

Preventive

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judge to decide whether a man is likely to appear for his trial and to grant bail accordingly.

The deputy attorney-general noted that the new act substituted, for a judge's arbitrary decision, "an adversary hearing with evidence following which a judge must then make written findings of fact and conclusions of law." He charged that, previously, judges had been statutorily charged with only considering whether the accused would appear for his trial, when, in fact, judges had actually been making subjective decisions about the danger which the accused would pose to the community if he were allowed his freedom before trial.

Noting that the accused could only be detained for sixty days, and would have to be released under the regular bail system after that time even if his trial had not yet taken place, Kleindienst argued that the measure would encourage the speedy trial of such detained persons.

While recognizing constitutional objections to the pretrial detention system, Kleindienst denied that the measure was in violation of the Eighth Amendment guarantee that "excessive bail shall not be required," explaining that, when enacted, the provision had not been construed to apply to the kinds of cases covered by the pretrial detention measure.

Kleindienst emphasized repeatedly in his arguments that the measure was a "responsible response to problems as they exist," and berated the Congress for not passing new legislation which would result in the "speedy determination of a defendant's innocence or guilt." He said that if such legislation were passed, the pretrial detention measure would become unnecessary.

However, the deputy attorney-general had difficulty defending his assertion that the preventive detention measure eliminated "judicial hypocrisy" when moderator Louis Schwartz pointed out that, under the provisions of the measure, a detained person who has not been tried within sixty days once again becomes eligible for bail under the old "hypocritical" system.

Harvard professor Dershowitz, a member of the national board of the

American Civil Liberties Union took issue with Kleindienst's opinions about the pretrial detention program, comparing it to the crime prevention system of the queen in Lewis Carroll's *Alice in Wonderland*.

He rejected Kleindienst's constitutional defense of the measure, saying that the "the Constitution's framers never had to confront the issue," and argued that the bill "invites a holding of unconstitutionality" because of its "vague and ambiguous phrasing."

Citing the phrase "any other person or community," as an example of the bill's vagueness, Dershowitz expressed concern that a broad interpretation of the "danger to the community" wording "could be applied to anticipated crimes of speech, advocacy, and political organization."

The youthful professor also rejected Kleindienst's claims that the detention system provided for a much greater degree of certainty and due process in the granting of bail, arguing that "no one can predict short term violence with any degree of accuracy." He pointed out that the United States' system of criminal justice is willing to let guilty men go rather than punish innocent ones when dealing with crimes already committed, and contended that pretrial detention reversed that position by confining innocent men in order to prevent as yet uncommitted crimes.

Terming preventive detention "radical surgery" he questioned whether a better proposal for improving criminal justice in the United States would not be simply expending enough funds to "make sure that all defendants could be brought to trial within sixty days," and called that suggestion better than a system which "builds a house of bars on a foundation of sand."

The deputy attorney general replied to Dershowitz's objections by emphatically denying that the bill could be used as a weapon to detain political offenders. However, in response to Dershowitz's additional claim that the drug provision of the bill could be "selectively enforced" against political dissidents, Klein-

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dienst pointed out that "political freedom does not include immunity from drug laws."

The deputy attorney-general also argued that there was "a direct correlation between heroin addiction and the commission of violent crime," and contended that the inclusion of the drug provision in the bill was aimed at addicts who use violent crime as a means of supporting their habit.

Both Dershowitz and Kleindienst agreed that the United States' entire criminal justice system needs overhauling, but disagreed as to whether such a reform was high on the administration's list of legislative priorities. Kleindienst stated that it was, while Dershowitz denied the claim and ridiculed the Administration's concern with pornography, urging it to "address itself to real tough problems" such as gun control and the means for dealing with heroin addiction in the United States.

Kleindienst defended the Administration by placing blame on an uncooperative Congress for lack of action in such fields, and asserted that he would be "the first to call for the repeal of preventive detention" when the entire system of criminal justice has been adequately reformed.