

In *Charles S. Coleman v. United States*, 114 U.S. App. D.C. 185, 313 F. 2d 576 (1962), a delay of 2 hours and 5 minutes was, again by a divided court, held fatal to the admissibility of the conviction.

In *Tony A. Coleman v. United States* —, U.S. App. D.C. —, 317 F. 2d 891 (1963), a divided court permitted the conviction on one count to stand although based upon a confession given 1 hour after the arrest, but reversed the conviction on other counts based upon confessions given 2 or 3 hours after arrest.

Most recently, in a dissenting opinion in *Robert A. Muschette v. United States*, D.C. Cir. No. 17410 (July 25, 1963), it was contended that a confession obtained 25 minutes after arrest and 1 hour and 50 minutes before the arrested person was presented to the committing magistrate should be excluded.

This past summer, in *United States v. James J. Jones*, Criminal No. 366-63, the trial judge excluded a confession which occurred within 15 minutes after arrest and prior to presentment of the arrested person to the committing magistrate. The dissent in the former case and the ruling in the latter case were based on the ground that no interrogation of any length is permissible and, indeed, an arrested person is not to be taken to the precinct or to headquarters for booking and fingerprinting, but is to be taken before a magistrate forthwith. Thus, "without unnecessary delay" was considered to mean "without any delay."

Obviously, such an interpretation of the *Mallory* rule changes it from a rule of reason to an absolute prohibition of interrogation following arrest. In my opinion, this goes far beyond the evil against which the Supreme Court spoke out in *Mallory*.

As I indicated in my written report to the committee, dated September 13, 1963, interrogation itself is not a violation of due process or of other constitutional rights. Free of abuse, interrogation is a valuable investigative tool for arriving at facts.

The only safeguard in title I is that the arrested person must be advised he is not required to make a statement and that any statement made by him may be used against him. The dissents of four justices in two Supreme Court cases (*In re Groban*, 352 U.S. 330 (1957); *Anonymous v. Baker*, 360 U.S. 287 (1959)) suggest that such a warning is not adequate.

In the view of these justices, compulsory interrogation in camera, without permitting the arrested person to be accompanied by counsel, amounts to a denial of due process of law.

If, therefore, this committee concludes that some corrective legislation is necessary, it is my recommendation that at a minimum four essential safeguards of defendants' rights must be incorporated in it. In addition to expressly preserving the rule against unnecessary delay, the legislation must provide for—

- (1) A plain warning to the defendant, immediately in advance of the questioning, that he is not required to make any statement at any time and that any statement made by him may be used against him;

- (2) The arrested persons being afforded a reasonable opportunity to notify a relative or friend and consult with counsel of his choosing;