

1962, an unusually high percentage of crime solutions, particularly in acts of violence without the aid of the confession. Although crime is on the upgrade in England, felonies increasing from 283,220 in 1938 to 896,424 in 1962, we find that in 1962, there were 37,958 offenses charging acts of violence with 32,027 cases cleared during the same year.

It is clear from these figures that adherence to a strict code of police behavior is not a handicap to police efficiency. On the other hand, slack and unimaginative police work cannot occur where recourse to extra legal action is not available in the solution of crime.

It should be pointed out that the *Mallory* rule does not prohibit questioning of a suspect. It simply requires arraignment without unnecessary delay.

The crucial period during which mental or physical coercion may be applied is between the time of detention and arraignment. The investigation into lawless enforcement of law conducted by the Wickersham Commission showed that out of 106 cases reported between 1920 and 1930 in appellate courts where use of the third degree was charged, there were only 7 cases where the prisoner declared that the third degree was used after he had been brought before a city magistrate.

Coercion itself is always hard to prove because the questioning takes place in secret. It is true that H.R. 5726 provides that—

Such questioning and the warning and advice required by subsections (a) and (b) of this section were, whenever reasonably possible, witnessed by a responsible person who is not a law enforcement officer or transcribed verbatim or recorded by a wire, tape, or other sound recording or conducting subject to other comparable means of verification.

This provision simply provides for verification of the accuracy of the warnings and advice with reference to self-incrimination, also to notify a relative or friend and consult with counsel. This does not provide for verification of the actual questioning, and it is well established that mere questioning, in and of itself, can be coercive under certain circumstances.

Section 3 of H.R. 5726 establishes a 6-hour period for detention between the time of arrest and completion of the confession, statement or admission. Could not this result in establishing the norm for investigative arrests?

Deputy Attorney General Katzenbach conceded this as a possibility in his questioning by Senator Dominick in his appearance before this committee yesterday. This establishes an arbitrary standard in which questioning which, in fact, was coercive could take place and confessions so acquired would be admissible. Deputy Attorney General Katzenbach seeks to justify the 6-hour rule on the basis that recent decisions of the District Court of Appeals have reversed convictions based upon confessions given 2 or 3 hours after arrest. He states:

Thus, "without unnecessary delay" has come to mean "without any delay."

On cross examination, Deputy Attorney General Katzenbach concedes that while confessions were obtained within 2 or 3 hours or less after arrest, arraignment in some instances did not take place until the following day. The *Mallory* rule simply requires the court to find that under a particular set of circumstances, delay was unnecessary. It may be that in each of the instances cited by Deputy Attorney Gen-