

conduct is under investigation, he approaches this individual and he talks to him and inquires concerning what facts he desires to know, and——

The CHAIRMAN. You mean, wherever he happens to intercept him?

Mr. PYE. Wherever he is intercepted. It could be a case where the police officer observes suspicious conduct on the street or the case where the officer goes to his home and he questions him, after having obtained entrance he questions him and he asks him those questions there.

It would appear that this is lawful. Now, on the second question, whether you can advise him to accompany you to a detention facility and interrogate him there, as long as he does not object, that seems quite clear. There is an opinion in the second circuit, *The United States v. DeKa*, holding that this is legal, that the defendant who voluntarily accompanied the Federal Bureau of Investigation officers to a police station where he was interrogated for a period of 7 hours, had not been placed under arrest, and unless he had been placed under arrest the requirements of 5(a) did not apply and therefore there was no obligation——

The CHAIRMAN. Along that line is what Professor Kamisar suggested. Instead of arresting and then questioning you can elicit the same information by artful questioning before arrest.

Mr. PYE. That is correct. There is this exception, and this is a very real one, if the defendant says "No, I don't want to answer your questions," unless you have probable cause, you can do nothing except leave him.

The CHAIRMAN. Of course, under your theory and Dr. Kamisar's theory, as I understand it, you can't do it anyway, if they stand on the *Mallory* case.

Mr. PYE. Well, I am not sure that is true, sir. We have a period of time in which we know of no confession which has been excluded under *Mallory* in a time interval shorter than 2½ hours and the cases clearly establish that if you arrest a person and put him in a squad car and take him to the precinct and ask him questions en route to that precinct and he answers them, his answers are admissible and while you are going through the booking process, the answers are admissible and while you are fingerprinting him, they are admissible.

The cases simply hold that after you have completed the routing booking purposes you may not then continue if you have no other purpose than interrogation, at that stage you have the duty to produce him before a magistrate. There is some opportunity.

The problem is that while you are going through these stages you do not have the secrecy, nor do you have the inductive effect of a police detention facility which is more likely to encourage a confession, and it is undoubtedly true that a sophisticated criminal, if he knows you are going to have to produce it promptly, he is more likely to volunteer a confession than if he has reason to believe that you can detain him for some period of time without——

The CHAIRMAN. That was the point made in the *Mallory* case. There Justice Frankfurter stated that the arrested person may of course be booked by the police but he is not to be taken to the police headquarters in order to carry out a process of inquiry, so designed as to elicit damaging statements to support an arrest.