

Questioning Prisoners

A little more than a year ago the United States Attorney, at that time David C. Acheson, gave some sober, realistic legal counsel to the Metropolitan Police Department:

It is probable that no interrogation prior to appearance before the committing magistrate can produce any admissible evidence, except a statement which is volunteered, or given in response to questions, at the scene of arrest or immediately thereafter . . . As a simple rule of thumb, I should think it would suffice to instruct your men that persons under arrest are not to be questioned regarding the facts of the offense following their arrival at precinct or headquarters, until after their appearance before the magistrate and appointment or retention of counsel.

However harshly this may have grated on Police Department ears, it had the virtue of being in conformity with constitutional commands and Supreme Court decisions. Ten months later, however, just before leaving office, Mr. Acheson persuaded himself, or allowed himself to be persuaded, that these limitations of law could be circumvented by the magic of a kind of incantation—a statement by a police officer to a prisoner advising the latter that he had a right to remain silent (providing he possessed the hardihood to assert such a right), and a right to the help of a lawyer (providing he could afford to hire a lawyer). The Supreme Court has never said, or even intimated, that such a statement by a policeman could be substituted for a magistrate's statement as to an arrested person's rights or that a policeman instead of a magistrate is empowered to determine whether probable cause exists to detain a suspect.

To buttress this new assumption of police power, Chief Layton—with some help, it is reported, from James Vorenberg, executive director of the National Crime Commission—has devised an elaborate form called a "Prisoner Process Report." In this each step in the procedure by which an arrested person is persuaded to incriminate himself is duly recorded.

It is easy enough to understand why zealous policemen would like to question suspects in police stations and without permitting the indigent and ignorant among them to have the help of a lawyer who might tell them to keep quiet. But it is by no means so easy to understand why eminent lawyers should suppose that, by mere legerdemain, they can erase the constitutional right to be free from arbitrary arrest and the constitutional guarantee of the assistance of counsel. And it is even harder to understand why they should want to.