

Now, I am paraphrasing Thurmond Arnold, but I think it is a fair commentary. ([Cf. "Arnold, the Symbols of Government," 160 (1935)].)

All right.

The CHAIRMAN. Let me follow you at that point. You take the suspect before the committing magistrate without undue delay. But this particular title would say that delay in itself shall not make the confession inadmissible. Doesn't it only go to the point of delay?

Mr. KAMISAR. My point is this bill says that you will be henceforth—you will be allowed to get into evidence statements obtained in violation of rule 5(a). That is the thrust of it. It does not say, it does not change the command. You see, it does not change the command, which will continue to exist in rule 5(a), that the police officers must take the arrested person without unnecessary delay. If he doesn't, he is violating that command. But this bill simply says, "So what?"

It says the admission of the statement obtained in violation will be allowed. My point is it is kind of an interesting way to go about it. Why don't we change the law? Why don't we say that a policeman is authorized to hold a man as long as he wants to? Why instead do we continue to have these laws which we are now saying the policeman can violate? That's my point. It is an interesting way to go about it. And it seems to me we go about it this way because everybody realizes that these laws do not mean anything without the sanction.

Nobody ever claimed we ought to repeal the search and seizure laws. All they claimed was we should not throw out the evidence once illegally-sized. Keep it on the books. But that is the amazing thing. What for? What good is it if you haven't got the sanction? That's the point I'm trying to make.

Next, we get to the question of, shall we say, the "sweetener" that no statement shall be admissible unless prior to such interrogation the arrested person had been advised that he is not required to make a statement, and so forth.

Well, this looks good at first glance—although what we are saying in effect is that the interrogator should protect the interests of the suspect, at the same time he is attempting to obtain enough damaging information from him to convict him.

Now, I frankly doubt that this is a substitute for the loyalty of counsel or disinterestedness of a judge.

But we are right back where we started, it seems to me, because if this is passed, the inevitable conflict will be: Did the police officer make the statement? When did he make the statement? How did he make the statement?

Now, I can make a statement, "Look, you might as well cooperate. You know it can be held against you, but you might as well cooperate." You can do it very perfunctorily, you can do it very routinely, sloppily. And the way you do it can affect the outcome immensely.

Now, you also have the problem that after the man has made a couple of oral incriminating statements, then, before he makes the written statement, you advise him of his rights. I have seen that happen in several cases. But the point is: psychologically "the cat is out of the bag." Once a man makes an incriminating statement, and then you say, "All right, you might as well reduce it to writing. Before we do,