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The Court Backs Off From Miranda

BIT BY BIT, the Supreme Court under Chief Justice Burger, is hacking away at one of the landmarks of individual rights that same Court established under Chief Justice Warren. Last week, by a vote of 6 to 2, another portion of the *Miranda* decision was sliced off. Sooner or later, the way things are going, that decision will be so undermined that it will topple of its own weight and with it will go one of the Court's best efforts to breathe vitality into the Fifth and Sixth Amendments.

Miranda, as you may recall, laid out a series of rules designed to prevent police abuse during the process of interrogating suspects. It required that police inform all those who are arrested of their constitutional rights and required that questioning of a suspect cease if the suspect indicated a desire to consult with a lawyer. If these rules were not followed, the Court ruled, any statements the suspect might make would not be permitted in evidence at his trial. There was, as you may also recall, a great outcry from some judges, policemen and politicians about the adverse impact this would have on crime control and a not quite so loud comment from other judges and policemen that its impact would not be adverse at all. Our impression in the nine years since is that the decision has had little impact, one way or the other, on good police work and a substantial impact in improving the quality of what had been bad police work.

Nevertheless, four years ago, the Court took one chip out of *Miranda*. In that case, by a vote of 5 to 4, the majority held that statements made by a suspect who was never told of his rights (a clear violation of the requirements) could be used, nevertheless, to impeach the testimony he gave later at a trial. The rationale for this decision was that a defendant ought not to be

allowed to lie on the witness stand about what he had told the police.

Last week's decision carries that notion one step further. The Court has now said that statements elicited from a suspect after he has asked to see a lawyer may also be used to impeach his testimony at trial. The difference is substantial. Under the original *Miranda* rules, the police had every incentive to tell a suspect of his rights and let him talk to a lawyer if he wanted one and no incentive at all to break the rules; if they broke the rules nothing they learned was useful in the prosecution. After the 1971 decision, the incentive to follow the rules was lessened because something useful might be gained despite breaking them. But the incentive still existed; the suspect might talk even if the warnings were properly given. But now, there is very little incentive for the police to stop questioning a suspect after he has asked to see a lawyer. If they let him see the lawyer, he will probably be advised to say nothing. If they don't let him see a lawyer, he may admit something that may be useful later at trial.

The net result of all this, it seems to us, is that the police will be encouraged to use that line in the television series, *Kojak*, "Sit down. You'll see a lawyer when I want to let you see a lawyer." And there goes a big part of the *Miranda* decision right down the drain. That part of the decision was designed to let people who are in trouble exercise their Sixth Amendment right to legal counsel at a time when it can do them some good. By trimming it down, the Court is taking a step backward toward the days when the goal of much police work was to persuade or force suspects to incriminate themselves instead of seeking other evidence on which to convict them. Someday, perhaps, a different Court will see the error—and the danger—in this retreat.