**Attorneys Begin Study**

# Little Learned of Mallory Rule's Effect

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Eight years after the Supreme Court's ruling in the Mallory case, lawyers in the Justice Department have come up with a distrubing discovery.

They have learned that despite hundreds of court cases, volumes of congressional testimony and uncounted speeches, not much is known about the decision's effects on law enforcement.

A maximum of emotionalism and a minimum of calm study have combined, in the Department's view, to make the city's experience almost useless as a basis for advising Congress on legislating in this criminal area.

As a result, Government attorneys have begun a study, and Congress has been asked to hold off until it is completed. A key part of the study is a new procedure that will allow Washington police three hours for questioning suspects. This replaces a ban on stationhouse questioning issued last fall.

**Experiments Planned**

The study will include experiments with record-keeping and tape recording of police questioning. It may fend off legislation and help take the heat off Congress, but it will not necessarily avoid controversy in a legal area that is disputed and unclear.

It is clear enough that the 1957 Mallory decision, which threw out a prisoner's confession because it was obtained during an "unnecessary delay" between arrest and arraignment, has restricted the police to some extent in questioning suspects.

Restriction was the idea. The late Justice Felix Frankfurter said for a unanimous Court, "It is not the function of the police to arrest, as it were, at large and to use the interrogation process at police headquarters in order to determine whom they should charge."

The result was that Andrew Mallory, sentenced to death for rape, went free because the only useful evidence against him was excluded as the result of illegal questioning. As the Court had done in the 1942 McNabb case, it applied judicial sanctions to law officers to force them to obey Federal law in gathering evidence.

For at least eight years, then, Washington police have been "living with" the strict requirements long demanded of Federal officers.

**Valuable Experience**

Such experience should prove valuable in helping Congress legislate, if legislate it must, in the criminal field. Beyond this, Washington could have been a laboratory producing information for state law officers and legislators who are having to face up to Federal standards of criminal investigation.

Instead, surprisingly little is known today about police questioning methods. Here are some of the unknowns:

- Beyond the few well-publicized court rulings, how often have police "lost" a case at the investigative stage because of curbs on questioning? (There is dispute over whether the "losses" are worth the savings in terms of individual rights, but there is little information on what the "losses" are.)
- In what kinds of cases is questioning most effective and used most effectively?
- How often does limited questioning result in the clearing of suspects or sharp reduction in the charges against them?
- How effective is a warning by police that the accused need not answer questions and that anything he says may be used against him in court? (Such warnings are so rare that data are considered nonexistent.)
- What happens when the secrecy of the question-devices as a tape recorder? ing room is broken by such

Justice Department attorneys began seeking answers to such questions last fall and to measure the effects of the Police Department directive against stationhouse questioning of suspects.

Members of the new Office of Criminal Justice interviewed policemen, rode around in detective cruisers and gathered tentative statistics. They determined that "some losses" to prosecution had resulted and that much more study was needed.

Meanwhile, pressure was building in Congress. The House passed a bill that would expand police questioning powers so greatly that it is not under active Senate consideration because of constitutional doubts. Nevertheless, members of the Senate District Committee have insisted that "something must be done" and they have pressed for an action recommendation from the Justice Department.

**Opening Seen**

Some legislative help had been expected from the American Law Institute, which is working on a model code for arrests. But so controversial is the problem that hope of anything in that area must await a more general consensus.

The Justice Department and United States Attorney David C. Acheson saw an opening for furthering fact-gathering—and a way to relieve the legislative pressure—in recent rulings by panels of the United States Court of Appeals. Some appellate interpretations of the Mallory Rule have seemed to point to more leeway in questioning under certain safeguards.

These and other considerations led Acheson to offer Police Chief John B. Layton fresh advice on interrogation practices. On the eve of recent Senate hearings, he wrote Layton that arrested persons, provided they were arrested on probable cause, could be questioned up to three hours before going before a judge or commissioner.

**Flexibility in Time**

More time would be allowed if needed to check an alibi, to confront witnesses or to check records. The suspect would be told that he need not answer questions, that what he said might be used against him and that he could call a lawyer, a relative or a friend. Police would keep more detailed records and experiment with tape recordings.

This fact-gathering approach has drawn fire from the standpoint of civil liberties. Many lawyers believe the Mallory decision was actually a vindication of the Fifth Amendment privilege against self-incrimination. If so, they say, police and prosecutors are experimenting with rights guaranteed by the Constitution.

In the view of Justice Department lawyers, however, the courts haven't told them "positively" yet. They are hoping that Congress, too, will delay a decision. Legislation might freeze police procedures and provoke an unwanted constitutional test in the courts.