

Misauda

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Exclusionary Rule
not known in England
Cross Corporation and
Corporate matters
66 Cal. L. Rev. 79, 88

Asked this problem in Mr. Hobb & Mollary - now Escobedo
If more lawyers available at station have we are likely to get
fewer incriminating statements at that stage.

Do not know statistical significance of station house incrimination
We do have notion of statistical significance of pleas of guilty - &
a significant decrease in the percentage of such pleas could
bring the criminal process to a grinding halt -

Disproportion lacking in the relationship of station house incrimi-
nation and the ultimate plea of guilty -

Police must make arrests & must be sure this lag between
arrest & arraignment - even if all arrests are on probable
cause, it does not wear guilt - Everyone's interest to have
some interrogation; prisoner may want to prove innocence - oblige
No common sense to require the arresting officer not to speak
to the person he has arrested -

Not is it possible to furnish counsel the moment of arrest -
Must be some period of informal interrogation - This could
be so even though we required the police to go straight to the magis-
trate on 24 hour duty -

Delays are inevitable - shall we put a vow of silence on
police - In my view this would exhibit a large dispro-
portion between the problem and the solution.

Prolonged interrogation in the warehouse

How do we square present practice with such principles

There will always be a period of time before counsel can appear - or be reached - & hence before the warning can take effect.

Even though 1st advice is "silence" - may change his mind

Since admittedly counsel is required in formal proceedings how can it be denied at station house?

No doubt poor at disadvantage as compared with rich but criminal code cannot cure that social injustice. It is no OEO program.

Should we trade on these disadvantages

D.C. p 960 -

No questioning before arraignment - Alston 348 F. 2d (1961)

Aims of criminal law & the compatibility of these aims with current practices & with revised procedures.

Aim of criminal law is to sustain & vindicate the conduct of the great preponderance majority - that good & bad are meaningful concepts & their difference is confirmed by solemn judgment of society -

If it can command respect & identify itself with the moral values it vindicates -

We need empirical knowledge - purposefulness of sanctions

No reason to impose irrational restraints on police

No freeze into permanent law folkloric & expedients

Professional law enforcement officers do not condone brutalized extraction of confessions -

This struggle not a sporting event but battle between law & order + criminal element -

∴ must make value appraisal of rights of public & police -

Maple creates tidal waves & earth quakes which require the rebuilding of our institutions sometimes from their very foundations upward. Retaining sessions had to be held from top down to thousands of foot patrolmen - hundreds of 1000