

Excerpts of Rulings on

Admissibility of

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Confessions

Here are excerpts from yesterday's Supreme Court opinion on the admissibility of statements obtained in questioning of a person in police custody, and on the Fifth Amendment protections such a person is to be afforded against self-incrimination.

This opinion, by Chief Justice Warren, encompasses four cases — *Ernesto A. Miranda v. the State of Arizona*, *Michael Vignera v. the State of New York*, *Carl Calvin Westover v. United States and the State of California v. Roy Allen Stewart*.

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime . . .

I.

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action.

In each, the defendant was

questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world.

In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials.

They all thus share salient features — incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights . . .

Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented . . . Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.

A valuable source of information about present police practices, however, may be found in various police

manuals and texts . . .

In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe.

Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired object may be obtained."

When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice.

It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In *Miranda v. Arizona*, the police arrested the defendant and took him to a special interrogation room where they secured a confession. In *Vignera v. New York*, the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In *Westover v. United States*, the defendant was handed over to the Federal Bureau of

Investigation by local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning.

After some two hours of questioning, the federal officers had obtained signed statement from the defendant.

Lastly, in *California v. Stewart*, the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect pre-

vious Fifth Amendment rights is, of course, not lessened in the slightest.

In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in *Miranda*, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in *Stewart*, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade.

To be sure, the records do not evince overt physical coercion or patented psychological ploys.

The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner . . . The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles — that the individual may not be compelled to incriminate himself.

Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of

his free choice . . .

II.

We are satisfied that all the principles embodied in the privilege against self-incrimination apply to informal compulsion exerted by law-enforcement officers during in-custody questioning.

An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak.

As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery . . .

III.

Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves.

We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.

In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored . . .

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.

For those unaware of the privilege, the warning is needed simply to make them aware of it — the threshold requirement for an intelligent decision as to its exercise.

More important, such a

warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury.

Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it . . .

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it.

It is only through an awareness of these consequences that there can be any

assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system — that he is not in the presence of persons acting solely in his interest.

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators.

Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process.

A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end . . . Even

preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver.

No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given.

The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel.

Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today.

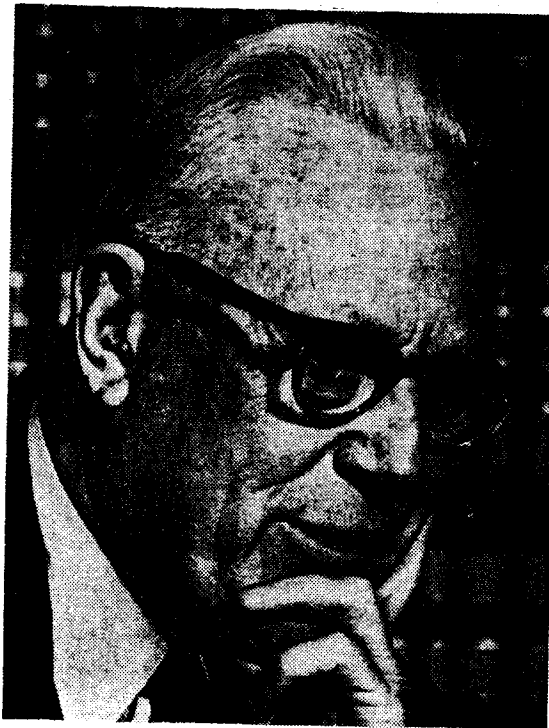
As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here.

The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the

affluent.

In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us as well as the vast majority of confession cases with which we have dealt in the



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CHIEF JUSTICE EARL WARREN

past involve those unable to retain counsel.

While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice . . .

In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.

Without this additional warning, the admonition of the right to consult with

counsel would often be understood as meaning only that he can consult with a

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.

At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.

Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.

If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may do so without violating the person's Fifth Amendment privilege so long as they do not question him during that time.

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel . . .

An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver.

But a valid waiver will not be presumed simply from the silence of the accused

after warnings are given or simply from the fact that a confession was in fact eventually obtained . . .

Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives some information on his own prior to invoking his right to remain silent when interrogated.

Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights.

In these circumstances the fact that the individual eventually made a statement is consistent with the con-

clusion that the compelling influence of the interrogation finally forced him to do so.

The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.

The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements which are direct confessions and statements which amount to "admissions" of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination.

Our decision is not intended to hamper the traditional function of police officers in investigating crime. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene ques-

tioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement.

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement.

Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence.

The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make.

Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.

IV.

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged . . .

If the individual desires to exercise his privilege, he has the right to do so. This is not for the authorities to decide. An attorney may advise his client not to talk to police until he has had an opportunity to investigate the case, or he may wish to be present with his client during any police question-

ing.

In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement . . .

Justice Harlan

One of two dissenting opinions was by Justice Harlan, with Justices Stewart and White concurring. Excerpts follow:

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it.

There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions.

To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.

How much harm this decision will inflict on law enforcement cannot fairly be

predicted with accuracy. Evidence on the role of confessions is notoriously incomplete, and little is added by the Court's reference to the FBI experience and the resources believed wasted in interrogation. We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a real risk with society's welfare in imposing its new regime on the country.

The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

It is no secret that concern has been expressed test long-range and lasting reforms be frustrated by this Court's too rapid departure from existing constitutional standards. Despite the Court's disclaimer, the practical effect of the decision made today must inevitably be to handicap seriously sound efforts at reform, not least by removing options necessary to a just compromise of competing interests.

Of course legislative reform is rarely speedy or unanimous, though this Court has been more patient in the past. But the legislative reforms when they came would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs.

In conclusion: Nothing in the letter or the spirit of the Constitution or in the precedent squares with the heavy handed and one-sided action that is so precipitously taken by the Court in the name of fulfilling its constitutional responsibilities.

The second dissent, by Justice White, was joined by Justices Harlan and Stewart. Excerpts follow:

The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. As the Court declares that the accused may not be interrogated without counsel present, absent a waiver of the right to counsel, and as the Court all but admonishes the lawyer to advise the accused to remain silent, the result

adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not.

This is the not so subtle overtone of the opinion—that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub of this dissent.

I see nothing wrong or immoral, and certainly nothing unconstitutional, with the police asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife or with confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent.

There is, in my view, every reason to believe that a good many criminal defendants, who otherwise would have been convicted on what this Court has previously thought to be the most satisfactory kind of evidence, will now, under this new version of the Fifth Amendment, either not be tried at all or acquitted if the State's evidence, minus the confession, is put to the test of litigation.

I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.

In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him.

As a consequence, there will not be a gain, but a loss, in human dignity.

The real concern is not the unfortunate consequences of this new decision on the criminal law as an abstract, disembodied series of authoritative proscriptions, but the impact on those who rely on the public authority for protection and who without it can only engage in violent self-help with guns, knives and the help of their neighbors similarly inclined.

There is, of course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case.

Nor can this decision do other than have a corrosive effect on the criminal law as an effective device to pre-

vent crime. A major component in its effectiveness in this regard is its swift and sure enforcement.

The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it.

This is still good common sense. If it were not, we should posthaste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct.

Justice Clark, in a separate opinion, dissented in the Miranda, Vignera and Westover cases but concurred in the result reached by the Court's majority in the California case. Excerpts follow:

I am unable to join the majority because its opinion goes too far on too little, while my dissenting brethren do not go quite far enough.

Nor can I agree with the Court's characterization of the present practices of police and investigatory agencies as to custodial interrogation.

The materials referred to as "police manuals" are not shown by the record here to be the official manuals of any police department, much less in universal use in crime detection.

Moreover, the examples of police brutality mentioned by the Court are rare exceptions to the thousands of cases that appear every year in the law reports . . .

Rather than employing the arbitrary Fifth Amendment rule which the Court lays down I would follow the more pliable dictates of Due Process Clauses of the Fifth and Fourteenth Amendments which we are accustomed to administering and which we know from our cases are effective instruments in protecting persons in police custody.

In this way we would not be acting in the dark nor in one full sweep changing the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society.

It will be soon enough to go further when we are able to appraise with somewhat better accuracy the effect of such a holding.