

I

A warning to the prisoner immediately in advance of the interrogation that he is not required to make any statement at any time, and that any statement made by him may be used against him.

I find no objection to this proposal.

In fact this proposal is now included in section 101(b) of H.R. 7525 and, consequently, no amendment to include it is needed. In this connection it might be said that the Supreme Court has held that no such warning is required, *Wilson v. United States*, 162 U.S. 613, 623. It is the practice both of the local Police Department and Federal law enforcement agencies to give such a warning. There is no reason why the requirement should not be embodied in a statute. It should be made clear, however, either in the legislation or possibly in a committee report that it is not intended to exclude a voluntary statement made by a prisoner on his own initiative, and sometimes even blurted out by him, but that the warning is required only in connection with the questioning of prisoners. An extreme instance of a voluntary statement is found in *Nance v. United States*, 299 F. 2d 122, 112 U.S. App. D.C. 38, in which a person charged with a robbery was identified by his victim at a preliminary hearing before the U.S. commissioner. The prisoner then asked the witness, "How do you know it was me when I had a handkerchief over my face?" Naturally, this statement was admitted in evidence at the trial.

II

That the arrested person be afforded a reasonable opportunity to notify a relative or friend, and consult with counsel of his choosing.

I am opposed to this amendment.

As a practical matter, if the prisoner wants to consult with counsel he will usually decline to answer any questions until he is given an opportunity for such a consultation. There is no reason why the police should be required to inform the prisoner of this right. There seems to be no doubt that an arrested person should be permitted to notify his family of the fact that he is in custody and also to consult with counsel of his choosing, if he expresses a desire to that effect. It is questionable whether he should be permitted to notify a friend because the friend may be an accomplice.

Under any circumstances this provision does not seem to have any place in the pending legislation. It must be borne in mind that the more restrictions and conditions that are included in the legislation, no matter how desirable some of them may be, the more opportunity there is for the defendant to raise objections at his trial, and claim that the requirements were not complied with.

III

That the interval between arrest and completion of a confession should not exceed a maximum of 6 hours.

I am opposed to this restriction.

Such a limitation would be purely arbitrary and there does not seem to be any basis for this specific figure. In many cases, indeed, the questioning of a prisoner is completed long before the expiration of 6 hours after his arrest. It is not necessarily always the case. The prisoner may give information to the police which, if true, would exculpate him and lead to his immediate release, but on investigation it may be found to be false, as not infrequently happens. The prisoner may then decide to confess. Ordinarily, he first makes an oral confession and then it is reduced to writing on a typewriter, because the police department is not equipped with many stenographers. By the time the typing is finished more than 6 hours may have elapsed from the moment of the arrest. It would seem unreasonable to exclude such a statement. Other situations can be conceived where 6 hours expires while a confession is being typed. Must the completion of the confession then be stopped? Such a requirement would likewise be unreasonable and may well lead to a miscarriage of justice.

IV

That a responsible witness, other than the law enforcement officer, observe the questioning or that a verbatim transcript or a recording of the interrogation be made.

I am opposed to this proposal.