

Miranda Decision Debated

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The Supreme Court has received a barrage of sharply conflicting advice over what to do with the controversial Miranda rule, the 1966 decision that curbed police interrogation powers.

A Michigan prosecutor said it was time to discard or at least restrict the rule, which requires police to warn suspects of their constitutional rights, including the right to free legal advice, before questioning them.

The Justice Department argued that the rule should be limited to its original scope—the barring of illegally obtained confessions as trial evidence—and not extended to deprive police of leads to other evidence they get from suspects during improper questioning.

Urging the court to hold fast to the Miranda rule were the Detroit Bar Association and a lawyer for Thomas W. Tucker, whose conviction for a brutal rape has become the vehicle for the high court's second look at Miranda.

The Miranda rule prevented prosecutors in Pontiac Township, Mich., from using Tucker's statements to police as evidence at his trial. But the prosecution did produce a witness whose name they had learned from Tucker.

Although Tucker had told police that his friend would support his alibi, the witness testified instead that Tucker had told him of having sexual relations with "a widow woman" who lived in the neighborhood. The prosecution conceded that it learned of the witness's identity only through Tucker.

Lower federal courts ruled that the testimony of the witness, like a confession, should have been suppressed. They cited the "fruit of the poisonous tree" doctrine, under which the Supreme Court, in

cases involving illegal searches, has said the government should not profit even indirectly from its own violation of a defendant's rights.

Prosecutor L. Brooks Patterson told the justices that if the Miranda doctrine extends that far, it should be modified so that failure to give complete warnings to suspects would not taint everything police learn from them.

The police should be commended, not criticized, for checking out Tucker's alibi, Patterson said.

Justice Department attorney Edward Korman said the federal government supported Michigan without going so far as asking that Miranda be overruled. He said the lower court rulings could deprive the government of evidence obtained during the solution of "ongoing, serious criminal activity" like kidnappings.

Kenneth M. Mogill, court-appointed counsel for Tucker, argued that permitting the use of investigative leads from illegal questioning would "remove the incentive" police now have to obey the high court's rules.

Some support for this point came from Justice Byron R. White, a bitter dissenter in the 5-4 Miranda decision. Police "will have a motive" to conduct improper questioning if they are permitted to seek other evidence that way, he suggested.

Mogill lashed directly a decision rendered by Chief Justice Warren E. Burger in 1963 as a judge of the U.S. Court of Appeals here. He said Burger had established an "unworkable" test for deciding when to suppress testimony of a witness.

Burger's opinion, sustaining two convictions in the 1962 robbery-slaying of Washington pianist Miksa Merson, said that although physical evidence might be excluded from a trial, the identity of a live witness was not subject to the same restrictions.

The chief justice asked Mogill to cite cases in which lower courts had found his reasoning "unworkable." Mogill replied that U.S. District Court Judge Gerhard A. Gesell had rejected it in a 1970 decision suppressing evidence in a Washington robbery case.

After hearing the arguments March 20, the justices took the Tucker case under advisement and are expected to decide it by June.