

enforcement officials could say everybody was doing it, it's all right—it does not become constitutional because enough of them do it. And it seems to me—sure they do it. I admit it. I admit that in Minneapolis there are “arrests for investigation.” But there is not a doubt in my mind it is unconstitutional. I mean we do a lot of things which are wrong, whether in this or other areas. There is a great deal of unconstitutional behavior going on in the South. It is still unconstitutional.

The CHAIRMAN. The point I am driving at is, then, that under your theory you would be able to—

Mr. KAMISAR. I would prefer to say under the Supreme Court decisions, as most people would read them—it is not my theory—I am simply reporting the Supreme Court law to the best of my ability. I do not think there is any doubt, the Supreme Court of the United States has made it crystal clear that you cannot go around “rounding up” people. That is the most spectacular, flagrant violation of the protection against unreasonable search and seizure there is. Sure, it happens. I understand that there was—I have not documented it, but I read it somewhere in a District of Columbia opinion—that 6,000 people were picked up in connection with a recent investigation involving four murders. (This “roundup” is referred to in *Jones v. United States*, 266 F. 2d 924, 930 n. 21 (1959).) Well, that may be speedy and efficient police work in a narrow sense, but that is unconstitutional.

The CHAIRMAN. What can you do, then, under your theory? What would you do to help strengthen the arm of the police? Because they do have these problems.

Mr. KAMISAR. For one thing, Mr. Chairman, I happen to believe that a substantial improvement might be worked if the police questioned more rather than arrested.

Now I understand the chief of police laughs at this and says some of the people he knows will just laugh in his face. Now my answer to this is this.

I don't think that most people are going to laugh in a policeman's face when he walks up to you and says, “Look, we are not arresting you, we are not putting you under restraint. We would like to have you cooperate.”

Now, if the man is hardened enough and defiant enough that he is going to laugh in a policeman's face, then you are not going to get anything out of him if you question him 5 or 6 hours.

Now, to follow that point up—the FBI may be a different breed than most police forces. But the people they deal with are the same. And it is very significant to me that in the lectures that the U.S. attorney's office gave the District of Columbia police on several occasions, the U.S. attorney, then Oliver Gasch, made this point.

Now I read—these are the hearings of July 1958. (Hearings before a subcommittee of the Senate Committee on the Judiciary, 85th Cong., 2d sess., on H.R. 11477, S. 2970), and this is page 413:

There may be other cases, of course, in which you follow the tactics that have been explained to me, and probably to many of you, by the FBI, in which you say to a man that you want to interrogate, “You are not under arrest, you are free to go at any time that you want to, but we are trying to solve such-and-such case, and I am working on that case, and I would just