

(3) A maximum of 6 hours elapsed time between arrest and completion of the confession;

(4) A responsible witness, other than a law enforcement officer, observing the questioning, or a verbatim transcript or recording of the interrogation.

We are commenting on the proposed safeguards in order.

(1) We have no disagreement with the inclusion of this amendment if "immediately" is omitted. To insure a warning immediately in advance of questioning might require repeated warnings, for it could very possibly be difficult, or impossible, to determine exactly at what point the questioning may be considered to have begun. This is particularly pertinent as the definition of "immediately" is "without interval of time," and any general or miscellaneous remarks or questions between the warning and the legal start of questioning might, by a stretch of the imagination, be used as an argument against the admissibility of the confession.

The proposed amendment, subject to the above comment, is generally in effect at the present time in the District of Columbia and would require no material change in present procedures.

(2) We recommend a revision of the second proposed amendment to read as follows:

"The arrested persons being afforded a reasonable opportunity to consult with counsel of his choosing, if such a request is made."

We believe "notify a relative or friend" should be omitted. A friend or relative could be an accomplice and notification to them could result in the destruction or removal of evidence, or other action, preventing or hindering successful solution of the case.

While consultation with counsel would most probably result in the arrested person being advised to make no statement whatsoever, and thwart the securing of necessary evidence for prosecution, we feel that this desire for counsel should not be denied, if requested by the suspect. However, we do not believe advice concerning the availability of counsel should be required or in any way be a mandatory provision prior to proper interrogation.

(3) The third proposed amendment should be omitted in its entirety. The establishment of a 6-hour maximum may void confessions which under all other requirements are legally admissible. Such a time limit could result in a claim by the defense that the arrested persons were detained unreasonably solely because of the 6-hour time allowance. On the other hand, arrested persons could decide, or be advised, to wait out a 6-hour period without making any statement with the knowledge that any statement made after the expiration of this time limit would be inadmissible.

We oppose the inclusion in any legislation of a time limit between arrest and completion of the confession and would prefer that the determination of the reasonableness of any time interval be left to the discretion of the court.

(4) As regards the fourth suggested amendment, we fully recognize the desirability of corroboration, in one acceptable form or another, of a confession. Our recommended wording to cover this situation is as follows:

"A responsible witness observing the questioning, or if practical a verbatim transcript or recording of the interrogation."

We do not believe that a law enforcement officer should be prevented from qualifying as a responsible witness. Under some circumstances it may be impossible to secure some other witness. It would be a sad commentary on our police officers if we could not so qualify them. We impose other and greater responsibilities on them in the conduct of their normal duties.

We believe it should be recognized that a verbatim transcript or recording should be secured on a "when practical" basis.

In preparing the above comments we have carefully weighed, on the one hand, reasonable and essential safeguards of the defendant's rights, and on the other hand, the rights of innocent and law-abiding society to be protected from criminal depredations. In our opinion, our comments reflect a reasonable balance between these two requirements, and any further tipping of the scales of justice in favor of the accused persons would be denying our law-abiding citizens their rights to safety and protection to which they are fully entitled.

Again, we thank you for this opportunity to present our views on Deputy Attorney General Katzenbach's testimony concerning title I of H.R. 7525.

Sincerely yours,

WILLIAM K. NORWOOD,
Chairman, Public Protection Committee.