CONSTITUTIONAL LAW—FIFTH AMENDMENT—"IF AND WHEN YOU GO TO COURT" LANGUAGE USED BY POLICE OFFICERS IS AN ADEQUATE RENDERING OF *MIRANDA* WARNINGS—*Duckworth v. Eagan*, 109 S. Ct. 2875 (1989).

Nemo tenetur seipsum accusare[1]

This maxim originated over 300 years ago as a response to the unjust interrogation techniques often used in the continental system.[2] American colonists fervently despised the inquisitorial methods used in the interrogation of the accused.[3] They thus enacted the fifth amendment as a fundamental safeguard against such inequities.[4] The historical development of the privilege against self-incrimination can be traced to a struggle between the powers vested in government and those afforded individuals.[5] The adoption of the fifth amendment was not a result of the changing legal and societal attitudes, but rather a "crystallization of the doctrine as to confessions."[6] Over a century ago, the United States Supreme Court recognized the importance of the privilege against self-incrimination[7] and it remains an integral

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[1] Brown v. Walker, 161 U.S. 591, 596-97 (1896). No one is bound to accuse himself. BLACK'S LAW DICTIONARY 937 (5th ed. 1979).

[2] *Brown*, 161 U.S. at 596. In *Brown*, a congressional statute requiring testimony before the Interstate Commerce Commission came into direct conflict with the fifth amendment. *Id.* at 593. The Court held, however, that due to the immunity granted to the petitioner through the statute, the witness was compelled to answer. *Id.* at 610.

[3] *Id.* at 596.

[4] *See id.* at 597. "The states, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed with the impregnability of a constitutional enactment." *Id.*

[5] *See* Miranda v. Arizona, 384 U.S. 436, 460 (1966) ("the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens").

[6] Bram v. United States, 168 U.S. 532, 543 (1897).

[7] *See, e.g.*, Boyd v. United States, 116 U.S. 616 (1886). In *Boyd*, custom revenue laws were enacted that forced a defendant to produce certain documents and materials or have allegations made against him taken as true. *Id.* at 620. The Court determined that seizing a man's private papers to be used as evidence of his guilt is equivalent to requiring self-incrimination and therefore is prohibited by the fifth amendment. *Id.* at 633. The Court noted that the fourth and fifth amendments shared an "intimate relation" because unreasonable searches and seizures are usually made to compel a man to incriminate himself. *Id.*

Analyzing the *Boyd* holding, the Court in Bram v. United States, 168 U.S. 532 (1897), noted:

> [T]he provision of the Fifth Amendment securing one accused against being compelled to testify against himself, and those of the Fourth Amendment protecting against unreasonable searches and seizures . . .

part of our legal system today.[8]

The fifth amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[9] In response to the potential abuses in a law enforcement system that relies in large part on confessions,[10] the Supreme Court has held that protective devices are necessary to insure that the privilege against self-incrimination is honored.[11] As a result, this privilege has a broad and far-reaching effect in our society.[12] In *Duckworth v. Eagan*,[13] the Court addressed the right against self-incrimination, and more specifically the safeguards that it had previously set forth in *Miranda v. Arizona*.[14] The Court held that the "if and when you go to court" language used by a police officer to apprise an accused of his right to counsel was an adequate rendering of a *Miranda* warning.[15]

On May 16, 1982, Gary James Eagan contacted the Chicago police to report that he had discovered a woman's body on a Lake Michigan beach.[16] Eagan then led several officers to the beach where the woman was found bleeding and crying for

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> demonstrated that both of these Amendments contemplated perpetuating, in their full efficacy, by means of a constitutional provision, principles of humanity and civil liberty, which had been secured in the mother country only after years of struggle, so as to implant them in our institutions in the fullness of their integrity, free from the possibilities of future legislative change.

Bram, 168 U.S. at 544 (citing *Boyd*, 116 U.S. at 616).

8 *See Miranda*, 384 U.S. at 460. In *Miranda*, the Court noted that "the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values." *Id.* (citing Murphy v. Waterfront Comm'n, 378 U.S. 52, 55-57 & 57 n.5 (1964)).

9 U.S. CONST. amend. V.

10 *See* Escobedo v. Illinois, 378 U.S. 478, 488-89 (1964).

11 *Miranda*, 384 U.S. at 467. The Court noted that "[i]n 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." *Id.*

12 The constitution of almost every state has a provision similar to the fifth amendment right against self-incrimination. 8 J. WIGMORE, EVIDENCE § 2252 (McNaughton rev. 1961). *See Miranda*, 384 U.S. at 467 (holding "[t]oday . . . 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 in any significant way from being compelled to incriminate themselves").

13 109 S. Ct. 2875 (1989).

14 384 U.S. 436 (1966). *See infra* notes 83-96 and accompanying text for a more complete discussion of *Miranda*.

15 *Duckworth*, 109 S. Ct. at 2876.

16 *Id.* at 2876-77.

help.[17] Although Eagan denied any criminal behavior,[18] the woman identified him as the man who had stabbed her.[19] Eagan agreed to go to police headquarters, and was transferred the next morning to the Hammond, Indiana Police Department where the officers commenced an investigation.[20] After Eagan signed a waiver form, the police began questioning him.[21] Although Eagan continued to deny involvement in the previous night's activities, he was placed in lockup at police headquarters.[22] After twenty-nine hours of incarceration, Eagan signed a second waiver form,[23] and the police conducted an additional interview.[24] Dur-

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17 *Id.* at 2877.

18 *Id.* Eagan admitted he had been with the woman earlier that night. *Id.* However, he claimed the woman was abducted after they were attacked by several men. *Id.*

19 *Id.* On seeing Eagan she exclaimed, "Why did you stab me? Why did you stab me?" *Id.* at 2876. Eagan later confessed to stabbing the woman nine times after she refused to have sexual relations with him. *Id.* at 2878.

20 *Id.* at 2877. Chicago Police turned the investigation over to the Hammond, Indiana Police Department when they learned the crime had been committed in Indiana's jurisdiction. *Id.*

21 *Id.* The relevant portion of the waiver form contained the following:

> Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. *You have a right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.* You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.* If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you have talked to a lawyer.

Id. (emphasis added) (quoting Eagan v. Duckworth, 843 F.2d 1554, 1555-56 (7th Cir. 1988)).

22 *Id.*

23 *Id.* at 2877-78. The waiver form provided:

> 1. Before making this statement, I was advised that I have the right to remain silent and that anything I might say may or will be used against me in a court of law.
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> 2. That I have the right to consult with an attorney of my own choice before saying anything, and that an attorney may be present while I am making any statement or throughout the course of any conversation with any police officer if I so choose.
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> 3. That I can stop and request an attorney at any time during the course of the taking of any statement or during the course of any such conversation.
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> 4. That in the course of any conversation I can refuse to answer any further questions and remain silent, thereby terminating the conversation.
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> 5. That if I do not hire an attorney, one will be provided for me.

Id. (quoting Eagan v. Duckworth, 843 F.2d 1554, 1556 (7th Cir. 1988)).

24 *Id.* at 2877.

ing this second interrogation Eagan confessed to stabbing the woman and subsequently led police to a site where they discovered the knife used in the stabbing as well as several items of clothing.[25]

At trial, the judge overruled Eagan's objection of an improper *Miranda* warning and allowed into evidence his original denial of culpability, his subsequent confession, and the recovery of the knife and clothing.[26] Based upon this evidence, the jury found Eagan guilty of attempted murder.[27] On appeal, the Indiana Supreme Court rejected Eagan's claim of an insufficient *Miranda* warning[28] and consequently he filed a writ of habeas corpus in the United States District Court for the Northern District of Indiana.[29] The petition was denied.[30] A divided United States Court of Appeals for the Seventh Circuit, however, reversed.[31] The court of appeals found that the warnings were "constitutionally defective because [they] denied an accused indigent a clear and unequivocal warning of the right to appointed counsel before any interrogation."[32] The court of appeals remanded the case to determine if Eagan knowingly waived his right to counsel in the second interview.[33] The United States Supreme Court granted certiorari after the court of appeals denied a rehearing en banc.[34]

The privilege to be free from government intimidation and self-incrimination has long been established in our country's history and documented in the Bill of Rights.[35] It was not until

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25 *Id.* at 2878.

26 *Id.*

27 *Id.* The court sentenced Eagan to 35 years imprisonment. *Id.*

28 *Id.* The Indiana Supreme Court further ruled that Eagan's statements were not a result of police coercion or overbearing. *Id.* at 2881.

29 *Id.* at 2878.

30 *Id.* The district court held that "[t]he record clearly manifests adherence to *Miranda*." *Id.*

31 *Id.* (quoting Eagan v. Duckworth, 843 F.2d 1554, 1557 (7th Cir. 1988)). The court of appeals held that the "if and when you go to court" language found in the initial waiver form did not clearly represent the accused's right to counsel before interrogation. *Id.* The court further stated that it was possible that the first warning led Eagan to believe he would not be afforded access to a lawyer during interrogation while the second warning did not correct the misinformation. *Id.* (citing Eagan v. Duckworth, 843 F.2d 1554, 1558 (7th Cir. 1988)).

32 *Id.* (quoting Eagan v. Duckworth, 843 F.2d 1554, 1557 (7th Cir. 1988)).

33 *Id.*

34 *Id.* The Supreme Court granted certiorari in order to resolve lower court conflicts involving the possible inadequacies of the "if and when you go to court" language of *Miranda* warnings. *Id.*

35 Miranda v. Arizona, 384 U.S. 436, 458 (1966).

1897, however, that the Supreme Court, in *Bram v. United States*,[36] held that the fifth amendment privilege against self-incrimination applies in all criminal trials when a voluntary confession is at issue.[37] In *Bram*, the defendant, the first officer aboard an American vessel on the high seas, was found guilty of murdering the ship's captain.[38] At trial, a police detective was allowed to testify to certain statements made by the defendant while he was in police custody.[39] The detective represented the defendant's statements as a voluntary confession.[40] The Court noted, however, that the circumstances surrounding the defendant's statements precluded the finding that the statements were made voluntarily.[41] Although this was not the first case dealing with an inadmissable confession,[42] the federal conviction was reversed and the statement made by the accused to a police officer was held not to be voluntary due to the officer's coercive tactics.[43] Justice White posited that proof of the voluntariness of a confession can be found by determining the existence of outside and improper influences.[44] He further opined that if the man would have otherwise remained silent, it is irrelevant if the statement was voluntarily made.[45] Justice White noted that the focus rests solely

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36 168 U.S. 532 (1897).

37 *Id.* at 542. *See also infra* note 7.

38 *Id.* at 534. While en route to South America, the ship's captain, his wife, and a crew member were found murdered. *Id.* at 535-36. Bram assumed command of the ship and, acting on suspicion among the crew, ordered that Brown, a seaman, be seized and placed in irons. *Id.* at 536. Subsequently, Brown identified Bram as the murderer and he was placed in irons. *Id.* at 536-37.

39 *Id.* at 539-40. While in custody, Bram was informed by the detective that Brown had made statements claiming that, while at the ship's wheel, he witnessed Bram kill the captain. *Id.* at 539. In response, Bram stated that "he could not have seen me . . . from there" and denied any further knowledge of the incident. *Id.*

40 *Id.* at 540. The detective claimed that he did not induce the defendant through promise, expectation, or advantage, but rather that he obtained a voluntary confession free from influence. *Id.* at 538-39.

41 *Id.* at 540. While in the custody of the Halifax police, Bram was taken to a private office where he was stripped and where "extraordinary liberties" were taken with him. *Id.* at 539.

42 *See* Hopt v. Utah, 110 U.S. 574 (1884) (common law rule barring involuntary confessions was invoked without reference to any specific constitutional provision). *See also* Sparf v. United States, 156 U.S. 51 (1895) (confession made by a seaman in irons was held to be voluntary absent threats).

43 Bram v. United States, 168 U.S. 532, 565 (1897). The Court noted it was conceivable that silence on Bram's part would be construed as an admission of guilt. *Id.* at 562. Consequently, the statements he gave regarding Brown's accusations could not have been construed to be of a voluntary nature. *Id.* at 562-63.

44 *Id.* at 549.

45 *Id.*

on whether the statement was freely given.[46]

In 1936, the Supreme Court, in *Brown v. Mississippi*,[47] further extended the meaning of the word "voluntary." The evolution of the "voluntariness test"[48] was the result of the Court's focus on whether confessions that were extorted from defendants were inconsistent with the fourteenth amendment's due process clause.[49] In *Brown* three murder suspects were coerced into confessions after initially professing their innocence.[50] The Court determined that law enforcement officials severely whipped the defendants and told them that the whippings would not be stopped until they confessed to the murder.[51] Noting the appalling way in which the suspects were treated, and stressing that "the rack and torture chamber may not be substituted for the witness stand,"[52] the Court held that the state can regulate the procedural aspects of its courts only so long as it does not offend traditional principles of justice that are considered so sacred as to be fundamental to our lives.[53]

In the period between 1940 and 1965 there were very few occasions in which the Court had the opportunity to rule on the constitutionality of federal interrogations.[54] This was the result of the enactment of Federal Rule of Criminal Procedure 5(a) (FRCP 5(a))[55] which was effectuated in *McNabb v. United States*[56]

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46 *Id.*

47 297 U.S. 278 (1936).

48 This test had its beginnings in Wan v. United States, 266 U.S. 1 (1924), when the Court held "the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat." *Id.* at 14.

49 *Brown*, 297 U.S. at 279.

50 *Id.* at 278. The Court noted that a state is free to abolish trial by jury and may substitute complaint or information for the right to indictment by grand jury. *Id.* at 285 (citing Walker v. Sauvinet, 92 U.S. 90, 92 (1875)). The Court noted, however, that "it does not follow that it may substitute trial by ordeal." *Id.*

51 *Id.* at 282.

52 *Id.* at 285-86.

53 *Id.* at 285. (citing Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)). *See* Chambers v. Florida, 309 U.S. 227 (1940) (confessions obtained after repeated inquisitions of prisoners in coercive circumstances are void); Ashcraft v. Tennessee, 322 U.S. 143 (1944) (holding defendant's confession invalid due to coercive tactics stemming from incommunicado measures in which the accused went without sleep for 36 hours). *See also* Caplan, *Questioning Miranda*, 38 VAND. L. REV. 1417, 1427 (1985) ("the Court defined voluntariness in a technical sense, at odds with the common usage suggesting free will, choice, even spontaneity").

54 Miranda v. Arizona, 384 U.S. 436, 463 (1966).

55 The rule states:

> An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available

and *Mallory v. United States*.[57] In *McNabb*, several suspects were arrested after a federal officer was shot and killed.[58] Instead of presenting the suspects to a judicial officer, as was required under FRCP 5(a), law enforcement officials took them to a detention center, where, after several days of questioning, the suspects made incriminating statements.[59]

The trial court admitted the statements as voluntary and the suspects were convicted of murder.[60] The United States Supreme Court, however, reversed.[61] Justice Frankfurter, writing for the Court, found a constitutional examination of the method used to procure the incriminating statements unnecessary.[62] The Justice emphasized that the failure to immediately bring the suspects before a judicial officer was a direct violation of the criminal procedures established by Congress.[63] Such safeguards, stressed the Court, were necessary to guard against overzealous law enforcement officers who practice the "third degree" and consider it a useful interrogation technique.[64]

Similarly in *Mallory*, a suspect convicted of rape in a federal district court had been unnecessarily detained before seeing a magistrate.[65] Several officers interrogated Mallory and commenced questioning by informing him that his brother had al-

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commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

FED. R. CRIM. P. 5(a).

56 318 U.S. 332 (1943).

57 354 U.S. 449 (1957).

58 *McNabb*, 318 U.S. at 334. *McNabb* involved Tennessee mountaineers engaged in the selling of untaxed whiskey. *Id.* at 333. On the night of the shooting, several officers of the Alcohol Tax Unit of the Bureau of Internal Revenue encountered the mountaineers as they were loading illegal whiskey into a car. *Id.* at 334. When the officers arrived the bootleggers ran into a nearby cemetery. *Id.* While apprehending the suspects, one officer was shot dead and another was shot and slightly wounded. *Id.*

59 *Id.* at 334-38.

60 *Id.* at 333. On appeal, the Court of Appeals for the Sixth Circuit sustained the convictions. *Id.*

61 *Id.* at 347.

62 *Id.* at 340.

63 *Id.* at 344. In referring to Federal Rule of Criminal Procedure 5(a), the Court stated: "Legislation . . . requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society." *Id.* at 343-44.

64 *Id.* at 344.

65 Mallory v. United States, 354 U.S. 449, 450-51 (1957).

ready given a statement naming him as the rapist.[66] The Court opined that "[s]ince such unwarranted detention led to tempting utilization of intensive interrogation,"[67] FRCP 5(a) must be triggered to act as a barrier against these types of potentialities.[68] In both *McNabb* and *Mallory*, Justice Frankfurter sent a strong message that FRCP 5(a) commanded that "unnecessary delays from the time of arrest to arraignment," would be strictly enforced.[69]

In 1964, a pivotal decision was reached in *Malloy v. Hogan*.[70] In *Malloy*, a man arrested during a gambling raid was ordered to answer questions before a referee appointed by the Connecticut Superior Court.[71] When the man refused, "on the grounds that it may tend to incriminate [him]," the superior court found him in contempt and ordered him jailed until he agreed to cooperate.[72] The United States Supreme Court granted certiorari and held that the fourteenth amendment protects against a state infringement of the self-incrimination right, just as the fifth amendment does in the federal context.[73] Justice Brennan, writing for the Court, asserted that the same standard must apply to "determine whether an accused's silence in either a federal or state proceeding is justified."[74] Consequently, the Court concluded that the nature of the questions could have resulted in injurious disclosure, and therefore, the state court's action suggested a violation of the self-incrimination privilege.[75] The extension of the self-incrimination privilege to the states had a tremendous and far-reaching effect on the law and its relationship to law enforcement.[76]

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66 *Id.* at 450.

67 *Id.* at 453.

68 *Id.* at 456.

69 *See McNabb*, 318 U.S. at 347; *Mallory*, 354 U.S. at 455-56.

70 378 U.S. 1 (1964).

71 *Id.* at 11. The referee inquired as to the identity of the suspect's employer as well as those responsible for paying his counsel fees, fines, and bail. *Id.* at 12. Although the suspect admitted guilt to the gambling misdemeanor, he refused to reply to any questions concerning his relationship with a man who was currently under investigation by the state and suspected of engaging in unlawful activity. *Id.* at 12-13. Further, he refused to disclose the identity of the tenant in whose apartment he was arrested. *Id.* The interrogation was part of a sweeping inquiry into criminal activity in the area and was designed to elicit information that might connect the petitioner with related recent crimes. *Id.* at 13.

72 *Id.* at 3.

73 *Id.* at 8.

74 *Id.* at 11.

75 *Id.* at 14 (citing Hoffman v. United States, 341 U.S. 479, 486-87 (1951)).

76 The shift of the federal standard to state cases "reflects recognition that the

Prior to the *Malloy* decision, the Court had extended the "voluntariness test" to all situations where "interrogation practices [were] . . . likely to exert such pressure upon an individual as to disable him from making a free and rational choice."[77] The implications of the Court's extension of the voluntariness test was expressed in *Escobedo v. Illinois*.[78] In *Escobedo*, the Court ruled that a violation of the sixth amendment right to counsel occurred when the police refused to grant the petitioner's request to speak to his attorney during an interrogation prior to being charged.[79] During the interrogation the petitioner made several incriminating statements which were used in convicting him in state court.[80] Writing for the majority, Justice Goldberg asserted that "[o]ur Constitution . . . strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination."[81] *Escobedo* was the harbinger for the landmark decision of *Miranda v. Arizona*.[82]

In *Miranda*, the Court focused on four separate criminal prosecutions with similar fact patterns.[83] The Court addressed

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American system of criminal prosecution is accusatorial, not inquisitorial." *Id.* at 7 (citing Rogers v. Richmond, 365 U.S. 534, 541 (1961)).

77 Miranda v. Arizona, 384 U.S. 436, 464-65 (1965) (citing Lisenba v. California, 314 U.S. 219 (1941)). In *Lisenba*, Justice Roberts stressed that police must obtain confessions by using methods that comport with a standard of basic fairness. *Lisenba*, 314 U.S. at 236. *See* Gallegos v. Colorado, 370 U.S. 49 (1962). In *Gallegos* the police obtained a voluntary confession from a fourteen-year-old boy regarding his role in an assault and battery of an elderly man who later died as a result of the beating. *Id.* at 49-50. While the boy was properly advised of his right to counsel, he did not request the presence of either an attorney or his parents during questioning. *Id.* at 54. Justice Douglas, finding the confession inadmissible and reversing the boy's conviction, stressed that a juvenile could not be compared to an adult because a youth is unlikely to comprehend the consequences of his statements due to his immaturity. *Id.* Although the confession was voluntary, acknowledged the Court, the surrounding circumstances (principally the failure of police to have an attorney or his parents present) deprived the juvenile of due process. *Id.* at 55. See *supra* note 48 and accompanying text for a discussion of the voluntariness test.

78 378 U.S. 478 (1964).

79 *Id.* at 479-80.

80 *Id.* at 483-84.

81 *Id.* at 488.

82 384 U.S. 436 (1966).

83 *Id.* at 465-66. The Court addressed all the prosecutions together because "they . . . share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." *Id.* at 445. Ernesto Miranda was arrested and questioned by police officers without being apprised of his right to consult with an attorney. *Id.* at 491. He signed a statement which admitted his confession and contained a typed-in clause stating that he had full knowledge of all his legal rights. *Id.* at 492. Consolidated in *Miranda* was Vignera v. New York which concerned Michael Vignera's oral admission of a robbery after he was picked up by detectives.

the problem of the admissibility of statements taken during custodial interrogations[84] and expanded on the holding of *Escobedo v. Illinois*.[85] Chief Justice Warren delivered the opinion which stated that unless certain procedural safeguards against self-incrimination are adhered to, exculpatory or inculpatory statements obtained during custodial interrogations cannot be used by the prosecution.[86] In the absence of such safeguards, the Court determined the proper warnings which must be afforded the accused.[87] Justice Harlan filed a scathing dissent in which he

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Id. at 493. At trial, the defense was precluded from establishing that no warnings were given when the prosecution's objections to such questions were sustained. *Id.* at 493. In Westover v. United States, the third case consolidated in *Miranda*, the facts revealed that Carl Westover was arrested as a suspect in two robberies and that he was wanted by the FBI on a felony charge. *Id.* at 494-95. After being questioned by local police officers for an extended period of time, the FBI proceeded to interrogate him. *Id.* at 494-95. Several hours later, Westover signed confessions to each of the robberies. *Id.* at 495. The last case consolidated within the *Miranda* decision was California v. Stewart. Roy Allen Stewart was arrested in connection with several purse-snatch robberies in which one of the victims had died. *Id.* at 497. After being interrogated on nine different occasions in a period of five days, he admitted robbing the deceased. *Id.* There was no indication that Stewart was advised of his rights. *Id.* at 497-98.

[84] *Id.* at 445-56.

[85] 378 U.S. 478 (1964). The *Escobedo* Court held that the sixth amendment right to counsel exists from the time of arrest. *Id.* at 490-91. Previously, it was taken as settled that warnings were not required in pre-trial interrogation as a condition of the admission of a defendant's statements. *See* Wilson v. United States, 162 U.S. 613 (1896); Powers v. United States, 223 U.S. 303 (1912).

> [W]here, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment . . . ."

Escobedo, 378 U.S. at 490-91.

[86] *Miranda*, 384 U.S. at 444. The Court noted that the procedural safeguards must be "fully effective means" by which an accused can be informed of his right to silence. *Id.* Furthermore, the definition of custodial interrogation was set out by the Court as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.*

[87] *Id.* The Court explained that:

> He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479.

stated that the proposed requirements would not prevent police brutality or coercive tactics, but would "negate all pressures, [] reinforce the nervous or ignorant suspect, and ultimately [] discourage any confession at all."[88]

The *Miranda* decision is one of our country's best known criminal cases.[89] The precedent set forth stands for those rights which all criminal suspects must be accorded.[90] Consequently, the cases following *Miranda* dealt with discrete aspects of the decision.[91] In *Orozco v. Texas*,[92] the Supreme Court interpreted the concept of custodial interrogation. The *Orozco* Court was presented a situation in which four police officers had entered the defendant's bedroom and elicited damaging information without first giving *Miranda* warnings.[93] Relying on precedent,[94] and on an officer's testimony that Orozco was not free to leave during questioning, the majority held that *Miranda* warnings were necessary when the person being interrogated was in custody or otherwise significantly deprived of his freedom of action.[95] However, the Court pointed out that its decision should

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88 *Id.* at 505 (Harlan, J., dissenting). Justices Stewart and White joined Justice Harlan's dissent which reasoned that the "Court's unspoken assumption that *any* pressure violates the privilege is not supported by the precedents and it has failed to show why the Fifth Amendment prohibits that relatively mild pressure the Due Process Clause permits." *Id.* at 513 (Harlan, J., dissenting) (emphasis in original).

89 Caplan, *supra* note 53, at 1418.

90 *Id. See also* Schulhofer, *Reconsidering Miranda*, 54 U. CHI. L. REV. 435 (1987) (concluding *Miranda* reassures suspects who fear abuse, reduces the pressure inherent in interrogation and provides some of the same safeguards that suspects are granted in formal proceedings). *Miranda* also had the effect of overruling previous cases. *See* Crooker v. California, 357 U.S. 433 (1958) (denial of the accused's request for counsel is only violative of the due process clause if the subsequent trial lacks "basic fairness"); Cicenia v. Lagay, 357 U.S. 504 (1958) (holding no constitutional violation existed when suspect's specific request for counsel was denied by the state police questioning him).

91 *See* Orozco v. Texas, 394 U.S. 324 (1969).

92 394 U.S. 324 (1969). *See* Special Project, *D.C.C.A. Project*, 23 How. L.J. 205, 208 (1980). *See also* Mathis v. United States, 391 U.S. 1 (1968) (extending "custodial interrogation" so that *Miranda* warnings must be given prior to questioning an individual incarcerated for a separate offense); United States v. Mandujano, 425 U.S. 564 (1976) (finding an interrogation in a grand jury proceeding is not considered "custodial interrogation").

93 *Orozco*, 394 U.S. at 325.

94 *See* Mathis v. United States, 391 U.S. 1 (1968). Mathis was questioned by an Internal Revenue agent while in state prison. *Id.* at 2. He did not receive any warnings that evidence he gave could be used against him. *Id.* at 2-3. However, documents and oral statements were introduced at trial and he was subsequently convicted. *Id.* at 3. The Supreme Court held that tax investigations are not immune from the *Miranda* requirement and petitioner was entitled to the warnings of his right to be silent and to have counsel. *Id.* at 5.

95 *Orozco*, 394 U.S. at 327.

not be construed as an expansion of *Miranda*.[96]

In 1981, however, an exception to the usual constrictive *Miranda* analysis was established in *Edwards v. Arizona*.[97] In *Edwards*, the petitioner requested the assistance of counsel during an interrogation after being informed of his right to do so.[98] Although questioning ceased at this time, the police interrogated him again the next day despite his verbal reluctance.[99] Justice White determined that when the right to counsel is invoked during custodial interrogation, waiver of that right is not established when the suspect responds to interrogation initiated by the police.[100] The Justice also added that a valid waiver must be voluntary and "constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege."[101]

Although the Court has been willing to loosely interpret *Miranda* warnings in the area of custodial interrogations, efforts to extend *Miranda* further have been rebuffed.[102] Further, the *Miranda* decision has been undermined to some extent,[103] as illus-

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96 *Id.*

97 451 U.S. 477 (1981). *But see* Rhode Island v. Innis, 446 U.S. 291 (1980). The *Innis* Court held that the petitioner was subject to "subtle compulsion" when two police officers engaged in a conversation that prompted defendant to disclose where he had discarded the murder weapon. *Id.* at 302-03. In holding that an "interrogation" had not taken place, the Court concluded there was no violation of *Miranda* rights. *Id.* at 303.

98 *Edwards*, 451 U.S. at 487. The Court observed that *Miranda* had classified distinctions between requests for counsel and those to remain silent and concluded that interrogation ceases only if counsel was requested. *Id.* at 485 (citing Michigan v. Mosley, 423 U.S. 96, 104 n.10 (1975)).

99 *Id.* at 487.

100 *Id.* at 484.

101 *Id.* at 482. *See also* Brewer v. Williams, 430 U.S. 387, 404 (1977) (holding that the government must sustain a heavy burden of proof for an effective waiver to exist).

102 *See* Moran v. Burbine, 475 U.S 412 (1986) (holding a suspect's rights are not violated when the police fail to inform the defendant of his attorney's efforts to contact him); Colorado v. Spring, 479 U.S. 564 (1987) (refusing to extend *Miranda* to include new warnings by rejecting a requirement that the claimant be warned concerning the crimes which will be the subject of interrogation); Minnesota v. Murphy, 465 U.S. 420 (1984) (denying application of *Miranda* rights to the questioning of a probationer by a probation officer); United States v. Mandujano, 425 U.S. 564 (1976) (finding *Miranda* rights do not apply to questioning of a targeted witness before a grand jury); Oregon v. Mathiason, 429 U.S. 492 (1977) (determining *Miranda* rights do not apply to the questioning of a suspected burglar by the police when the suspect was free to leave at any time); Beckwith v. United States, 425 U.S. 341 (1976) (holding *Miranda* rights do not apply to the questioning of a suspect at his home by Internal Revenue Service officers); Colorado v. Connelly, 479 U.S. 157 (1986) (a waiver is voluntary as long as it is not the product of governmental coercion).

103 *See* Harris v. New York, 401 U.S. 222 (1971) (holding the defendant's pre-trial

trated by the decision of *Oregon v. Elstad*.[104] In *Elstad*, police officers questioned the respondent at his home after a witness implicated him in the burglary of a neighbor's house.[105] An officer testified that after informing the respondent of his suspicions regarding the respondent's involvement in the robbery, the respondent admitted that he was at the scene.[106] It was only after the respondent was transported to police headquarters, over one hour later, that *Miranda* rights were first issued.[107] Subsequent to being given his rights, the respondent confessed to police that he led several men to the burglarized residence where he pointed out a defective sliding-glass door which would allow them easy access.[108] The Court was thus presented with the question of whether the delay in issuing the respondent's *Miranda* warnings "tainted" subsequent admissions.[109] Although the police had elicited an earlier voluntary but unwarned admission from the suspect, Justice O'Connor reasoned that the self-incrimination clause does not require the suppression of a confession made after proper *Miranda* warnings and a valid waiver of rights.[110] In concluding that courts should avoid any rigid rule, Justice O'Connor stressed that the determination of the voluntariness of a statement should take into account the totality of circumstances as well as the overall conduct of the police.[111]

It was against this background that the United States Supreme Court rendered its decision in *Duckworth v. Eagan*.[112] The Court began its analysis by reviewing its prior holding in *Miranda* in which procedural safeguards for custodial interroga-

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statements obtained in violation of *Miranda* can be used for purposes of impeachment if the defendant takes the stand and gives an inconsistent story). *See also* New York v. Quarles, 467 U.S. 649 (1984) (establishing the "overriding need" rule which created a public safety exception to the *Miranda* warnings); United States v. Gouveia 467 U.S. 180 (1984) (sixth amendment right to counsel can attach no earlier than the filing of an indictment or the initial appearance of the defendant in court to answer charges).

104 470 U.S. 298 (1985).

105 *Id.* at 300.

106 *Id.* at 301.

107 *Id.*

108 *Id.* The trial court admitted the confession and convicted Elstad of first-degree burglary. *Id.* at 302.

109 *Id.* at 300.

110 *Id.* at 318.

111 *Id.*

112 109 S. Ct. 2875 (1989). Chief Justice Rehnquist delivered the opinion of the Court in which Justices White, O'Connor, Scalia, and Kennedy joined. *Id.* at 2876.

tions were established.[113] Chief Justice Rehnquist, writing for the majority, noted that the exact form of warnings professed in *Miranda* need not be followed and an effective equivalent would suffice.[114] The Court determined that since interrogations do not always occur in a station-house setting,[115] a police officer may not have access to printed *Miranda* forms and departures from the standard routine may occur.[116] In reasoning that it is not the warnings themselves but the right against self-incrimination that is constitutionally protected, the Court held that a general inquiry to determine if a suspect's rights were conveyed is all that is necessary.[117]

The Chief Justice next addressed the specific warnings given to the respondent by the police.[118] The Court determined that the court of appeals misunderstood the "if and when you go to court" language utilized in the warnings.[119] The Court opined that the instruction given was an accurate reflection of the state's procedure for appointment of counsel.[120] Moreover, the Court reasoned that the "if and when you go to court" language anticipates a suspect's likely question of when his counsel will be retained.[121]

The Court further held that there is no requirement that attorneys be producible on call.[122] In emphasizing that *Miranda* did not require a "station-house lawyer", Justice Rehnquist held that the police must refrain from questioning a suspect unless a valid waiver is obtained.[123] Additionally, the Court distinguished

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113 *Id.* at 2879. See *supra* notes 83-96 and accompanying text for a more complete discussion of *Miranda*.

114 *Duckworth*, 109 S. Ct. at 2879 (citing Miranda v. Arizona, 384 U.S. 436, 476 (1966)).

115 *See* Rhode Island v. Innis, 446 U.S. 291 (1980) (police car); New York v. Quarles, 467 U.S. 649 (1984) (supermarket); Orozco v Texas, 394 U.S. 324 (1969) (bedroom).

116 *Duckworth*, 109 S. Ct. at 2879-80.

117 *Id.* at 2880 (citing California v. Prysock, 453 U.S. 355, 361 (1981); Michigan v. Tucker, 417 U.S. 433, 444 (1974)). The Court added, "[r]eviewing courts therefore . . . need not examine *Miranda* warnings as if construing a will or defining the terms of an easement." *Id.*

118 *Id.*

119 *Id.*

120 *Id.* Under Indiana law, the defendant is given counsel on his initial appearance in court at which time formal charges must be made. *Id. See* IND. CODE §§ 35-33-7-6, 35-33-7-3(a) (1988).

121 *Duckworth*, 109 S. Ct. at 2880.

122 *Id.*

123 *Id.* (citing Miranda v. Arizona, 384 U.S. 436, 474 (1966)). The Court empha-

the case of *California v. Prysock*,[124] on which both the respondent and the court of appeals relied.[125] The Court concluded that the wrong in *Prysock*, failure to apprise the suspect of his right to counsel if he agreed to answer questions, was not present in this case and the warnings were sufficient to convey the aforementioned right.[126] As a result of holding the *Miranda* warnings sufficient,[127] the Chief Justice admitted the knife, clothing and respondent's denial of culpability into evidence.[128]

Justice O'Connor, joined by Justice Scalia, wrote a lengthy concurrence to address the applicability of the exclusionary rule in federal habeas corpus proceedings.[129] While relying on the rationale of *Stone v. Powell*,[130] Justice O'Connor posited that the respondent should be barred from bringing a claim that was previously litigated in the state courts and which had been given "plenary consideration" by eighteen judges.[131] Holding that both the *Miranda* and exclusionary rules were only protective devices used to insure adherence to constitutional values, Justice

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sized that Eagan specifically waived his right to counsel. *Id.* See *supra* note 23 for the text of the waiver form Eagan signed.

124 453 U.S. 355 (1981) (per curiam). In *Prysock*, police officers administered *Miranda* warnings during a custodial interrogation in which a minor was questioned about his role in a heinous murder. *Id.* at 356. The police strayed from the usual order in which the warnings were given, however, by telling the suspect that he "had the right to talk to a lawyer before" he was questioned and to have him present during questioning, and only later apprised him that he had "the right to have a lawyer appointed to represent" him at no cost. *Id.* at 356-57. The *Prysock* Court distinguished two earlier cases, People v. Bolinski, 260 Cal. App. 2d 705, 67 Cal. Rptr. 347 (1968) and United States v. Garcia, 431 F.2d 134 (9th Cir. 1970) which held "the reference to appointed counsel was linked to a future point in time after police interrogation, and therefore did not fully advise the suspect of his right to appointed counsel before such interrogation." *Prysock*, 453 U.S. at 360. Determining the suspect's rights were clearly conveyed, the Court held the court of appeals erred in basing its decision on the order in which the *Miranda* warnings were given. *Id.* at 361.

125 *Duckworth*, 109 S. Ct. at 2880-81.

126 *Id.* at 2881. The Court explained that out of the eight sentences given in the warnings, one described respondent's right to stop answering questions until he talked to a lawyer and another conveyed his right to counsel before questioning began. *Id.*

127 *Id.* The Court did not consider the question of whether the initial warnings had any effect on the respondent's second statements. *Id.*

128 *Id.*

129 *Id.* (O'Connor, J., concurring).

130 428 U.S. 465 (1976). In *Stone*, the Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, . . . a state prisoner [may not] be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.* at 482.

131 *Duckworth*, 109 S. Ct. at 2882 (O'Connor, J., concurring).

O'Connor determined that they were not constitutional rights in and of themselves.[132] Accordingly, Justice O'Connor held that these rules must be considered in view of other societal interests.[133] In applying a balancing test, Justice O'Connor argued that the marginal gain achieved through increased police adherence to *Miranda* is far outweighed by the detrimental effect to society's interest in an efficient and effective criminal justice system.[134]

In reasoning that relitigation of *Miranda* claims will not only be ineffective as a deterrent of violative police behavior, Justice O'Connor stated that it would have the undesirable effect of increasing the number of admittedly guilty criminals on the street, as well as creating more conflict in the delicate setting in which lower federal courts review state supreme court decisions.[135] Justice O'Connor also distinguished direct review of criminal convictions as opposed to those collaterally attacked in a federal habeas corpus proceeding.[136] In doing so, the Justice held that the balance shifts towards the unavailability of the suppression remedy because the burden imposed on society in the form of increased advantages for criminals becomes too heavy.[137]

Justice Marshall, joined by Justice Brennan in full, and by Justices Blackmun and Stevens in part,[138] disagreed with the majority's characterization of the *Miranda* decision.[139] Reasoning that "if and when you go to court" language often misleads a

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132 *Id.* at 2883 (O'Connor, J., concurring).

133 *Id.* Justice O'Connor continued: "In the name of efficient judicial administration of the Fifth Amendment guarantee and the need to create institutional respect for Fifth Amendment values, it sacrifices society's interest in uncovering evidence of crime and punishing those who violate its laws." *Id.*

134 *Id.* at 2882-83 (O'Connor, J., concurring). Specifically, Justice O'Connor noted, "the marginal possibility that police adherence to *Miranda* will be enhanced by suppression of highly probative evidence some seven years after the police conduct at issue in this case is far outweighed by the harm to society's interest in punishing and incapacitating those who violate its criminal laws." *Id.* at 2882 (O'Connor, J., concurring).

135 *Id.* at 2884 (O'Connor, J., concurring).

136 *Id.* at 2883 (O'Connor, J., concurring).

137 *Id.* at 2884 (O'Connor, J., concurring). Federal habeas corpus review "disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty . . . ." *Id.* at 2883 (O'Connor, J., concurring) (quoting Harris v. Reed, 109 S. Ct. 1038, 1053 (1989) (Kennedy, J., dissenting)).

138 *Id.* at 2885 (Marshall, J., dissenting). Justices Blackmun and Stevens did not join in Justice Marshall's treatment of federal habeas corpus review as addressed by Justice O'Connor's concurrence. *Id.*

139 *Id.* at 2886 (Marshall, J., dissenting).

suspect into believing he will not be provided counsel until after questioning, Justice Marshall "refuse[d] to acquiesce in the continuing debasement of this historic precedent."[140] In commencing his analysis, Justice Marshall reiterated the strong requirements needed to fulfill a valid *Miranda* warning.[141] Justice Marshall then scrutinized the specific warning given, and concluded that because Eagan could have easily misinterpreted the warning, he would have been unsure of his rights at best.[142]

In faulting the majority's holding, Justice Marshall concluded that it was inappropriate to fail to take into consideration the reality of an interrogation.[143] Justice Marshall opined that even in the unlikely event a suspect comprehends the warnings, he still will have no knowledge as to when his court appearance, and thus receipt of counsel, will take place.[144] Furthermore, Justice Marshall illuminated the pressure police officers can exert with the "threat of an indefinite deferral of interrogation."[145]

Justice Marshall also expressed his dismay with the majority's flippant dismissal of *California v. Prysock*.[146] The Justice stated that the *Prysock* decision held, by distinguishing several lower court decisions, that warnings are defective when "the reference to the right to appointed counsel was linked with some future point in time."[147] Since Eagan was subjected to this defect in his initial warning, Justice Marshall could not reconcile the ma-

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140 *Id.*

141 *Id.* He explained that *Miranda* mandated a "clear and unequivocal offer to provide appointed counsel prior to questioning" or a "fully effective equivalent" as an alternative. *Id.*

142 *Id.* at 2887 (Marshall, J., dissenting). Justice Marshall agreed with the court of appeals, finding that "Eagan could easily have concluded from the 'if and when' caveat that only 'those accused who can afford an attorney have the right to have one present before answering any questions; those who are not so fortunate must wait.' " *Id.* at 2886-87 (Marshall, J., dissenting) (quoting Eagan v. Duckworth, 843 F.2d 1554, 1557 (7th Cir. 1988)).

143 *Id.* at 2887 (Marshall, J., dissenting). Justice Marshall noted that "the recipients of police warnings are often frightened suspects unlettered in the law, not lawyers or judges or others schooled in interpreting legal or semantic nuance." *Id.*

144 *Id.* Furthermore, Justice Marshall added that the confusion would be exacerbated because the "going to court" terminology is synonymous with "going to trial" in everyday usage, and the determination of when counsel will be provided hinges on this. *Id.*

145 *Id.* at 2888 (Marshall, J., dissenting).

146 *Id.* Justice Marshall posited that the *Prysock* decision dealt directly with Eagan's claim of insufficient *Miranda* warnings. *Id.* Furthermore, the majority's misinterpretation of *Miranda* was consequently heightened. See *supra* note 112 for a further discussion of *Prysock*.

147 *Duckworth*, 109 S. Ct. at 2888 (Marshall, J., dissenting) (quoting California v. Prysock, 453 U.S. 355, 360 (1981) (per curiam)).

jority's reasoning.[148] In concluding his first point, Justice Marshall posited that it would be simple to rectify the present circumstances by redrafting the *Miranda* forms to eradicate the ambiguities.[149] In support of his assertion, Justice Marshall compared the clarity of the warnings used by the Federal Bureau of Investigation[150] with those given Eagan.[151]

In the second part of his dissent, Justice Marshall expressed his obvious disdain for Justice O'Connor's position in her concurrence.[152] In reiterating his reasons for dissenting in the *Stone* decision,[153] Justice Marshall determined that there is no basis for an extension of *Stone* because it was erroneous when originally decided.[154] The Justice further stated that it is not the Supreme Court's place to determine the scope of jurisdiction, but one of congressional choice,[155] and consequently it is Congress who must weigh the competing interests Justice O'Connor referred to in her concurrence.[156] Furthermore, Justice Marshall argued that claims such as "prosecutorial misconduct, double jeopardy, or the right to a speedy trial, could never be cognizable on federal

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148 *Id.* at 2889 (Marshall, J., dissenting).

149 *Id.*

150 *Id.* The standard FBI warnings are as follows:

> Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Id. at 2879 n.4.

151 *Id.* at 2889 (Marshall, J., dissenting).

152 *Id.* More specifically, Justice Marshall stated, "Her concurring opinion evinces such a palpable distaste for collateral review of state court judgments that it can only be viewed as a harbinger of future assaults on federal habeas corpus." *Id.* at 2889-90 (Marshall, J., dissenting).

153 *Id.* at 2890 (Marshall, J., dissenting). Justice Marshall agreed with Justice Brennan who argued that the majority's decision in *Stone* "portends substantial evisceration of federal habeas corpus jurisdiction." *Id.* at 2889 (Marshall, J., dissenting) (quoting Stone v. Powell, 428 U.S. 465, 503 (1976) (Brennan, J., dissenting)).

154 *Id.* at 2890 (Marshall, J., dissenting). The Justice explained that he scrutinized the habeas statute and found there was no language to infer that certain federal claims should not be afforded collateral review. *Id.*

155 *Id.* Article III, section 1 of the Constitution provides that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. CONST. art. III, § 1.

156 *Duckworth*, 109 S. Ct. at 2890 (Marshall, J., dissenting).

habeas" under Justice O'Connor's view which narrows the scope of habeas review to guilt-related claims.[157]

In addition to attacking Justice O'Connor's stance on federal habeas review, Justice Marshall further addressed his colleague's "profound distaste for *Miranda*."[158] In assuming arguendo that the *Stone* decision was correct, Justice Marshall contended that it should not be extended further.[159] The Justice pointed out that *Stone* was distinguishable from the present case, because when *Miranda* rights are violated, statements taken are presumptively unreliable, whereas seized physical evidence is not.[160] In further delineating differences between claims based on the exclusionary rule and claims based on *Miranda*, Justice Marshall stressed that the only function of the exclusionary rule is police deterrence while *Miranda* rights "go to the heart of our accusatorial system."[161]

Justice Marshall also opposed Justice O'Connor's treatment of "voluntary statements" as "non-constitutional" *Miranda* claims.[162] In holding that there are no such claims, Justice Marshall relied on prior authority[163] which determined that a statement is not considered "voluntary" unless *Miranda* standards were complied with.[164] Even conceding the existence of "non-constitutional" *Miranda* claims, Justice Marshall declared that it would be impossible to discover which petitioner's statements would be considered "voluntary" for purposes of applying the *Stone* rationale.[165] Justice Marshall reasoned that Congress has

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157 *Id.* at 2891 (Marshall, J., dissenting). Justice Marshall contended that Justice O'Connor failed to consider defendant's rights that are not guilt related but still deserve collateral protection. *Id.*

158 *Id.* Justice Marshall challenged Justice O'Connor's statement that "*no* significant federal values are at stake" when *Miranda* claims are raised in federal habeas corpus proceedings. *Id.* (quoting Duckworth v. Eagan, 109 S. Ct. at 2884 (O'Connor, J., concurring) (emphasis supplied by Justice Marshall).

159 *Id.*

160 *Id.*

161 *Id.* at 2892 (Marshall, J., dissenting). The Justice went on to conclude that the requirements "serve to protect 'a criminal suspect's exercise of [a] privilege which is one of the distinctive components of our criminal law.' " *Id.* (quoting White v. Finkbeiner, 687 F.2d 885, 893 (7th Cir. 1982)).

162 *Id.*

163 *See* Michigan v. Tucker, 417 U.S. 433, 465-66 (1974) (observing that *Miranda*'s purpose was to assure that the self-incrimination clause would be upheld by the constitutional standards enunciated in that decision); Orozco v. Texas, 394 U.S. 324, 326 (1969) (holding admissions obtained without the required warnings violates the self-incrimination clause of the fifth amendment as set forth in *Miranda*).

164 *Duckworth*, 109 S. Ct. at 2892 (Marshall, J., dissenting).

165 *Id.* Thus, to determine the applicability of *Stone*, federal habeas courts must

already used a balancing process and the Court should not inquire into which claims should be granted collateral federal review.[166]

The *Duckworth* decision is not a radical break from the recent treatment of *Miranda* cases but, on the contrary, the continuation of a rather slow and methodic retreat from the strong safeguards originally set forth in 1966.[167] Once *Miranda* was heralded as a bold and innovative decision designed to uphold our sacred Bill of Rights[168] and granted even the most violent criminal some degree of respect.[169] Presently, however, *Miranda* lies on the edge of obsolescence, a despised formality for the police, forced to adhere to it, and a nebulous right often beyond an accused's comprehension.[170] Although the courts have derogated from the stringency of the *Miranda* decision, it nevertheless remains good law. It is unfortunate that the Court did not use *Duckworth* as a stepping stone to decrease the ambiguities of *Miranda* warnings and more importantly, steer *Miranda* law back to a position as guardian of an accused's right against self-incrimination.

The majority correctly holds that *Miranda* warnings need not be given in the exact form prescribed by *Miranda v. Arizona*[171] but falters in its treatment of the "if and when you go to court" language. While the Court acknowledged that the primary consideration in such an issue is whether or not the advisement reasonably conveys a suspect's rights,[172] it ignored the implications that confusing legal jargon will have. *Miranda* forms, such as those used by Indiana law enforcement officials, only exacerbate the existing problem.

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make a prior inquiry into the type of *Miranda* claim being brought. *Id.* at 2892-93 (Marshall, J., dissenting).

166 *Id.* at 2893 (Marshall, J., dissenting).

167 *See* Harris v. New York, 401 U.S. 222 (1971) (allowing statements obtained in violation of *Miranda* to be used as evidence to cast doubts on a defendant's credibility). *See also* Caplan, *supra* note 53, at 1418 (stating that since *Harris*, the Court has avoided opportunities to extend *Miranda* and even diminished its principles); Goldberg, *Escobedo and Miranda Revisited*, 18 AKRON L. REV. 177, 182 (1984) (reasoning that the present Court's treatment of fifth amendment cases "has consigned *Escobedo* to the ash heap of legal history and *Miranda* is twisting slowly in the wind").

168 "The fifth amendment . . . reveals an unwillingness to wage all-out war on crime, even heinous crime, lest other values be demeaned." Caplan, *supra* note 53, at 1471.

169 *Id.*

170 *See* Goldberg, *supra* note 155, at 181 (proclaiming that suspects usually do not understand the meaning behind the *Miranda* warnings they receive).

171 *Duckworth*, 109 S. Ct. at 2879. *See supra* note 86-87 and accompanying text.

172 *Duckworth*, 109 S. Ct. at 2880.

In a society that prides itself on the equity and fairness afforded its citizens through the criminal justice system, the present apathy of the Court toward a suspect's *Miranda* rights is alarming. The travesty becomes more acute upon realization of such a simple remedy. As Justice Marshall lucidly opined, "[d]eleting the sentence containing the offending language is all that needs to be done."[173] *Miranda* warnings were always considered a prophylactic device to insure the accused's constitutional right against self-incrimination.[174] It is consequently illogical to refuse to make the warnings more comprehensible to the very class of people who are in most desperate need of its protection. The very reason for creating such a device is degraded when it is applied in such a way that it is too difficult for the lay person to understand. The FBI warnings, referred to in Justice Marshall's dissent,[175] should act as a model of clarity on which all law enforcement agencies can rely. The straightforward language utilized would satisfy a standard of the "reasonable conveyance of a suspect's rights" and consequently cases such as those at bar would need never be litigated.

The ease with which the aforementioned solution can be arrived at and the majority's refusal to address it is the most disturbing aspect of the *Duckworth* decision. It implies that the Court is not willing to make any concessions to uphold *Miranda's* usefulness but rather curb its effectiveness altogether. The majority's suggestion that *Miranda* warnings need only "touch all bases"[176] is a clear sign of the gray area in which *Miranda* presently is situated. The Court must take a firm stand either way.[177] Ideally, a concise and clear *Miranda* warning that would apprise the accused of his right against self-incrimination is the ultimate goal. However, the Court's predilection towards limiting *Miranda* and society's changing views are evidence of the Court's willingness to abrogate *Miranda's* usefulness and perhaps overrule this historic precedent in the not too distant future. In so doing, the Court will most likely adopt the premise that "[t]he ultimate issue is whether the government proceeded fairly, in a

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173 *Id.* at 2889 (Marshall, J., dissenting).

174 *Id.* at 2880.

175 *Id* at 2889 (Marshall, J., dissenting).

176 *Id* at 2880.

177 Caplan, *supra* note 53, at 1475. In addition Caplan posited that there was no room for a middle ground and a choice must be made between "government or subversion." *Id.*

proper manner, not whether the suspect knew his rights."[178] In any event, the Court must assert itself and decide the fate of *Miranda* rather than allowing it to remain a formality with little meaning.

Gregory G. Tole

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178 *Id.*