

Correspondence

After the Arrest

Sirs:

May I add to Alexander M. Bickel's reply to the critics of his article "After the Arrest" (February 12)? Detective Harry Winegar's observation that the only advice he ever heard a lawyer give his arrested client is to make no statement is probably accurate enough; his conclusion that this advice results in frustrating "the learning of facts which could release the prisoner" is, in this lawyer's opinion, sheer fantasy.

The lawyer's injunction to his client to remain silent is not motivated by a wish to quench the burning desire of the police to free the innocent. He knows—and most criminal lawyers

know—that its purpose is to protect the client against the use of highly sophisticated and unscrupulous "interview" techniques in which police are trained and which are designed to lead any statement which the client may initially make, no matter how innocuous, into further statements which will (a) incriminate the client, or (b) cause the client to incriminate others.

These techniques customarily and routinely include such devices as the use of coached "eye witnesses" who are in fact not witnesses, the use of fabricated "evidence" which is not in fact evidence, the flaunting of nonexistent "confessions" of accomplices, the making of false or misleading statements regarding the status of the prisoner's family and friends, and similar bluffs, deceptions and frauds calculated to "break" the prisoner. . . .

It may be argued that an innocent person ought to resist the pressures herein described, and that there is nothing wrong with arresting and interrogating a "suspect," knowing him to be innocent and hoping to have him incriminate others. In evaluating these arguments, it must be remembered that (a) most of the persons upon whom these techniques are used are not experienced, callous criminals (who know enough to remain silent without a lawyer's advice); (b) often the prisoner is not certain whether or not he has committed a crime, since he is ignorant of the law; (c) the prisoner is usually ignorant of the consequences of

his statement (he does not know what "may be used against you" means); (d) the prisoner is worried, often to the point of panic (a condition which the police freely encourage in many cases); and (e) he is ignorant of his constitutional rights to counsel. . . . and of the law generally.

So far as protection of the public is concerned, it is unfortunately true that a substantial segment of the public is, from time to time, subjected to arrest and to the employment of the techniques herein described. Usually, they are a part of the public which lacks the protections of money, education and influence. Nonetheless, the "State" has a vital interest in their right to be protected from abuses of the police power. The answer, as Mr. Bickel points out, lies in more and better-trained police, and not in a gradual restoration of Trial by Ordeal.

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