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## Dealing With Suspects <sup>1957</sup> <sub>11/14/61</sub>

A man convicted of murder on the basis of a confession obtained by the police without allowing him access to a lawyer and without telling him he had a right to remain silent could be reversed on appeal if he happened to have been convicted in Pennsylvania, Delaware or New Jersey. But if his conviction in the same circumstances came about in New York, Vermont or Connecticut, there would be no chance of a reversal on these grounds. Obviously, there is need for the Supreme Court to lay down the law more clearly and firmly with respect to the rights of arrested persons. Its announcement that it would review four appeals involving five indigent prisoners convicted on the basis of confessions is, therefore, a most welcome one.

The most common argument in favor of admitting police station confessions obtained from persons without lawyers is the argument advanced by Chief Judge Edward Lumbard of the Second Circuit Court of Appeals. If police were required to advise arrested persons of their right to silence and to counsel, he said, "in most cases such warning would cause the accused to say nothing."

Three answers can be made to this. One is that in most cases such warnings would *not* silence innocent persons eager to clear themselves and confident that they could do so by telling the truth. A second answer is that reliance on interrogation of suspects leads to lazy and often bad police work. As Dean Wigmore said in his great book on evidence,

The inclination develops to rely mainly upon such evidence, and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture.

And, finally, there is the answer given by the Supreme Court in an opinion written by Justice Goldberg, that "the right to counsel would indeed be hollow if it began at a period when few confessions were obtained" and that "no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights."

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