

N.Y. 12/9/65
Rights of Suspects

To the Editor:

Your editorial of Dec. 11 entitled "Those Troublesome Confessions" refers to "the proposed Model Code of the American Law Institute on pre-arraignment procedures." To date, the American Law Institute has not approved any such code. You must have had in mind the proposals of the reporters for the American Law Institute.

The editorial says the proposed code "approves, by implication at least, continuance of existing police practices"; which means that the police need not warn suspects of their constitutional rights prior to interrogation.

It also seems to imply that I think the rights of suspects will be adequately protected if the police so warn them. Neither attribution is correct.

Warning by Police

As I understand it, the code proposed by the reporters of the American Law Institute would require a warning by the police but would not provide for an appointed lawyer for those financially unable to retain one. My view is that we cannot expect the police to advise a suspect effectively and disinterestedly of his right to remain silent at the same time as they are trying to elicit a confession from him.

The reporters' suggestion that elaborate recordings and monitoring devices be required to assure that the warning is effectively given, would also seem to reflect some discomfort with entrusting this function to police. How much simpler (and fairer) it would be to provide a lawyer to those unable to afford one at this critical stage.

As Mr. Justice Black has so wisely said, "The Constitution

does not contemplate that prisoners shall be dependent upon Government agents for legal counsel and aid, however conscientious and able those agents may be. Undivided allegiance and faithful, devoted service to a client are the prized traditions of the American lawyer."

The reporters' refusal to provide lawyers for those unable to afford them would seem to imply that our society cannot "live with" the privilege against self-incrimination unless enough of its members are kept sufficiently ignorant of it so that it does not significantly hamper the quest for confessions.

This philosophy of institutionalizing ignorance of existing rights is a disturbing and dangerous one which I hope will not be adopted by so respected a body as the American Law Institute.

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Washington, Dec. 13, 1965
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