Preventive Detention Symposium

Articles by:

Senator Joseph D. Tydings
Senator Sam J. Ervin
Judge Charles W. Halleck
Bruce D. Beaudin

Response to Georgetown's New Grading System
Beginning with this issue, a new feature has been added to RES IPSA LOQUITUR. It was felt by the editors that alumni would rather keep up with news events at the Law Center as they occur rather than reading a lengthy “News of the Year in Review” at the end of each school year. Throughout this and each succeeding issue, therefore, “News Notes” will be included recapitulating major events of interest to alumni.

The editors wish to thank those alumni who took time to write to us concerning our first issue. The comments were thoughtful, and while space limitations prohibit our printing them, they were appreciated. The response of the practicing legal community to our remarks about improving the lawyer’s image was overwhelmingly favorable.

The current issue is devoted to two discussions: one is a national issue, and the other concerns legal education itself. Alumni may note with pride that the Georgetown Law Center is taking the initiative in making reforms and instituting new methods and concepts in formal legal education.

A.M.K.

Just prior to press time for this issue, the Law Center community was saddened by the death of Fr. Francis E. Lucey, S.J. Fr. Lucey, Regent of the Law Center for thirty years, and Regent Emeritus for the last nine years, passed away after a long illness.

Winter 1969
The Bail Reform Act of 1966, which was to eradicate the inequities in the bail system in the District of Columbia, is engulfed in controversy. The Act made the only ground for pretrial detention the possibility that the criminal suspect may not show up for trial. A proposed amendment to the Act supplies an additional criterion for release, the accused's danger to the community while out on bail.

With such a piece of legislation under active consideration by the Congress and because of the serious constitutional and policy-making problems involved, RES IPSA LOQUITUR is presenting a symposium consisting of the views of Senator Joseph D. Tydings (D.-Md.), Senator Sam J. Ervin (D.-N.C.), Judge Charles W. Halleck of the Court of General Sessions of the District of Columbia, and Bruce D. Beaudin, Director of the D.C. Bail Agency.

Senator Tydings has proposed to amend the Act to permit a thirty-day pretrial detention of certain criminal defendants. As Chairman of the Senate Committee on the District of Columbia he has presided over hearings on the amendment. Tydings' position is that while the bail law should make no distinction between the rich and the poor, it should make a distinction between the ordinary defendant and the defendant whose case and record demonstrate a high probability that if released he may commit a crime before trial on the original charge. Professor William W. Greenhalgh, Co-Director for Criminal Proceedings of the Legal Internship Program at the Law Center, has testified in favor of this legislation, while Barbara Allen Bowman, Director of the D.C. Legal Aid Agency, has testified against the bill as being unworkable because of the impossibility of presenting clear and convincing evidence on the issue of future criminal behavior.

Judge Halleck, who deals with the Bail Reform Act on a day to day basis in the D.C. Court of General Sessions, supports the preventive detention amendment. He sees little or no constitutional difficulty in pretrial detention if procedural safeguards are provided. Halleck also argues that the increasing crime rate has made such a procedure imperative.

Senator Sam J. Ervin (D.-N.C.) disagrees that the Act and the crime rate are linked and seriously doubts the ability of the judge to determine if a suspect will commit a crime while awaiting trial. As Chairman of the Senate's Judiciary Committee on Constitutional Rights, Senator Ervin questions the constitutionality of preventive detention under the Eighth Amendment.

Bruce D. Beaudin, Director of the D.C. Bail Agency, maintains that the difficulties lie in the court structure and are not inherent in the Bail Act itself. He argues that the judges have not implemented the Act fully, that there is not adequate prosecution of bail violations and that the clogging of the courts which produces long delays before trial is the source of most of the problems.

It is quite possible that Senator Tydings' amendment to the Bail Reform Act of 1966, or some other legislation providing for pretrial detention, will become law, and in 1970 this may well be a harbinger of the end of the criminal justice revolution of the 1960s.

In the midst of a growing and a penetrating investigation of the activities of law firms from such diverse sources as Ralph Nader,1 the Law Students Civil Rights Research Council2 and FORTUNE magazine,3 our study of the impact of grading changes upon the hiring practices of law firms, printed in this issue of RES IPSA LOQUITUR, may seem a bit mundane. We feel however that the findings are evidence of a significant shift of emphasis in legal education.

With evaluation of academic performance less precisely drawn than in the past and with law journal work becoming even more of a singular measuring rod by interviewers, the pressure is upon the student to show achievement in other ways. The most obvious manner is through working experience. Perhaps Jerome Frank finally has defeated Landell in his fight to get the law student out of the law library and into the law. Opportunities for real involvement abound—from the Students in Court project, in which third year students represent indigents in the Small-Claims and Landlord-Tenant Branch of the D.C. Court of General Sessions, to employment and volunteer work with lawyers, firms, the government, or neighborhood legal service programs. The first cooperative plan law school is already well into its second year at Northeastern University in Boston, with a former Georgetown Law Center professor, Thomas J. O'Toole, as dean. There, students after the first year, alternate three month periods of classroom study with three months of paid employment in legal offices and courts.

Consideration of our survey, its critique by the Law Center's Director of Placement, Mrs. Anna M. Tucci, and the fact that several other law schools have also changed their grading systems, make it quite apparent that there is a fundamental shift in the pattern of legal education.

Anne E. Hewitt

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Feiffer

The defendant alleges this court has deprived him of his constitutional rights.

Gag the defendant.

The co-defendants side with the defendant.

Shackle the co-defendants.

The press is critical.

Impound the press.

The country is shocked.

Sequester the country.

The measures taken here today are only to insure a fair trial.

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On the Need for Preventive Detention

Sen. Joseph D. Tydings

There has been considerable discussion in recent months centering on proposals I introduced in the Senate to reform the Bail Act, especially with respect to a measure permitting the detention of certain dangerous persons pending trial. It was only after extended study of the problem that I made these proposals, and I think it most important that they be approached with an understanding of the magnitude of the difficulties they are designed to meet. These are perhaps best seen by focusing on the District of Columbia.

Recidivism during bail is an especially acute problem in the District. This is a result both of the extraordinary backlog of cases in the D.C. courts and of the extraordinary type of criminal who is tried in the Federal courts here.

Undoubtedly, the most effective means of reducing crime committed by persons released pending trial would be to reduce drastically the amount of time between arrest and trial. The President's Commission on Crime in the District of Columbia found that sixty-eight (68) percent of crime on bail is committed more than thirty days after initial release. Swift trials should therefore reduce recidivism on bail. Moreover, the deterrent effect of the criminal law would be greatly enhanced by bringing the trial into closer proximity with the criminal act and making the sentence seem more society's response to the defendant's criminal conduct and less the result of a long, drawn-out game.

In the last fiscal year some progress was made in speeding up the administration of criminal justice in the District of Columbia. Even with the increased workload after the April disorders, the United States District Court for the District of Columbia managed to reduce slightly its criminal backlog during fiscal 1968. But almost forty (40) percent of the cases pending in the district court at the end of fiscal 1968 had been on the calendar for six months or more, and twenty-one (21) percent had been pending for over a year. The 1374 criminal cases pending in the district court at the end of fiscal 1968 gave that court the heaviest criminal docket in the entire federal system, with more criminal cases that were pending in all the district courts for seven of the other ten federal circuits.

But swift trials will not provide a complete solution to the problem. The Crime Commission Report indicates that thirty-two (32) percent of recidivism on bail occurs within the first thirty days after initial release. It would be totally unrealistic to suggest that the criminal justice system could be operated in such a fashion as to eliminate this aspect of the problem.

The District Court of the District of Columbia is confronted with a type of criminal unknown, or at least little known, in almost every other federal district court. The broad criminal jurisdiction of the district court here, encompassing a jurisdiction left to the states in all other federal districts, gave the district court here jurisdiction over 61% of all the homicides, 27% of all assaults, 50% of all burglary trials in the entire federal system in 1967.

A few additional statistics should be of assistance in outlining the magnitude of the bail recidivism problem. The Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia -- the Hart Committee -- found a 9% recidivism rate on pretrial bail in the District for the first six months of 1967; the rate for the first six months of 1968 was 7.2%.

A random inspection of the docket of the General Sessions Court of the District of Columbia reveals the all too typical history of one defendant whose record I shall brief for you as it stood at the time of a December 1968 appearance. The string of cases continued on page 6.
Senator Joseph D. Tydings (D., Md.) received his law degree from the University of Maryland Law School in 1953. After graduating he was elected to the Maryland House of Delegates, served as United States Attorney for Maryland, and was elected to the United States Senate in 1964. Senator Tydings is Vice-President of the American Judicature Society, and is a member of Delta Theta Phi Law Fraternity. A Chairman of the Senate Committee on the District of Columbia and a member of the Senate Committee on the Judiciary. Senator Tydings is especially well qualified to discuss the Bail Reform Act amendment issue.

charges then outstanding dated back to May, 1967, when he was indicted for robbery in the federal district court and released on bail. He was thereafter charged with robbery on no less than four occasions, three of them involving the use of firearms. In each instance he was again released on bail. The defendant is currently out on bond, and only one of this collection of charges has been disposed of. Particular cases such as this, perhaps even more than the broad, general statistics, evidence the need for change in the criminal justice system and the pretrial release procedures in the District of Columbia.

Before I discuss the directions for change set forth in my bills, let me suggest a course which change must not be permitted to take — I speak of return to the old money bail system.

The Bail Reform Act of 1966 marked a significant advance in the administration of justice. The archaic system of money bail served only to separate the wealthy from the impoverished. To the extent that the old system sought to deal with the potential for further criminal activity, it did so through the subterfuge of sums set beyond the ability of the accused to pay out of his own resources. But such high bail was by no means a sure restraint of the potential recidivist. It merely put the release decision in the hands of the bondsman, who was not concerned with whether the defendant was likely to engage in further criminal activity, but only with whether he was a good risk to appear and not forfeit bond. Hence, as I learned too well in my years as a United States attorney, the most hardened and habitual offender — especially the person involved in the racket or organized crime — could and would obtain release under the bail money system. Whatever the operational deficiencies of the current system with respect to recidivism, they will not be remedied by a return to money bail.

The logic of this conclusion is sustained and reinforced by the available statistics. The Report of the Hart Committee indicates that the recidivism rate on pretrial bail in the years immediately preceding the Bail Reform Act of 1966 was 7.5%. A rate higher than that for the most recent six month period reported.

I have anticipated the suggestion of return to a money bail system for two reasons. The first is a suggestion I have heard that the present recidivism rate is somehow a result of the reforms of 1966. I think it is evident, especially in light of the figures which show a comparable rate before the reform, that this is simply not true. The second reason is what I believe to be attempts by some judges to use the money bail condition for release as an effective means of detaining some persons whom they think to be dangerous. This is a misuse of the provisions of the present act, which are prescribed only to deter the accused's flight from prosecution, and not to protect the community from dangerous persons.

We must see in these attempts to restrain individual defendants evidence that the judges so acting believe that there is a need for change in the Bail Reform Act and for some form of preventive detention.

The Hart Committee made a number of recommendations for reform short of such legislation, and did not take a position on the question of preventive detention. Among the recommendations of the Committee which I strongly endorse are:

1. Creation of an additional one year penalty for persons convicted of crimes committed while released on bail;
2. Revocation of bail for violation of conditions or indictment for offense allegedly committed while on bail with expedited trials;
3. Denial of bail for certain riot-connected offenses during a civil emergency; and,
4. Imposition of conditions of release based on the dangerousness of the accused.

I have concluded, however, that three steps alone will not be sufficient to cope with the problem we face. There are certain defendants who pose so great a menace to society or to other individuals within the society that mere conditions upon their release are not a sufficient safeguard. Hence, I have introduced legislation, carefully drafted to insure the constitutional rights of the accused, to permit the detention of these persons pending trial.

The bill I have introduced is in the form of a new section to the Bail Reform Act. It provides that at the time the accused appears before a judicial officer for release on bail, the government may request a special evidentiary hearing for the purpose of imposing the conditions of release or commitment to custody provided by the bill. The hearing may be granted only if the judicial officer finds that the defendant falls into one of the special categories — as, for example, being a person accused of committing or attempting a crime of violence while on bail from a prior felony charge — which would warrant holding him if he is shown additionally to be dangerous within the meaning of the statute.

The hearing must be held within two days of the filing of the government's motion, and the accused has a right to be represented by counsel, to be appointed by the court if the accused is indigent. The rigid rules of evidence applicable in a criminal trial will not prevail at the hearing, but no testimony of the accused will be admissible in any other judicial proceedings, nor will he be considered to have waived his right against self-incrimination in any future proceeding by testifying at the hearing.

(continued on page 15)
Preventive Detention Is Not the Answer

Sen. Sam J. Ervin

During recent weeks the Subcommittee on Constitutional Rights has been engaged in a comprehensive study of the administration of the Bail Reform Act of 1966. Notwithstanding the great steps forward in federal criminal procedure represented by the Act, it is recognized that it has not fully accomplished the purposes for which it was designed. Moreover, operation of the Act in the District of Columbia has highlighted deep-rooted and long-ignored problems in the criminal justice system that must now receive attention.

The major provisions of the Act seek to limit pretrial detention and the imposition of money bail by requiring that any pretrial restriction be justified as necessary to prevent flight to avoid prosecution and by providing for appellate review of bail decisions. These provisions have resulted in pretrial release of many more defendants than were released prior to enactment of the Act, including some allegedly dangerous defendants who previously could have been detained extra-legally by setting high money bond. Some of these defendants have in fact committed other crimes while free on bail. This has led many persons to suggest that the Act be amended expressly to authorize the "preventive" detention of defendants considered to represent a high risk of further criminal conduct, as well as those considered to represent a high risk of flight.

I am opposed to preventive detention for a number of reasons, all of which, I believe, are consistent with my basic position that crime can best be eradicated by the speedy conviction and sure punishment of the guilty.

In the first place, I feel that preventive detention is of questionable constitutionality under the provision on the Eighth Amendment which prohibits excessive bail. I realize that the language of the Amendment can be read to mean only that bail may not be excessive in cases made bailable by law. To my mind, however, interpreting the Amendment in that way, so as to mean that judges may not impose excessive bail but Congress may deny the right to bail altogether, would as Justice Black said in Carlson v. Landon, 323 U.S. 542 (1952), reduce the Amendment "below the level of a pious admonition." Moreover, imprisoning a person prior to trial on a criminal charge of which he is presumed innocent merely because he is deemed likely to commit another crime if released would seem to violate the Fifth Amendment's command that no person shall be deprived of liberty without due process of law. It is possible, too, that denying a person accused of a crime the right to be free to assist his attorney in finding witnesses and preparing the case for trial could be deemed a violation of the Sixth Amendment's right-to-counsel guarantee.

In a more basic constitutional sense, preventive detention runs contrary to fundamental concepts of a free society. Historically, from Magna Charta to the present, Anglo-American law has been distinguished for its strict adherence to the doctrine that an accused, regardless of his former record or behavior, is presumed to be innocent until he is proven guilty beyond a reasonable doubt in a fair trial. To imprison a defendant in a non-capital case pending investigation into his guilt would be to deny him a right that has existed in our country at least since the passage of the Judiciary Act of 1789, or perhaps since the Northwest Ordinance of 1787. To allow a judge or a United States Commissioner to imprison a man in the absence of a trial or jury verdict establishing his guilt of a crime already committed, in order to prevent a crime not yet committed or contemplated and possibly never to be committed, is to create a power repugnant to constitutional principles of basic fairness. As I stated in a law review article written in 1967, "No claim of public safety can (continued on page 8)

RES IPSA LOQUITUR

Bruce D. Beaudin

The dilemma facing those charged with the administration of justice, especially in the area of bail and bail reform is critical. Its resolution can either set the system of law as it has developed in this country back 200 years or can solve not only the problems inherent in bail but the crucial deficiencies of our system. The single aspect that both opponents and proponents of preventive detention have agreed upon is that the controversy has disclosed a Pandora's Box of ills.

The problems of bail reform highlight the visible seventh of the iceberg of problems in the courts.

The view of this writer simply stated is that preventive detention in any form—and by preventive detention I mean any pretrial incarceration of an accused charged with a non-capital crime based on the potential danger he may present to the community—is undesirable. No matter the form, be it detention without bond, high money bond, or any condition designed to keep the accused in jail pending trial, the effect is the same—punishment before conviction.

Advocates of preventive detention and critics of the Bail Reform Act of 1966 cite various cases and statistics to support a charge that from 5 to 75 percent of those free on pretrial release commit subsequent offenses. The tremendous variance among reports and statistics suggests a basic need of the system—accurate statistics on which to base reform such as that suggested here.

Another fact with which both sides agree is that charges filed in over 50% of the cases of alleged subsequent offenses occurred more than 90 days from the date of the original offense. The Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary seems to have reached a consensus that there are no reliable statistics on which to base a final answer. Where the F.B.I., Police, Courts, U.S. Attorney, Department of Justice, and other court related agencies each keep their own sets of statistics there exists no common denominator of comparison.

It is disconcerting to hear the all too familiar wail of Judges that "I have to release him on personal bond under the Bail Reform Act." The Bail Reform Act introduced not a wit of new law into our system and to hear critics blame the Bail Reform Act for theills of the system is disturbing. The Act does not restrict judicial discretion as charged. On the contrary it enlarges the possibilities of conditions for release, catalogues the priorities for release, and grants judges discretion to set even more stringent and meaningful conditions of release. Rule 46 of the Federal Rules of Criminal Procedure requires in explicit terms the pretrial release of all non-capital alleged offenders. The Bail Reform Act gave the judges the tools to release intelligently.

What has happened in four years? Judges continue to set meaningless conditions and when violations are reported, refuse to take action. Judges continue to set money bond they know cannot be made. The United States Attorney prosecuted no more than a handful of bail violation cases in 1968. There has been a total lack of imagination in developing conditions of release. It is only recently that three Judges of the Court of General Sessions have conducted hearings of violation of conditions of release. When it has been stated by Chief Judge Harold Greene of that court that his judges set more than 40% of the total number of bonds set in the whole federal system and when the D.C. Bail Agency has reported violations of conditions in over 50% of those released on conditions in the last four months it seems that another deficiency in the administration of the Bail Reform Act surfaces.

Hand in hand with the failure to implement the Bail Reform Act, the delay between arrest and trial continues to pyramid the ills of the system. Without enough Judges, Prosecutors, and (continued on page 12)
on bail after being indicted for felonies in the District during the first eight months of 1967, 73 (8 percent) were subsequently reindicted for felony offenses allegedly committed during the pretrial period. Justice Department statistics also show that of a total of 2575 persons indicted for felonies in the District during 1968, only 153 (less than 6 percent) of those indictments were for crimes allegedly committed while on bail. These statistics are comparable to those produced by the Judicial Council Bail Study Committee (chaired by Judge Hart) for all of 1967 and by the President’s D.C. Crime Commission for 19666.

In summary, then, even if judges could, with 100 percent accuracy, identify the few defendants who will commit crimes if released out of the large number of defendants who will not (and available studies suggest that the accuracy of prediction would in fact be very, very poor) they would “prevent” less than 6 percent of the total volume of crime in the District of Columbia. This ounce of prevention certainly does not, in my view, justify the radical departure from basic constitutional principles represented by preventive detention.

In my judgment, the answer lies in tightening up enforcement of the Bail Reform Act, and, most importantly, in the simple commandment embodied in the Sixth Amendment to the Constitution that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” It is clear that the rate of recidivism by persons free on bail is directly proportionate to the speed with which trials are held. Statistics for 1966, 1967 and 1968 show that 65 percent of those persons released on bail on committed other crimes did so within thirty days after they were originally charged and released. Over half of the crimes by persons on bail were committed more than sixty days after release. If all defendants, or even just the allegedly dangerous ones, could be tried within 6 weeks to two months, I am convinced that the problem of crime by persons on bail would be reduced to negligible proportions. Not only would persons on bail not be free long enough to commit other crimes, but, in addition, the deterrent effect of impending trial would serve to further induce defendants to behave themselves. In his testimony before the Subcommittee, Judge Hart summed up this point well. He said that if criminal trials in the District could take place in 6 to 8 weeks, “I doubt if we would even be sitting here discussing the problem of crime by persons free on bail.” I am sure he is right.

I do not contend that the Bail Reform Act is faultless. The experience of administering it for two and one-half years has revealed some deficiencies that should be corrected by amendment. These were set forth in the excellent report of Judge Hart’s bail study committee, and I generally endorse them. They include amending the Act to permit judges to consider the potential dangerousness of a defendant as well as the risk of flight in setting conditions of release, authorizing the imposition of additional penalties for persons convicted of crimes committed while on bail, and authorizing bail revocation, under specified circumstances, for defendants who violate conditions of release or who commit serious offenses while on bail.

Aside from these legislative changes in the Bail Reform Act, however, there are more important changes that must be made to perfect the operation of the pretrial release system. Some of these, such as the enlargement of the Bail Agency to permit better supervision of released defendants, will require legislation and appropriations. Others are purely administrative, and can be effectuated immediately. In fact, they should have been in practice long ago. I speak of more imaginative use by judges of conditions of release, and greater efforts by judges and prosecutors to enforce conditions that are imposed. I think it is accurate to say that during the two and one-half years between the effective date of the Bail Reform Act and the Subcommittee’s January hearings, there were less than a half dozen prosecutions for bail-jumping in the District of Columbia and not a single instance of the use of a court’s contempt power to punish a (continued on page 16)
Response to Georgetown’s
New Grading System

During the 1968-69 school year, the faculty and administration of the Law Center, with student urging, decided to eliminate the traditional system of numerical grading and ranking of students within their classes, and to substitute a new system of descriptive grades, already adopted in different forms in many major law schools. (RES IPSA LOQUITUR has previously reported this change. See Vol. 21, No. 4, Summer, 1969.) The Class of 1969 was the last class to graduate from the Law Center with all numerical grades and specific ranks-in-class. The Class of 1971 and all subsequent classes will graduate entirely under the new system. The Class of 1970, which had been graded on the traditional number system for its first two years, will not be ranked, and were given the option, on an individual basis, of remaining on the old grading system, or receiving their last year’s grades under the new system.

The descriptive grading system now in effect, as outlined in the 1969/70 catalog, follows:

a) For course work which evidences average, satisfactory performance with regard to legal analysis and reasoning, writing ability, and other relevant professional skills, the notation shall be “GOOD.”

b) For course work which evidences a consistently higher level of performance with regard to the above-mentioned professional skills, the notation shall be “DISTINGUISHED.”

c) For course work which is professionally unsuitable, the notation shall be “FAIL.”

In his discretion a faculty member may recognize outstanding performance by the alternative notation “EXCEPTIONAL.” In addition, a faculty member may warn students whose course work barely satisfies the minimum standards by the alternative notation “LOW PASS.” (1969/70 Bulletin of the Georgetown University Law Center, 15.)

How do these changes affect prospective employers? What is the response of law firms to the lack of traditional grading and ranking criteria? What changes in hiring practices will be caused by the switch to descriptive grades?

To attempt to ascertain the answers to such questions, the editors of RES IPSA LOQUITUR designed a questionnaire (set forth as Appendix A) to elicit the response of the practicing legal community to the changes. Approximately one hundred twenty letters were sent to firms, most of which interview at the Law Center, on the assumption that these firms would be the most interested and most likely to respond to the development.

Of the questionnaires sent out, 36 law firms and two corporations responded. The firms were asked to answer anonymously; therefore, none of the quotations in this article will be attributed.

The first question asked: If a Georgetown Law Center graduate could present a list of the courses taken and his grades, but no class ranking, would he be at a disadvantage in relation to a student from a comparable law school still using a ranking system?

Of the 36 firms responding, eighteen answered “yes,” and eighteen answered “no.” Among the eighteen answering “yes,” the consensus seemed to be that a list of courses and grades was useless if the grades were “pass/fail.” Although the questionnaire did not directly relate to the pass/fail system, many firms expressed their feelings on the subject.

On the advisability of the pass/fail system, one firm’s response was: “We urge you: Don’t do it to yourselves.” A response as to which more explanation is given stated: “It will adversely affect those law schools as to which employers feel less certain, compared to a handful of law schools (such as Harvard and Yale) as to which employers are more willing to rely on a simple ‘pass’ rating or on grades without a class ranking.”

The feeling among many firms is that “we continue to believe that grades are an important indication of a student’s intellectual aptitude for the law and his motivation. There is a high, although not perfect, correlation between high grades and the ability to produce such work (of the caliber of the firm).”

One lawyer, admittedly sympathetic to the problem with the grading system, said: “I feel that the elimination of the numerical grading system is a development to be encouraged. I do however feel that it would be profitable from the employer’s standpoint to have some feeling for the general ranking of the graduate in his law school class, such as upper 1/3 or lower 1/3.” One firm suggested that “firms are likely to be pickier and to get even more grade conscious. Law firms want something along these lines (grades) and aren’t apt to be satisfied without it.”

The second question was designed to determine the priority given to other indices of a student’s capability. The most influential determinants were law school grades and law journal membership. Undergraduate grades and moot court appeared to be the next most important factors with one firm noting: “We interview wholly on personality, getting what help we can from undergraduate distinctions: Phi Beta Kappa, or the like. To a certain extent, the effect (of no ranking, limited pass/fail system) is to transfer the emphasis from law school grades to undergraduate grades. To some extent, the effect is simply to cause one to spend more time at schools that will give more information.” (Emphasis added)

Writing samples are apparently too time-consuming to be of use to employers. Participation in the Student Bar Association does not weigh heavily in their evaluation of a prospective attorney.

Past employment fell in a remarkably low status on the hierarchy. There was little reference in the comments to job experience. Although it is very dangerous to generalize from such a small sampling, if the indifference shown to employment record was genuine, there does not appear to be any reason for a student to have a past clerkship unless he needs the money or wants personal experience. According to this questionnaire, time spent on moot court or legal aid will more favorably influence a prospective employer.

There were interesting responses to the fourth question, which asked: Would you feel the necessity of developing your own evaluation methods in the absence of ranking? For example: probationary employment?

One New York City firm stated candidly, “I believe most firms are moving in the direction of earlier and more frequent decisions about their new people — so that kind of ‘ranking,’ if you will, will probably increase after graduates are actually on the job. In that sense — which is not evaluation of student applicants -- probationary employment already exists fairly generally, although it isn’t called that and isn’t formalized or cut-and-dried.” One firm suggested a solution to the lack of valid indicia would be to hire more graduating law students than necessary and weed them out on the basis of their performance in

(continued on Page 14)
APPENDIX A

PLEASE DO NOT INDICATE THE NAME OF YOUR FIRM ON THIS QUESTIONNAIRE

1. Please indicate the type of practice your firm is engaged in, the number of partners, the number of associates, and the city in which your firm is located.

2. If the Georgetown Law Center graduate could present a list of the courses taken and his grades, but not rank-in-class, would he be at a disadvantage in relation to a student from a comparable law school still using a ranking system?

3. With the elimination of ranking, presumably other criteria will rise in importance in evaluating the applicant. Please indicate the degree of importance of the following:

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Other (Please specify)

4. Would you feel the necessity of developing your own evaluation methods in the absence of ranking?
   For example:
   probationary employment period
   psychological testing
   other (please specify)

5. What changes in present hiring procedure do you foresee as a result of the abolition of class ranking?

6. Any further comments as to the changes in grading system and abilution of rank-in-class would be appreciated.

APPENDIX B

If the Georgetown Law Center graduate could present a list of the courses taken, and his grades, but not rank-in-class, would he be at a disadvantage in relation to a student from a comparable law school still using a ranking system?

YES - 17
NO - 17

APPENDIX C

Responses to Question 3.

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<td>employment record</td>
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APPENDIX D

Responses to Question 3 of those who did believe the absence of ranking would place Georgetown students at a comparative disadvantage.

<table>
<thead>
<tr>
<th>CRITERION</th>
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APPENDIX E

Responses to Question 3 of those who did not believe that the absence of ranking would disadvantage Georgetown students.

<table>
<thead>
<tr>
<th>CRITERION</th>
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<tr>
<td>LSAT scores</td>
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<td>13</td>
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<td>Student Bar Ass'n</td>
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<td>employment record</td>
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APPENDIX F

Would you feel the necessity of developing your own evaluation methods in the absence of ranking?

<table>
<thead>
<tr>
<th>ANSWERS</th>
<th>YES to Ques. 2</th>
<th>NO to Ques. 2</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Yes, but no specific</td>
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<td>1</td>
<td>2</td>
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<td>new evaluation method indicated.</td>
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<tr>
<td>Probationary employment</td>
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<td>5</td>
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<tr>
<td>No.</td>
<td>10</td>
<td>17</td>
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<td>Psychological testing.</td>
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</table>

APPENDIX G

What changes in present hiring procedure do you foresee as a result of the abolition of class ranking?

<table>
<thead>
<tr>
<th>ANSWERS</th>
<th>YES to Ques. 2</th>
<th>NO to Ques. 2</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some change, but nothing specifically</td>
<td>2</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>indicated.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second-year summer living</td>
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<td></td>
<td>2</td>
</tr>
<tr>
<td>More emphasis on LSAT's, undergrad. grades</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Investigation</td>
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<td></td>
<td>1</td>
</tr>
<tr>
<td>No changes foreseen</td>
<td>11</td>
<td>17</td>
<td>27</td>
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</table>
NEW GRADING SYSTEM

Experiences of the Placement Office

by Anna M. Tucci

The questionnaire sent out to law firms by the staff of RES IPSA LOQUITUR seeking reactions to the new system of evaluation at Georgetown could not and did not elicit any concrete information. I believe this was due to the brevity of the form plus a limited circulation and an even more limited response. The sparsity of information obtained, in my opinion, made any conclusion a simple conjecture. While law firms have expressed open objection to the continuous flow of questionnaires by many law student organizations from various schools, it is possible that they may be receptive to a standard form. The idea proposed by some Georgetown students to have such a standard form drawn by either the American Bar Association or the Association of American Law Schools merits consideration by the Student-Faculty Committee. Assuming that this proposal is pursued and that either association agrees to draw a uniform questionnaire, then all law school placement offices could have it completed by the firms who plan to conduct interviews. The idea sounds good, and if it becomes a reality it will probably meet with little or no objection by the law firms. And it would satisfy the students’ desire for more complete information on the firm’s position and policy concerning current issues. It is a possibility and time will determine its potential and usefulness.

We must admit, however, the reluctance instilled by a flood of forms and questionnaires. We must also consider the tendency of the person completing a questionnaire to supply the answers that he believes the sender hopes to receive. And too, there is the disposition of the respondent to place his firm in the most favorable light possible to meet today’s applicants of the “NOW” market. While these factors are known and described as human, nevertheless, equally well known and admittedly human and natural is the face-to-face open and honest conversation. It is this latter source of information upon which I base the following comments.

Many questions and comments were made concerning the new grading system and the possible effects it may have upon students seeking employment. In May, 1969 law firms were openly and vociferously disturbed by it. The elimination of ranking was, they believed, hard enough to accept but to change from numerical to adjectival grading was impossible to understand. Much thought was given to the “how” for decision making on hiring practices. First thoughts were that resumes would give no understandable disclosure as to academic qualifications and even an official transcript would not reveal the desired specifics. Firms would, therefore, have to apply new measures when considering applicants. Various means or measures were discussed by which the prospective employer could go beyond pro-offered resume information. First reactions were to require and review college transcripts; to lean heavily on references; and to obtain faculty references.

Some discussed the possibility of an application form that would elicit the desired information. Ultimately law firms predicted that a much more lengthy and exhaustive interview of a greater number of applicants was inevitable. None of these ideas appeared to offer an adequate solution to the problem and the latter suggestion of individual exhaustive interviewing posed a dreaded waste of time and energy.

Knowing this situation to exist, I was apprehensive as to its effect on members of the Classes of 1970 and 1971 and the 1969-70 interviewing season. During the summer of 1969, however, it became increasingly clear that most major law schools had adopted or were initiating some similar grading system. In light of this, Georgetown’s grading system was neither unique or unusual. By September 1969 the number of scheduled interviews and the geographic diversity they represented greatly dispelled most of my apprehension. As the interviewing season approached the Christmas Holidays and so many of our students had received such excellent offers, any further concern would be without foundation.

There is one area, however, that requires further thought by the Class of 1971 and all successive second year classes. This area is the primary emphasis placed by an ever growing number of firms on the summer clerkship program to provide the bulk of their offers for associates following graduation. Since offers for the summer programs are usually extended after Christmas, the effects of the adjectival grading system are still to be determined. We do not, however, anticipate any significant change in the number of offers extended. Our chief concern is the number of such offers which will be rejected. The causes for rejection are varied. The one which we all recognize and have to accept is the man with a Reserve duty obligation. These cases are few in number compared to the students who are immobile. This immobility, whether due to a Law Journal requirement, apartment lease, or working wife or husband, can be a real handicap for the student who desires to practice in New York City, San Francisco, or Denver, after graduation. The firm that has been favorably impressed with the quality of the summer clerks’ work will extend their first offers to them. After this they will determine how many additional offers, if any, they will extend. Already this year some firms have confined their interviews to second year students. It is a growing pattern being followed by many firms in most large cities. They desire to expand this program and with the various new grading systems, they believe it is the best solution for them. The salary offers are excellent and this period of evaluation helps the student to determine whether or not he likes the firm, its practice and the location. Likewise, the firm is able to know the student, the quality of his work, his personal habits and daily appearance before inviting him to join the firm on a permanent basis. Considering the high starting salaries today, money spent by firms in the summer program without commitment by either party is a sound investment. It is our hope that more Georgetown students will understand this trend and take advantage of its benefits.

The Georgetown law student also has the opportunity to secure part-time employment in Government and with private law firms. These positions afford the student the benefit of acquiring practical skills; familiarity with the courts; in short, the application of theory to the actual practice of law. Many of these part-time positions lead to permanent offers upon graduation. Most of them, when held during the second year, result in full-time summer employment. For the student who is immobile these positions are invaluable whether or not he plans to practice

(continued on Page 14)
discretionary sentencing and contempt powers, seeking of amendments to release conditions by the U.S. Attorney for cause and other related remedies are effected, it seems an awesome step to overthrow a basic tenet of our system. How can preventive detention square with the principles of presumption of innocence and an historically developed if not constitutionally based right to pretrial release?

In the last analysis it is significant to observe that the dilemma does not follow the conventional liberal versus conservative clash. Alligned with Senator Sam Ervin in opposing a detention statute are such diverse ideological exponents as Life, Time, The Nation, The New Republic, The Washington Post, The National Crime Commission, The American Bar Association and the American Civil Liberties Union.

Since the Chief Judges of both the criminal courts in Washington concede that speedy trials and swift punishment would alleviate the bail reform problems a logical corollary will be the reduction of crime in the nation's capital. Let us first correct the ills of the administration of justice and reach what Judge Greene has referred to as "the most desirable solution to this dilemma—to escape it altogether." Admission to pretrial release has involved and will involve risk. It is the same risk involved in issuing a driver's license or the exercise of free speech. It is in the words of the Supreme Court, "a calculate risk . . . the price of our system of Justice."

Bruce David Beaudin is the Director of the District of Columbia Bail Agency, which position he assumed in 1968. Prior to this he was a staff interviewer for the District of Columbia Bail Project; investigator, staff attorney, and Deputy Director of the Legal Aid Agency of the District of Columbia. In all these positions, especially the most recent, Mr. Beaudin has been actively involved with the theory and application of the Bail Reform Act of 1966.

Mr. Beaudin is a graduate of Fairfield University, Fairfield, Connecticut, in 1961 with an A.B. degree, cum laude, in English. He received his LL.B. from Georgetown Law Center in 1964.

Bruce D. Beaudin
(continued from page 7)

specialized Defense Attorneys, a defendant can still play the system for an average of 9 or 10 months. This time lapse is certainly a crucial part of any subsequent offense statistic especially when received in light of the fact that over ½ of the subsequent crimes charged to defendants free on bond in one case occur more than 3 months after the initial charge.

The proponents of preventive detention cry out that Congress will not provide the funds to deal with the problems of insufficient numbers of Judges, Prosecutors, Courts, Court related agencies and Court personnel soon enough and therefore the panacea is preventive detention. On the contrary, to introduce the aspect of preventive detention in non-capital cases—recognizing that the law has always provided for pre-trial detention of those accused with capital crimes—into a system concededly inadequate is to superimpose another burden on a structure already crumbling under a weight too great to carry.

It is certainly persuasive to note that the Judicial Conference Committee to Study the Bail Reform Act concluded that most of the problems of subsequent offenses and absenteeism were due in large measure to the myriad problems of court administration. The same committee also indicated that most of the problems with the Act could be remedied by reasonable planning within the present law.

Until widespread use of intelligent release conditions, use of
Charles White Halleck, judge of the Court of General Sessions of the District of Columbia, was appointed to that position in 1965 by President Lyndon B. Johnson. Prior to this he was a research assistant for the Internal Security Subcommittee of the Committee on the Judiciary, U.S. Senate, Assistant United States Attorney for the District of Columbia and associate in the Washington, D.C. firm of Hogan and Hartson. Judge Halleck is an outspoken critic of the present D.C. Bail Reform Act of 1966 and the need for preventive detention provisions.

Judge Halleck is a native of Rensselaer, Indiana. He received his Bachelor of Arts degree from Williams College in Massachusetts in 1951 and his J.D. degree from George Washington University Law School in 1957.

**Judge Charles W. Halleck**

(continued from page 5)

law provided the death penalty for some sixty crimes. Consequently, when the Eighth Amendment was adopted, only the relatively minor offenses were subject to mandatory bail. As a practical matter, then, there was no right to bail for persons accused, in the Federal courts, of the more serious crimes. Rather, judges in such cases could exercise discretion “regarding the nature and circumstances of the offense, and of the evidence, and the usages of law” (1 Stat. 91, Sec. 33) in determining whether to detain or set bail. In 1952, in *Carlson vs. Cardon*, the Supreme Court recognized that the Eighth Amendment prohibits *excessive bail* in those cases where it is proper to grant bail. However, it does not prevent Congress from establishing which cases, or types of cases, are subject to bail. There would seem to be, then, no constitutional right to bail. Congress clearly has the authority to legislate which cases are bailable, and what conditions may be allowed with respect to pretrial detention, bail, or release.

Fifth Amendment rights regarding due process are another matter. In cases where pretrial detention is sought, there are locating witnesses, providing information, and so forth. However, provisions for limited day time release in the custody of the attorney would remedy this defect.

A more difficult problem lies in the pretrial confinement of persons not yet convicted. It is argued that since a defendant is presumed innocent, it is not proper to confine him, or in effect punish him, before he is convicted. Any condition of bail, or amount of bail, which a defendant cannot meet results in his pretrial confinement. If the Fifth Amendment prevents pretrial detention on the ground that it results in punishment of one presumed to be innocent before conviction, then every bail or condition of release not met is similarly defective. The courts have not so ruled. In fact, Congress has enacted a statute which requires that a defendant be given credit on any subsequent sentence for time spent in custody prior to conviction, indicating Congressional recognition and tacit approval of some pretrial detention.

The most troublesome aspect of pretrial detention relates to the necessity and extent of a hearing at which adequate grounds for detention must be established, after which reviewable findings by the judicial officer should be required as a prerequisite for such detention. Senator Tydings has introduced a bill which takes such problems into account. Whether the procedure set forth in that bill, or some other procedure, is adopted is immaterial. What is important is that a pretrial detention measure can be adopted which will protect a defendant’s due process rights, and at the same time allow a judicial officer to state openly and directly that he intends that certain defendants should be detained pending trial.

The alternative is a degree of hypocrisy which most trial judges abhor, but which has been forced on them. Former Attorney General Clark, in testimony about the proposed Bail Reform Act given to Sen. Ervin’s Committee in June, 1965, suggested that by virtue of the progress being made “only hard-core offenders; i.e., the very people who in fact that posing substantial risks of flight or danger, will be held in pretrial detention ... And if the defendant’s background and character make it likely that he will commit a violent crime while at liberty, will not the same factors often raise serious questions concerning his likelihood to appear at trial and thereby justify bond?” No, Mr. Clark, not necessarily! But we should note that Mr. Clark was inviting the Court to engage in a charade in order to detain certain hard core, dangerous defendants. It is just such hypocrisy that courts will be able to avoid if pretrial detention of dangerous, hard-core recidivists is allowed.

Critics of pretrial or preventive detention rely on statistics to support their position. But there are some statistics not generally mentioned by them. For example, there are about 1400 indictments pending in U.S. District Court, but over 200 of them are considered inactive because the defendants have not appeared. One out of seven cases are not being prosecuted because the defendants, on pretrial release, have failed to appear. Contrast this with the fact that the first conviction, after trial, of a bond jumper in District Court came in March, 1969, almost two-and-a-half years after the Bail Reform Act became law. Prior to that, only four such cases had been disposed of by plea of guilty, and only one of them received a consecutive sentence. Yet, literally hundreds of defendants have failed to appear in District Court having first been released pursuant to the Act.

Letting hosts of defendants out on personal bond has not worked, as a practical matter.

But perhaps the most startling statistics are new ones. Since January of 1969, the judges in General Sessions Court have become alarmed, individually, at the rising tide of armed robbery. Practical experience demonstrated that armed robbers, as a class, are usually not only violent and dangerous, but are most (continued on page 16)
in the area after graduation. Most large firms throughout the country have a Washington, D.C. office or a representative firm. The result of the recommendation by the Washington office for an applicant to the New York or Los Angeles office is obvious. Most Government positions provide the development of a specialty. Who can fail to notice the qualifications of an applicant who had worked for the Securities and Exchange Commission, or the Tax, Anti-Trust, or Civil Rights Divisions of the Department of Justice? Few indeed are the prospective employers who will not appreciate the value of these qualifications when considering an offer for permanent employment.

Aside from the increased emphasis on the summer clerkship program, the "new" means and measures in use for hiring practices are simply the same criteria previously applied with a closer look at the individual. Legal writing, particularly Law Journal work, will continue to merit high recognition. It is an understandable, tangible tool the prospective employer can use as a determining factor. Whereas in the past a student could offer increased scholastic achievement to combat the powerful influence of Journal experience, he must now seek additional sources of strength because of adjectival grades. This is not to say that the new system has reaped the reverse of its goal. It does, however, place the burden on the student to produce samples of good legal writing whether published or assigned class materials. It does demand student participation in meaningful co-currucular and extra-curricular activities, i.e., research assistant for a professor, moot court for both the brief and the argument, legal aid work, etc.

With these and many more straws flying in the wind the interviewing season began and continues. It is the largest season Georgetown has had, and a most successful one. We are pleased that the issue regarding grading has mostly resolved itself. In fact, by the release date of this issue of R.I.L. any further debate on the subject is tantamount to beating a dead horse. An understanding and realization expressed by many prospective employers was summed up most succinctly by one: "Law school grades do not necessarily represent judgment and integrity, and after all, judgment and integrity are the backbone of any good lawyer."

Georgetown's E.D. White Senate of the Delta Theta Phi Law Fraternity, which was awarded the National Outstanding Student Senate plaque at the Delta Thet convention last August, initiated 22 new brothers in December. E.D. White is now the largest and most active Senate in the Washington-Maryland Virginia area.

**Roy A. Schotland** has just been announced successor to Associate Dean David J. McCarthy. Schotland, a law professor at the University of Virginia Law School, is on extended leave serving as Chief Counsel for the S.E.C.'s Institutional Investors Study. He is expected to assume office when the study is completed, probably next September.

Dean Schotland is a 1960 graduate of Harvard Law School, where he served as Professor Paul Freund's research assistant. After clerking for Supreme Court Justice William Brennan, he worked briefly for the S.E.C. before becoming associated with the Wall Street firm of Paul, Weiss, Rifkind, Wharton and Garrison. Schotland has taught at Virginia since 1964, and has been visiting professor here at Georgetown, at Wisconsin, and at the University of Pennsylvania.

**Response to Georgetown's New Grading System** (continued from Page 9)

relation to one another, during the trial employment. This comment was accompanied by the observation that competition under such a procedure would be considerably stiffer than any experienced within the walls of academe.

The question specifically relating to action taken to offset the lack of standard grading, the fifth, was left unanswered by most firms. The inquiry was: What changes in present hiring procedure do you foresee as a result of the abolition of class ranking?" Motivating the question was the speculation that more attorneys in the firm would have to take part in the hiring process. Any deficiency in evaluating a man's knowledge or intelligence wrought by the grading changes could be alleviated by having partners interview in their specialty, asking the applicant questions to test his general background of knowledge.

Instead, the responses fell into three categories. Some firms stated that the present hiring procedures would be changed to favor those schools giving the law firms the information that they considered important. Another body of responses indicated that undergraduate grades and LSAT scores would gain in importance if no better determinant of the applicant's performance in law school were available. And the last alternative suggested an increased summer clerkship program so that the firms would not have to rely on law school performance.

It was interesting to note that at least five of the firms contacted had prepared memoranda on the subject of grading or ranking elimination, their hiring criteria, or a description of their "pro bono" programs. Obviously the practicing community is concerned with what is happening in the law schools and the effect it will have on their recruitment process. It is clear also, from these prepared responses, that Georgetown is not the only school making changes.

A generalized conclusion to this study would have to be that the law firms are not happy about the grading changes. But judging from the equal number of "yes" and "no" responses, they are probably not going to do much about it, such as going only to schools providing grade and rank information. Instead, firms will accommodate themselves to the changes by hiring more summer clerks or hiring more graduates. This development is a partial accomplishment of what the changes were intended to accomplish, namely, recognition of the student's work over an extended period of time in preference to one exam score or arbitrary ranking criteria.

Rebecca H. Laird

**Thomas C. Fischer**, the Law Center's dynamic young director of admissions for the past four years, was named Associate Dean in October by Dean Adrian Fisher. Dean Tom Fischer remains as Director of Admissions, as well as serving in new functions.
Dean Adrian Fisher, Formerly the Deputy Director of the U.S. Arms Control and Disarmament Agency, delivered this year's Julius Rosenwald Foundation Lectures at Northwestern Law School in Chicago. "Negotiating with the U.S.S.R." was Fisher's first talk, delivered on November 18. The following two days' lectures were "Preventing the Spread of Nuclear Weapons" and "Preventing the Extension of the Strategic Arms Race: A Realistic Proposal."

Sen. Joseph D. Tydings
(continued from page 6)

If the judicial officer determines that there is clear and convincing evidence that the accused will, if unconditionally released, cause the death of or inflict serious bodily harm upon another, or participate in the planning or commission of a robbery or burglary offense, or seek to intimidate witnesses or otherwise interfere with the administration of justice, then the judicial officer must impose such conditions of release as will reasonably protect against this danger. If the judicial officer should find that no conditions offer a sufficient protection against the described dangers, then he must order the accused detained for a period not to exceed thirty days. The standard of proof required, clear and convincing evidence, is that recommended by the American Bar Association's Tentative Draft on Standards Relating to Pretrial Release. The imposition of conditions or commitment is, of course, subject to appellate review as provided by the present bail act.

It is important to recognize that the bill does not provide a means whereby the accused may be indefinitely detained. The case must be treated as an urgent matter, subject to expedited trial under the terms of the proposal. If trial has not begun within thirty days, the accused may not be further detained unless there is a showing of extraordinary cause giving rise to the delay.

The proposals I have offered have been carefully drafted, with close consideration being given to the rights of the accused. At every stage of the process, I have tried to ensure him the full benefits of his constitutional privileges from the right to counsel through protection against any form of compulsory self-incrimination.

The constitutional question which has been raised by those questioning my proposals is whether it is possible to deny bail under any circumstances. As I read the Eighth Amendment, I do not believe that it excludes the possibility of a procedure such as that which I have outlined. Nor do I find in the case law or in history anything which persuades me otherwise. That bail may be denied in a capital case is unchallenged. I do not believe that the interests of society are so insubstantial that we must await the commission of a capital offense before protecting against a person who evidently presents as serious a threat as that which must be shown to bring an accused within the purview of my bill.

A second proposal which I introduced deals with the problem of bail on appeal. The right to bail pending appeal is not surrounded by the same constitutional restrictions which limit restraint prior to trial. The presumption of innocence and the need to assist counsel in the preparation of a defense disappear upon conviction. The Bail Reform Act presently recognizes the distinction between pre- and post-trial bail and gives the judge great latitude in dealing with the convicted criminal who seeks bail pending appeal. Not only may conditions be imposed, but detention is authorized. Not only may the risk of flight be used as a standard for restraint, but also the potential danger to the community.

In spite of the greater discretion which may be used to restrain convicted persons, the Hart Committee found the rate of recidivism among those released pending appeal for the first six months of 1967 to be 15%, as compared with the 9% recidivism rate for those released on pretrial bail during the same period. The Hart Committee urged more extensive use of the existing power to detain and I concur in that recommendation. I further propose, however, that we alter the statutory language to make clear that such detention is justified whenever there is a sufficient indication of dangerousness and that the restraints are not intended to apply, as at least one court has stated and other courts appear to believe, only to the exceptional case. I propose that we amend Section 3148 of title 18 to state that no person shall be released pending appeal unless a court finds both that the appellant is not likely to flee or pose a danger to the community and that his appeal raises a substantial question of law or fact likely to require a new trial or reversal.

The Bail Reform Act of 1966 brought about significant improvement in the pretrial release procedures used in the federal courts. It appears now that further change is needed. I have determined what I believe the most effective alterations to be, and have embodied them in my present proposals.

I fully recognize that these amendments to the Bail Reform Act cannot serve as a substitute for continued efforts to make the ideal of swift justice a reality. This is a task to which I have devoted considerable effort as chairman of the Judiciary Committee's Subcommittee on Improvements in Judicial Machinery. I will be introducing several measures later in this session which should contribute significantly toward achieving the goal of swifter justice in all federal courts.

As chairman of the District of Columbia Committee, I am now in a position to deal with the Article 1 courts as well as the Article III courts in our Nation's Capital. A management study is currently being conducted of all the courts in the District, at private expense with funds secured through my efforts. I am preparing legislation that will bring about a massive overhaul of the court system in the District, and I propose to hold continuing hearings to investigate the need for further improvements.

Still, as I suggested earlier, these reforms in themselves do not supply a complete answer to the problem, nor will they resolve the immediate crisis. Significant strides will have to be taken in many areas before the criminal justice system is operating smoothly and effectively, in the manner in which it must function to meet the constantly increasing challenge of crime to our society. I believe that the measures I have introduced to reform the bail act constitute a small but important phase of this process.

Fr. Dexter L. Hanley, S.J., a long-time faculty member here at the Law Center, was elected in September to be Vice-Chairman of the Board of Trustees of the University of Scranton.

Professor Don Wallace, who has been on the faculty since 1966, has been named Director of the Institute for International and Foreign Trade Law, to succeed Professor Heinrich Kronstein. The Institute, which is headquartered at the Law Center, has a branch in Frankfurt, Germany.
frequently repeaters. Since the first of 1969, the Court employed much stricter criteria for releasing suspects in robbery cases on personal bond, and money bonds were generally set quite high. Only five robbery complaints were filed before the U.S. Commissioner in February and March, but 186 complaints were filed in the same period in General Sessions. Of these 186, only 18 were released on personal bond. Thirteen more made financial bond. One hundred fifty-five were held, or confined, in lieu of bond. The effect of this was to take 155 armed robbers off the streets of Washington in February and March. In January, 1969, there were 707 reported armed robberies, which included nineteen bank robberies. In February the figures dipped to 576 armed robberies, including only two bank robberies. By March, the figures showed 44 armed robberies and only one credit-union was held up.

The figures for April showed a continuation of this trend. While longer sentences and extra police patrols no doubt contributed to this marked decline, it is quite reasonable to conclude that pretrial detention of armed robbers, whose guilt is strongly made out at preliminary hearing, has now graphically demonstrated, that effectively denying pretrial release to a relatively few criminal defendants who fall into a certain category has helped reduce the robbery rate by 38% in two months. By comparison, in 1968 there were 323 robberies reported in January, 355 in February, and 386 in March. During that period the robbery rate increased by 20%. At that time, no tightening up of release criteria had occurred, and in fact, the monthly figures climbed steadily all through 1968. The trend has reversed. Yet, it is often said that statistics show that only about five to seven percent of defendants on pretrial release are committing crimes while out because that is how many were indicted for subsequent crimes. Indictments bear no relationship to the number of crimes committed. In February and March of 1969, 1017 robberies were committed, but only 191 defendants were brought into court and charged with robbery. This is less than one out of five. It represents only about a 20% rate of closed robbery cases. If we assume that persons out on bond commit offenses at a rate proportionate to their percentage of the indicted cases, then we must multiply the five to seven percent by five. Realistically, then, we must conclude that 25% to 35% of the defendants out on bond are committing crimes. Of course, only about 20% of them are being caught and indicted.

Whether the extremely liberal release requirements of the Bail Reform Act have contributed to the increasing crime statistics in the District of Columbia is the subject of strenuous debate. It is quite probable that the ease of release coupled with the long delay in coming to trial removes certain deterrent aspects of the criminal process, and thereby encourages commission of some crime. In the first two and one half years after the adoption of the Bail Reform Act robberies in the District of Columbia increased 207%. In that same period burglaries increased 94%.

The liberal release provisions of the Bail Act create other problems too. Police report a great reluctance on the part of many victims of crime to come forward and identify or testify against a prospective defendant because of the fear that the defendant will be released on personal bond and will thereafter harass and threaten the victim for a period of months or years prior to trial. Contemporaries of accused criminals who are released on personal bond come to believe that nothing will happen to a defendant, even if he is caught in the act of a vicious crime, because the defendant has returned to the streets immediately after his arrest and has remained there for months or years without any apparent disability.

Former Attorney General Ramsey Clark stated, on a recent television broadcast, that in most jurisdictions 90% of the criminal cases are disposed of by pleas of guilty. Yet, less than half of the serious cases in the District of Columbia are disposed of by pleas. There is no reason why even the most obviously guilty defendant should enter a plea to an offense for which he might expect to be sentenced to prison when he can remain free on the streets for months or years on personal bond while awaiting trial of his case. In addition, if he is convicted after trial he can obtain a free appeal, probably remain on bond, and delay retribution for another year or two. And, of course, as the backlog continues to grow, the periods of liberty grow even longer. Coupled with this is the knowledge that if a defendant is caught committing an additional offense while on bond the prosecutor will probably accept a plea of guilty to the original offense and dismiss, or not indict for, the later offenses because of the overwhelming backlog.

Currently, there seems to be a general feeling that Judges should be allowed to consider the potential dangerousness of a defendant, as well as the risk of flight, in setting the conditions of release. This is precisely the standard that would have to be considered in determining whether to detain a defendant prior to trial. The practical effect of only allowing dangerousness to affect the conditions of bond will be to encourage courts to engage in pretrial detention without calling it pretrial detention, and without surrounding it with adequate safeguards.

Of course, everyone recognizes that the best solution to these problems is an adequately enlarged court system which will be able to provide a trial to all criminal defendants within six weeks to two months. Even if this goal were adopted today, and legislation were framed and introduced to accomplish that, it would take several years for the goal to be achieved. A new court house cannot be built overnight. Additional judges and additional personnel cannot try all of the cases immediately. In the meantime, the District of Columbia is faced with a clear and present danger which seems to require practical and realistic measures immediately. Pretrial detention is one such necessary measure.

**Sen. Sam. J. Ervin**

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person who violated conditions of release. I am pleased to see that since our hearings highlighted these problems, the courts and the prosecutors are now cooperating in an effort to prosecute and punish persons who do not appear on time for trial and that the judges are holding release condition violators in contempt and sentencing them to jail. These practices, and the new policy of many judges of imposing consecutive rather than concurrent sentences for additional crimes committed on bail, were partly responsible, I believe, for the dramatic decrease in crime during February and Early March of this year. This approach by the courts and prosecutors, together with the accelerated calendar now in effect in the U.S. District Court to expedite trials of dangerous felons, will in time, I am convinced, reduce crime by persons on bail by at least as much as a preventive detention statute would.

In conclusion, I would like to emphasize my strong conviction that we will not solve the problem of crime in our society until we are willing to make a financial and manpower commitment to law enforcement commensurate with the seriousness of the problem, which we thus far have never been willing to do. We must vastly improve our entire system of law enforcement. We must have more judges -- many more judges -- and many more prosecutors. We must have increased supporting personnel and improved facilities from top to bottom. We must greatly improve court procedures and efficiency. Such improvements will cost a great deal of money. But they can be attained, I am convinced, in a relatively short time and at a cost that is modest in comparison to the vast sums we expend for other government programs. And they must be attained if we are to make permanent inroads on the crime crisis we now experience. Preventive detention is a desperate stop-gap measure, which, at best, would solve only a very small fraction of the crime problem, and, at worst, could further postpone more necessary and useful improvements.
ding of the new Law Center physical plant continues, completion projected for the end of this year, and with acy to begin in September, 1971.