

SYNOPSIS OF COURT CASES PERTINENT TO MALLORY RULE

Anonymous v. Baker

(360 U.S. 287 (1959))

Question: Whether due process clause of 14th amendment requires presence of counsel in hearing room with witnesses summoned in State judicial inquiry into improper practices at the bar.

Brooklyn Bar Association presented petition charging ambulance chasing and other unethical practices by local bar; N.Y. State Supreme Court ordered an investigation. Justice Baker presided. Appellants were private investigators, not lawyers; subpoenaed to testify, appeared with counsel. Justice Baker told appellants counsel not allowed in hearing room, but appellants would be free to leave room to consult counsel at any point. For that reason appellants refused to testify. Convicted of contempt. Appellants Division affirmed; N.Y. Court of Appeals dismissed appeals. U.S.S.C. treated appeal as cert. petition.

Held: Affirmed. Weaker claim of denial due process than *Groban*, since judge conducted investigation and allowed free right of consultation of counsel. Doesn't matter that appellants might have been prosecuted as result of investigation.

Dissent (Warren, Black, Douglas, Brennan): Reaffirms dissenting view in *Groban*.

IN RE GROBAN (352 U.S. 330 (1957))

Question was whether appellants had right, under due process clause of 14th amendment, to have counsel present in giving of testimony in fire marshal's investigation.

Fire marshal investigating fire on premises of appellants, subpoenaed appellant to appear. Refused to permit counsel to attend under authority of Ohio Code. Appellants declined to testify without counsel present. Under Ohio Code, fire marshal committed appellant to county jail until willing to comply. Habeas corpus denied — affirmed by Ohio Supreme Court.

Held: Affirmed (5-4 vote, opinion by Reed). No more right to presence of counsel in fire marshal's hearing than in grand jury. Privilege of silence is protection of witness. Presence of counsel might encumber proceeding — State code not contrary to fundamental liberty and justice.

Dissent: (Black, Warren, Douglas, Brennan.) Due process requires attendance of counsel at secret inquisition which holds possibility of incrimination of witness or citation for contempt.

TONY A. COLEMAN v. UNITED STATES (317 F.2d 891 (4-19-63))

Conviction on housebreaking count 7 affirmed. Conviction on housebreaking counts 1-6 reversed. (J.J. Danaher (writing), Burger, (Washington dissenting as to count 7).)

12:25 a.m.—Defendant seen by police standing by store door, padlock broken, defendant carrying tire iron. Defendant claimed waiting for a friend, carrying tire iron for protection.

12:30 a.m.—Defendant arrested at scene for housebreaking (count 7). Defendant taken to precinct.

1:00 a.m.—Two detectives sent from headquarters to interrogate defendant, questioning commenced. Defendant denied complicity in housebreaking (count 7).

Detectives went back to store, got samples of paint and wood chips from door. Returned to defendant and told him laboratory test would compare samples with particles on tire iron.

1:45 a.m. (approx.)—Defendant admitted guilt (count 7).

1:45-3:00 a.m.—Defendant questioned as to other unsolved housebreakings.

3:00 a.m. (approx.)—Defendant admitted guilt in other cases (counts 1-6).

3:00-3:30 a.m.—Defendant accompanied police to scene of other cases (counts 1-6).

3:30-4:45 a.m.—Transcription of confession as to counts 1-6.

10:00 a.m.—Defendant presented to magistrate.