United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
(PURSUANT TO S. RES. 236, 90TH CONGRESS)
WASHINGTON, D.C. 20510

August 5, 1969

SAM ERVIN

Professor Joshua Lederberg
Stanford University Medical Center
Department of Genetics
Stanford, California 94305

Dear Professor Lederberg:

I wish to acknowledge receipt of your letter concerning proposals for amending the Bail Reform Act of 1966 to authorize preventive detention and to thank you for the copy of your article about using communications technological advances in the fight against crime.

Initially, I want you to know that I am deeply concerned about our crime problem in this country and about the safety of our law-abiding citizens. In fairness to those who worked diligently for passage of the Bail Reform Act of 1966, I should point out that crime on bail has actually decreased since the Act took effect. The Act has certainly not made our crime problem any more acute nor has it increased the danger to our law-abiding citizens.

Notwithstanding the above facts and the fact that only a slight percentage of crime is committed by persons on bail and awaiting trial, such crime does constitute a serious problem which we must meet and overcome. Reliable studies show that the majority of such crimes are not committed until more than 60 days after release. Thus, one clear answer to our problem, and the one I favor, is the speedy trial of criminal suspects and the swift and severe punishment of the guilty.

In order to attain that objective we must bring major improvements, long overdue, into our system of criminal justice. We must have more judges with adequate staffs and facilities, more prosecutors with sufficient supporting personnel and a more efficient system of defense for suspects financially unable to obtain counsel. The Congress is now considering means to achieve those ends. While working toward such long range reform, we can, I believe, meet our immediate problem by greater effort on the part of our judges and prosecutors to bring about speedy trials, by the advancement of cases involving defendants believed dangerous, and by wider use of the procedures established in the Bail Reform Act of 1966 to supervise and control the conduct of defendants on bail.

An alternative solution, which some people favor, is the pretrial jailing of so-called "dangerous" defendants. Such detention raises grave constitutional questions when considered in light of the 8th Amendment's guarantee of reasonable bail, the due process clause of the 5th Amendment, the 6th Amendment's guarantee of access to counsel and the opportunity to participate in preparation of a defense, and the due process and equal protection clauses of the 14th Amendment. In my view, jailing people because of possible future misconduct repudiates the most basic principles of a free society and smacks of a police state rather than a democracy under law.

Not only does the proposed pretrial detention unfairly deprive an individual of the opportunity to assist in his defense, but it may cost him his job, it is detrimental to his family life and it subjects him to the physical and psychological degradation of prison life. Moreover, I do not believe that judges are gifted with the prophetic powers necessary to determine accurately which individuals represent a danger to the community. The law would therefore result in the imprisonment without trial of many innocent persons and would be highly susceptible to abuse.

In my judgment, it is infinitely better to strive for the constitutional goal of speedy trial than to resort to the enticingly simple but desperate and unjust device of pretrial detention.

Thank you for your expression of interest in this matter.

With all kind wishes, I am

Sincerely yours,

Sam J. Ervin, Jr.

Sam J. Ervin, Jr.
Chairman

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