

ALI Code Explained

We are writing in response to your Nov. 25 editorial, "Circumvention," concerning the proposed model prearrest code being prepared under the auspices of the American Law Institute. The code has been analyzed in detail at meetings of an Advisory Committee, composed of distinguished judges, prosecutors, defense lawyers, police officials and professors and, with the changes made following these meetings, it will be presented to the Council of the Institute this month. While it would be improper for us to discuss the merits of the proposals at this time, we believe we should point out some basic misstatements in your editorial as to what the code as formulated by the reporters for presentation to the Council would provide.

First, you state that the proposed code would "relax the requirement of probable cause for making an arrest, reinstating something akin to the system of arrests for investigation recently banned in the District of Columbia." In fact, the code does not permit an arrest on less than the constitutionally prescribed standard of probable or reasonable cause. It would permit the police to stop persons whom they suspect may be involved in crime or may be able to give information about a crime which there is reasonable cause to believe has taken place. The period of such stop could not exceed more than 20 minutes; the person stopped could not be taken to the stationhouse or any other place; and the stop would not

constitute part of the person's arrest record. As you will recall, the arrest for investigation, which caused great concern recently in the District of Columbia, consisted of a full-scale arrest, following which the arrested person was taken to the police station and booked "on suspicion" and was available for stationhouse interrogation. This practice would be prohibited by the proposed code.

Second, you state that the code would undermine the rule that the prosecution may not introduce evidence illegally obtained. In fact, the draft code makes detailed provision for the exclusion of illegally obtained evidence.

Third, you suggest that the code would permit "arrests on suspicion and sweating confessions out of suspects." As indicated above, arrests could be made only on the constitutional standard of reasonable cause. Furthermore, what you referred to as "sweating" confessions would be specifically barred.

Fourth, you indicate that the code is written in disregard of recent Supreme Court opinions, or, as you put it, "as though their authors had read none of the Supreme Court's opinions of the past decade." In fact, the code's supporting commentary contains a full discussion of all relevant Supreme Court decisions, and we believe is consistent with these decisions.

Fifth, your implication that the draft is consistent only with a "police state" is particularly puzzling, since it would afford substantially greater

protections to individuals than are now in effect in any jurisdiction in this country with which we are familiar and greater protections than are mandated by present constitutional decisions of the Supreme Court. Among the protections which the code would provide are a warning to an arrested person of his rights, both on arrest and on his arrival at the stationhouse; access to the arrested person by counsel, family and friends, and the right to make telephone calls; prohibition against coercive practices, including persistent questioning in the face of a suspect's indication of his desire to consult with counsel; limitation on the periods during which questioning may take place and prohibition of questioning after these periods unless counsel is present or consents; and a requirement of detailed written records of all actions taken during police custody and of sound recording of interrogation and the giving of required warnings.

Any attempt to reconcile a viable system of criminal administration with fair regard for individual rights presents issues of enormous difficulty, notwithstanding the simplistic answers you espouse. But your insistence on prejudging and rejecting solutions, however tentatively they may be proposed, confers no license to distort what the proposals actually are.

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