

Three-Hour Quiz *Page 2165*

Like a traveler trying to cram into a vacation suitcase more than it can possibly contain, Police Chief Layton keeps trying to cram his new arrest and interrogation procedure, bequeathed to him by former U.S. Attorney David Acheson, within the confines of the Constitution, the law and relevant judicial decisions. Unhappily for him, it simply cannot be done.

There is something appealing about the Police Chief's relief at being able to explain that the new procedure is not the same as the arrests for investigation forbidden as flagrantly unconstitutional by the D.C. Commissioners. Of course it is not. Under the old system of investigative arrests, the police admittedly arrested on mere suspicion. Under the new system, they are to make arrests only when *they themselves* believe they have probable cause; but their belief is not to be subjected to a judicial test until after they have had an opportunity to interrogate the arrested person for as much as three hours "exclusive of interruptions."

The plain purpose of this procedure, whatever it is called, is to investigate by interrogation—and to have the interrogation take place in the intimidating atmosphere of a police station. The procedure is designed to let the police question anyone they believe to be guilty, before a judge has had opportunity to decide whether their belief is justified, before a judge has had opportunity to advise the arrested person of his constitutional rights and before the arrested person, if he is indigent, can be given the assistance of counsel.

This is precisely what the *Mallory* rule was intended to forbid. If it is not forbidden, an arrested person may be deprived of the right guaranteed by him by the Fourth Amendment to be free from unreasonable arrests; he may be deprived of the right guaranteed to him by the Fifth Amendment to refrain from incriminating himself; and he may be deprived, at the most crucial stage of the case against him, of the right guaranteed by the Sixth Amendment to have the assistance of counsel for his defense. We think it unlikely that the courts are going to allow this disregard of the Constitution of the United States.