

like to see if I could not get a little help from you." Well, they tell me that in many of the cases in which they work that technique is effective, that technique has paid off, and that technique and that system will undoubtedly be a good basis for our arguing in court that such a man was very definitely not under arrest and that admissions he made during such questioning would not be subject to the strict qualifications of the *Mallory* rule.

And again on page 397 this point is discussed. And on page 409:

I would like to emphasize what Assistant U.S. Attorney Tom [Flannery] said about the desirability of using new techniques to the extent possible insofar as questioning work is concerned. That it is a widely used technique by the Bureau. You never can tell whether it will work or won't work in your type of case until you try it. And if you get a break that way, you can remember the *Mallory* rule does not apply to a confession secured prior to arrest.

Of course, I was impressed by the fact that I went down to the FBI School at Quantico with Inspector John Layton and some others a year ago. We talked about this thing with the instructor at the school. He told me the way they usually handled a situation like that is when they go into a man's home they say to him, "I just want to talk with you about this situation. You are not under arrest, you are free to go, but I have talked to a few people and maybe you can help me solve this crime."

Now the instructor down there, a man of 15 years' experience, told me the technique has been found quite productive by their men in many different kinds of cases.

Now, there is no stigma—the man is not arrested. He has no record. He is not dragged down to headquarters. I happen to think the great majority of people will cooperate whether they are indirectly coerced or not—I think that is the normal reaction. The point is at least they have not been arrested. And I think that if the FBI can do this, so can all policemen.

The CHAIRMAN. That does not violate any constitutional guarantee?

Mr. KAMISAR. Absolutely not. It does not violate anything.

The CHAIRMAN. I say "Professor, I want you to come along. You and I are going to have a friendly talk. I just want to ask you a few questions."

Mr. KAMISAR. You can say this—"I cannot arrest you. I am not going to take you down to headquarters at this point. I may come back and do it later if I have enough information. I am just going to ask you whether you are willing to cooperate."

Now, I think most people will say, "Yes, I will answer the questions. Maybe I can help you."

Now, no one has ever forbade mere questioning. The main problem is the stigma of arrest—when you grab these guys and take them down and then question them later. It seems to be routinely done. But as Commissioner Duncan said a couple of years ago, he said—maybe it doesn't happen any more, but it happened in the old days—Negroes going to Howard University or Howard Law School or Medical School got picked up in a big roundup, and 15 or 20 years later, when some of them are lawyers and doctors, they are still trying to explain why they were arrested 15 years before.

It is a big difference from the point of view of the man being questioned. And apparently it has worked in a number of other jurisdictions. And I just throw that out.

I also suggest—well, to buttress the point I just made, it is interesting to note that in a number of recent *Mallory*-type cases, when a man is brought before a committing magistrate, and then put in the custody of the marshal or the warden, you must get him to sign a