

Justices Won't Extend, Overturn Police Curbs

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The Supreme Court refused yesterday either to extend or to overturn the restrictions on police and prosecutors under its controversial 1966 confessions decision, *Miranda vs. Arizona*.

By an 8-to-1 vote the court sustained the use of evidence obtained by police after questioning in violation of the so-called "Miranda rules." But the outcome rested mainly on the fact that the questioning occurred before the rules were laid down.

At the same time the court ignored invitations by Michigan and other states to discard the guidelines as an unnecessary obstacle to law enforcement.

It was the latest of a series of criminal law decisions indicating that the high court, as currently constituted, will interpret the *Miranda* ruling as narrowly as possible, resisting efforts by defendants and civil libertarians to enforce the broad language written by former Chief Justice Earl Warren.

Three years ago the court permitted prosecutors to use an illegally obtained confession to discredit the defendant when he took the witness stand to deny a crime. Dissenters protested then, as Justice William O. Douglas said in his lone dissent yesterday, that exceptions to the *Miranda* rules will invite police evasion.

Yesterday's ruling reinstated the rape conviction of Thomas W. Tucker and his 20-to-40-year prison sentence for a brutal assault on a woman in

Pontiac Township, Mich., early in 1966.

Questioned under pre-*Miranda* rules, Tucker was asked whether he wanted a lawyer but was not told he could have free legal advice if he could not afford to hire a lawyer. He did not confess but he did name a potential alibi witness.

Instead of providing an alibi, the witness told police that Tucker had spoken of having sexual relations with a "widow woman" in the neighborhood. This became damaging testimony at Tucker's trial.

Justice William H. Rehnquist, writing for the court, said it was unnecessary to enforce the *Miranda* procedural safeguards by excluding the evidence in Tucker's case because the police questioning methods had been permissible at the time.

"Whatever deterrent effect on future police conduct" might be gained from the suppression of the suspect's statements, no such purpose would be gained by excluding an otherwise reliable witness, Rehnquist said.

Saying he was distinguishing between the privilege against self-incrimination, which is protected by the Fifth and 14th amendments, and the safeguards set forth in *Miranda*, Rehnquist said it was wrong to "penalize police error" in every case because it was "unrealistic" to require that policemen "make no errors whatsoever" when they investigate crime.

Joining Rehnquist were Chief Justice Warren E. Burger and Justices Potter Stewart, Harry A. Blackmun and Lewis F. Powell Jr. Also

concurring, for reasons that clouded the basis for the ruling, were Justices William J. Brennan Jr., Thurgood Marshall and Byron R. White.

White said he continued to believe that *Miranda* was a wrong decision. Brennan and Marshall also concurred, saying that *Miranda* did not apply retroactively to Tucker's case. Stewart said he agreed both with Rehnquist and Brennan because both opinions took "virtually parallel lines, give or take a couple of argumentative footnotes."

Justice Douglas dissented, repeating his often-stated view that *Miranda* and other constitutional rulings must be applied retroactively for the benefit of all prisoners convicted on the basis of invalid evidence.

The high court also:

- Reversed a Pennsylvania Supreme Court decision and ruled that Pittsburgh and other cities have a right to impose stiff taxes on commercial downtown parking while operating competing municipal facilities that enjoy tax benefits.

- Upheld the latest Federal Power Commission rate schedule for natural gas from the rich southern Louisiana region, but told the FPC in another case to reconsider an order attempting to deregulate future sales by small gas producers.

- Agreed to review in the fall term a decision by the Ninth U.S. Circuit Court of Appeals that resident aliens are eligible to seek federal jobs. The justices also affirmed, over Rehnquist's sole



WILLIAM H. REHNQUIST
... writes for court

dissent, a decision that Indiana may not restrict real estate licenses to U.S. citizens.

- Agreed to review a decision by a three-judge U.S. District Court panel here that struck down part of the 1971 Federal Election Campaign Act under which newspapers and other media were required to certify whether any political advertisement was on behalf of a particular candidate.

- Agreed to decide whether states have the power to deny welfare payments to a mother who fails to help authorities find the father of her children who are also on welfare.

- Ruled, 8 to 1, that a person serving a federal prison sentence has a right to seek release on the basis of a change in law that comes about by a new appellate court interpretation of that law.

- Agreed to hear the appeal of Wisconsin's state board of medical examiners from a ruling that its proceedings against a doctor who defied state abortion policy were unconstitutional.