeal from a conviction for a misdemeanor he be fined not more than the maximum provided for such misdemeanor and imprisonment for not more than 1 year or both.

Mr. CELLER. Is there anything else?

Mr. SPEISER. One last point on the credit for time spent in custody. I think the Justice Department properly pointed out the advantage of the language in your bill, H.R. 10195, that time be given for days spent in custody, for the offense which the sentence is imposed or for which the person was arrested. If he is arrested for something else, and they finally juggle around until they sentence him, he is not going to get credit for that.

Mr. CELLER. We are aware of that.

Mr. SPEISER. However, I would disagree with the Justice Department's position about not making the bill retroactive. I think if you have people who are in prison who happened to be sentenced beforehand and are not automatically given credit for time in custody, this creates an incongruity. Many judges say that they are taking into consideration the amount of time the person has spent in custody. You can't figure it out on a day time, because they never do it exactly. It is done in very general terms.

Mr. CELLER. Don't judges really take into consideration time spent in custody prior to a trial? Don't they usually do that?

Mr. SPEISER. They say they do. I don't know whether they do or not. I don't think some of them have. But they have said they have; and this, I think, creates a problem. I don't see there is any major harm for the amount of time that is spent to be given automatic credit. The average time, I gather, is 41 days for Federal prisoners. It doesn't seem to me this is going to ruin the administration of justice if they are given automatic credit for their time.

Mr. CELLER. I think they should be given credit for that time spent. The only question is whether you want to make it retroactive. That is all.

Mr. SPEISER. If the average is 41 days, I think that for the situations where some have not been given credit or the judges have said they have given credit and haven't really, I don't think there is any great harm to the administration of justice to make this retroactive as well.

Mr. CELLER. You know, Mr. Speiser, this is an innovation. We want to get this bill through, and if we put too many conditions on it we are going to have trouble. There is the matter of practicality, too, you know. We have to consider that.

Mr. SPEISER. Well, let me suggest, Mr. Chairman, you don't bargain away first; you might have to do it later.

Mr. CELLER. All good bills are as a result of compromise and we have to compromise with the witnesses as well as with ourselves and our colleagues.

Mr. SPEISER. I have finished my comments on the bail reform bill and Mr. Halpern will discuss Mr. Schweiker's bill.

Mr. CORMAN. Could I just ask Mr. Speiser one question. You brought up release in capital cases and after conviction. As I read this, it just injects one additional consideration for the judicial officer and that is whether there is danger existing to society if you release a man on capital offense after conviction. Because the other things have to do with flight. That really seems reasonable to me under those circumstances. Because you find him in all the rest of the law except, you say, if there is a danger to the community.

Mr. SPEISER. With one exception, Mr. Corman. I think the logic is unassailable, but the past experience may be open to dispute. We have not permitted the courts to consider, in noncapital offenses, the danger of the defendant committing other offenses. I don't see why that doesn't apply to capital offenses as well. It is based on the presumption of innocence and the fact we don't punish people before they commit crimes.

Mr. CELLER. Mr. Halpern.

Mr. HALPERN. I am Charles Halpern, a member of the New York and District of Columbia bars, testifying on behalf of the American Civil Liberties Union.

In general, we approve H.R. 12442, but we would make certain suggestions which we think would improve the efficiency of its operation, and also would give additional safeguards to the person accused. The bill is addressed to the return of persons who have jumped bail, a problem which has come to public attention recently, due to the virtual kidnaping of a Pennsylvania resident who was accused of a crime in Alabama.

Mr. CELLER. I want to say we heard Mr. Schweiker at length and I wonder whether or not that is a matter that should be considered separately and distinctly from this bail reform bill. It is quite a different topic although it is related somewhat. And I would not like to confuse the issue.

That question involving this bill bristles with difficulties. I wonder whether or not we shouldn't leave it alone temporarily. We will consider it and I told Mr. Schweiker we would consider it. But I don't think the two should be mixed.

Mr. SPEISER. Mr. Chairman, we are quite willing to agree on not having testimony on this today, if the matter will be considered at some later time by the committee.

Mr. CELLER. We will consider it. I promised the author of the bill that privilege because it is very important. But I don't think we should, at this time, join the two together. If you don't mind, Mr. Halpern, and we will give you an opportunity at a time later to talk to this subject.

Mr. SPEISER. That is fine. Thank you, very much, Mr. Chairman. May my statement be inserted in the record?

Mr. CELLER. Yes. The Chair also wishes to place into the record the statement by Bishop Paul Hardin, Jr., on this subject.

(The statements referred to are as follows:)

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION, ON S. 1357 AND H.R. 10195

The proposed Bail Reform Act is truly a remarkable piece of legislation. It evolved from the searching analysis given our incredibly disgraceful bail system by the National Conference on Bail and Criminal Justice in 1964.

The American Civil Liberties Union is in favor of the passage of S. 1357 or H.R. 10195, with amendments. There are some differences between the two. However, we think that both bills would represent a giant step forward in alleviating the injustices which have occurred under present bail practices, and even without the changes that I am going to suggest, they are to be heartily endorsed. The work of the Justice Department, I think, is to be particularly commended, as well as the work that has been done by two Senate subcommittees previously on S. 1357, and some prior bills. These bills by no means solve all problems connected with the bail system, because there are some outstanding problems which will continue to exist. For example, there are some very interesting and worthwhile projects and studies which are currently undertaken to expand the systems of summons, citations, and notifications to appear, which will go far to alleviate many of the unnecessary hardships existing at the present time. It seems strange that we still seem wedded to an archaic procedure requiring the arrest of individuals, taking them down to police stations, determining whether they can be released at that point, rather than utilizing the system developed for our rather mobile society in traffic offenses in which a notification to appear is given by a police officer. This traffic procedure operates perfectly well after many years of experience.

Therefore, although these bills are a giant step forward, they do not resolve all of the problems of inconvenience and unnecessary deprivation of liberty associated with our administration of criminal justice.

THE CONDITIONS OF RELEASE

Section 3 of S. 1357 inserts a new 18 U.S.C. 3146. It sets forth the factors and conditions upon which individuals charged with offenses other than those punishable by death, shall be released pending trial. The initial alternative is that such an individual shall be released upon his personal recognizance or upon execution of an unsecured appearance bond in amounts specified by the judicial officer, unless the officer determines in the exercise of his discretion that such a release will not reasonably assure the appearance of that person. In that event, the judicial officer shall in lieu of, or in addition to, release on personal recognizance, impose the first of the following conditions of release which will reasonably assure his appearance:

"(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

"(2) Place the person under the supervision of a probation officer;

"(3) Place restrictions on the travel, association, or place of abode of the person during the period of release;

"(4) Require the person to return to custody after daylight hours on designated conditions;

"(5) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of

a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(6) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(7) Impose any other condition deemed reasonably necessary to assure appearance as required."

The provisions of S. 1357 in providing for an order of priority or preference as a basis for release is excellent, with the most preferable being a release on personal recognizance.

I would like to suggest, however, some additional language in the provision requiring the 10-percent deposit which is under subsection (a)(5). Judges are notoriously slow to change. That is one of the reasons for this bill—to spell out the kinds of choices that they might consider in releasing people. It does not say anywhere in the bill that release might be conditioned on the posting of a personal check. Most courts and jailors will refuse to accept checks as collateral or in payment of fines. It is evident that most people do not carry the necessary sums of money required in order to regain their freedom after they have been arrested. Often their funds are tied up in banks which may be closed from Friday afternoon until Monday morning, and there are no banking facilities open in which to cash checks. Since it is a crime to utter or issue a check with insufficient funds to back it up, we would think it unlikely that many people would commit a crime in order to gain their freedom. In any case, it would certainly be worthwhile experimenting to determine whether checks may be acceptable for cash whenever required under this bill.

REVIEW OF CONDITIONS

In subsection (d) of section 3146, the judge is required *upon application* to review the cases of those who have been kept in jail for 24 hours to determine whether the conditions that have been imposed should be changed. I would like to suggest eliminating the words "upon application." There have been instances of people who have been in a jail awaiting trial who have literally been lost. Their attorneys have not performed the tasks they should have, and there have been cases of not only months, but also years, where people have been awaiting trial. They did not know what their rights were. It would never occur to them to contact a judge. I would like to suggest that there be an automatic review of conditions of release if a person is in jail for 24 hours by the judge who made the determination.

AMENDING CONDITIONS OF RELEASE

In Subsection (e), it states "a judicial officer ordering the release of a person on any condition specified in the section, may at any time amend his order to impose additional or different conditions of release." It says nothing at all about a hearing. We believe a hearing should be specifically provided for. Should a judicial officer be permitted to amend conditions without the opportunity of the individual to argue against any change or to present evidence as to why the conditions should not be changed? It seems to me there is a due process question involved here. I am not prepared to say that the judicial officer may not change these conditions prior to the hearing, but at some reasonable close time after the conditions are changed, I think the individual involved ought to have an opportunity to a hearing in order to counter the change.

APPEAL FROM CONDITION OF RELEASE

A new section 3147 permits an appeal from conditions of release by any person aggrieved by an order of a judge. Under subsection (b), the appellate court shall affirm the order if it is supported by the proceedings below. It makes no provision for a hearing, notice, or even appearance of the aggrieved individual. This may be an oversight, but it certainly should be corrected.

RELEASE IN CAPITAL CASES OR AFTER CONVICTION

Section 3148 provides that a person who is charged with an offense punishable by death, or who has been convicted of an offense and is either awaiting sentence or has filed an appeal, or petition for certiorari shall be released in accordance with the provisions of section 3146, unless the court or judge has reason to believe that no one or more conditions will reasonably assure the person will not flee or pose a danger to any other person or to the community. The national board of the ACLU has voted that it does not consider the denial of right to bail proper for a person even though charged with a capital offense, because this does not square

with the presumption of innocence. If the constitutional concern is that he should be present at his trial, then to deny him release in a capital offense while he is clothed with the same presumption of innocence as in a noncapital case just does not make sense.

Supposed danger to the community is not a legitimate factor in determining whether release should be granted to individuals in noncapital cases; there should be no constitutional distinction permitting that factor to be used in capital cases.

This point, however, does not follow in the case of a person who has been convicted of an offense, because at that point, his presumption of innocence has been wiped out, and a different standard can be utilized in determining whether a person is entitled to bail or not.

VIOLATIONS OF CONDITIONS OF RELEASE

Section 3150 provides for the imposition of a \$5,000 fine or imprisonment for not more than 5 years for anyone who willfully fails to appear before any court or judicial officer as required, if he was released in connection with a charge of felony, or *while awaiting sentence or pending appeal or certiorari after conviction of any offense*. This would be in addition to the forfeiture of any security which was given for his bail or release. Although this permits the imposition of a fairly severe penalty in connection with failures to show if released on a felony charge, it appears to be well within constitutional limits. However, we have grave doubts as to the constitutionality of applying such penalties to anyone who fails to appear while awaiting sentencing or pending appeal or certiorari after conviction of *any offense*. This could include misdemeanors with maximum sentences of a few days. Such "kiting" as this hardly seems necessary to induce defendants not to abscond. There seems to be no reason why the penalty under subsection (2), which would be imposed for failure to appear on a misdemeanor charge, should not apply. There the bill provides the individual shall be fined or imprisoned for the maximum provided for such misdemeanor or for 1 year or both.

CREDIT FOR TIME SPENT IN CUSTODY

Section 4 of S. 1357 amends 18 U.S.C. 3568 and provides that every individual shall be given credit for the service of a sentence for any days spent in custody in connection with the offense for which sentence was imposed. This wholly desirable change eliminates the illogical distinction in the present law which grants this right only to those who are convicted of crimes with mandatory minimum sentences. This section is broad enough, we assume, to require that credit be given to juveniles for any time they spent within the jurisdiction of the juvenile court before being waived to be tried as an adult in the district court.

However, it probably is not broad enough to give credit for time spent in custody if the defendant were arrested on a serious charge, but is convicted and sentenced for a lesser included offense. For this reason, we urge that section 4 of H.R. 10195, be adopted which also would give credit for detention based on the offense for which the person *was arrested*. We also agree with the Department of Justice that the proviso in S. 1357 to section 3568 be eliminated. This would bar any credit "if the judge in imposing * * * sentence takes into consideration the number of days such person has spent in custody * * * and so records in his judgment." Such a proviso would permit judges to say they are giving credit but not really do so. The credit should be automatic and should be complete.

We do, however, disagree with the Justice Department which recommends that the new credit provision should not be made retroactive. It may be true that some Federal judges have considered preconviction custody in sentencing. However, in most cases it is impossible to determine this. If there is doubt, it should inure to the benefit of the prisoner. After all, this section of the act is intended to prevent injustices which no one defends—the waste of time spent in custody for which no credit is given. The incongruity of having different men in prison at the same time with some automatically getting credit for preconviction confinement while others do not, cannot help but cause resentment and prevent a proper rehabilitative attitude among the less-fortunate ones.

CONCLUSION

We commend the subcommittee for the splendid work it is doing on this bill. We have suggested a number of amendments which we trust will receive the favorable consideration of the subcommittee. It is a pleasure to testify in favor of such a worthwhile measure.

STATEMENT BY BISHOP PAUL HARDIN, JR., CHAIRMAN, DIVISION OF ALCOHOL PROBLEMS AND GENERAL WELFARE, GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS, THE METHODIST CHURCH, ON S. 1357, THE BAIL REFORM ACT

We are delighted to have the opportunity to present testimony in favor of the Bail Reform Act. We have followed with considerable interest the pilot projects sponsored by the Vera Foundation and others in New York City and Washington, D.C., in which selected persons were permitted to go free without bond until their trial. The success of these projects and the justice it allows for poor persons is significant.

The division I head in the General Board of Christian Social Concerns, a national agency of the Methodist Church, prepared a study paper on crime and rehabilitation in 1963 which stated: "We support the replacement of bail as the sole criteria for release or detention by an adequate screening process which provides for detention of only those who must be imprisoned to protect themselves or society prior to trial."

The national governing body of our church in 1964 stated: "It is our Christian duty to help protect society from lawless behavior through improved methods of prevention, control, and treatment of crime and delinquency. We support all sound procedures which help persons to become responsible citizens. We do not believe an individual should be excused from his personal responsibility, but we confess that all of us share responsibility for the social conditions which breed crime and delinquency. The judgment of God falls on all men. We urge Methodists to work with other concerned citizens to improve law enforcement, judicial procedures, confinement and parole, and aftercare systems."

We were pleased to see this Bail Reform Act adopted by the Senate of the United States last September. We believe that it will set a constructive pattern for State and local bail procedures and practices, as well as providing fair treatment for persons awaiting trial, enabling them to pursue a normal life and to assist in their defense.

Others are much more qualified to testify on the technical aspects of this bill. We simply want the committee to know that we will support public understanding and acceptance of the provisions of this act. We feel this is a step in the right direction—to aid in social restoration of law offenders—and urge the committee to report S. 1357, and the House of Representatives to adopt it.

Mr. CELLER. Our next witness is the Honorable William F. Smith, judge of the Third Circuit Court of Appeals, Newark, N.J. Judge Smith.

STATEMENT OF JUDGE WILLIAM F. SMITH

Judge SMITH. Good morning, Mr. Chairman, Counsel, members of the subcommittee. I must apologize. I came here on short notice, so I do not have a prepared statement. In fact, I am not certain which bill we are really talking about this morning but I know we are talking about bail procedures.

I have before me H.R. 6271 which is the counterpart of the Senate bill S. 1357. They have been referring to other numbers here. I don't think there has been any change. I can tell very quickly if you let me have a copy. I am particularly interested in some of the subjects Mr. Speiser spoke about.

I have it. This is the same. We are dealing with the same thing.

Mr. CELLER. What bill are you referring to now?

Judge SMITH. I will forget the bills generally; the bill specifically at the moment. But I think I would like to place in the record some information I have, because the Committee on the Administration of Criminal Law, of which I have been chairman for 7 years or more, has had 23 bail procedures under study consideration for the better part of 3 years. And bail procedures have been under survey and study by the Manhattan project, by the Vera Foundation, and others, and I think the information thus far demonstrates that there is a very sad need for reform. Because in the Federal system alone, the impact of

bail requirements fall most heavily on those who are less able to afford the premiums for professional bondsmen.

Now, the Federal Rules of Criminal Procedure, 46(a) particularly, provides a person arrested for an offense not punishable by death shall be admitted to bail. Since the passage of the Judiciary Act of 1789, the Federal courts have uniformly made the right to bail prior to convictions absolute except where the offense is one punishable by death.

However, in reality, immediate release on bail is frequently a privilege available only to the accused financially able to post bond, to provide adequate security for his appearance.

The situation results in an inequality of administration in the criminal justice. One of the situations is this time spent in jail by some of these people awaiting trial but there are other factors. The accused unable to meet the requirements of even minimal bail may be held in custody for a period which may range from 2 to 6 weeks, and at times longer, awaiting disposition of the charge against him. Now, the 2 to 6 weeks is a mean figure, taken from the available statistics compiled by the Bureau of Prisons.

I think it can be demonstrated that the majority of offenders can be released on one or more of the conditions described in either H.R. 6271 or H.R. 10195. And I think we don't have to go far to approve it, because during the fiscal year of 1963, there were 2,683 defendants convicted of larceny and theft, exclusive of burglary. Of this number, 1,321 or approximately 49 percent were automatically released on probation. During this same year, there were 1,147 defendants convicted of embezzlement. Of this number, 895 or approximately 75 percent were released on probation.

Also during the same year, there were 2,768 defendants convicted of fraud and of this number, 1,505 or approximately 55 percent were released on probation.

Now, it is interesting to note that during these fiscal years of 1962 and 1963, there were 28,000 persons convicted of offenses under the Federal laws. And of this number, 40 percent were placed on probation. I think it can be safely assumed that the great majority of those released on probation were first offenders, or the gravity of the offense wasn't serious, whose family history and background indicated their effective rehabilitation could be accomplished by probation supervision.

Now, the same considerations would warrant the prompt release of many of these defendants on their personal recognizance or under the provision which enables them to post cash equal to 10 percent of the amount of bond. Because if the judge can determine, or the commissioner, early enough that the man's family history, his ties, and the nature of the offense are such that there is no hazard to the community that he will get into further difficulty, nor is there any real fear or should there be any real fear that he will not appear, it has been my experience—and I spent 21 years as a district court judge and I have released many people on their own recognizance, bank embezzlers and the like, men whose family ties are such that there is no temptation to flee. In fact, their ties are so strong that they would make bad fugitives. They couldn't leave their families anyway, and they wouldn't be prompted to do so. Yet we demand of this type of offender under our present bail procedures, that they post a bond.

Now, some judges deal with it one way, some another, but I must confess that there are some who entertain the idea, erroneous as it may be, that bail should be high.

Now, the prolonged pretrial detention of a defendant, and I say it is prolonged if it exceeds 2 weeks, ultimately released on probation may result in a serious consequence not only to him but to his family. Not the least of which is the possible loss of employment. We know from our experience that one of the most important contributing factors to the rehabilitation of a probationer is his continued employment. There are many employers willing to restore a probationer to his former position, provided the position has not been filled by a replacement. Many of the same employers, however, cannot hold a position open during the period of the prospective probationer's pretrial detention.

In other words, if you keep a man off a job and the kind of a job the most of these men hold, for anywhere from 2 to 6 weeks, especially if his employer has only a small number of employees, he has got to replace him. And then when he is ultimately released on probation, he can't put him back.

Now, the probationer who has lost his employment because of a temporary incarceration faces a serious problem when released; bearing the stigma of a criminal conviction, he must seek new employment. A difficult task, many prospective employers are reluctant and in many cases unwilling to hire a probationer, particularly one who has been convicted of larceny, theft, embezzlement, or fraud. And yet some of these offenses in my experience, the terms sound bad, but in many cases the gravity of the offense is not serious. Many probationers are able to obtain employment only with the assistance of the probation officer.

Now, there is a different situation, if the offender can be released immediately so he suffers no loss of employment. We find in that situation his employer will continue him on the employment rolls until his case is disposed of. If he is placed on probation, we are then able to deal with his employer on a more intelligent basis. He has had experience with the man, he understands his work, and he is willing to trust him, where a new employer wouldn't do the same thing.

Now, the Committee on the Administration of Criminal Law has approved two House measures in 1964, two Senate measures, and, of course, all of these I think are embodied now in this one bill, so we have a real package. But there are features which I think and the committee thinks, may be undesirable. The bills prescribe several conditions under which these people may be released.

I have H.R. 10195 before me now. Let's turn to section 3147. I am not concerned about the definitions. First, I want to point to one and in this area, I am going to disagree with what I know is Mr. Bennett's view. One, placing the person under the supervision of a probation officer. Now, this can lead in my judgment to very serious complications. At the moment, under the Federal Rules of Criminal Procedure, the judge may authorize that a presentence investigation be made. But most judges have considered it inadvisable to have that investigation made until after conviction, so there will be no chance that any constitutional right of this defendant shall be invaded. Because to cause the probation officer to make that inquiry, he must question the offender.

If he is going to assume the responsibility for a man whose case has not yet been disposed of, he must likewise make some inquiry, particularly since the man would be a stranger to him. I would not oppose placing him in the custody of any other person, as is suggested in (i) "place the person in the custody of a designated person or organization agreeing to supervise him." That is the only objection I have to that phase of it.

Now, I think it should be made clear and I think we can deal with the language of 3147(a). The language is "shall be ordered released on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines that such a release will not reasonably assure the appearance of the person."

There is one other factor there that must be, I think, considered. Because of the mandatory language "shall" I think there should be some reservation of discretion in the judge and in dealing with the Senate bill, I have recommended to them in a similar provision this modification "if otherwise eligible for bail and except for good cause shown for the contrary." "Except for good cause shown for the contrary."

Now, as we deal with subdivision (2)(i), there again, I think it should be made clear, that utilization of this should be discretionary and for a reason I will point out. Now I will permit the release of an offender who has executed a bond in a specified amount, and on deposit with the clerk of the court, an amount equal to 10 percent of the bond, the deposit to be returned upon satisfaction of its conditions.

This is a very desirable feature and I have no objection to it whatsoever. But, in its present form it may be too broad in its application, unless the discretionary authority of the judge or commissioner is present.

We will take a man who is charged with the embezzlement of \$5,000 to \$10,000 from a bank. We will say he was an executive officer of the bank and we would assume that the gravity of the offense may be such the judge may not want to release him on his own recognizance but he could release him under this condition—fix a bond we say in the amount of \$5,000 and let him post \$500 in cash.

Now, this is the area in which this feature of the bill is to be commended. Let me point out a pitfall as the bill now reads. I say here this release procedure should be available to the accused only when the court in the exercise of its discretion determines that release under the conditions is appropriate. There are many cases in which release under the prescribed conditions would not be in the public interest.

We shall assume for the purpose of illustration that an accused having a formidable criminal record is charged with a serious offense, such as burglary, armed robbery, or extortion or the like, the gravity of the offense, the circumstances surrounding its commission and the criminal background of the accused may be such that there may be a strong temptation to flee.

Mr. CELLER. We would have that situation even if you raised the bail. The likelihood he is going to commit another crime, he would commit it whether we release him on his own recognizance or under the conditions of this bill or if we raised the bail.

Judge SMITH. I think you are right, except this answers what I want to point out and I could skip some of this written material easily.

We will assume, and this is not unusual, the temptation to flee is the greatest thing in my mind. I am dealing now with the professional criminal, not the average that we get. He is rare. It is the rare birds that go to prison for 5 years or more. Armed robbery and the like.

We will say the bond is fixed as it frequently is in that kind of a situation, at \$25,000. Now, he can post \$2,000 in cash under this and walk right away.

Mr. CELLER. No, he can't, unless the judge feels that these other conditions are satisfied.

Judge SMITH. That is what I want to be sure that the judge feels. That is the only thing about it. And this was a weakness. It doesn't stand out in your bill as prominently as it did in S. 1327. He seems to have some discretion there.

Mr. CELLER. It says he must make a determination, on page 2, line 16, "when such a determination is made, the judicial officer shall."

Judge SMITH. As I say, I think your bill is superior in that regard. I am talking as against the Senate version, you see. I don't know, because as I understand it, the Senate version has passed and I thought maybe it might be here too. I don't know.

Mr. FOLEY. S. 1357?

Judge SMITH. That is it.

Mr. FOLEY. That is the one that passed the Senate.

Judge SMITH. And I have in mind what Congressman Celler said a while ago, that ultimately this legislation results from compromise.

I mean compromises must be made.

I won't keep you too long. I think a lot of this has been covered. Mr. Speiser was talking of time spent in jail, in retroactivity, and I agree with the chairman that this provision should not be made retroactive. Our committee has been dealing with it for a long time. We can't be certain that judges in past cases have not taken into consideration time spent in jail. But I think if from my knowledge of what judges do in the imposition of sentences, they usually will, particularly where a man has spent a month or more in jail and he can deal with it easily.

In other words, a judge might decide to give a man a year. Instead of that he might say well, in fact, I have been more generous myself in this if a man has spent 2 weeks. I might give him full credit for 2 months in order to round out an intelligent, proper sentence, because jail conditions are such that maybe you ought to have that kind of time.

But I think to make the bill retroactive would create problems of administration, because you are dealing with approximately 17,000 or more, I think. It is in that area of Federal prisoners.

Mr. CELLER. You would have to review all of those cases probably.

Judge SMITH. That is right. They would have to review all of those cases and some of these are going to be a matter of days. There is another thing. There is going to be a very strong temptation if you do that, because the judges are plagued with this now, or have been, if they don't say to the man I am taking this under consideration, the man will go to jail and the judge will get a letter. He would be reminded that he spent 3 weeks in jail and "I want credit for it." Well, then, the judge writes, "I am taking it into consideration."

Mr. Speiser is enthusiastic about that. But I don't feel as enthusiastic about it at all. And I think for a feasible administration of the new provision, retroactivity would be inadvisable.

Now, he referred to one other matter while I was here. He is concerned about the penalties for violation of conditions of release. And I think he referred to section 3151. I see nothing in the bill as it now stands that will warrant any undue apprehension. Because it covers a situation exactly as it has, the felony, the penalty is equal to that for the felony itself or the misdemeanor, it is equal to the misdemeanor itself.

Mr. CORMAN. If you permit me, I think his complaint was with the Senate bill where that is not spelled out.

Judge SMITH. Oh, well, the Senate bill.

Mr. CORMAN. That is my understanding of it.

Judge SMITH. All right, that may be then. I will tell you what, having appeared before the Senate committee, I thought that that was to be changed.

Mr. CORMAN. Maybe it has been.

Judge SMITH. I appeared there and at the time of my testimony, at least I inferred from what Senator Johnston said to me, that that was called to their attention.

Mr. CORMAN. Yes; I see it is in both bills.

Judge SMITH. All right. This is what I thought they were going to change it. He is probably dealing with the old bill as I was, S. 2838, I think it is. The old bill did have such an undesirable feature in it, there is no doubt about it.

There is one other thing I wish to call to your attention and you may know it, you probably do, but the new rules or the proposed amendment to the Federal Rules of Criminal Procedure as you probably know have already been approved by the Supreme Court and forwarded to the Congress as required by statute. They are very broad but they fix no definite standards. Under subdivision (c), which is an entirely new provision, it gives the commissioner or the judge, the standards which he now employs, so there is no problem in it. It says to consider the weight of the evidence, the type of the crime and we do this anyway.

Now when you get to (d), though, and you may find yourselves, maybe your committee is in difficulty, because I sat on this committee as well. It is rather flexible, it would not conflict with what we have here. I will read it to you: The commissioner or court or judge or justice with regard to consideration set forth in subdivision (c), would require one or more sureties, may authorize the acceptance of cash or bonds or notes of the United States in any amount equal to or less amount of the face amount of the bond or may authorize release on his personal recognizance.

With that rule present, I think the enactment of the proposed legislation is desirable.

Now, these general conditions for the guidance of the court and commissioner are fine. But the proposed legislation goes further in that it does establish definite standards. They say in here, "may authorize the acceptance of cash or bonds or notes of the United States," and all that sort of thing. We do that now. This doesn't add very much except it does clarify the standards by which the commissioner and courts should be guided.

And when they were drafting this, I did bring to their attention the previous legislation. They knew it was pending and I think there was a view among some of the members of the Rules Com-

mittee that this rule would remedy the situation, but it does not afford the complete remedy that the legislation itself provides. And that is all I have to say.

Mr. FOLEY. Judge, right there, would there be any conflict?

Judge SMITH. There is no conflict.

Mr. FOLEY. Between the adoption of this legislation as we have it today?

Judge SMITH. None whatsoever. I studied it very carefully. It came to me when you spoke to me on the telephone, and I read this. I have gone over it very carefully. I worked with this as a member of the Rules Committee that drafted it. In fact, we were directed by the Judicial Conference, our committee was to work with the Rules Committee.

The Rules Committee did not adopt what was then a modified version of the Senate bill. It was modified as written by me, and they were not willing to accept that and came up with this. But as it stands, there is no conflict. Because it says broadly he may do all of these things.

I think that the important thing in the administration of bail procedure is that the judge shall know that he shall do it. Because it has been my long experience, and I have worked with these committees, I work with judges, I have worked in seminars and various things, there are judges who are very reluctant to use their authority to place a man out on his own recognizance. And yet it has an even higher power. I think the statute goes a long way in spelling this out. It says he shall do it unless it clearly appears to the contrary that he shouldn't do it.

In other words, this is an affirmative command, and not a negative rule, which is more desirable. Now, you take a 10-percent feature.

Mr. CELLER. One of our members is a little worried about the use of the word "shall." You don't worry about that, do you?

Judge SMITH. No.

Mr. CELLER. If he finds these other conditions present?

Judge SMITH. I like it. I think it ought to be there. Because it says to the judge in no uncertain terms, "You shall do it this way, unless there is good cause to the contrary."

I want to get to another thing. I don't know whether your bill has it in or not.

Mr. CORMAN. Could I ask a quick question right now?

Judge SMITH. Yes.

Mr. CORMAN. Senate bill, section 3146, indicates the officer makes a determination—this is in the originally setting conditions—makes a determination in the exercise of his discretion. Now, do you understand from that language that the standards on review would be abuse of discretion to overturn his determination of the conditions required?

Judge SMITH. Yes; I think it would still be that. Because it isn't.

Mr. CORMAN. Is that what the law is now?

Judge SMITH. That is what the law is now.

Mr. CORMAN. All right. Now, over on page 7 of the Senate bill, section 3147, subsection (b), it says:

Any order so appealed shall be affirmed if it is supported by the proceedings below.

Does that sound like abuse of discretion to you?

Judge SMITH. That is an abuse of discretion standard. Because we get into this. Counsel in dealing with these terms "that clearly are erroneous," "substantial evidence", we sometimes wind up with the same result. There will be an appeal. I am not afraid of the appeals or even the standards set by the bills. And I think this doesn't do much to change the existing rule. I don't see why it should be.

I had an experience recently where a man was convicted of several violations of the wage earning tax law. And he was committed without bail. Well, the situation was ridiculous. He came before our court and we heard it and we effected bail and he was released. Well, I don't think this is going to happen too often.

I just want to see if there is something in here.

Mr. HOFFMANN. Of course, the reverse of that situation also occurs, where the district court refuses bail pending appeal, the court of appeals then releases the man on his own recognizance and he goes out and commits the same crime for which he was convicted. So there are probably examples that would sustain any position that could be taken.

Judge SMITH. I think this is so and I will agree with you 100 percent. You know this derives from our personal approach. I am talking of judges generally, including myself. I don't excuse myself. We bring either consciously or unconsciously our personal predilections into decisional process and I don't think there is any way to avoid it.

Some judges feel particularly rigid about some types of crimes, depending upon their own individual background. This may dictate high bail. But high bail—bail was never intended to be punishment. And yet I have heard some men argue without saying that directly, that that is what they have used it for, to be sure he wasn't going to get out until he was tried. Well, that is nonsense.

Mr. CORMAN. Do you yield?

Mr. CELLER. Yes.

Mr. CORMAN. One of the things we discussed the other day was whether or not we are really doing anything at all with this legislation because the judge already has a lot of discretion to let men out on recognizance. It would seem to me if you pass this, then you as an appellate judge reviewing the validity of proceeding up to that point in this instance, would have more considerations than you have at the moment because I assume at the moment—

Judge SMITH. Not only more consideration, you would be compelled to recognize it.

Mr. CORMAN. Yes, sir.

Judge SMITH. That is the important thing.

Mr. CORMAN. Excuse me. We are asking something substantial here?

Judge SMITH. Yes; you are. Now, I know you will get disagreement from those who lean strongly toward the rule process as the method. But there is one thing they are overlooking. We do have on the books now a statute which deals with bail. Now all this is going to do is enlarge upon the provisions of that and make clear what may have always been the authority of the judge, by making it clear that we expect him to use it.

Because you know there is another thing about this. This has an economic factor, important to the Government. I know this from

having been the chief judge of the district of New Jersey for close to 5 years, where we had a practice of having the chief judge study the jail list at the end of each week to determine how many people were there.

Now in New Jersey we were dealing with contract incarceration in three counties for the use of a jail, where we were paying a per diem rate for every man held in jail pending disposition of his case. Well, this can run into considerable money, because there were times, I suppose, in New Jersey, when taking into consideration the population, Federal population, of all 3 jails, we were running 30 to 40 men a day for an average of 2 weeks or more. Now, you multiply this by the many States in which the Federal Government is using contract incarceration jails, you have a considerable item in your Federal Bureau of Prisons budget.

Now, these men as I pointed out, if you can put 40 percent of your offenders on probation and there is another thing in this figure that I didn't put in, because I don't presume they are in the same position, there are also in the 17,000 in the Federal prisons today, many who are there for terms of imprisonment of less than 1 year. These men, too, I think, would have been eligible for release on their own recognizance, or under the second alternative, the 10 percent of the amount of the bond deposit with the clerk of the court, which would increase it.

But take 50 percent, and we are holding these for any reason aside from the injustice to them. I didn't take into consideration the number of defendants—because I had no way of finding out—who are held in jail for 2 or 3 weeks or more and ultimately acquitted. This is an intolerable injustice. And there are cases, I suppose, in which the men could have been released on their own recognizance.

So, I think, you are doing something. That is my view. I think it sets the standards and tells the judges they had better use it.

Mr. CORMAN. Thank you.

Mr. HOFFMANN. Looking at section 3146, what is your idea of the time frame we are talking about in which the judicial officer must or shall—

Judge SMITH. Tell me the bill you are on.

Mr. HOFFMANN. 1357, sir.

Judge SMITH. All right. Yes.

Mr. HOFFMANN. On page 3, section 3146, starting off, the arrestee appears and the judge is required to release him. Now, if he is not released in 24 hours from the time of a hearing—and I am skipping now to page 5, the conditions must be reviewed. Do you anticipate that the hearing on setting of conditions could be postponed under this bill or must a determination be made immediately?

Judge SMITH. Now, I am glad you asked that question. Because this question came up at the Senate hearing, on this very bill. And it was raised by Judge Craven of North Carolina. All right. I followed Judge Craven. I don't think it does. And if it does, it has got to be changed.

Well, take the case of a serious offense and a potential serious offender. We don't know anything about it. He comes before the commissioner. Now, the commissioner has got to have time to explore, ascertain whether or not. That is the reason I like this. There has to be a determination. If the commissioner is going to be required to release everybody willy-nilly, without any appraisal

of the situation, we are going to have every criminal—not everyone, but some of them—that ought to be in jail or on high bond on the streets in no time.

Let us take it in two steps. Your initial hearing. We say the FBI just apprehended two fellows who are charged with the armed robbery of a bank, the robbery just having been committed. Now, they are required to arraign them under the statute as it now reads and arraign them before a U.S. commissioner within a reasonable time.

Now, the commissioner gives them a hearing under the rules, provides for a hearing. Now suppose he doesn't get enough information, or the judge for that matter. I think he is entitled to hold them.

Now, review the conditions after 24 hours. I think review the conditions contemplates the judge having fixed release conditions which the man has failed to meet within 24 hours after that time. He will be required to review the conditions, I suppose, to determine whether or not they were harsh.

That is the way I interpret that. Senator Johnston seemed to agree, but I mean there is this area of ambiguity in that phase of this bill.

Mr. HOFFMANN. Do you think this bill could be interpreted as requiring release unless good cause is shown?

Judge SMITH. Judge Craven, an experienced judge, so interpreted the thing. That is right.

Mr. HOFFMANN. With the amendment you suggested, the language which will appear in the record, do you think that would cure that defect?

Judge SMITH. It may; yes. Because then the reason I have in mind is this, the U.S. attorney can come forward, right at that stage, or with a reasonable time and then the commissioner will give him reasonable time to bring before him such evidence as he has which would not warrant the release of the man under any one of these conditions.

Mr. HOFFMANN. Right.

Judge SMITH. I think it is safe, sir.

Mr. HOFFMANN. Under the present law it is up to the man to show he is entitled to release on recognizance.

Judge SMITH. That is right.

Mr. HOFFMANN. You interpret this bill as reversing that?

Judge SMITH. It reverses it in a way, it does.

Mr. HOFFMANN. You would not be in favor of that, I take it?

Judge SMITH. No. I think personally, with my experience as both a U.S. attorney and a district judge for many years, I favor the release rather than incarceration, pretrial release rather than incarceration. And I was never known to be a very easy judge, as that term is used.

Mr. CORMAN. Does the Chairman yield?

Mr. CELLER. Yes.

Mr. CORMAN. Most of the facts in (b) of page 4, line 18, S. 1357, the things the judicial officer considers, of course, the nature of the offense which he knows because the man is being arraigned.

Judge SMITH. Right.

Mr. CORMAN. But then the information about his family, his employment, his financial resource and so forth, it seems to me that

is incumbent on the man who is seeking release to establish to the satisfaction of the judicial officer that these conditions exist and that he would be warranted within his discretion to release him and that he would get back.

Judge SMITH. Yes, exactly.

Mr. CORMAN. I can't see how he can assume. It is up to the prosecutor to prove that the man doesn't have a family or doesn't have a job. It seems to me all of the obligation is on the man, under that language.

Judge SMITH. You are right. That would not be a burden. In other words, these are the elements, but they should be brought forward by the man who knows them best. Now, actually, in practice, you will inquire into these things. You would ask a man: "Are you married?" "How many children do you have?" "Are you employed?" All this information he can give without and danger of self-incrimination whatsoever.

And I don't think this bill really contemplates anything else, because if it did, I wouldn't even support that feature of it. But if it does, I have got to take a different position. Now he has got to come forward. He can't sit like a bump on a log and say this bill says release me. Because then we do the converse of what we are doing now. I don't think any of these bills can be interpreted as doing that.

A man comes forward and now, after he has presented a good picture, we will assume that he has, coming from his own mouth, the U.S. attorney may come forward and say: "Well, wait, he doesn't support his family. He doesn't live with his family," and other things. In other words, he may destroy this pattern of good behavior the man has set for himself. And then a different result may be dictated in fixing the conditions of bail. Or release, I should say, rather than bail.

Mr. HOFFMANN. How long will it take the U.S. attorney to get an FBI record in the hypothetical case you mentioned?

Judge SMITH. I tell you, unless he is a first offender, he can have it in 15 minutes. We have a case before us now, just to show you how fast it is working. A bank is robbed at 9:30 in the morning. Descriptions are given by two employees of the bank, the bank robbers or alleged bank robbers were apprehended at the railroad station at 10:15. The FBI had their pictures with them. You see, that is how fast.

They had been offenders before. The description alerted them. They had a battery of pictures so that is how quickly.

But I don't believe that the commissioner can be denied time. I don't mean an inordinate time to explore. Because he is given a number of alternatives whether we take the Senate version or your version—release on his own recognizance, 10 percent of cash, and this sort of thing. He has got to determine whether or not.

I don't think a man who is not indigent, for example, the bank executive, you can release him on his own recognizance, but I would prefer to ask him to deposit 10 percent of \$5,000 bond or \$500 showing his good faith. I think this makes a better appearance publicly and every other way.

Mr. CELLER. Are there any further questions?

Thank you, very much, Judge, for your contribution. We appreciate your coming down here.

Judge SMITH. I am sorry I didn't have a chance to really get a statement out for you.

Mr. CELLER. That is all right.

Our next witness is Mr. Carroll Stewart, of Lexington, Ky., representing the Johnson Licensed Bonding Co., Paducah, Ky.

**STATEMENT OF CARROLL STEWART, ON BEHALF OF JOHNSON
LICENSED BONDING CO.**

Mr. STEWART. Mr. Chairman and gentlemen, I, too, wasn't aware of the hearings until just several days ago. I have not prepared a statement to give to you. I wasn't aware of the existence of other bills, other than Senate bill S. 1357; therefore, I haven't gone into the House bills.

There are a number of items therein with which I was not familiar this morning. In a short statement which I did prepare in the wee hours night before last, I ran across some thoughts that have been given to you already this morning. But if I may, I would like to give you a few of the things that may or may not be in error concerning the content of these bills.

I am a bail bondsman. It has been my vocation for around 7 years. I am indeed grateful that you have given me the time to express my opinions concerning the contents and possible ramifications of Senate bill 1357, aptly entitled the Bail Reform Act of 1965. I am not a representative of the bonding profession as a whole, but rather as a small town bondsman who is concerned with the effects of this proposed legislation on the rural areas of America.

The consideration that has been omitted in the testimony given before this august body, the studies that have been made, have been limited to regulations and revisions of procedures that exist in the large urban areas of this country, with no consideration given by the courts in the rural areas, which compose the grassroots society of this country.

I shall make no attempt to burden you with my opinion of the advantages or disadvantages of this bill, or to have you aware of my lack of legal knowledge thereof. For I am neither an attorney nor representative of the judiciary of this country. You have the benefit of the printed records of past testimony in the Senate and any further reiterations would be boring, to say the least. To assert my knowledge of the various programs without practical consideration thereof would be an insult to your intelligence.

I am aware, however, of problems that would be created as a result of the implementation of these programs in the rural communities, and you will be spared every angle heard all too often on the "iniquities of the system" and "the encroachment of subversive elements bringing us to the brink of self-destruction of the political socialistic tendencies." We have heard too much of that. Instead, I hope we can intelligently discuss what may or may not be gained through the contents of Senate bill 1357.

The gentlemen of the Senate subcommittees on constitutional rights and improvements in judicial machinery have spent many long hours in the formulation of proposed legislation concerning the bail revision plans and the result is what we are studying here today. These are long steps and may be in the right direction. But we note that

with too hasty a stride the chances of a misstep are multiplied and that is what we are in danger of incurring with too hasty plans.

The implementation of these programs is not of too much concern. The basic principles have already been implemented. You may be familiar with a letter from the then Attorney General Robert Kennedy to the respective Federal courts and the U.S. commissioners at the outset of these hearings, instructing them that they should consider pretrial release whenever possible.

This is being followed throughout the country with varying degrees of success. The Federal district court in Chicago changed its rules in September of last year, adopting procedures of the present Illinois or 10-percent law, which is a portion of the bill under consideration by the committee.

If these programs are presently in use, what is the value of the considered opinion of a nation's lawmakers when the adoption of a new procedure is only a matter of departmental regulatory changes? Are you considered as only being able to put the stamp of approval on these new procedures without having seen the rule solidified by a passage of a legal law?

In brief summary, I have only these opinions concerning section 3146, chapter 207, of title 18, United States Code, as affected by the implementation of proposed new law. In Senate bill 1357, the paragraph is entitled "Release," subparagraph (1):

The execution of a written promise to appear as required.

This is within the jurisdiction of the court at the present time and new legislation is unnecessary.

Subparagraph (2):

The execution of an unsecured appearance bail bond in an amount specified by the judge.

This; too, is within the discretion of the court and new legislation is not required. We are all familiar with the time-honored procedure of signing your own bond. This is the same thing.

Subparagraph (3):

The execution of an appearance bail bond in an amount specified by the judge, coupled with the deposit in the registry of the court, in cash or other security of a sum equal to 10 per centum of the amount of bail so fixed, which shall be returned upon the performance of the conditions of release.

This is, as I have said, commonly referred to as the Illinois law. It is the end result of a campaign by members of the Bar Association of the State of Illinois to rid the State of all bail bondsmen and it has been to that end very effective. What they were unable to accomplish through normal legislative channels as required was accomplished by what has shown itself to be a travesty of justice, and the disposition of the real process to deny to protect the citizens of that fine State. Through the deposit of the 10 percent of the bond with the court, the defendant awaiting trial can be set free, to follow his normal pursuits whether they be in the reestablishment of his community existence or following the vein of his criminal activities.

We, as a company, have a contractual agreement with each person with whom we make bond. The bond may be revoked if they are charged with the violation of any law whether it be municipal, State, or Federal. The 10-percent law, however, imposes no restraints, save one, which I will explain.

Let us remember that the State is prohibited from extraditing a defendant across the State line when the offense charged is a misdemeanor. Neither can the State request Federal assistance under the auspices of the new fugitive felony act signed by President Kennedy on December 12, 1961.

Faced with the alarming number of persons failing to appear for trial, the State of Illinois has added a provision that if there are reasonable grounds to believe that the bailee has left the jurisdiction of the court, that is, the confines of the State, his bond is revoked. Even this has failed to lower the jump rate which we have heard to be as high as 40 percent in areas throughout the state.

The presiding judge sets a bond after considering the merits of the defendant and theoretically the bond is sufficient to assure the appearance of the defendant in court. Yet the State says this amount is wrong, and is, in fact, at times too high. Combating this, the judges of the State in many instances are merely placing the bond at 10 times the original adjudged amount.

Clearly this law has done nothing to improve the situation except to satisfy one aim, that is, of ridding the State of bondsmen. There are no bondsmen in Illinois today.

Subparagraph (4): "Supervision by a probation officer." This could possibly be quite effective, but would add to the burden of an overworked staff.

Subparagraph (5): "Return to custody after daylight hours on conditions designated by the judge." I think this is workable, and is the best suggestion thus far. It entails a feeling of responsibility within the defendant, yet allows him to follow his normal pursuits for providing for his family. It also provides for the necessary amount of *supervision*. Let's remember that word as we will get back to it in just a moment.

Subparagraph (6): "In the custody of a third person." If this could be amended so that the third person would be financially as well as morally responsible for the defendant, I think it would be a sound proposal. My suggestion would be that this paragraph encompass the normal bail bond with which we are familiar. It by no name has no mention in this act.

Subparagraph (7): "Reasonable restrictions as to associations with persons or movement." Here we are in reality telling the defendant to move from the old neighborhood for that isn't good for you and to stop seeing all of those fellows who have been a bad influence on you. I beg your indulgence, gentlemen, but it is impossible to legislate morals and that is exactly what is being suggested here.

Subparagraph (8): "Any other conditions which the judge may reasonably require to insure appearance as required." Of all the provisions of this piece of legislation, this could have the most detrimental effect on both the judiciary and society. Let me prefix this by saying the judges, as you and I, are human, and may be capable of erring in judgment. Regardless of being a complete violation and reverse of the Judiciary Act, it clearly states for the first time in the history of the United States, a judge may refuse to release the defendant even on bail in a noncapital offense. I need explain no further.

In closing, please consider the following. The proposed Federal legislation has been formulated largely from procedures now being used in pilot programs in States and local courts throughout the

country. Conversely, whatever procedures that are adopted by the Federal Government will be seriously considered in future legislation by State and local governments.

The Federal authorities are not hampered by the restraint of State boundaries as are the local law enforcement agencies and thus are more successful in apprehending fugitives from justice. The record of the Federal Bureau of Investigation is above reproach, as we are all aware. Personal recognizance procedures for Federal courts should be designed with these facts in mind.

For the mounting number of defendants who are released and not supervised pending trial, the number of fugitives is increasing at an alarming rate. We are unable to train and employ sufficient amount of personnel to protect the cities of our Nation in face of the alarming crime rate now. Let us not burden them with the responsibility that has been borne previously throughout the history of this country by an ill-publicized but also misunderstood profession, that of the bail bondsman. Thank you.

Mr. CELLER. Thank you, sir.

Our last and final witness for the hearing will be Mrs. Marion Katzive of the Vera Foundation and National Conference on Bail and Criminal Justice of New York.

I desire to put in the record the letter from chief justice of the appellate division first department, Judge Bernard Botein, in New York, prior to the testimony of Mrs. Katzive.

(The letter referred to is as follows:)

SUPREME COURT APPELLATE DIVISION, FIRST DEPARTMENT,
New York, N.Y., March 14, 1966.

HON. WILLIAM R. FOLEY,
General Counsel, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. FOLEY: After our telephone conversation last week, I learned that Mrs. Marion Katzive will appear at the committee hearings on behalf of the National Conference on Bail and Criminal Justice. I have arranged that she will present the views of Mr. Herbert Sturz, executive director, and myself at the hearings. It will therefore not be necessary for me to send you a separate communication.

As I told you, I regret very much that I cannot attend in person because of court commitments. I wish to congratulate you and the committee on the great progress being made in the bail area.

Sincerely,

BERNARD BOTEIN.

STATEMENT OF MRS. MARION KATZIVE, VERA FOUNDATION, INC.

Mrs. KATZIVE. Mr. Chairman and members of the subcommittee, I thank you for inviting me to appear before you as a representative of the Vera Foundation. I am here today on behalf of Mr. Herbert Sturz, director of the foundation, as well as on behalf of the Honorable Bernard Botein, presiding justice of the Appellate Division and chairman of the executive board of the National Conference on Bail and Criminal Justice.

I am happy to be here today since the bills under discussion promise to introduce a new dimension of fundamental fairness and informed judgment to Federal bail practices. The Vera Foundation heartily supports both S. 1357 and H.R. 10195 which assure all persons convicted of offenses against the United States credit for time spent in custody prior to sentencing and which encourage the greater use of release on recognizance for Federal defendants. Hopefully, these bills will bring to all Federal defendants eligible for bail the same kind

of factfinding operation which we at Vera have found can aid judges in safely releasing more persons on their own recognizance.

I would like to describe for you work that is being done in New York City and elsewhere throughout the country in the area of bail reform.

From 1961 when the Manhattan bail project began to 1964 when it was taken over by the city of New York, 3,505 accused persons were released on their own recognizance. Of these 3,505 persons, 98.4 percent returned to court when required. Only 56 persons, or 1.6 percent, willfully failed to return. Before the experiment began we could not really be sure that even one accused person would return to court; nor could we know whether committing magistrates would listen to our recommendations. Some skeptics said we were doing the community a disservice by turning loose the kind of people who would add to the rising crime rate by committing crimes while awaiting trial.

Months of study preceded our first day in court. Our early thought had been to provide a revolving bail fund so that we could make bail available to indigent defendants, but it seemed that helping a small segment to buy their freedom would only perpetuate reliance on bail. We wanted to break the pattern and stimulate a basic change in bail thinking. The release of greater numbers of defendants on their own recognizance seemed the most potentially valuable approach. We decided to test the hypothesis that a greater number of defendants could be released if the judge had verified information about community roots. This was the goal of Vera's first project, the Manhattan bail project.

The bail project was financed in part by a generous grant from the Ford Foundation. It was launched in October 1961, with the cooperation of the Institute of Judicial Administration. The New York University Law School provided staff members. I would like to tell you how the bail project worked under Vera's sponsorship. It has continued in substantially the same way under municipal operation.

When a prisoner was brought to the detention pen prior to his first court appearance, the Vera staff member used to determine first whether he had been charged with homicide or a narcotics offense or one of several sex crimes. In the beginning these were excluded because of the special problems they seemed to present. As the project is now run by the office of probation only the homicide charge warrants immediate exclusion. Time and staff permitting, defendants charged with all other crimes will be interviewed. The interview is geared to determine whether the defendant has roots in the community. He is asked whether he is working, how long he has held his job, whether he supports his family, whether he has contact with relatives in the city, whether he receives unemployment insurance or welfare relief, and so on.

After the interview the defendant is scored according to a point-weighting system. If the interview indicates that he would be a good risk for release on recognizance the interviewer obtains written permission to get in touch with a friend or relative to verify the information. The verification may be done by telephone or in the visitors' section of the courtroom.

If the case is still considered a good risk after verification, a summary of the information is sent to the arraignment court. Copies of the recommendation and supporting information are given to the judge, the district attorney, and counsel for the accused.

During the first year of the project, half of the recommendable cases were set aside in a control group and these were not recommended to the court. The use of the control group gave us an idea of how the accused persons who met our criteria would have fared without our recommendation. We found that the court granted release on recognizance in 60 percent of the cases in which a recommendation was actually made, but granted release on recognizance in only 14 percent of parallel cases in the control group. In other words, judges released on recognizance four times as many accused persons as they ordinarily would when they had the aid of verified information.

In evaluating the success of our project, the rate of appearance in court was, of course, fundamental. Included in the 98.4 percent who returned were some few defendants who did miss a court appearance. In these cases a bench warrant was issued, but most often a telephone call from a member of the Vera staff revealed there had been some mishap or some misunderstanding of the time or place of appearance and eventually, the defendant showed up and the official process was reversed.

Our high rate of returns seems to suggest that verified information about a defendant is at least as good a gage of his reliability to return as ability to buy a bail bond. Vera's success in insuring the return of released defendants may be accounted for to some degree by a careful system of notification which we worked out. Our practice, and this has been continued by the office of probation, was to send a letter to each person telling him the time and place of his scheduled appearance. And we departed from the ordinary court practice by going a little further.

If the defendant is illiterate, he is telephoned as well as notified by letter. If he is literate in a language other than English, such as Spanish, he would receive a letter in Spanish. If an employer or a friend promised to help get the defendant to court, and we frequently asked references to make this kind of promise, this reference would also be notified of the date and time of appearance.

As of September 1965, we tabulated dispositions on 3,334 cases which have been released on our recommendation. Of these, 46 percent had won acquittals or had their cases dismissed; 54 percent were convicted but of those found guilty, 70 percent received suspended sentences and 10 percent were given prison terms. The remaining 20 percent of those found guilty were given the alternative of fine or jail. All of the persons who had been released prior to trial were able to post their fines. They had been working and they had continued contact with their family and friends. So of the 3,334 dispositions of persons, only 194 ultimately ended up behind bars.

The City of New York incorporated our procedures in the courts of all five boroughs in 1964. Although the office of probation has been running the project less than 2 years, their rate of release and appearance rate compare favorably with that reached by Vera in our last year of sponsorship.

In May 1964, the Department of Justice and Vera cosponsored a National Conference on Bail and Criminal Justice. The Conference brought together police officers, prosecutors, judges, and defense attorneys from all 50 States. As a result of that Conference and its followup efforts to encourage new entries into the bail reform field, over 65 communities in the United States now have bail projects releasing defendants.

A lesser known result of the Conference is the impact that its findings have had on bail practices in other countries. Interested persons have sponsored conferences which are expected to lead to bail projects in Toronto and London. The State Department has also found a trip to our office and bail project is frequently a high point in tours given to visiting groups. And we have found discussion with foreign students often reveals lively interest in the bail problem, fascination with the role played by a private organization in the court system, as well as interest in adapting the program to the needs of their own countries.

In October of this year, we had a workshop in New York City of persons who had been participating in bail projects throughout the country. A survey was taken in connection with this institute on the operation of pretrial release projects. It showed that 25,000 defendants had thus far been released on the basis of project recommendations. This, we realize, is only the proverbial drop in the bucket when we consider the millions of defendants who still stay in jail each year for their untried crime of poverty.

At the present time we have an application pending for a grant to sponsor a bail reevaluation project. The purpose of this project will be to develop procedures for immediate appellate review of the status of incarcerated defendants who have neither been released on recognizance at arraignment nor able to post bail. We will reinterview defendants who did not originally qualify for R.O.R. to see if they can safely be released under some form of supervision or some kind of non-financial condition. We will also reexamine cases of defendants whose interviews could not be checked out in the very brief period that we had prior to arraignment.

We will send people into the field to locate family and friends of accused persons who could not be reached by phone, and in these ways, we shall try to expand the number of defendants affected by pretrial release programs and to learn more about the characteristics of defendants who can safely be released. We will be releasing a greater number of defendants and will be seeing something about defendants who heretofore have been considered poor risks.

But we in the bail projects realize perhaps more strongly than anyone else that isolated bail projects and bail reevaluation projects are not enough. It seems clear to us that legislation will be needed to change the system significantly. We are hopeful that legislation such as your committee is contemplating can become a model for the legislatures of our 50 States.

There are two aspects of the bills we are specifically pleased with. The first is all defendants whether indigent or not are covered. Since our basic tenet is that payment of a bail bond premium has little or no relationship to whether a man will come back, it seems just as unfair to demand a useless sacrifice by the man who can pay as it is to jail the defendant who cannot raise bail. This seems particularly true when the defendant is of marginal means and must sacrifice some other essential to raise bail.

The other aspect I would like to endorse is the fact they apply to serious felonies as well as minor crimes. The Vera experiment actually began with felonies only and we were interested to discover that the incidence of bail violators ran in inverse proportion to the seriousness of the crimes. The few skips there have been appear to be concentrated in the misdemeanor categories.

Finally, although there is not now any directly relevant provision in either bill, I would like to briefly inform you of our subsequent work with immediate release by arresting officers of minor offenses through the use of summons. The Manhattan summons project was begun in early 1964 with the cooperation of the New York police. We have law student investigators who are stationed at the precinct houses and when the arrestees are brought in, these students run on the spot bail investigations. They check only defendants who have been charged with petty larceny, simple assault, disorderly conduct and malicious mischief.

If the defendant qualifies for release, the recommendation is made to the desk officer and he can decide whether or not to release the defendant on a summons and also on his promise to return for arraignment, which is generally scheduled between 5 and 10 days after the time of his original apprehension.

In the 2 years that the project has been in operation, we have effected the release of more than 805 misdemeanor defendants in three experimental precincts. The program is now being expanded by the police department into six more precincts. Exclusions for several categories of defendants, such as pickpockets and prostitutes, which were excluded in prior police practice, have now been eliminated. Prior record can be considered by the officer at the desk and is considered by him, but there is no automatic exclusion for people who fall into these categories.

Also, we are now experimenting on the feasibility of using the summons in felony cases. Felony defendants are now being interviewed and although the police do not have the power to release felony defendants on summonses, what we learn is given to the court at arraignment time and our recommendation may affect the fact that the defendant gets released on his own recognizance at the arraignment.

The summonsing system has been estimated by former Police Commissioner Murphy as saving 4,000 New York City police man-hours per year. That time was spent guarding and transporting defendants to their first court appearance. And this is in just the experimental three precincts. Since the summons project was started, over a half dozen municipal and State police agencies in other States have followed our example and begun the systematic use of summons in minor criminal cases.

I bring these facts to your attention for possible consideration of their application to the Federal domain. I understand there is already authority in the Federal Rules of Criminal Procedure for courts and U.S. commissioners issuing summonses instead of warrants but not for Federal arresting agents to issue summonses instead of making arrests. It might be that for some minor and even some major Federal crimes where there is a minimum of risk a Federal summonsing procedure could mean great manpower savings and immediate release for reliable defendants.

I would like to thank you once again for allowing me to speak on behalf of the Vera Foundation in support of these bills.

Mr. CELLER. What is the Vera Foundation?

Mrs. KATZIVE. The Vera Foundation is a nonprofit corporation which was incorporated about 5 years ago for the purpose of doing research and experimentation in criminal areas, especially criminal areas which affect indigent defendants. We have been working in

New York City for the past 5 years, since 1961, on the Manhattan bail project and the Manhattan summons project.

Mr. CELLER. Where does the name come from?

Mrs. KATZIVE. The name comes from the name of the philanthropist who founded Vera, as his mother's name was Vera.

Mr. CELLER. First or last?

Mrs. KATZIVE. First name. Louis Schweitzer is the industrialist who endowed the Vera Foundation.

Mr. CELLER. He has done a creditable job. Any questions?

Mr. MACGREGOR. I have just one. Has the Vera Foundation done any experimental work in the practice that is prevalent in many parts of the country of releasing an accused during the daytime but providing for his incarceration in the evening?

Mrs. KATZIVE. No; we haven't done anything on this as yet. When we recommended release, it was straight ROR. But we have been only working with good risks. Now when we get in the bail reevaluation project that is the kind of thing we want to try, to see whether we can release people who originally were not recommended for ROR, but see whether or not we can release them on conditions such as you describe. This will be our next attempt.

Mr. MACGREGOR. Thank you, very much for your appearance. We will look forward to hearing the results of your future efforts in the Vera Foundation.

Mr. CORMAN. One of the things we don't seem to have mentioned about the value of being released is that it gives the defendant more opportunity to prepare for trial. Have you evaluated that?

Mrs. KATZIVE. We do have a study which will be submitted by Mr. Bennett for the record, showing that defendants who are released prior to trial fare much better on sentencing, remarkably better on sentencing, than defendants who have been incarcerated. The study was called the Wald-Rankin study, and it is in the NYU Law Review. It showed that defendants who are released on recognizance receive more suspended sentences. This study was done with controls on various factors.

Also, there is another interesting thing we have observed and that is defendants who are released on summons come back for arraignment and have often come back with their own attorneys. And this is a distinction from defendants who are held overnight and come into arraignment the next morning and don't have counsel, and often have to come back for a second appearance.

But when they have been out for a few days or a week they do come back with an attorney and are in a better position.

Mr. CELLER. Thank you, very much. Your statement will be placed in the record.

(The statement of Mrs. Katzive is as follows:)

TESTIMONY OF MARION KATZIVE, VERA FOUNDATION, INC.

Mr. Chairman and members of the subcommittee, thank you for inviting me to appear before you as a representative of the Vera Foundation. Our executive director, Herbert Sturz, regrets that he cannot be here today but he did not learn of the hearings until after he had accepted a prior speaking commitment. His views on the substance of this bill were submitted to the Senate Judiciary Subcommittee in July 1964 and are on record in the committee's hearings.

I am here today on Mr. Sturz' behalf as well as on behalf of the Honorable Bernard Botein, presiding justice of the Appellate Division of the New York

Supreme Court, First Department, and chairman of the executive board of the National Conference on Bail and Criminal Justice.

I am happy to be here today on behalf of Mr. Sturz and Judge Botein since the bills under discussion promise to introduce a new dimension of fundamental fairness and informed judgment into Federal bail practices. The Vera Foundation heartily supports both S. 1357 and H.R. 10195 which assure all persons convicted of offenses against the United States credit for time spent in custody prior to sentencing and which encourage the greater use of release on recognizance for Federal defendants. These bills will hopefully bring to all Federal defendants eligible for bail the same kind of factfinding operation which we at Vera have found can aid judges in safely releasing more persons on their own recognizance.

I would like to describe for you, work that is being done in New York City and elsewhere throughout the country in the area of bail reform.

From 1961 when the Manhattan bail project began to 1964 when it was taken over by the city of New York 3,505 accused persons were released on their own recognizance in Manhattan's criminal court upon our recommendation. Of these 3,505 persons, 98.4 percent returned to court when required. Only 56 persons, or 1.6 percent, willfully failed to return. Before the experiment began we could not really be sure that even one accused person would return to court; nor could we know whether committing magistrates would listen to our recommendations. Some skeptics said we were doing the community a disservice by turning loose the kind of people who would add to the rising crime rate by committing crimes while awaiting trial.

Months of study preceded our first day in court. Our early thought was to provide a revolving bail fund which would be available to indigent defendants. But helping a small segment of the poor to buy their freedom was no permanent solution; it would merely perpetuate reliance upon money as the criterion for release. We wanted to break the pattern and stimulate a more basic change in bail thinking. The release of greater numbers on their own recognizance appeared the broadest and most potentially valuable approach. We decided to test the hypothesis that a greater number of defendants could be successfully released in this way if verified information about their stability and community roots could be presented to the court. This was the goal of Vera Foundation's first undertaking: the Manhattan bail project.

The bail project, financed in part by a generous grant from the Ford Foundation and launched in cooperation with the Institute of Judicial Administration, with New York University Law School providing a student working force, inaugurated a 3-year pretrial release operation in October 1961. It began in what was then called the felony part of magistrates court; now it operates in the felony, misdemeanor, and adolescent courts in all five boroughs of the city.

This is how the Manhattan bail project worked under Vera's sponsorship and has continued, in substantially the same fashion, to work under municipal operation. When a prisoner is brought to the detention pen prior to his first court appearance, a law student checks his previous record and current charge with the arresting officer to see if he is bailable in the criminal court. Under the original project the law student determined whether the defendant had been charged with homicide, a narcotics offense, or a sex crime. In the beginning these were excluded from the experiment because of the special problems they seemed to present. As the project is now run by the office of probation only the homicide charge warrants immediate exclusion. Time and staff permitting, defendants charged with all other crimes will be interviewed. The interview is geared to determine whether the defendant has roots in the community. He is asked whether he is working, how long he has held his job, whether he supports his family, whether he has contact with relatives in the city, whether he receives unemployment insurance or welfare relief, etc.

After the interview the defendant is scored according to a point-weighted system. If the interview indicates that the accused would be a good risk for release on recognizance the interviewer obtains written permission from the prisoner to get in touch with a friend, relative, or employer for the purpose of verifying the information. Verification is done either by telephone or in the visitors' section of the courtroom. An interview generally takes about 10 minutes and verification less than an hour.

If the case is still considered a good risk after verification, a summary of the information is sent to the arraignment court. Copies of the recommendation and supporting information are given to the judge, the district attorney, and counsel for the accused.

Now let me translate the system into a typical case history.

Walter Layne is charged with felonious assault. His prior criminal record consists of a felonious assault charge which was reduced to simple assault, for which he received 30 days suspended sentence in 1952. In 1957 he was convicted of driving while intoxicated and his sentence was \$100 fine or 30 days. He couldn't post the fine, and went to jail. In 1961 he was convicted on a disorderly conduct charge, and got a suspended sentence.

He is 35 years old, has been living at his present residence for 6 months with his wife and child and had a verified previous 1-year residence in Manhattan. He has been working as a counterman in a restaurant for the past 3 months, and his previous job has been verified as lasting 3 years. His current employer says he is good worker. If released on recognizance, the employer volunteers to help him get to court.

Should Mr. Layne be recommended for release on recognizance? Well, this is how we calculate his score: -1 point for three misdemeanor convictions, +2 points for a stable residence, +2 points for family ties, +2 points for good ratings on present and prior jobs. Mr. Layne receives a total of 5 points.

Although this is a minimum score, he is recommended for release on recognizance.

During the first year of the project, half of the recommendable cases were set aside as a control group and were not recommended to the court. The control group demonstrated how accused persons who met Vera's good risk criteria fared without the Vera recommendation. The court granted release on recognizance in 60 percent of the cases in which a recommendation was actually made; but in only 14 percent of the parallel cases in the control group—those cases in which Vera was prepared to make a recommendation but refrained. In other words, judges released on recognizance four times as many accused persons as they ordinarily would when they had the aid of verified information.

A glance at the history of the Manhattan bail project shows a steady increase in the number of defendants released. During the first year of the project an average of 5 defendants were released each week; when we turned the project over to the city, we were averaging about 70. There are several reasons for this increase the principal one being a rise in the number of defendants considered "recommendable" by Vera staff—from 29 percent of those interviewed in the beginning to the current rate of 65 percent. This is largely due to the introduction of the point-weighting system to replace the subjective system utilized in the beginning. The increase in numbers released also reflects a rise from 55-percent rate of acceptance by judges at the project's outset to 70 percent at the present time.

In evaluating the success of our project, the rate of appearance in court was fundamental. Included in the 98.4 percent who returned were some few defendants who did miss a court appearance, had their ROR revoked and a bench warrant issued; but in most of these cases a telephone call from Vera revealed some mishap or misunderstanding; and the official process was reversed. Our high rate of returns—compared with a bail forfeiture rate estimated at about 2½ percent—suggests that verified information about a defendant is a better gauge of reliability than ability to buy a bail bond. Vera's success in insuring the return of released defendants may be accounted for, to some degree, by a careful system of notification. Vera's practice—which has been continued by the office of probation—was to send a letter to each person telling him the time and place of his scheduled appearance. If the defendant is illiterate, he is telephoned as well as notified by letter. If he is literate in a language other than English, he receives a letter in his native tongue. A person like Mr. Layne's employers often agrees to help get the defendant to court. In this case, the reference is notified as well.

As of September 1965 we tabulated dispositions on 3,334 cases released on our recommendation. Forty-six percent won acquittals or had their cases dismissed; 54 percent were convicted. Of those found guilty, 70 percent received suspended sentences while 10 percent were given prison terms. The remaining 20 of those found guilty were given the alternative of fine or jail. All of these persons—at liberty before trial—were able to post their fines. Of the 3,334 dispositions of persons released on their own recognizance, only 194 ultimately ended up behind bars.

The city of New York incorporated the factfinding procedures of the Manhattan bail project in all five boroughs of the city. Although the office of probation has been operating the system less than 2 years their rate of release and appearance compares favorably with that reached by Vera in the last year of our sponsorship.

In May 1964 the Department of Justice and Vera Foundation cosponsored a National Conference on Bail and Criminal Justice under a training grant from the Office of Juvenile Delinquency and Youth Development, Welfare Administration, U.S. Department of Health, Education, and Welfare in cooperation with the

President's Committee on Juvenile Delinquency and Youth Crime. The Conference brought together over 400 police officers, prosecutors, judges, and defense attorneys from all 50 States. As a result of that Conference and of its followup efforts to encourage new entries into the bail reform field, over 65 communities in the United States now have bail projects releasing defendants.

A lesser known result of the Conference is the impact that its findings have had on bail practices in Canada and London and the interest created among law students in Latin America. Following a period of correspondence with Vera, interested persons sponsored conferences which are expected to lead to bail projects in Toronto and London. The State Department has found that a trip to the Vera office and bail project is frequently a high point in tours given to groups from other countries. Discussion with foreign students often reveals lively interest in the bail problem, fascination with the role played by a private organization in the court system, and enthusiasm for adapting the program to the needs of their own countries.

In October 1965, a workshop meeting was held in New York City of persons participating in the bail projects which have grown up in the United States in the wake of the National Bail Conference. A survey taken in connection with this Institute on the Operation of Pretrial Release Projects revealed that some 25,000 defendants had already been released on the basis of project recommendations. This, we realize, is only the proverbial drop in the bucket when we consider the millions of defendants who still stay in jail each year for their untried crime of being poor.

At the present time we have an application pending for a grant to sponsor a bail reevaluation project. The purpose of this project will be to develop procedures for immediate appellate review of the status of incarcerated defendants who have neither been released on recognizance at arraignment nor able to post bail. We will reinterview defendants who did not originally qualify for ROR to see if they can safely be released under some form of supervision or some kind of nonfinancial condition. We will also reexamine cases of defendants whose interviews could not be checked out in the brief period prior to arraignment and send staff into the field to locate family and friends of accused persons who could not be reached by phone. In these ways we shall try to expand the number of defendants affected by pretrial release programs and to learn more about the characteristics of defendants who can safely be released.

Still, we in the bail projects realize perhaps more strongly than anyone else that isolated bail projects and bail reevaluation projects are not enough; it seems clear that legislation will be needed to change the system significantly. We are hopeful that legislation such as your committee is contemplating in the Federal and District of Columbia areas can become the model for our 50 States. There are two aspects of these bills that we are especially pleased with. The first is that all defendants whether indigent or not are included in the new system. Since our basic tenet is that payment of a bail bond premium has little or no relationship to whether a man will come back, it is just as unfair to demand a useless sacrifice by the man who can pay as it is to jail defendants who cannot raise bail. This is particularly true where the defendant is of marginal means and must sacrifice some other essential to raise bail. The other aspect of the bills I would like to endorse particularly is the fact that they apply to serious felonies as well as minor crimes. The Vera experiment actually began with felonies only and we were interested to discover that the incidence of bail violators ran in inverse proportion to the seriousness of the crimes. The few skips there have been appear to be concentrated in the misdemeanor categories.

Finally, although there is not now any directly relevant provision in either bill, I would like briefly to inform you of Vera's subsequent work with immediate release by arresting officers of minor defendants through the use of summons. The Manhattan summons project was begun in early 1964 with the wholehearted cooperation of the New York City Police Department. Law student investigators are stationed at the precinct houses, and when arrestees are brought in, they run on the spot bail background checks for defendants charged with petty larceny, simple assault, disorderly conduct, and malicious mischief—all misdemeanors. If the defendants qualify for release, the recommendation is made to the desk officer who can decide to release the defendant on a police issued summons and his promise to return for arraignment between 5 and 10 days later. In 2 years, the project has released more than 805 misdemeanants in the three experimental precincts. The program is now being expanded by the police department into six more precincts; exclusions for several categories of defendants, such as pickpockets, prostitutes, gamblers, so-called professional thieves and

known criminals, have been eliminated; and an experiment is being conducted to test the feasibility of using the summons in felony cases. The summoning system saves some 4,000 New York City police man-hours per year in guarding and transporting defendants to their first court appearance. Since the summons project was started over a half dozen municipal and State police agencies in other States have followed our example and begun the systematic use of summons in minor criminal cases.

I bring these facts to your attention for possible consideration of their application to the Federal domain. I understand there is already authority in the Federal Rules of Criminal Procedure for courts and U.S. commissioners issuing summonses instead of warrants but not for Federal arresting agents to issue summonses instead of making arrests. It might be that for some minor and even some major Federal crimes where there is a minimum of risk a Federal summoning procedure could mean great manpower savings and immediate release for reliable defendants. This might be especially desirable in districts where there is an extended wait until the Federal court convenes or long distances to U.S. commissioners. The District of Columbia police too might benefit from specific summoning authority such as we have in New York.

I again want to thank you on behalf of the Vera Foundation for this opportunity to testify before your committee.

Mr. CELLER. This concludes the hearings on the bail bond bills. The record will be open a reasonable time for insertions.

(Whereupon, at 12:35 p.m., the committee adjourned.)

(The following was received subsequent to the hearings:)

ROCHELLE BAIL AGENCY, INC.,
Yonkers, N.Y., March 21, 1966.

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN: This letter is being written at the suggestion of my fine Congressman, Hon. Richard L. Ottinger.

As you probably know, bail bonds go back to the days of King Solomon. Congress should do nothing to interfere with private enterprises. Our great Government has prospered because of noninterference with private enterprises.

In the city of New York, the unofficial amount of persons released in their own recognizance (ROR) that fail to come back to court is so great that the criminal courts of the city of New York, refuses to give out the amount of parole violators.

The bail-bond release system is unworkable and costly to operate and un-American. Using their own financial figures from the "Famous Manhattan Bail Project" the first year of it's operation in New York City, cost over \$100,000 to release only 2,300 persons; in the same period of time the bail bondsmen in the city of New York, released over five times as many persons without cost to the taxpayers.

At present, the State of Illinois has entered the bail-bond business, acting as a bonding company; as a result of this law the number of bail-bond jumpers has increased tremendously and the State of Illinois has a national reputation as a haven for fugitives from bail.

In Miami, Fla., we have a system of release of traffic offenders, if they are property owners or registered voters, without bond. As a result of this system they have published a "red book" of over 50,000 violators. It seems reasonable to assume that if citizens who are charged with traffic offenses will not appear in court voluntarily, certainly, persons charged with serious crimes will not appear in court voluntarily, when their life and liberty may be jeopardized by their appearance.

Recently my son James, appeared on radio station WOR, with a Mr. Ronald Goldfarb, who wrote the book "Ransom"; at that time Mr. Goldfarb admitted to a great listening public, that many of the statements he had in his book, were wrong and misleading. He asked my son to corroborate with him on another book, so that he may be able to give the true facts of the bail-bond system.

In 1964, I wrote to the then Attorney General, Mr. Robert Kennedy, that statements given out to the press, that poor people cannot get bail bonds, were misleading. I operate with my sons a bail-bond agency in the States of New York, Connecticut, New Hampshire, and Vermont, I would gladly give him my records of bail bonds written, which will refute the above statements; that my

records will prove that at least 90 percent of all persons we bail out are far from being wealthy, and have no collateral to give to the insurance company that we represent. The reason that we bail them is that they have roots and enjoy a good reputation in their community. The then Attorney General gave me figures of the amount of persons in jail in New York City, Chicago, Los Angeles, San Francisco, Miami, Boston, etc., that were unable to get bail. I asked the Attorney General, whether or not he had the figures in these various cities of persons that were unable to get bail because they were transients, this his Office refused to release.

I shall be very glad to bring my records to your committee, so that they may see for themselves, that I speak the truth. These facts are the same with most of the bail bondsmen throughout the country.

I hope that you and your committee will take the time to really find out the truth of the operations of the national bail-bond business, and will recommend that this un-American bill be defeated. Forget the newspaper articles that are written by people who are uninformed headline seekers and actually know little if anything about the existing bail-bond system.

Very truly yours,

S. NATHANIEL ROCHELLE.



