

the advice, the times of beginning and interruption of all questioning, and a concluding statement by the arrested person that he has been subjected to no questioning after his arrest, or threats or promises that are not upon recording.

Subsection (e). New:

Such recording was made available to the arrested person's counsel for inspection, listening, and copying, a reasonable time prior to trial.

DISCUSSION OF SUGGESTED CHANGES

A. General

Whether warranted or not the basic reason for Mallory-type restriction upon police interrogation lies in traditional American distrust of secret interrogation and an unwillingness to believe the police testimony regarding such interrogations. The historic choice between the differing versions regarding the interrogation of the suspect and the police has proven unpalatable to the courts. The risk of self-serving perjury by police interrogators has been deemed sufficiently great that judicial measures to eliminate the risk have been taken. The result has been restrictive upon interrogation itself. The suggestions herein are designed to eliminate the risk but not the questioning. Actually, the risk cannot be completely eliminated, but it can be reduced.

The military practice of keeping a complete tape recording of all interrogations seems a good model to follow. I am not aware of any inability to gain convictions as a result of this procedure. My suggestions are largely, but not entirely, patterned after the military experience.

B. Specific

The change in section 3, subsection (a), is designed to insure that the warning and advice to the arrested person would appear in the sound recording, thus eliminating the risk of challenge upon this point. The sound record also has the tangible proof concerning the actual questions and answers and the manner of interrogation. The concluding statement by the suspect reduces the possibility of "softening up" tactics which occur "off the record."

Section 3, subsection (e), is designed to facilitate a plea of guilty when appropriate and the avoidance of unnecessary trials. It also aids the defense if there is any suspicion of coercive tactics.

I believe the bill is a good one, and I would support it with the suggested changes.

Respectfully,

GEORGE W. SHADOAN.

P.S.—With reference to my testimony before the committee, I find Chief Murray stating (p. 766 of November 5, 1963, transcript): "I don't believe what that witness has to say and that is the one I want to rebut. I want to put a statement in, if I may." I would appreciate a copy of the Chief's statement. It does not appear in the transcript.

NATIONAL CAPITAL AREA CIVIL LIBERTIES UNION,
Washington, D.C., November 13, 1963.

Hon. ALAN BIBLE,
Chairman, Senate District Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: The National Capital Area Civil Liberties Union appreciates the opportunity you have given us to comment upon the revisions of title I, of H.R. 7525, which have been proposed by Deputy Attorney General Nicholas deB. Katzenbach, and endorsed by U.S. Attorney David Acheson and by the President of the Board of Commissioners, Mr. Tobriner.

The point of departure for our present comment is Mr. Katzenbach's testimony in which he declared his opinion that, " * * * The *Mallory* rule is a good one. Through it, the Supreme Court made clear its intentions to prevent law enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. This is as it should be."

If this is as it should be, we cannot understand how the Deputy Attorney General can justify his recommendations to your committee.

First, he would give police authorities, "a maximum of 6 hours elapsed time between arrest and completion of the confession," before they would be required to take their prisoner before the U.S. commissioner. This recommendation is a barefaced repudiation not only of the *Mallory* rule, but of rule 5 of the Federal Rules of Criminal Procedure because it plainly and explicitly allows the arrest-