

B. The Right to Counsel

The Six Hour Bill says nothing about the right to counsel. In line with Rule 5 (b), I think the respondent should be advised of his right to retain counsel. Perhaps he should also be advised of his right to request the *assignment* of counsel, as recently recommended by an Advisory Committee on Criminal Rules. See Preliminary Draft of Proposed Amendments to Rules of Criminal Procedure for the United States District Courts, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, page 2, December 1962. In my opinion, this is a fatal omission in the Six Hour Bill. We cannot ignore the inexorable trend of all of our local courts—and the Supreme Court—expanding the right to counsel.

One key case may be *In re Groban*, 352 U.S. 330 (1957), where four of nine justices dissented (Warren, Black, Brennan and Douglas) and said there is a right to counsel even when a fire marshal's questioning is involved in an administrative proceeding. Justices Frankfurter and Harlan concurred with the majority only because a fire marshal was involved. Now Mr. Justice Goldberg has succeeded Mr. Justice Frankfurter, which probably tilts the scales the other way. A fortiori, when a policeman is involved, the Supreme Court will find a right to counsel.

At the very least, the respondent needs an attorney for contempt questions. In addition, how does an untrained man know he is validly invoking the Fifth Amendment?

Discussions of an accused's constitutional right to the assistance of counsel may be found in the annotations in 84 Law. Ed. 383 and 1 Law Ed. 2d 1865 (in administrative proceedings).

Another fundamental question is whether any bar association should recommend legislation which weakens the right to counsel.

C. The Contempt Problem

The contempt proviso seems to create as many problems as it solves. As I read the cases, an open trial would be required