

# Confession Curb

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## Limited to New Cases

### High Court's 7-2 Ruling Applauded

#### Prosecution Hopes Are Exceeded; Justices Adjourn

By John P. MacKenzie  
Washington Post Staff Writer

To the relief of police and prosecutors across the country, the Supreme Court yesterday limited its tough new guidelines on confessions to new criminal cases. The Justices then adjourned for the summer.

The Court refused, 7 to 2 to give retroactive effect to restrictions on police questioning in the absence of effective warnings to suspects of their constitutional rights.

Most observers had expected the Court to deny the benefits of its new criminal rules to thousands of closed cases. But in a surprise development, the Court went beyond even the pleas of prosecutors.

#### Only Future Cases

The Court announced, in an

opinion by Chief Justice Earl Warren, that the severest limitations on police would affect only criminal trials begun after the rules were laid down a week ago.

In earlier cases denying retroactive effect to new constitutional doctrine, prisoners whose direct appeals to higher courts were pending could benefit from the new rules.

With this dictum the Court cleared its docket of nearly 200 cases that had been held in abeyance awaiting last Monday's decision and refused to review them.

Only the principals in last week's cases—Ernesto Miranda in Arizona, Michael Vignera in New York, Roy A. Stewart in California and Carl C. Westover in a Federal bank robbery case—will get new trials.

#### Black, Douglas Dissent

Justices Hugh L. Black and William O. Douglas dissented, with Douglas adding that he saw "no reason for discriminating" against prisoners whose direct appeals were "of the same vintage" as Miranda's.

The Court's announcement appeared calculated to take some of the sting out of the Miranda decision, which was denounced by many law enforcement officials as spelling

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## Court Limits Confession Curb to New Cases

the end to all police questioning.

Dozens of serious cases were in the appellate pipeline. Few if any convicted prisoners received anything approaching the police warnings and other self-incrimination safeguards the Court now requires.

Among those who might have stood to benefit from retroactive rules were Nelson Drummond, Navy yeoman sentenced to life imprisonment for selling security information to the Soviet Union.

In addition, dozens of prisoners convicted of crimes ranging from marijuana possession to murder of police-

men, were seeking direct Supreme Court review.

Springboard for the Court's announcement was the case of Sylvester Johnson and Stanley Cassidy, who are under death sentences for the 1958 holdup-murder of a toy merchant in Camden, N.J.

Johnson and Cassidy exhausted their direct appeals by 1960 and had avoided the electric chair by a series of habeas corpus pleadings. The latest attack was begun after the 1964 decision reversing the murder conviction of Danny Escobedo, another decision the Court refused yesterday to apply to old cases.

New Jersey's Supreme Court assumed that the Escobedo rule against questioning a suspect who was denied counsel would apply to the Johnson-Cassidy case of prolonged police detention and questioning. But the lower court, like most of the Nation's courts, rejected the retroactivity argument, and the Supreme Court agreed.

### Read by Brennan

In the absence of the Chief Justice due to the death of his sister in California, Warren's majority opinion was read to the chamber by Justice William J. Brennan Jr. Justice Abe Fortas, a third member

of the 5 to 4 majority in the Miranda case, joined Brennan in the opinion.

Justices Tom C. Clark, John M. Harlan, Potter Stewart and Byron R. White concurred in the ruling but repeated their strong opposition to the new confessions guidelines. Black and Douglas wrote no opinion but noted their continuing resistance to setting limits on new constitutional doctrines.

Warren's opinion insisted that the majority did not "disparage" the self-incrimination privilege. He said limitations on the privilege were governed by the purpose of the new rules, reliance by police on the old rules and the potential "burden on the administration of justice."

He compared the Miranda decision to rulings that "affected the very integrity of the fact-finding process" and "averted the clear danger of convicting the innocent."

By contrast, Warren said, the Miranda rule embraces more than protection against unreliable, coerced confessions. In order to vindicate other rights, the rule excludes

use of confessions that may be truthful, he noted.

Law officers had relied, with good reason, on previous Supreme Court rulings, no longer binding, that refused to upset "an entire process of in-custody interrogation," Warren said. He said retroactive application of the rule would not cure past errors.

### Acknowledges Disruption

A retroactive rule "would seriously disrupt the administration of our criminal laws," Warren acknowledged, requiring "the retrial of release of numerous prisoners found guilty by trustworthy evidence in conformity with previously announced constitutional standards."

Warren said remedies for coerced confessions were still available, both for old cases and the cases stripped from the Court's docket yesterday.

To emphasize the point, the Court set aside the death sentence of Elmer Davis Jr., a North Carolina Negro who confessed to a rape-murder after 16 days in the custody of Charlotte police.