



ECBA Conference Program

Saturday 6 October 2007

CASE STUDY

The Lyon Financial squad suspects Mr Francis Malain, manager of a Swiss mail order selling company, of having committed several felonies, such as swindles, misuse of company assets and forgeries.

Mr Marcel Malain, the suspect's brother and also manager of the company, is questioned as a witness for two hours by the police service. He explains that he cannot supply the police with the bank and annual accounts of the company, as his brother's lawyer, Me Dupont is in possession of them.

The squad decides to arrest Mr Francis Malain and to carry out a search of his home. In order to acquire the company accounts, the police service contemplates the possibility of carrying out a search of Me Dupont's firm.

Mr Francis Malain is also questioned first as a witness for two hours and then as a suspect for twenty four hours. At the same time, police officers carry out a search of the law firm and of the suspect's home.

The following day, Mr Francis Malain is handed over to the Lyon examining magistrate for questioning.

- How can the Malain brothers' lawyers intervene?
- How can the suspect and the witness communicate with their lawyers?
- What are the guaranties that protect the searches carried out by the police?
- How is the questioning in front of police and magistrates carried out? Is Me Dupont able to attend?
- Who can Me Dupont speak to about the case and the searches? Can he give information to Mrs Malain or to Mr Durand, Mr Malain's partner? Can he speak to the press?
- Can Me Dupont keep evidence given by his client's family at his office? Can he withhold from the police confidential information received from Mrs Malain?
- Who can Me Dupont accept payment fees from?