

The Washin

AN INDEPENDENT NEWSPAPER

Round Robin Hood's Barn

P. W. 711965

The Department of Justice and the United States Attorney have advised the Metropolitan Police Department to circumvent the Mallory rule instead of trying to overturn it by legislation. While the advice is undoubtedly well meant, we think it is likely to lead to frustration. Under its terms, the police could detain a suspect in a police station and interrogate him concerning a crime for as much as three hours—exclusive of interruptions. Two clear constitutional objections appear to be raised by this proposal.

Arrest is a very grave matter among free men. The Fourth Amendment to the Constitution says that it is permissible only when there is probable cause to believe the arrested person guilty of a particular crime. And the existence of probable cause, it follows, is to be determined not by the police in their unchecked discretion but by a judicial officer. This is why the law at present requires the police to take an arrested person before a committing magistrate "without unnecessary delay."

To say that the police may hold a suspect in a police station for "investigative purpose" is to permit a return to something uncomfortably reminiscent of the arrests for investigation only recently forbidden by the District Commissioners because they were unconstitutional. The express purpose of Mr. Acheson's recommendation is to enable the police to investigate a crime by questioning a suspect—that is, to obtain, by interrogation, the basis for charging him with a crime and establishing probable cause when he is subsequently taken before a magistrate.

The proposed course seems to us constitutionally indefensible on a second count. In his letter to the Chief of Police, Mr. Acheson wrote: "One under arrest should be permitted to communicate with a lawyer, relative or friend, and such persons should be given access to him. Such communication or access should not, however, be allowed where there is reason to believe it is sought for the purpose of concealing or destroying evidence or otherwise defeating the ends of justice."

What this seems to say is that an accused person may have the assistance of counsel provided he wants to cooperate with the law; but the Constitution guarantees the assistance of counsel indistinguishably to the innocent and the guilty. If the latter desire a lawyer to "defeat the ends of justice," they are entitled to have him. The

burden of proving a crime rests on the prosecution.

Mr. Acheson seems to think that the rights of an arrested person can be met by having a policeman tell him of those rights. He proposes, therefore, that a policeman tell the suspect that he need not answer questions, that he may have a lawyer and that "if you cannot afford a lawyer, one may be appointed for you when you first go to court." What a mockery this would make of the principle of equal justice under law. A rich man could have the help of a lawyer during police interrogation; a poor man could have a lawyer only after he had made damaging admissions and been brought to trial on the basis of them.

In a statement before the Senate District Committee on Thursday, Deputy Attorney General Ramsey Clark, while endorsing the Acheson proposals, made some very sound recommendations for combatting crime in the District of Columbia. He urged tightening of the law here relating to the possession of firearms, enlargement of the Court of General Sessions, better equipment for the Police Department, increased police pay and manpower and similar practical measures for strengthening law enforcement.

At the same time, he urged the Committee "to refrain from action in the Mallory area pending a review of experience under the police procedures initiated yesterday." This seems to us extremely good advice. We think, however, that experience with these procedures will lead inevitably to judicial rejection of them as unconstitutional. But this is at least preferable to counseling Congress to enact a law which the Courts would be obliged to declare invalid. The right response to the Mallory rule, in our judgment, is to accept it and live with it as implicit in the concept of ordered liberty.