

In my experience, I have never encountered much success in relying upon dissenting opinions of the Supreme Court. The question of whether a lawyer should be permitted to advise an arrested person at the police station level was directly before the Supreme Court in both *Crooker, supra*, and *Cicenia*,¹ *supra*. The majority ruled that the due process clause of the 14th amendment did not require the presence of counsel during interrogation by the police. In *Crooker*, Mr. Justice Clarke, speaking for the majority, said that such a requirement would have a devastating effect on law enforcement.

For these reasons, I prefer the House-passed bill, H.R. 7525. It is noted that the motivation for the joint hearings conducted by Senators and Congressmen earlier this year was the desire to strengthen the public safety. There is no question but that the rights of the individual are scrupulously protected by the judges who try and review the case. There is question, however, as to whether the innocent victims of crime in this jurisdiction are given adequate protection by the Government. Interrogation of persons whom the police have reason to believe are involved in crime has long been regarded as the most useful single tool for the solution of crime.

Washington leads cities of the Nation of comparable size in aggravated assaults. Washington is second in the cities of the Nation of comparable size insofar as the crime of robbery is concerned. Most of these crimes take place on poorly lighted streets at late or unusual hours when the question of identity is difficult. These additional safeguards proposed in H.R. 5726 will render more difficult the solution of crime and the punishment of these numerous felons with whom the public is plagued in the Nation's Capital. Certainly inability to solve and punish crimes of this character is not likely to aid law enforcement or increase the public's safety. Obviously, the opposite is true.

A lawyer called in to advise a client during the course of interrogation has only one obligation, to protect his client. It would be unprofessional for him to act in any other capacity. This is so clear that the only advice to a client under these circumstances would be the words "don't talk."

If the committee, in the exercise of its legislative judgment, decides to follow the expert advice of the Deputy Attorney General, and I willingly concede that his sources of information and consequently his judgment on the matter are superior to mine, then I would say that it is preferable to limit as far as possible the additional "safeguards" proposed in H.R. 5726 to 3a and 3b. It is noted that 3a, in substance, is contained in the House-passed legislation. Subsection 3b does not require that the interrogation be stayed until either the lawyer or the friend or relative is present. It simply requires that the arrested person prior to questioning be told by his custodian that he should have the opportunity to notify a relative or friend and to consult with counsel of his own choosing.

The additional safeguards 3c and 3d, which incidentally are not strongly urged by the Deputy Attorney General, seem to be in addition to the rationale of the dissenting opinions contained in *In re Groban* and *Anonymous v. Baker, supra*. Subsection 3c puts an arbitrary limit of 6 hours upon questioning. The arbitrary limitation would seem by implication to tell the police that any questioning up to 6 hours is lawful. In many instances, the police can complete their procedures in less than 6 hours. I do not favor this provision. Take the case of *Milton Mallory*, 259 F. 2d 296, the nephew of Andrew Mallory. He was convicted of a sexual assault on a young girl. He was arrested and after some preliminary questioning, it was ascertained that he was too intoxicated to respond to questions. The detention was continued for approximately 13 hours before he had sobered up sufficiently to permit continuation of the questioning. Shortly after the commencement of this second period of interrogation, he confessed. Obviously, the 6-hour rule would preclude meaningful questioning of such a person. The court of appeals held that the conduct of the police under the circumstances in that case was proper and the conviction was affirmed.

Subsection 3d which requires either a stenographic transcript of the interrogation or an electronic recording thereof, or that the interrogation be conducted in the presence of a "responsible person who is not a law enforcement officer" is in my experience impracticable. The police have very few, if any, employees who could record verbatim interrogations. Electronic recording devices require experienced operatives and are always subject to the charge by defense counsel of tampering or splicing. Finding a "responsible person who is not a law en-

¹ In what amounts to dicta, at p. 509 of 357 U.S., the Supreme Court said: "* * * even in Federal prosecutions this Court has refrained from laying down (a rule that) police could not interrogate a suspect before giving him an opportunity to secure counsel."