Case 1

PC v. State

Cases and Related Materials

U.S. Const. amend. IV

U.S. Const. amend. V

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

Safford Unified School Dist. v. Redding, 557 U.S. 364 (2009)

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

In re Gault, 387 U.S. 1 (1967)

United States Code Annotated
Constitution of the United States
Annotated
Amendment IV. Searches and Seizures; Warrants

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants

Amendment IV. Searches and Seizures; Warrants

Currentness

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for this amendment.>

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants, USCA CONST Amend. IV-Search and Seizure; Warrants
Current through P.L. 115-68.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text
Current through P.L. 115-68.

End of Document

KeyCite Yellow Flag - Negative Treatment
Superseded by Statute as Stated in U.S. v. Dickerson, 4th Cir.(Va.), February 8, 1999

86 S.Ct. 1602
Supreme Court of the United States

Ernesto A. MIRANDA, Petitioner,
v.
STATE OF ARIZONA.
Michael VIGNERA, Petitioner,
v.
STATE OF NEW YORK.
Carl Calvin WESTOVER, Petitioner,
v.
UNITED STATES.
STATE OF CALIFORNIA, Petitioner,
v.
Roy Allen STEWART.

Nos. 759—761, 584.
|
Argued Feb. 28, March 1 and 2, 1966.
|
Decided June 13, 1966.
|
Rehearing Denied No. 584 Oct. 10, 1966.

See 87 S.Ct. 11.

Criminal prosecutions. The Superior Court, Maricopa County, Arizona, rendered judgment, and the Supreme Court of Arizona, 98 Ariz. 18, 401 P.2d 721, affirmed. The Supreme Court, Kings County, New York, rendered judgment, and the Supreme Court, Appellate Division, Second Department, 21 A.D.2d 752, 252 N.Y.S.2d 19, affirmed, as did the Court of Appeals of the State of New York at 15 N.Y.2d 970, 259 N.Y.S.2d 857, 207 N.E.2d 527. The United States District Court for the Northern District of California, Northern Division, rendered judgment, and the United States Court of Appeals for the Ninth Circuit, 342 F.2d 684, affirmed. The Superior Court, Los Angeles County, California, rendered judgment and the Supreme Court of California, 62 Cal.2d 571, 43 Cal.Rptr. 201, 400 P.2d 97, reversed. In the first three cases, defendants obtained certiorari, and the State of California obtained certiorari in the fourth case. The Supreme Court, Mr. Chief Justice Warren, held that statements obtained from defendants during incommunicado interrogation in police-dominated atmosphere, without full warning of constitutional rights, were inadmissible as having been obtained in violation of Fifth Amendment privilege against self-incrimination.

Judgments in first three cases reversed and judgment in fourth case affirmed.

Mr. Justice Harlan, Mr. Justice Stewart, and Mr. Justice White dissented; Mr. Justice Clark dissented in part.

West Headnotes (82)

[1] **Federal Courts**
Criminal matters

Certiorari was granted in cases involving admissibility of defendants' statements to police to explore some facets of problems of applying privilege against self-incrimination to in-custody interrogation and to give concrete constitutional guidelines for law enforcement agencies and courts to follow.

250 Cases that cite this headnote

[2] **Criminal Law**
Compelling Self-Incrimination

Criminal Law
Right of Defendant to Counsel

Constitutional rights to assistance of counsel and protection against self-incrimination were secured for ages to come and designed to approach immortality as nearly as human institutions can approach it. U.S.C.A.Const. Amends. 5, 6.

23 Cases that cite this headnote

[3] **Criminal Law**
Custodial interrogation in general

Prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of defendant unless it demonstrates use of procedural safeguards

effective to secure privilege against self-incrimination. U.S.C.A.Const. Amend. 5.

3797 Cases that cite this headnote

[4] **Criminal Law**
What Constitutes Custody
Criminal Law
What Constitutes Interrogation

"Custodial interrogation", within rule limiting admissibility of statements stemming from such interrogation, means questioning initiated by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom of action in any significant way. U.S.C.A.Const. Amend. 5.

4519 Cases that cite this headnote

[5] **Criminal Law**
Right to remain silent
Criminal Law
Right to counsel
Criminal Law
Use of statement

Unless other fully effective means are devised to inform accused person of the right to silence and to assure continuous opportunity to exercise it, person must, before any questioning, be warned that he has right to remain silent, that any statement he does make may be used as evidence against him, and that he has right to presence of attorney, retained or appointed. U.S.C.A.Const. Amend. 5.

1033 Cases that cite this headnote

[6] **Criminal Law**
Right to remain silent
Criminal Law
Counsel
Criminal Law
In general;right to appear pro se

Defendant may waive effectuation of right to counsel and to remain silent, provided that waiver is made voluntarily, knowingly and intelligently. U.S.C.A.Const. Amends. 5, 6.

1147 Cases that cite this headnote

[7] **Criminal Law**
Counsel

There can be no questioning if defendant indicates in any manner and at any stage of interrogation process that he wishes to consult with attorney before speaking. U.S.C.A.Const. Amend. 6.

374 Cases that cite this headnote

[8] **Criminal Law**
Right to remain silent

Police may not question individual if he is alone and indicates in any manner that he does not wish to be interrogated.

127 Cases that cite this headnote

[9] **Criminal Law**
Counsel

Mere fact that accused may have answered some questions or volunteered some statements on his own does not deprive him of right to refrain from answering any further inquiries until he has consulted with attorney and thereafter consents to be questioned. U.S.C.A.Const. Amends. 5, 6.

248 Cases that cite this headnote

[10] **Criminal Law**
Coercion
Criminal Law
Force;physical abuse

Coercion can be mental as well as physical and blood of accused is not the only hallmark of unconstitutional inquisition. U.S.C.A.Const. Amend. 5.

31 Cases that cite this headnote

[11] **Criminal Law**

Coercion

Incommunicado interrogation of individuals in police-dominated atmosphere, while not physical intimidation, is equally destructive of human dignity, and current practice is at odds with principle that individual may not be compelled to incriminate himself. U.S.C.A.Const. Amend. 5.

327 Cases that cite this headnote

[12] Criminal Law

Compelling Self-Incrimination

Privilege against self-incrimination is in part individual's substantive right to private enclave where he may lead private life. U.S.C.A.Const. Amend. 5.

6 Cases that cite this headnote

[13] Criminal Law

Compelling Self-Incrimination

Constitutional foundation underlying privilege against self-incrimination is the respect a government, state or federal, must accord to dignity and integrity of its citizens.

22 Cases that cite this headnote

[14] Criminal Law

Compelling Self-Incrimination

Government seeking to punish individual must produce evidence against him by its own independent labors, rather than by cruel, simple expedient of compelling it from his own mouth. U.S.C.A.Const. Amend. 5.

42 Cases that cite this headnote

[15] Criminal Law

Compelling Self-Incrimination

Privilege against self-incrimination is fulfilled only when person is guaranteed right to remain silent unless he chooses to speak in unfettered exercise of his own will. U.S.C.A.Const. Amend. 5.

86 Cases that cite this headnote

[16] Criminal Law

Compelling Self-Incrimination

Individual swept from familiar surroundings into police custody, surrounded by antagonistic forces and subjected to techniques of persuasion employed by police, cannot be otherwise than under compulsion to speak. U.S.C.A.Const. Amend. 5.

42 Cases that cite this headnote

[17] Arrest

Mode of Making Arrest

When federal officials arrest individuals they must always comply with dictates of congressional legislation and cases thereunder. Fed.Rules Crim.Proc. rule 5(a), 18 U.S.C.A.

11 Cases that cite this headnote

[18] Criminal Law

Necessity of showing voluntary character

Defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on involuntary confession, regardless of its truth or falsity, even if there is ample evidence aside from confession to support conviction.

36 Cases that cite this headnote

[19] Criminal Law

Voluntariness

Whether conviction was in federal or state court, defendant may secure post-conviction hearing based on alleged involuntary character of his confession, provided that he meets procedural requirements.

164 Cases that cite this headnote

[20] Criminal Law

Coercion

Voluntariness doctrine in state cases encompasses all interrogation practices which are likely to exert such pressure upon individual as to disable him from making free and rational choice. U.S.C.A.Const. Amend. 5.

61 Cases that cite this headnote

[21] **Criminal Law**
Absence or denial of counsel
Criminal Law
Consultation with counsel;privacy

Independent of any other constitutional proscription, preventing attorney from consulting with client is violation of Sixth Amendment right to assistance of counsel and excludes any statement obtained in its wake. U.S.C.A.Const. Amend. 6.

95 Cases that cite this headnote

[22] **Criminal Law**
Absence or denial of counsel

Presence of counsel in cases presented would have been adequate protective device necessary to make process of police interrogation conform to dictates of privilege; his presence would have insured that statements made in government-established atmosphere were not product of compulsion. U.S.C.A.Const. Amends. 5, 6.

59 Cases that cite this headnote

[23] **Criminal Law**
Compelling Self-Incrimination

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 from being compelled to incriminate themselves. U.S.C.A.Const. Amend. 5.

64 Cases that cite this headnote

[24] **Criminal Law**
Compelling Self-Incrimination
Criminal Law
Form and sufficiency
Criminal Law
Effect of Invocation

To combat pressures in in-custody interrogation and to permit full opportunity to exercise privilege against self-incrimination, accused must be adequately and effectively apprised of his rights and exercise of these rights must be fully honored. U.S.C.A.Const. Amend. 5.

111 Cases that cite this headnote

[25] **Criminal Law**
Right to remain silent

If person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has right to remain silent, as threshold requirement for intelligent decision as to its exercise, as absolute prerequisite in overcoming inherent pressures of interrogation atmosphere, and to show that interrogators are prepared to recognize privilege should accused choose to exercise it. U.S.C.A.Const. Amend. 5.

410 Cases that cite this headnote

[26] **Criminal Law**
Right to remain silent

Awareness of right to remain silent is threshold requirement for intelligent decision as to its exercise. U.S.C.A.Const. Amend. 5.

80 Cases that cite this headnote

[27] **Criminal Law**
Compelling Self-Incrimination

It is impermissible to penalize individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. U.S.C.A.Const. Amend. 5.

261 Cases that cite this headnote

[28] **Criminal Law**
Silence
Criminal Law
Statements asserting constitutional rights

Prosecution may not use at trial fact that defendant stood mute or claimed his privilege in face of accusation.

506 Cases that cite this headnote

[29] **Criminal Law**
Right to remain silent

Whatever background of person interrogated, warning at time of interrogation as to availability of right to remain silent is indispensable to overcome pressures of in-custody interrogation and to insure that individual knows that he is free to exercise privilege at that point and time. U.S.C.A.Const. Amend. 5.

476 Cases that cite this headnote

[30] **Criminal Law**
Right to remain silent
Criminal Law
Use of statement

Warning of right to remain silent, as prerequisite to in-custody interrogation, must be accompanied by explanation that anything said can and will be used against individual; warning is needed to make accused aware not only of privilege but of consequences of foregoing it and also serves to make him more acutely aware that he is faced with phase of adversary system. U.S.C.A.Const. Amend. 5.

655 Cases that cite this headnote

[31] **Criminal Law**
Counsel in General

Right to have counsel present at interrogation is indispensable to protection of Fifth Amendment privilege. U.S.C.A.Const. Amend. 5.

157 Cases that cite this headnote

[32] **Criminal Law**
Counsel in General

Need for counsel to protect Fifth Amendment privilege comprehends not merely right to consult with counsel prior to questioning but also to have counsel present during any questioning if defendant so desires. U.S.C.A.Const. Amends. 5, 6.

94 Cases that cite this headnote

[33] **Criminal Law**
Counsel
Criminal Law
Counsel

Preinterrogation request for lawyer affirmatively secures accused's right to have one, but his failure to ask for lawyer does not constitute waiver. U.S.C.A.Const. Amend. 5.

100 Cases that cite this headnote

[34] **Criminal Law**
Counsel

No effective waiver of right to counsel during interrogation can be recognized unless specifically made after warnings as to rights have been given. U.S.C.A.Const. Amend. 5.

100 Cases that cite this headnote

[35] **Criminal Law**
Counsel in General

Proposition that right to be furnished counsel does not depend upon request applies with equal force in context of providing counsel to protect accused's Fifth Amendment privilege in face of interrogation. U.S.C.A.Const. Amend. 5.

8 Cases that cite this headnote

[36] **Criminal Law**
Right to counsel

Individual held for interrogation must be clearly informed that he has right to consult with lawyer and to have lawyer with him during interrogation, to protect Fifth Amendment privilege. U.S.C.A.Const. Amend. 5.

147 Cases that cite this headnote

[37] Criminal Law
Right to counsel

Warning as to right to consult lawyer and have lawyer present during interrogation is absolute prerequisite to interrogation, and no amount of circumstantial evidence that person may have been aware of this right will suffice to stand in its stead. U.S.C.A.Const. Amend. 5.

102 Cases that cite this headnote

[38] Criminal Law
Counsel

If individual indicates that he wishes assistance of counsel before interrogation occurs, authorities cannot rationally ignore or deny request on basis that individual does not have or cannot afford retained attorney.

151 Cases that cite this headnote

[39] Criminal Law
Compelling Self-Incrimination

Privilege against self-incrimination applies to all individuals. U.S.C.A.Const. Amend. 5.

56 Cases that cite this headnote

[40] Criminal Law
Indigence

With respect to affording assistance of counsel, while authorities are not required to relieve accused of his poverty, they have obligation not to take advantage of indigence in administration of justice. U.S.C.A.Const. Amend. 6.

10 Cases that cite this headnote

[41] Criminal Law
Right to counsel

In order fully to apprise person interrogated of extent of his rights, it is necessary to warn him not only that he has right to consult with attorney, but also that if he is indigent lawyer will be appointed to represent him. U.S.C.A.Const. Amend. 6.

61 Cases that cite this headnote

[42] Criminal Law
Duty of Inquiry, Warning, and Advice

Expedient of giving warning as to right to appointed counsel is too simple and rights involved too important to engage in ex post facto inquiries into financial ability when there is any doubt at all on that score, but warning that indigent may have counsel appointed need not be given to person who is known to have attorney or is known to have ample funds to secure one. U.S.C.A.Const. Amend. 6.

149 Cases that cite this headnote

[43] Criminal Law
Right to remain silent

Once warnings have been given, if individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, interrogation must cease. U.S.C.A.Const. Amend. 5.

1473 Cases that cite this headnote

[44] Criminal Law
Right to remain silent

Criminal Law
Right to remain silent

If individual indicates desire to remain silent, but has attorney present, there may be some circumstances in which further questioning would be permissible; in absence

of evidence of overbearing, statements then made in presence of counsel might be free of compelling influence of interrogation process and might fairly be construed as waiver of privilege for purposes of these statements. U.S.C.A.Const. Amend. 5.

251 Cases that cite this headnote

[45] Criminal Law
Right to remain silent

Any statement taken after person invokes Fifth Amendment privilege cannot be other than product of compulsion. U.S.C.A.Const. Amend. 5.

65 Cases that cite this headnote

[46] Criminal Law
Counsel

If individual states that he wants attorney, interrogation must cease until attorney is present; at that time, individual must have opportunity to confer with attorney and to have him present during any subsequent questioning. U.S.C.A.Const. Amends. 5, 6.

313 Cases that cite this headnote

[47] Criminal Law
Right to counsel

Criminal Law
Counsel in General

While each police station need not have "station house lawyer" present at all times to advise prisoners, if police propose to interrogate person they must make known to him that he is entitled to lawyer and that if he cannot afford one, lawyer will be provided for him prior to any interrogation. U.S.C.A.Const. Amend. 5.

811 Cases that cite this headnote

[48] Criminal Law
Compelling Self-Incrimination

If authorities conclude that they will not provide counsel during reasonable period of time in which investigation in field is carried out, they may refrain from doing so without violating person's Fifth Amendment privilege so long as they do not question him during that time. U.S.C.A.Const. Amend. 5.

145 Cases that cite this headnote

[49] Criminal Law
Waiver of rights

If interrogation continues without presence of attorney and statement is taken, government has heavy burden to demonstrate that defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. U.S.C.A.Const. Amend. 5.

2915 Cases that cite this headnote

[50] Criminal Law
Waiver of rights

High standards of proof for waiver of constitutional rights apply to in-custody interrogation.

114 Cases that cite this headnote

[51] Criminal Law
Waiver of rights

State properly has burden to demonstrate knowing and intelligent waiver of privilege against self-incrimination and right to counsel, with respect to incommunicado interrogation, since state is responsible for establishing isolated circumstances under which interrogation takes place and has only means of making available corroborated evidence of warnings given.

1424 Cases that cite this headnote

[52] Criminal Law
Right to remain silent

Criminal Law

Counsel

Criminal Law

Waiver of rights

Express statement that defendant is willing to make statement and does not want attorney, followed closely by statement, could constitute waiver, but valid waiver will not be presumed simply from silence of accused after warnings are given or simply from fact that confession was in fact eventually obtained.

1141 Cases that cite this headnote

[53] **Criminal Law**

Capacity and requisites in general

Criminal Law

Presumptions as to waiver, burden of proof

Presuming waiver from silent record is impermissible, and record must show, or there must be allegations and evidence, that accused was offered counsel but intelligently and understandingly rejected offer.

79 Cases that cite this headnote

[54] **Criminal Law**

Right to remain silent

Where in-custody interrogation is involved, there is no room for contention that privilege is waived if individual answers some questions or gives some information on his own before invoking right to remain silent when interrogated. U.S.C.A.Const. Amend. 5.

2062 Cases that cite this headnote

[55] **Criminal Law**

Form and sufficiency in general

Fact of lengthy interrogation or incommunicado incarceration before statement is made is strong evidence that accused did not validly waive rights. U.S.C.A.Const. Amend. 5.

136 Cases that cite this headnote

[56] **Criminal Law**

Compelling Self-Incrimination

Any evidence that accused was threatened, tricked, or cajoled into waiver will show that he did not voluntarily waive privilege to remain silent. U.S.C.A.Const. Amend. 5.

90 Cases that cite this headnote

[57] **Criminal Law**

Necessity in general

Criminal Law

Necessity

Requirement of warnings and waiver of right is fundamental with respect to Fifth Amendment privilege and not simply preliminary ritual to existing methods of interrogation.

55 Cases that cite this headnote

[58] **Criminal Law**

Necessity in general

Criminal Law

Necessity

Warnings or waiver with respect to Fifth Amendment rights are, in absence of wholly effective equivalent, prerequisites to admissibility of any statement made by a defendant, regardless of whether statements are direct confessions, admissions of part or all of offense, or merely "exculpatory". U.S.C.A.Const. Amend. 5.

2547 Cases that cite this headnote

[59] **Criminal Law**

Compelling Self-Incrimination

Privilege against self-incrimination protects individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination.

35 Cases that cite this headnote

[60] **Criminal Law**

Necessity in general

Criminal Law

Necessity

Statements merely intended to be exculpatory by defendant, but used to impeach trial testimony or to demonstrate untruth in statements given under interrogation, are incriminating and may not be used without full warnings and effective waiver required for any other statement. U.S.C.A.Const. Amend. 5.

1562 Cases that cite this headnote

[61] **Criminal Law**

Intervention of Public Officers

When individual is in custody on probable cause, police may seek out evidence in field to be used at trial against him, and may make inquiry of persons not under restraint.

90 Cases that cite this headnote

[62] **Criminal Law**

Warnings

Criminal Law

Necessity

Rules relating to warnings and waiver in connection with statements taken in police interrogation do not govern general on-the-scene questioning as to facts surrounding crime or other general questioning of citizens in fact-finding process. U.S.C.A.Const. Amend. 5.

6276 Cases that cite this headnote

[63] **Criminal Law**

Statements, Confessions, and Admissions by or on Behalf of Accused

Confessions remain a proper element in law enforcement.

30 Cases that cite this headnote

[64] **Criminal Law**

Necessity of showing voluntary character

Any statement given freely and voluntarily without compelling influences is admissible.

360 Cases that cite this headnote

[65] **Criminal Law**

Necessity of showing voluntary character

Criminal Law

What constitutes voluntary statement, admission, or confession

Volunteered statements of any kind are not barred by Fifth Amendment; there is no requirement that police stop person who enters police station and states that he wishes to confess a crime or a person who calls police to offer confession or any other statements he desires to make. U.S.C.A.Const. Amend. 5.

485 Cases that cite this headnote

[66] **Criminal Law**

Compelling Self-Incrimination

When individual is taken into custody or otherwise deprived of his freedom by authorities in any significant way and is subjected to questioning, privilege against self-incrimination is jeopardized, and procedural safeguards must be employed to protect privilege. U.S.C.A.Const. Amend. 5.

1008 Cases that cite this headnote

[67] **Criminal Law**

Right to remain silent

Criminal Law

Right to counsel

Criminal Law

Use of statement

Criminal Law

Invocation of Rights

Criminal Law

Form and sufficiency in general

Unless other fully effective means are adopted to notify accused in custody or otherwise deprived of freedom of his right of silence and to assure that exercise of right will be scrupulously honored, he must be warned

before questioning that he has right to remain silent, that anything he says can be used against him in court, and that he has right to presence of attorney and to have attorney appointed before questioning if he cannot afford one; opportunity to exercise these rights must be afforded to him throughout interrogation; after such warnings have been given and opportunity afforded, accused may knowingly and intelligently waive rights and agree to answer questions or make statements, but unless and until such warnings and waiver are demonstrated by prosecution at trial, no evidence obtained as a result of interrogation can be used against him. U.S.C.A.Const. Amends. 5, 6.

5376 Cases that cite this headnote

[68] Criminal Law

Compelling Self-Incrimination

Fifth Amendment provision that individual cannot be compelled to be witness against himself cannot be abridged. U.S.C.A.Const. Amend. 5.

131 Cases that cite this headnote

[69] Criminal Law

Right of Defendant to Counsel

In fulfilling responsibility to protect rights of client, attorney plays vital role in administration of criminal justice. U.S.C.A.Const. Amend. 6.

17 Cases that cite this headnote

[70] Criminal Law

Counsel

Interviewing agent must exercise his judgment in determining whether individual waives right to counsel, but standard for waiver is high and ultimate responsibility for resolving constitutional question lies with courts.

240 Cases that cite this headnote

[71] Criminal Law

Custodial interrogation in general

Constitution does not require any specific code of procedures for protecting privilege against self-incrimination during custodial interrogation, and Congress and states are free to develop their own safeguards for privilege, so long as they are fully as effective as those required by court. U.S.C.A.Const. Amend. 5.

1733 Cases that cite this headnote

[72] Constitutional Law

Necessity of Determination

Issues of admissibility of statements taken during custodial interrogation were of constitutional dimension and must be determined by courts.

203 Cases that cite this headnote

[73] Administrative Law and Procedure

Validity

Constitutional Law

Statutory abrogation of constitutional right

Where rights secured by Constitution are involved, there can be no rule making or legislation which would abrogate them.

70 Cases that cite this headnote

[74] Constitutional Law

Particular cases

Criminal Law

Right to counsel

Statements taken by police in incommunicado interrogation were inadmissible in state prosecution, where defendant had not been in any way apprised of his right to consult with attorney or to have one present during interrogation, and his Fifth Amendment right not to be compelled to incriminate himself was not effectively protected in any other manner, even though he signed statement which contained typed in clause that he had full

knowledge of his legal rights. U.S.C.A.Const. Amends. 5, 6.

2754 Cases that cite this headnote

[75] **Criminal Law**
Right to remain silent
Criminal Law
Counsel

Mere fact that interrogated defendant signed statement which contained typed in clause stating that he had full knowledge of his legal rights did not approach knowing and intelligent waiver required to relinquish constitutional rights to counsel and privilege against self-incrimination.

920 Cases that cite this headnote

[76] **Constitutional Law**
Particular cases
Criminal Law
Right to remain silent
Criminal Law
Right to counsel

State defendant's oral confession obtained during incommunicado interrogation was inadmissible where he had not been warned of any of his rights before questioning, and thus was not effectively apprised of Fifth Amendment privilege or right to have counsel present. U.S.C.A.Const. Amends. 5, 6.

2120 Cases that cite this headnote

[77] **Criminal Law**
Effect of Prior Illegality

Confessions obtained by federal agents in incommunicado interrogation were not admissible in federal prosecution, although federal agents gave warning of defendant's right to counsel and to remain silent, where defendant had been arrested by state authorities who detained and interrogated him for lengthy period, both at night and the following morning, without giving warning, and confessions were obtained after some two hours of questioning by federal agents in same police station. U.S.C.A.Const. Amends. 5, 6.

2611 Cases that cite this headnote

[78] **Criminal Law**
Confessions, declarations, and admissions

Defendant's failure to object to introduction of his confession at trial was not a waiver of claim of constitutional inadmissibility, and did not preclude Supreme Court's consideration of issue, where trial was held prior to decision in Escobedo v. Illinois.

901 Cases that cite this headnote

[79] **Criminal Law**
Effect of Prior Illegality

Federal agents' giving of warning alone was not sufficient to protect defendant's Fifth Amendment privilege where federal interrogation was conducted immediately following state interrogation in same police station and in same compelling circumstances, after state interrogation in which no warnings were given, so that federal agents were beneficiaries of pressure applied by local in-custody interrogation; however, law enforcement authorities are not necessarily precluded from questioning any individual who has been held for period of time by other authorities and interrogated by them without appropriate warning.

3078 Cases that cite this headnote

[80] **Federal Courts**
Review of state courts

California Supreme Court decision directing that state defendant be retried was final judgment, from which state could appeal to federal Supreme Court, since in event defendant were successful in obtaining acquittal on retrial state would have no appeal. 28 U.S.C.A. § 1257(3).

61 Cases that cite this headnote

[81] **Criminal Law**
Reception of evidence

In dealing with custodial interrogation, court will not presume that defendant has been effectively apprised of rights and that his privilege against self-incrimination has been adequately safeguarded on record that does not show that any warnings have been given or that any effective alternative has been employed, nor can knowing and intelligent waiver of those rights be assumed on silent record. U.S.C.A.Const. Amend. 5.

709 Cases that cite this headnote

[82] **Constitutional Law**
Particular cases

Criminal Law
Necessity in general

Criminal Law
Particular cases

Criminal Law
Necessity

State defendant's inculpatory statement obtained in incommunicado interrogation was inadmissible as obtained in violation of Fifth Amendment privilege where record did not specifically disclose whether defendant had been advised of his rights, he was interrogated on nine separate occasions over five days' detention, and record was silent as to waiver. U.S.C.A.Const. Amend. 5.

11100 Cases that cite this headnote

Attorneys and Law Firms

****1609** No. 759:

***438** John J. Flynn, Phoenix, Ariz., for petitioner.

Gary K. Nelson, Phoenix, Ariz., for respondent.

Telford Taylor, New York City, for State of New York, as amicus curiae, by special leave of Court. (Also in Nos. 584, 760, 761 and 762)

Duane R. Nedrud, for National District Attorneys Ass'n, as amicus curiae, by special leave of Court. (Also in Nos. 760, 762 and 584)

No. 760:

Victor M. Earle, III, New York City, for petitioner.

William I. Siegel, Brooklyn, for respondent.

No. 761:

F. Conger Fawcett, San Francisco, Cal., for petitioner.

Sol. Gen. Thurgood Marshall, for respondent.

No. 584:

Gorden Ringer, Los Angeles, Cal., for petitioner.

William A. Norris, Los Angeles, Cal., for respondent.

Opinion

***439** Mr. Chief Justice WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.

***440** We dealt with certain phases of this problem recently in ****1610** Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964). There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. Rather, they confronted him with an alleged accomplice who accused him of having perpetrated a murder. When the defendant denied the accusation and said 'I didn't shoot Manuel, you did it,' they handcuffed him and took him to an interrogation room. There, while handcuffed and standing, he was questioned for four hours until he

confessed. During this interrogation, the police denied his request to speak to his attorney, and they prevented his retained attorney, who had come to the police station, from consulting with him. At his trial, the State, over his objection, introduced the confession against him. We held that the statements thus made were constitutionally inadmissible.

[1] This case has been the subject of judicial interpretation and spirited legal debate since it was decided two years ago. Both state and federal courts, in assessing its implications, have arrived at varying conclusions.[1] A wealth of scholarly material has been written tracing its ramifications and underpinnings.[2] Police and prosecutor ***441** have speculated on its range and desirability.[3] We granted ****1611** certiorari in these cases, 382 U.S. 924, 925, 937, 86 S.Ct. 318, 320, 395, 15 L.Ed.2d 338, 339, 348, in order further to explore some facets of the problems, thus exposed, of applying the privilege against self-incrimination to in-custody interrogation, and to give ***442** concrete constitutional guidelines for law enforcement agencies and courts to follow.

[2] We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough re-examination of the Escobedo decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution—that 'No person * * * shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall * * * have the Assistance of Counsel'—rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured 'for ages to come, and * * * designed to approach immortality as nearly as human institutions can approach it,' Cohens v. Commonwealth of Virginia, 6 Wheat. 264, 387, 5 L.Ed. 257 (1821).

Over 70 years ago, our predecessors on this Court eloquently stated:

'The maxim 'Nemo tenetur seipsum accusare,' had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which (have) long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, (were) not uncommon even in England. While the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the ease with which the ***443** questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evident in many of the earlier state trials, notably in those of Sir Nicholas Throckmorton, and Udal, the Puritan minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become firmly embedded in English, as well as in American jurisprudence. So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that 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 in this country with the impregnability of a constitutional enactment.' Brown v. Walker, 161 U.S. 591, 596—597, 16 S.Ct. 644, 646, 40 L.Ed. 819 (1896).

In stating the obligation of the judiciary to apply these constitutional rights, this Court declared in Weems v. United States, 217 U.S. 349, 373, 30 S.Ct. 544, 551, 54 L.Ed. 793 (1910):

> '* * * our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted ****1612** by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The ***444** meaning and vitality of the

> Constitution have developed against narrow and restrictive construction.'

This was the spirit in which we delineated, in meaningful language, the manner in which the constitutional rights of the individual could be enforced against overzealous police practices. It was necessary in Escobedo, as here, to insure that what was proclaimed in the Constitution had not become but a 'form of words,' Silverthorn Lumber Co. v. United States, 251 U.S. 385, 392, 40 S.Ct. 182, 64 L.Ed. 319 (1920), in the hands of government officials. And it is in this spirit, consistent with our role as judges, that we adhere to the principles of Escobedo today.

[3] [4] [5] [6] [7] [8] [9] Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean 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.[4] As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the ***445** process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

1.

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact ****1613** that in this country they have largely taken place incommunicado. From extensive factual studies undertaken in the early 1930's, including the famous Wickersham Report to Congress by a Presidential Commission, it is clear that police violence and the 'third degree' flourished at that time.[5] ***446** In a series of cases decided by this Court long after these studies, the police resorted to physical brutality—beatings, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions.[6] The Commission on Civil Rights in 1961 found much evidence to indicate that 'some policemen still resort to physical force to obtain confessions,' 1961 Comm'n on Civil Rights Rep., Justice, pt. 5, 17. The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party. People v. Portelli, 15 N.Y.2d 235, 257 N.Y.S.2d 931, 205 N.E.2d 857 (1965).[7]

***447** The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved—such as these

decisions will advance—there can be no assurance that practices of this nature will be eradicated in the foreseeable future. The conclusion of the Wickersham **1614 Commission Report, made over 30 years ago, is still pertinent:

'To the contention that the third degree is necessary to get the facts, the reporters aptly reply in the language of the present Lord Chancellor of England (Lord Sankey): 'It is not admissible to do a great right by doing a little wrong. * * * It is not sufficient to do justice by obtaining a proper result by irregular or improper means.' Not only does the use of the third degree involve a flagrant violation of law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence. As the New York prosecutor quoted in the report said, 'It is a short cut and makes the police lazy and unenterprising.' Or, as another official quoted remarked: 'If you use your fists, you *448 are not so likely to use your wits.' We agree with the conclusion expressed in the report, that 'The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.'' IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement 5 (1931).

[10] Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before, 'Since Chambers v. State of Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' Blackburn v. State of Alabama, 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960). Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics.[8] These *449 texts are used by law enforcement agencies themselves as guides.[9] It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other **1615 data, it is possible to describe procedures observed and noted around the country.

The officers are told by the manuals that the 'principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation.'[10] The efficacy of this tactic has been explained as follows:

'If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and *450 more reluctant to tell of his indiscretions of criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law.'[11]

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for women. The officers are instructed to minimize the moral seriousness of the offense,[12] to cast blame on the victim or on society.[13] These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.

The texts thus stress that the major qualities an interrogator should possess are patience and perseverance. *451 One writer describes the efficacy of these characteristics in this manner:

'In the preceding paragraphs emphasis has been placed on kindness and stratagems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must

rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. The method should be used only when the guilt of **1616 the subject appears highly probable.' [14]

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge-killing, for example, the interrogator may say:
'Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him and that's why you carried a gun—for your own protection. You knew him for what he was, no good. Then when you met him he probably started using foul, abusive language and he gave some indication *452 that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe?' [15]

Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that 'Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense 'out' at the time of trial.' [16]

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the 'friendly-unfriendly' or the 'Mutt and Jeff' act:
'* * * In this technique, two agents are employed. Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room.' [17]

*453 The interrogators sometimes are instructed to induce a confession out of trickery. The technique here is quite effective in crimes which require identification or which run in series. In the identification situation, the interrogator may take a break in his questioning to place the subject among a group of men in a line-up. 'The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party.' [18] Then the questioning resumes 'as though there were now no doubt about the guilt **1617 of the subject.' A variation on this technique is called the 'reverse line-up':
'The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with diferent offenses. It is expected that the subject will become desperate and confess to the offense under investigation in order to escape from the false accusations.' [19]

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain silent. 'This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain silent impresses *454 the subject with the apparent fairness of his interrogator.' [20] After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect's refusal to talk:
'Joe, you have a right to remain silent. That's your privilege and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O.K. But let me ask you this. Suppose you were in my shoes and I were in yours and you called me in to ask me

about this and I told you, 'I don't want to answer any of your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over.'[21]

Few will persist in their initial refusal to talk, it is said, if this monologue is employed correctly.

In the event that the subject wishes to speak to a relative or an attorney, the following advice is tendered:

> '(T)he interrogator should respond by suggesting that the subject first tell the truth to the interrogator himself rather than get anyone else involved in the matter. If the request is for an attorney, the interrogator may suggest that the subject save himself or his family the expense of any such professional service, particularly if he is innocent of the offense under investigation. The interrogator may also add, 'Joe, I'm only looking for the truth, and if you're telling the truth, that's it. You can handle this by yourself.'[22]

***455** From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.'[23] When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the 'third degree' or the specific stratagems ****1618** described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.[24] ***456** This fact may be illustrated simply by referring to three confession cases decided by this Court in the Term immediately preceding our Escobedo decision. In Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), the defendant was a 19-year-old heroin addict, described as a 'near mental defective,' id., at 307—310, 83 S.Ct. at 754—755. The defendant in Lynumn v. State of Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963), was a woman who confessed to the arresting officer after being importuned to 'cooperate' in order to prevent her children from being taken by relief authorities. This Court as in those cases reversed the conviction of a defendant in Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963), whose persistent request during his interrogation was to phone his wife or attorney.[25] In other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed.

In the cases before us today, given this backgound, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In No. 759, Miranda v. Arizona, the police arrested the defendant and took him to a special interrogation room where they secured a confession. In No. 760, Vignera v. New York, the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In No. 761, Westover v. United States, the defendant was handed over to the Federal Bureau of Investigation by ***457** local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in No. 584, California v. Stewart, the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing

police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual **1619 fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

[11] It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. [26] The current practice of incommunicado interrogation is at odds with one of our *458 Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

From the foregoing, we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. It is fitting to turn to history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation.

II.

We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came and the fervor with which it was defended. Its roots go back into ancient times. [27] Perhaps *459 the critical historical event shedding light on its origins and evolution was the trial of one John Lilburn, a vocal anti-Stuart Leveller, who was made to take the Star Chamber Oath in 1637. The oath would have bound him to answer to all questions posed to him on any subject. The Trial of John Lilburn and John Wharton, 3 How.St.Tr. 1315 (1637). He resisted the oath and declaimed the proceedings, stating:

'Another fundamental right I then contended for, was, that no man's conscience ought to be racked by oaths imposed, to answer to questions concerning himself in matters criminal, or pretended to be so.' Haller & Davies, The Leveller Tracts 1647—1653, p. 454 (1944).

On account of the Lilburn Trial, Parliament abolished the inquisitorial Court of Star Chamber and went further in giving him generous reparation. The lofty principles to which Lilburn had appealed **1620 during his trial gained popular acceptance in England. [28] These sentiments worked their way over to the Colonies and were implanted after great struggle into the Bill of Rights. [29] Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that 'illegitimate and unconstitutional practices get their first footing * * * by silent approaches and slight deviations from legal modes of procedure.' Boyd v. United States, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed. 746 (1886). The privilege was elevated to constitutional status and has always been 'as broad ad the mischief *460 against which it seeks to guard.' Counselman v. Hitchcock, 142 U.S. 547, 562, 12 S.Ct. 195, 198, 35 L.Ed. 1110 (1892). We cannot depart from this noble heritage.

[12] [13] [14] [15] Thus we may view the historical development of the privilege as one which groped for the proper scope of governmental power over the citizen. As a 'noble principle often transcends its origins,' the privilege has come right-fully to be recognized in part as an individual's substantive right, a 'right to a private enclave where he may lead a private life. That right is the hallmark of our democracy.' United States v. Grunewald, 233 F.2d 556, 579, 581—582 (Frank, J., dissenting), rev'd, 353 U.S. 391, 77 S.Ct. 963, 1 L.Ed.2d 931 (1957). We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values, Murphy v. Waterfront Comm. of New York Harbor, 378 U.S. 52, 55—57, n. 5, 84 S.Ct. 1594, 1596—1597, 12 L.Ed.2d 678 (1964); Tehan v. United States ex rel. Shott, 382 U.S. 406, 414—415, n. 12, 86 S.Ct. 459, 464, 15 L.Ed.2d 453 (1966). All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a 'fair state-individual balance,' to require the government 'to shoulder the entire load,' 8 Wigmore, Evidence 317 (McNaughton rev. 1961), to

respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. Chambers v. State of Florida, 309 U.S. 227, 235—238, 60 S.Ct. 472, 476—477, 84 L.Ed. 716 (1940). In sum, the privilege is fulfilled only when the person is guaranteed the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will.' Malloy v. Hogan, 378 U.S. 1, 8, 84 S.Ct. 1489, 1493, 12 L.Ed.2d 653 (1964).

[16] The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation. ***461** In this Court, the privilege has consistently been accorded a liberal construction. Albertson v. Subversive Activities Control Board, 382 U.S. 70, 81, 86 S.Ct. 194, 200, 15 L.Ed.2d 165 (1965); Hoffman v. United States, 341 U.S. 479, 486, 71 S.Ct. 814, 818, 95 L.Ed.2d 1118 (1951); Arnstein v. McCarthy, 254 U.S. 71, 72—73, 41 S.Ct. 26, 65 L.Ed. 138 (1920); Counselman v. Hitchcock, 142 U.S. 547, 562, 12 S.Ct. 195, 197, 35 L.Ed. 1110 (1892). We are satisfied that all the principles embodied in the privilege apply to informal compulsion exerted by ****1621** law-enforcement officers during in-custody questioning. An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery. [30]

This question, in fact, could have been taken as settled in federal courts almost 70 years ago, when, in Bram v. United States, 168 U.S. 532, 542, 18 S.Ct. 183, 187, 42 L.Ed. 568 (1897), this Court held:

'In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the fifth amendment * * * commanding that no person 'shall be compelled in any criminal case to be a witness against himself.''

In Bram, the Court reviewed the British and American history and case law and set down the Fifth Amendment standard for compulsion which we implement today:

'Much of the confusion which has resulted from the effort to deduce from the adjudged cases what ***462** would be a sufficient quantum of proof to show that a confession was or was not voluntary has arisen from a misconception of the subject to which the proof must address itself. The rule is not that, in order to render a statement admissible, the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say, that, from the causes which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement when but for the improper influences he would have remained silent. * * *' 168 U.S., at 549, 18 S.Ct. at 189. And see, id., at 542, 18 S.Ct. at 186.

The Court has adhered to this reasoning. In 1924, Mr. Justice Brandeis wrote for a unanimous Court in reversing a conviction resting on a compelled confession, Ziang Sung Wan v. United States, 266 U.S. 1, 45 S.Ct. 1, 69 L.Ed. 131. He stated:

'In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. Bram v. United States, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568.' 266 U.S., at 14—15, 45 S.Ct. at 3.

In addition to the expansive historical development of the privilege and the sound policies which have nurtured ***463** its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation. In fact, the Government concedes this point as well established in No. 761, Westover v. United States, stating: 'We have no doubt * * * that it is

possible for a suspect's Fifth **1622 Amendment right to be violated during in-custody questioning by a law-enforcement officer.'[31]

[17] Because of the adoption by Congress of Rule 5(a) of the Federal Rules of Criminal Procedure, and the Court's effectuation of that Rule in McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 (1943), and Mallory v. United States, 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed.2d 1479 (1957), we have had little occasion in the past quarter century to reach the constitutional issues in dealing with federal interrogations. These supervisory rules, requiring production of an arrested person before a commissioner 'without unnecessary delay' and excluding evidence obtained in default of that statutory obligation, were nonetheless responsive to the same considerations of Fifth Amendment policy that unavoidably face us now as to the States. In McNabb, 318 U.S., at 343—344, 63 S.Ct. at 614, and in Mallory, 354 U.S., at 455—456, 77 S.Ct. at 1359—1360, we recognized both the dangers of interrogation and the appropriateness of prophylaxis stemming from the very fact of interrogation itself.[32]

[18] [19] [20] Our decision in Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), necessitates an examination of the scope of the privilege in state cases as well. In Malloy, we squarely held the *464 privilege applicable to the States, and held that the substantive standards underlying the privilege applied with full force to state court proceedings. There, as in Murphy v. Waterfront Comm. of New York Harbor, 378 U.S. 52, 84 S.Ct. 1594, 12 L.Ed.2d 678 (1964), and Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), we applied the existing Fifth Amendment standards to the case before us. Aside from the holding itself, the reasoning in Malloy made clear what had already become apparent—that the substantive and procedural safeguards surrounding admissibility of confessions in state cases had become exceedingly exacting, reflecting all the policies embedded in the privilege, 378 U.S., at 7—8, 84 S.Ct. at 1493.[33] The voluntariness **1623 doctrine in the state cases, as Malloy indicates, encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from *465 making a free and rational choice.[34] The implications of this proposition were elaborated in our decision in Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977, decided one week after Malloy applied the privilege to the States.

Our holding there stressed the fact that the police had not advised the defendant of his constitutional privilege to remain silent at the outset of the interrogation, and we drew attention to that fact at several points in the decision, 378 U.S., at 483, 485, 491, 84 S.Ct. at 1761, 1762, 1765. This was no isolated factor, but an essential ingredient in our decision. The entire thrust of police interrogation there, as in all the cases today, was to put the defendant in such an emotional state as to impair his capacity for rational judgment. The abdication of the constitutional privilege—the choice on his part to speak to the police—was not made knowingly or competently because of the failure to apprise him of his rights; the compelling atmosphere of the in-custody interrogation, and not an independent decision on his part, caused the defendant to speak.

[21] [22] A different phase of the Escobedo decision was significant in its attention to the absence of counsel during the questioning. There, as in the cases today, we sought a protective device to dispel the compelling atmosphere of the interrogation. In Escobedo, however, the police did not relieve the defendant of the anxieties which they had created in the interrogation rooms. Rather, they denied his request for the assistance of counsel, 378 U.S., at 481, 488, 491, 84 S.Ct. at 1760, 1763, 1765.[35] This heightened his dilemma, and *466 made his later statements the product of this compulsion. Cf. Haynes v. State of Washington, 373 U.S. 503, 514, 83 S.Ct. 1336, 1343 (1963). The denial of the defendant's request for his attorney thus undermined his ability to exercise the privilege—to remain silent if he chose or to speak without any intimidation, blatant or subtle. The presence of counsel, in all the cases before us today, would be the adequate protective device necessary to make the process of police interrogation conform to the dictates of the privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.

It was in this manner that Escobedo explicated another facet of the pre-trial privilege, noted in many of the Court's prior decisions: the protection of rights at trial.[36] That counsel is present when **1624 statements are taken from an individual during interrogation obviously enhances the integrity of the fact-finding processes in court. The presence of an attorney, and the warnings

delivered to the individual, enable the defendant under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process. Without the protections flowing from adequate warning and the rights of counsel, 'all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police.' Mapp v. Ohio, 367 U.S. 643, 685, 81 S.Ct. 1684, 1707, 6 L.Ed.2d 1081 (1961) (Harlan, J., dissenting). Cf. Pointer v. State of Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965).

***467** III.

[23] **[24]** Today, then, 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. We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In 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.

It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule-making capacities. Therefore we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

[25] **[26]** **[27]** **[28]** At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and ***468** unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury.[37] Further, ****1625** the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

[29] The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information ***469** as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation;[38] a warning is a clearcut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.

[30] The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system —that he is not in the presence of persons acting solely in his interest.

[31] **[32]** The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere ***470** warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent without more 'will benefit only the recidivist and the professional.' Brief for the National District Attorneys Association as amicus curiae, p. 14. Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Cf. Escobedo v. State of Illinois, 378 U.S. 478, 485, n. 5, 84 S.Ct. 1758, 1762. Thus, the need for counsel to protect ****1626** the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

The presence of counsel at the interrogation may serve several significant subsidiary functions as well. If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness. With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police and that the statement is rightly reported by the prosecution at trial. See Crooker v. State of California, 357 U.S. 433, 443—448, 78 S.Ct. 1287, 1293—1296, 2 L.Ed.2d 1448 (1958) (Douglas, J., dissenting).

[33] **[34]** **[35]** An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request ***471** may be the person who most needs counsel. As the California Supreme Court has aptly put it:

'Finally, we must recognize that the imposition of the requirement for the request would discriminate against the defendant who does not know his rights. The defendant who does not ask for counsel is the very defendant who most needs counsel. We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request and by such failure demonstrates his helplessness. To require the request would be to favor the defendant whose sophistication or status had fortuitously prompted him to make it.' People v. Dorado, 62 Cal.2d 338, 351, 42 Cal.Rptr. 169, 177—178, 398 P.2d 361, 369—370, (1965) (Tobriner, J.).

In Carnley v. Cochran, 369 U.S. 506, 513, 82 S.Ct. 884, 889, 8 L.Ed.2d 70 (1962), we stated: '(I)t is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request.' This proposition applies with equal force in the context of providing counsel to protect an accused's Fifth Amendment privilege in the face of interrogation. [39] Although the role of counsel at trial differs from the role during interrogation, the differences are not relevant to the question whether a request is a prerequisite.

[36] **[37]** Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of ***472** circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

[38] **[39]** **[40]** If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability ****1627** of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the

privilege exists for the indigent as well as the affluent. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us as well as the vast majority of confession cases with which we have dealt in the past involve those unable to retain counsel.[40] While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice.[41] Denial ***473** of counsel to the indigent at the time of interrogation while allowing an attorney to those who can afford one would be no more supportable by reason or logic than the similar situation at trial and on appeal struck down in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), and Douglas v. People of State of California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

[41] **[42]** In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present.[42] As with the warnings of the right to remain silent and of the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it.[43]

[43] **[44]** **[45]** **[46]** Once warnings have been given the subsequent procedure is clear. If the individual indicates in any manner, ***474** at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.[44] At this ****1628** point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

[47] **[48]** This does not mean, as some have suggested, that each police station must have a 'station house lawyer' present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person they must make known to him that he is entitled to a lawyer and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the person's Fifth Amendment privilege so long as they do not question him during that time.

[49] **[50]** **[51]** ***475** If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Escobedo v. State of Illinois, 378 U.S. 478, 490, n. 14, 84 S.Ct. 1758, 1764, 12 L.Ed.2d 977. This Court has always set high standards of proof for the waiver of constitutional rights, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), and we reassert these standards as applied to incustody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.

[52] **[53]** **[54]** An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. A statement we made in Carnley v. Cochran, 369 U.S. 506, 516, 82 S.Ct. 884, 890, 8 L.Ed.2d 70 (1962), is applicable here:

> 'Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.'

See also Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942). Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives ***476** some information on his own prior to invoking his right to remain silent when interrogated. [45]

****1629** **[55]** **[56]** **[57]** Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege. Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.

[58] **[59]** **[60]** The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements which are direct confessions and statements which amount to 'admissions' of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination. Similarly, ***477** for precisely the same reason, no distinction may be drawn between inculpatory statements and statements alleged to be merely 'exculpatory.' If a statement made were in fact truly exculpatory it would, of course, never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement. In Escobedo itself, the defendant fully intended his accusation of another as the slayer to be exculpatory as to himself.

The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries. Under the system of warnings we delineate today or under any other system which may be devised and found effective, the safeguards to be erected about the privilege must come into play at this point.

[61] **[62]** Our decision is not intended to hamper the traditional function of police officers in investigating crime. See Escobedo v. State of Illinois, 378 U.S. 478, 492, 84 S.Ct. 1758, 1765. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of ***478** responsible citizenship for individuals to give whatever information they may have to aid in ****1630** law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present. [46]

[63] **[64]** **[65]** In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the

benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime,[47] or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.

[66] **[67]** To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to ***479** protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. 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. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.[48]

IV.

[68] A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. See, e.g., Chambers v. State of Florida, 309 U.S. 227, 240—241, 60 S.Ct. 472, 478—479, 84 L.Ed. 716 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged. As Mr. Justice Brandeis once observed:

'Decency, security, and liberty alike demand that government officials shall ****1631** be subjected to the same ***480** rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means * * * would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.' Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (dissenting opinion).[49]

In this connection, one of our country's distinguished jurists has pointed out: 'The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal law.'[50]

[69] If the individual desires to exercise his privilege, he has the right to do so. This is not for the authorities to decide. An attorney may advise his client not to talk to police until he has had an opportunity to investigate the case, or he may wish to be present with his client during any police questioning. In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement. He is merely carrying out what he is sworn to do under his oath—to protect to the extent of his ability the rights of his ***481** client. In fulfilling this responsibility the attorney plays a vital role in the administration of criminal justice under our Constitution.

In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does

not in any way preclude police from carrying out their traditional investigatory functions. Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the 'need' for confessions. In each case authorities conducted interrogations ranging up to five days in duration despite the presence, through standard investigating practices, of considerable evidence against each defendant. [51] Further examples are chronicled in our prior cases. See, e.g., Haynes v. State of Washington, 373 U.S. 503, 518—519, 83 S.Ct. 1336, 1345, 1346, 10 L.Ed.2d 513 (1963); Rogers v. Richmond, 365 U.S. 534, 541, 81 S.Ct. 735, 739, 5 L.Ed.2d 760 (1961); Malinski v. People of State of New York, 324 U.S. 401, 402, 65 S.Ct. 781, 782 (1945). [52]

**1632 *482 It is also urged that an unfettered right to detention for interrogation should be allowed because it will often redound to the benefit of the person questioned. When police inquiry determines that there is no reason to believe that the person has committed any crime, it is said, he will be released without need for further formal procedures. The person who has committed no offense, however, will be better able to clear himself after warnings with counsel present than without. It can be assumed that in such circumstances a lawyer would advise his client to talk freely to police in order to clear himself.

Custodial interrogation, by contrast, does not necessarily afford the innocent an opportunity to clear themselves. A serious consequence of the present practice of the interrogation alleged to be beneficial for the innocent is that many arrests 'for investigation' subject large numbers of innocent persons to detention and interrogation. In one of the cases before us, No. 584, California v. Stewart, police held four persons, who were in the defendant's house at the time of the arrest, in jail for five days until defendant confessed. At that time they were finally released. Police stated that there was 'no evidence to connect them with any crime.' Available statistics on the extent of this practice where it is condoned indicate that these four are far from alone in being subjected to arrest, prolonged detention, and interrogation without the requisite probable cause. [53]

*483 Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay. [54] A **1633 letter received from the Solicitor General in response to a question from the Bench makes it clear that the present pattern of warnings and respect for the *484 rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. It states:

'At the oral argument of the above cause, Mr. Justice Fortas asked whether I could provide certain information as to the practices followed by the Federal Bureau of Investigation. I have directed these questions to the attention of the Director of the Federal Bureau of Investigation and am submitting herewith a statement of the questions and of the answers which we have received.

"(1) When an individual is interviewed by agents of the Bureau, what warning is given to him?

"The standard warning long given by Special Agents of the FBI to both suspects and persons under arrest is that the person has a right to say nothing and a right to counsel, and that any statement he does make may be used against him in court. Examples of this warning are to be found in the Westover case at 342 F.2d 684 (1965), and Jackson v. U.S., (119 U.S.App.D.C. 100) 337 F.2d 136 (1964), cert. den. 380 U.S. 935, 85 S.Ct. 1353,

"After passage of the Criminal Justice Act of 1964, which provides free counsel for Federal defendants unable to pay, we added to our instructions to Special Agents the requirement that any person who is under arrest for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, must also be advised of his right to free counsel if he is unable to pay, and the fact that such counsel will be assigned by the Judge. At the same time, we broadened the right to counsel warning *485 to read counsel of his own choice, or anyone else with whom he might wish to speak.

"(2) When is the warning given?

"The FBI warning is given to a suspect at the very outset of the interview, as shown in the Westover case, cited above. The warning may be given to a person arrested as soon as practicable after the arrest, as shown in the Jackson case, also cited above, and in U.S. v. Konigsberg, 336 F.2d 844 (1964), cert. den. (Celso v. United States) 379 U.S. 933 (85

S.Ct. 327, 13 L.Ed.2d 342) but in any event it must precede the interview with the person for a confession or admission of his own guilt.

"(3) What is the Bureau's practice in the event that (a) the individual requests counsel and (b) counsel appears?

"When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, Shultz v. U.S., 351 F.2d 287 ((10 Cir.) 1965). It may be continued, however, as to all matters other than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent. For example, in Hiram v. U.S., 354 F.2d 4 ((9 Cir.) 1965), the Agent's conclusion that the person arrested had waived his right to counsel was upheld by the courts.

"A person being interviewed and desiring to consult counsel by telephone must be permitted to do so, as shown in Caldwell v. U.S., 351 F.2d 459 ((1 Cir.) 1965). When counsel ****1634** appears in person, he is permitted to confer with his client in private.

***486** "(4) What is the Bureau's practice if the individual requests counsel, but cannot afford to retain an attorney?

"If any person being interviewed after warning of counsel decides that he wishes to consult with counsel before proceeding further the interview is terminated, as shown above. FBI Agents do not pass judgment on the ability of the person to pay for counsel. They do, however, advise those who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, of a right to free counsel if they are unable to pay, and the availability of such counsel from the Judge." [55]

[70] The practice of the FBI can readily be emulated by state and local enforcement agencies. The argument that the FBI deals with different crimes than are dealt with by state authorities does not mitigate the significance of the FBI experience. [56]

The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. The English procedure since 1912 under the Judges' Rules is significant. As recently ***487** strengthened, the Rules require that a cautionary warning be given an accused by a police officer as soon as he has evidence that affords reasonable grounds for suspicion; they also require that any statement made be given by the accused without questioning by police. [57] ***488** The right of the individual to ****1635** consult with an attorney during this period is expressly recognized. [58]

The safeguards present under Scottish law may be even greater than in England. Scottish judicial decisions bar use in evidence of most confessions obtained through police interrogation. [59] In India, confessions made to police not in the presence of a magistrate have been excluded ***489** by rule of evidence since 1872, at a time when it operated under British law. [60] Identical provisions appear in the Evidence Ordinance of Ceylon, enacted in 1895. [61] Similarly, in our country the Uniform Code of Military Justice has long provided that no suspect may be interrogated without first being warned of his right not to make a statement and that any statement he makes may be used against him. [62] Denial of the right to consult counsel during interrogation has also been proscribed by military tribunals. [63] ****1636** There appears to have been no marked detrimental effect on criminal law enforcement in these jurisdictions as a result of these rules. Conditions of law enforcement in our country are sufficiently similar to permit reference to this experience as assurance that lawlessness will not result from warning an individual of his rights or allowing him to exercise them. Moreover, it is consistent with our legal system that we give at least as much protection to these rights as is given in the jurisdictions described. We deal in our country with rights grounded in a specific requirement of the Fifth Amendment of the Constitution, ***490** whereas other jurisdictions arrived at their conclusions on the basis of principles of justice not so specifically defined. [64]

[71] **[72]** **[73]** It is also urged upon us that we withhold decision on this issue until state legislative bodies and advisory groups have had an opportunity to deal with these problems by rule making. [65] We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial

interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions and must be determined by the courts. The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. See Hopt v. People of Territory of Utah, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262 (1884). Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when Escobedo was before us and it is our ***491** responsibility today. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

V.

Because of the nature of the problem and because of its recurrent significance in numerous cases, we have to this point discussed the relationship of the Fifth Amendment privilege to police interrogation without specific concentration on the facts of the cases before us. We turn now to these facts to consider the application to these cases of the constitutional principles discussed above. In each instance, we have concluded that statements were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.

No. 759. Miranda v. Arizona.

On March 13, 1963, petitioner, Ernesto Miranda, was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to 'Interrogation Room No. 2' of the detective bureau. There he was questioned by two police officers. The officers admitted at trial that Miranda was ****1637** not advised that he had a right to have an attorney present.[66] Two hours later, the ***492** officers emerged from the interrogation room with a written confession signed by Miranda. At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and 'with full knowledge of my legal rights, understanding any statement I make may be used against me.'[67]

At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each count, the sentences to run concurrently. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession and affirmed the conviction. 98 Ariz. 18, 401 P.2d 721. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

[74] **[75]** We reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had 'full knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights. Cf. Haynes v. State of Washington, 373 U.S. 503, 512—513, 83 S.Ct. 1336, 1342, 10 L.Ed.2d 513 (1963); ***493** Haley v. State of Ohio, 332 U.S. 596, 601, 68 S.Ct. 302, 304, 92 L.Ed. 224 (1948) (opinion of Mr. Justice Douglas).

No. 760. Vignera v. New York.

Petitioner, Michael Vignera, was picked up by New York police on October 14, 1960, in connection with the robbery three days earlier of a Brooklyn dress shop. They took him to the 17th Detective Squad headquarters in Manhattan. Sometime thereafter he was taken to the 66th Detective Squad. There a detective questioned Vignera with respect to the robbery. Vignera orally admitted the robbery to the detective. The detective was asked on cross-examination at trial by defense counsel whether Vignera was warned of his right to counsel before being interrogated. The prosecution objected to the question and the trial judge sustained the objection. Thus, the defense was precluded from making any showing that warnings had not been

given. While at the 66th Detective Squad, Vignera was identified by the store owner and a saleslady as the man who robbed the dress shop. At about 3 p.m. he was formally arrested. The police then transported him to still another station, the 70th Precinct in Brooklyn, 'for detention.' At 11 p.m. Vignera was questioned by an assistant district attorney in the presence of a hearing reporter who transcribed the questions and Vignera's answers. This verbatim account of these proceedings ****1638** contains no statement of any warnings given by the assistant district attorney. At Vignera's trial on a charge of first degree robbery, the detective testified as to the oral confession. The transcription of the statement taken was also introduced in evidence. At the conclusion of the testimony, the trial judge charged the jury in part as follows:

> 'The law doesn't say that the confession is void or invalidated because the police officer didn't advise the defendant as to his rights. Did you hear what ***494** I said? I am telling you what the law of the State of New York is.'

Vignera was found guilty of first degree robbery. He was subsequently adjudged a third-felony offender and sentenced to 30 to 60 years' imprisonment.[68] The conviction was affirmed without opinion by the Appellate Division, Second Department, 21 A.D.2d 752, 252 N.Y.S.2d 19, and by the Court of Appeals, also without opinion, 15 N.Y.2d 970, 259 N.Y.S.2d 857, 207 N.E.2d 527, remittitur amended, 16 N.y.2d 614, 261 N.Y.S.2d 65, 209 N.E.2d 110. In argument to the Court of Appeals, the State contended that Vignera had no constitutional right to be advised of his right to counsel or his privilege against self-incrimination.

[76] We reverse. The foregoing indicates that Vignera was not warned of any of his rights before the questioning by the detective and by the assistant district attorney. No other steps were taken to protect these rights. Thus he was not effectively apprised of his Fifth Amendment privilege or of his right to have counsel present and his statements are inadmissible.

No. 761. Westover v. United States.

At approximately 9:45 p.m. on March 20, 1963, petitioner, Carl Calvin Westover, was arrested by local police in Kansas City as a suspect in two Kansas City robberies. A report was also received from the FBI that he was wanted on a felony charge in California. The local authorities took him to a police station and placed him in a line-up on the local charges, and at about 11:45 p.m. he was booked. Kansas City police interrogated Westover ***495** on the night of his arrest. He denied any knowledge of criminal activities. The next day local officers interrogated him again throughout the morning. Shortly before noon they informed the FBI that they were through interrogating Westover and that the FBI could proceed to interrogate him. There is nothing in the record to indicate that Westover was ever given any warning as to his rights by local police. At noon, three special agents of the FBI continued the interrogation in a private interview room of the Kansas City Police Department, this time with respect to the robbery of a savings and loan association and a bank in Sacramento, California. After two or two and one-half hours, Westover signed separate confessions to each of these two robberies which had been prepared by one of the agents during the interrogation. At trial one of the agents testified, and a paragraph on each of the statements states, that the agents advised Westover that he did not have to make a statement, that any statement he made could be used against him, and that he had the right to see an attorney.

[77] **[78]** Westover was tried by a jury in federal court and convicted of the California robberies. His statements were introduced at trial. He was sentenced to 15 years' imprisonment on each count, the sentences to run consecutively. On appeal, the conviction was affirmed by the Court of Appeals for the Ninth Circuit. 342 F.2d 684.

****1639** We reverse. On the facts of this case we cannot find that Westover knowingly and intelligently waived his right to remain silent and his right to consult with counsel prior to the time he made the statement.[69] At the ***496** time the FBI agents began questioning Westover, he had been in custody for over 14 hours and had been interrogated at length during that period. The FBI interrogation began immediately upon the conclusion of the interrogation by Kansas City police and was conducted in local police headquarters. Although the two law enforcement authorities are legally distinct and the crimes for which they interrogated Westover were different, the impact on him was that of a continuous

period of questioning. There is no evidence of any warning given prior to the FBI interrogation nor is there any evidence of an articulated waiver of rights after the FBI commenced its interrogation. The record simply shows that the defendant did in fact confess a short time after being turned over to the FBI following interrogation by local police. Despite the fact that the FBI agents gave warnings at the outset of their interview, from Westover's point of view the warnings came at the end of the interrogation process. In these circumstances an intelligent waiver of constitutional rights cannot be assumed.

[79] We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them. But here the FBI interrogation was conducted immediately following the state interrogation in the same police station—in the same compelling surroundings. Thus, in obtaining a confession from Westover ***497** the federal authorities were the beneficiaries of the pressure applied by the local in-custody interrogation. In these circumstances the giving of warnings alone was not sufficient to protect the privilege.

No. 584. California v. Stewart.

In the course of investigating a series of purse-snatch robberies in which one of the victims had died of injuries inflicted by her assailant, respondent, Roy Allen Stewart, was pointed out to Los Angeles police as the endorser of dividend checks taken in one of the robberies. At about 7:15 p.m., January 31, 1963, police officers went to Stewart's house and arrested him. One of the officers asked Stewart if they could search the house, to which he replied, 'Go ahead.' The search turned up various items taken from the five robbery victims. At the time of Stewart's arrest, police also arrested Stewart's wife and three other persons who were visiting him. These four were jailed along with Stewart and were interrogated. Stewart was taken to the University Station of the Los Angeles Police Department where he was placed in a cell. During the next five days, police interrogated Stewart on nine different occasions. Except during the first interrogation session, when he was confronted with an accusing witness, Stewart was isolated with his interrogators.

****1640** During the ninth interrogation session, Stewart admitted that he had robbed the deceased and stated that he had not meant to hurt her. Police then brought Stewart before a magistrate for the first time. Since there was no evidence to connect them with any crime, the police then released the other four persons arrested with him.

Nothing in the record specifically indicates whether Stewart was or was not advised of his right to remain silent or his right to counsel. In a number of instances, ***498** however, the interrogating officers were asked to recount everything that was said during the interrogations. None indicated that Stewart was ever advised of his rights.

[80] Stewart was charged with kidnapping to commit robbery, rape, and murder. At his trial, transcripts of the first interrogation and the confession at the last interrogation were introduced in evidence. The jury found Stewart guilty of robbery and first degree murder and fixed the penalty as death. On appeal, the Supreme Court of California reversed. 62 Cal.2d 571, 43 Cal.Rptr. 201, 400 P.2d 97. It held that under this Court's decision in Escobedo, Stewart should have been advised of his right to remain silent and of his right to counsel and that it would not presume in the face of a silent record that the police advised Stewart of his rights. [70]

[81] **[82]** We affirm. [71] In dealing with custodial interrogation, we will not presume that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded on a record that does not show that any warnings have been given or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of ***499** these rights be assumed on a silent record. Furthermore, Stewart's steadfast denial of the alleged offenses through eight of the nine interrogations over a period of five days is subject to no other construction than that he was compelled by persistent interrogation to forgo his Fifth Amendment privilege.

Therefore, in accordance with the foregoing, the judgments of the Supreme Court of Arizona in No. 759, of the New York Court of Appeals in No. 760, and of the Court of Appeals for the Ninth Circuit in No. 761 are reversed. The judgment of the Supreme Court of California in No. 584 is affirmed. It is so ordered.

Judgments of Supreme Court of Arizona in No. 759, of New York Court of Appeals in No. 760, and of the Court of Appeals for the Ninth Circuit in No. 761 reversed.

Judgment of Supreme Court of California in No. 584 affirmed.

Mr. Justice CLARK, dissenting in Nos. 759, 760, and 761, and concurring in the result in No. 584.

It is with regret that I find it necessary to write in these cases. However, I am unable to join the majority because its opinion goes too far on too little, while my **1641 dissenting brethren do not go quite far enough. Nor can I join in the Court's criticism of the present practices of police and investigatory agencies as to custodial interrogation. The materials it refers to as 'police manuals' [1] are, as I read them, merely writings in this filed by professors and some police officers. Not one is shown by the record here to be the official manual of any police department, much less in universal use in crime detection. Moreover the examples of police brutality mentioned by the Court [2] are rare exceptions to the thousands of cases *500 that appear every year in the law reports. The police agencies—all the way from municipal and state forces to the federal bureaus—are responsible for law enforcement and public safety in this country. I am proud of their efforts, which in my view are not fairly characterized by the Court's opinion.

I.

The ipse dixit of the majority has no support in our cases. Indeed, the Court admits that 'we might not find the defendants' statements (here) to have been involuntary in traditional terms.' Ante, p. 1618. In short, the Court has added more to the requirements that the accused is entitled to consult with his lawyer and that he must be given the traditional warning that he may remain silent and that anything that he says may be used against him. Escobedo v. State of Illinois, 378 U.S. 478, 490—491, 84 S.Ct. 1758, 1764—1765, 12 L.Ed.2d 977 (1964). Now, the Court fashions a constitutional rule that the police may engage in no custodial interrogation without additionally advising the accused that he has a right under the Fifth Amendment to the presence of counsel during interrogation and that, if he is without funds, counsel will be furnished him. When at any point during an interrogation the accused seeks affirmatively or impliedly to invoke his rights to silence or counsel, interrogation must be forgone or postponed. The Court further holds that failure to follow the new procedures requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof. Such a strict constitutional specific inserted at the nerve center of crime detection may well kill the patient. [3] *501 Since there is at **1642 this time a paucity of information and an almost total lack of empirical knowledge on the practical operation of requirements truly comparable to those announced by the majority, I would be more restrained lest we go too far too fast.

II.

Custodial interrogation has long been recognized as 'undoubtedly an essential tool in effective law enforcement.' Haynes v. State of Washington, 373 U.S. 503, 515, 83 S.Ct. 1336, 1344, 10 L.Ed.2d 513 (1963). Recognition of this fact should put us on guard against the promulgation of doctrinaire rules. Especially is this true where the Court finds that 'the Constitution has prescribed' its holding and where the light of our past cases, from Hopt v. People of Territory of Utah, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262 (1884), down to Haynes v. State of Washington, supra, is to *502 the contrary. Indeed, even in Escobedo the Court never hinted that an affirmative 'waiver' was a prerequisite to questioning; that the burden of proof as to waiver was on the prosecution; that the presence of counsel—absent a waiver—during interrogation was required; that a waiver can be withdrawn at the will of the accused; that counsel must be furnished during an accusatory stage to those unable to pay; nor that admissions and exculpatory statements are 'confessions.' To require all those things at one gulp should cause the Court to choke over more cases than Crooker v. State of California, 357 U.S. 433, 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958), and Cicenia v. La Gay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed.2d 1523 (1958), which it expressly overrules today.

The rule prior to today—as Mr. Justice Goldberg, the author of the Court's opinion in Escobedo, stated it in Haynes v. Washington—depended upon 'a totality of circumstances evidencing an involuntary * * * admission of guilt.' 373 U.S., at 514, 83 S.Ct. at 1343. And he concluded:

'Of course, detection and solution of crime is, at best, a difficult and arduous task requiring determination

and persistence on the part of all responsible officers charged with the duty of law enforcement. And, certainly, we do not mean to suggest that all interrogation of witnesses and suspects is impermissible. Such questioning is undoubtedly an essential took in effective law enforcement. The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw, particularly in cases such as this where it is necessary to make fine judgments as to the effect of psychologically coercive pressures and inducements on the mind and will of an accused. * * * We are here impelled to the conclusion, from all of the facts presented, that the bounds of due process have been exceeded.' Id., at 514—515, 83 S.Ct. at 1344.

***503** III.

I would continue to follow that rule. Under the 'totality of circumstances' rule of which my Brother Goldberg spoke in Haynes, I would consider in each case whether the police officer prior to custodial interrogation added the warning that the suspect might have counsel present at the interrogation and, further, that a court would appoint one at his request if he was too poor to employ counsel. In the absence of warnings, the burden would be on the State to prove that counsel was knowingly and intelligently waived or that in the totality of the circumstances, including the failure to give ****1643** the necessary warnings, the confession was clearly voluntary.

Rather than employing the arbitrary Fifth Amendment rule[4] which the Court lays down I would follow the more pliable dictates of the Due Process Clauses of the Fifth and Fourteenth Amendments which we are accustomed to administering and which we know from our cases are effective instruments in protecting persons in police custody. In this way we would not be acting in the dark nor in one full sweep changing the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society. It will be soon enough to go further when we are able to appraise with somewhat better accuracy the effect of such a holding.

I would affirm the convictions in Miranda v. Arizona, No. 759; Vignera v. New York, No. 760; and Westover v. United States, No. 761. In each of those cases I find from the circumstances no warrant for reversal. In ***504** California v. Stewart, No. 584, I would dismiss the writ of certiorari for want of a final judgment, 28 U.S.C. s 1257(3) (1964 ed.); but if the merits are to be reached I would affirm on the ground that the State failed to fulfill its burden, in the absence of a showing that appropriate warnings were given, of proving a waiver or a totality of circumstances showing voluntariness. Should there be a retrial, I would leave the State free to attempt to prove these elements.

Mr. Justice HARLAN, whom Mr. Justice STEWART and Mr. Justice WHITE join, dissenting.

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the Court's justification seem to me readily apparent now once all sides of the problem are considered.

I. INTRODUCTION

At the outset, it is well to note exactly what is required by the Court's new constitutional code of rules for confessions. The foremost requirement, upon which later admissibility of a confession depends, is that a fourfold warning be given to a person in custody before he is questioned, namely, that he has a right to remain silent, that anything he says may be used against him, that he has a right to have present an attorney during the questioning, and that if indigent he has a right to a lawyer without charge. To forgo these rights, some affirmative statement of rejection is seemingly required, and threats, tricks, or cajolings to obtain this waiver are forbidden. If before or during questioning the suspect seeks to invoke his right to remain silent, interrogation must be forgone or cease; a request for counsel ***505** brings about the same result until a lawyer is procured. Finally, there are a miscellany of minor directives, for example, the burden of proof of waiver is on the State, admissions and exculpatory statements are treated just like confessions, withdrawal of a waiver is always permitted, and so forth.[1]

While the fine points of this scheme are far less clear than the Court admits, the tenor is quite apparent. The new ****1644** rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in

court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward 'voluntariness' in a utopian sense, or to view it from a different angle, voluntariness with a vengeance.

To incorporate this notion into the Constitution requires a strained reading of history and precedent and a disregard of the very pragmatic concerns that alone may on occasion justify such strains. I believe that reasoned examination will show that the Due Process Clauses provide an adequate tool for coping with confessions and that, even if the Fifth Amendment privilege against self-incrimination be invoked, its precedents taken as a whole do not sustain the present rules. Viewed as a choice based on pure policy, these new rules prove to be a highly debatable, if not one-sided, appraisal of the competing interests, imposed over widespread objection, at the very time when judicial restraint is most called for by the circumstances.

***506** II. CONSTITUTIONAL PREMISES.

It is most fitting to begin an inquiry into the constitutional precedents by surverying the limits on confessions the Court has evolved under the Due Process Clause of the Fourteenth Amendment. This is so because these cases show that there exists a workable and effective means of dealing with confessions in a judicial manner; because the cases are the baseline from which the Court now departs and so serve to measure the actual as opposed to the professed distance it travels; and because examination of them helps reveal how the Court has coasted into its present position.

The earliest confession cases in this Court emerged from federal prosecutions and were settled on a nonconstitutional basis, the Court adopting the common-law rule that the absence of inducements, promises, and threats made a confession voluntary and admissible. Hopt v. People, of Territory of Utah, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262; Pierce v. United States, 160 U.S. 355, 16 S.Ct. 321, 40 L.Ed. 454. While a later case said the Fifth Amendment privilege controlled admissibility, this proposition was not itself developed in subsequent decisions. [2] The Court did, however, heighten the test of admissibility in federal trials to one of voluntariness 'in fact,' Ziang Sung Wan v. United States, 266 U.S. 1, 14, 45 S.Ct. 1, 3, 69 L.Ed. 131 ***507** (quoted, ante, p. 1621), and then by and large left federal judges to apply the same standards the Court began to derive in a string of state court cases.

This new line of decisions, testing admissibility by the Due Process Clause, began in 1936 with Brown v. State of Mississippi, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682, and must now embrace somewhat more than 30 full opinions of ****1645** the Court. [3] While the voluntariness rubric was repeated in many instances, e.g., Lyons v. State of Oklahoma, 322 U.S. 596, 64 S.Ct. 1208, 88 L.Ed. 1481, the Court never pinned it down to a single meaning but on the contrary infused it with a number of different values. To travel quickly over the main themes, there was an initial emphasis on reliability, e.g., Ward v. State of Texas, 316 U.S. 547, 62 S.Ct. 1139, 86 L.Ed. 1663, supplemented by concern over the legality and fairness of the police practices, e.g., Ashcraft v. State of Tennessee, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192, in an 'accusatorial' system of law enforcement, Watts v. State of Indiana, 338 U.S. 49, 54, 69 S.Ct. 1347, 1350, 93 L.Ed. 1801, and eventually by close attention to the individual's state of mind and capacity for effective choice, e.g., Gallegos v. State of Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325. The outcome was a continuing re-evaluation on the facts of each case of how much pressure on the suspect was permissible. [4]

***508** Among the criteria often taken into account were threats or imminent danger, e.g., Payne v. State of Arkansas, 356 U.S. 560, 78 S.Ct. 844, 2 L.Ed.2d 975, physical deprivations such as lack of sleep or food, e.g., Reck v. Pate, 367 U.S. 433, 81 S.Ct. 1541, 6 L.Ed.2d 948, repeated or extended interrogation, e.g., Chambers v. State of Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, limits on access to counsel or friends, Crooker v. State of California, 357 U.S. 433, 78 S.Ct. 1287, 2 L.Ed.2d 1448; Cicenia v. La. Gay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed.2d 1523, length and illegality of detention under state law, e.g., Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513, and individual weakness or incapacities, Lynumn v. State of Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922. Apart from direct physical coercion, however, no single default or fixed combination of defaults guaranteed exclusion, and synopses of the cases would serve little use because the overall gauge has been steadily changing, usually in the direction of restricting admissibility. But to mark just what point had been

reached before the Court jumped the rails in Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977, it is worth capsulizing the then-recent case of Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336. There, Haynes had been held some 16 or more hours in violation of state law before signing the disputed confession, had received no warnings of any kind, and despite requests had been refused access to his wife or to counsel, the police indicating that access would be allowed after a confession. Emphasizing especially this last inducement and rejecting some contrary indicia of voluntariness, the Court in a 5-to-4 decision held the confession inadmissible.

There are several relevant lessons to be drawn from this constitutional history. The first is that with over 25 years of precedent the Court has developed an elaborate, sophisticated, and sensitive approach to admissibility of confessions. It is 'judicial' in its treatment of one case at a time, see **1646 Culombe v. Connecticut, 367 U.S. 568, 635, 81 S.Ct. 1860, 1896, 6 L.Ed.2d 1037 (concurring opinion of The Chief Justice), flexible in its ability to respond to the endless mutations of fact presented, and ever more familiar to the lower courts. *509 Of course, strict certainty is not obtained in this developing process, but this is often so with constitutional principles, and disagreement is usually confined to that borderland of close cases where it matters least.

The second point is that in practice and from time to time in principle, the Court has given ample recognition to society's interest in suspect questioning as an instrument of law enforcement. Cases countenancing quite significant pressures can be cited without difficulty, [5] and the lower courts may often have been yet more tolerant. Of course the limitations imposed today were rejected by necessary implication in case after case, the right to warnings having been explicitly rebuffed in this Court many years ago. Powers v. United States, 223 U.S. 303, 32 S.Ct. 281, 56 L.Ed. 448; Wilson v. United States, 162 U.S. 613, 16 S.Ct. 895, 40 L.Ed. 1090. As recently as Haynes v. State of Washington, 373 U.S. 503, 515, 83 S.Ct. 1336, 1344, the Court openly acknowledged that questioning of witnesses and suspects 'is undoubtedly an essential tool in effective law enforcement.' Accord, Crooker v. State of California, 357 U.S. 433, 441, 78 S.Ct. 1287, 1292.

Finally, the cases disclose that the language in many of the opinions overstates the actual course of decision. It has been said, for example, that an admissible confession must be made by the suspect 'in the unfettered exercise of his own will,' Malloy v. Hogan, 378 U.S. 1, 8, 84 S.Ct. 1489, 1493, 12 L.Ed.2d 653, and that 'a prisoner is not 'to be made the deluded instrument of his own coniviction,'' Culombe v. Connecticut, 367 U.S. 568, 581, 81 S.Ct. 1860, 1867, 6 L.Ed.2d 1037 (Frankfurter, J., announcing the Court's judgment and an opinion). Though often repeated, such principles are rarely observed in full measure. Even the word 'voluntary' may be deemed somewhat *510 misleading, especially when one considers many of the confessions that have been brought under its umbrella. See, e.g., supra, n. 5. The tendency to overstate may be laid in part to the flagrant facts often before the Court; but in any event one must recognize how it has tempered attitudes and lent some color of authority to the approach now taken by the Court.

I turn now to the Court's asserted reliance on the Fifth Amendment, an approach which I frankly regard as a trompe l'oeil. The Court's opinion in my view reveals no adequate basis for extending the Fifth Amendment's privilege against self-incrimination to the police station. Far more important, it fails to show that the Court's new rules are well supported, let alone compelled, by Fifth Amendment precedents. Instead, the new rules actually derive from quotation and analogy drawn from precedents under the Sixth Amendment, which should properly have no bearing on police interrogation.

The Court's opening contention, that the Fifth Amendment governs police station confessions, is perhaps not an impermissible extension of the law but it has little to commend itself in the present circumstances. Historically, the privilege against self-incrimination did not bear at all on the use of extra-legal confessions, for which distinct standards evolved; indeed, 'the history of the two principles is wide apart, differing by one hundred years in origin, and derived through separate **1647 lines of precedents. * * *' 8 Wigmore, Evidence s 2266, at 401 (McNaughton rev. 1961). Practice under the two doctrines has also differed in a number of important respects. [6] *511 Even those who would readily enlarge the privilege must concede some linguistic difficulties since the Fifth Amendment in terms proscribes only compelling any person 'in any criminal case to be a witness against himself.' Cf. Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1, 25—26 (1965).

Though weighty, I do not say these points and similar ones are conclusive, for, as the Court reiterates, the privilege embodies basic principles always capable of expansion. [7] Certainly the privilege does represent a protective concern for the accused and an emphasis upon accusatorial rather than inquisitorial values in law enforcement, although this is similarly true of other limitations such as the grand jury requirement and the reasonable doubt standard. Accusatorial values, however, have openly been absorbed into the due process standard governing confessions; this indeed is why at present 'the kinship of the two rules (governing confessions and self-incrimination) is too apparent for denial.' McCormick, Evidence 155 (1954). Since extension of the general principle has already occurred, to insist that the privilege applies as such serves only to carry over inapposite historical details and engaging rhetoric and to obscure the policy choices to be made in regulating confessions.

Having decided that the Fifth Amendment privilege does apply in the police station, the Court reveals that the privilege imposes more exacting restrictions than does the Fourteenth Amendment's voluntariness test. [8] ***512** It then emerges from a discussion of Escobedo that the Fifth Amendment requires for an admissible confession that it be given by one distinctly aware of his right not to speak and shielded from 'the compelling atmosphere' of interrogation. See ante, pp. 1623—1624. From these key premises, the Court finally develops the safeguards of warning, counsel, and so forth. I do not believe these premises are sustained by precedents under the Fifth Amendment. [9]

The more important premise is that pressure on the suspect must be eliminated though it be only the subtle influence of the atmosphere and surroundings. The Fifth Amendment, however, has never been thought to forbid all pressure to incriminate one's self in the situations ****1648** covered by it. On the contrary, it has been held that failure to incriminate one's self can result in denial of removal of one's case from state to federal court, State of Maryland v. Soper, 270 U.S. 9, 46 S.Ct. 185, 70 L.Ed. 449; in refusal of a military commission, Orloff v. Willoughby, 345 U.S 83, 73 S.Ct. 534, 97 L.Ed. 842; in denial of a discharge in bankruptcy, Kaufman v. Hurwitz, 4 Cir., 176 F.2d 210; and in numerous other adverse consequences. See 8 Wigmore, Evidence s 2272, at 441—444, n. 18 (McNaughton rev. 1961); Maguire, Evidence of Guilt s 2.062 (1959). This is not to say that short of jail or torture any sanction is permissible in any case; policy and history alike may impose sharp limits. See, e.g., ***513** Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106. However, 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.

The Court appears similarly wrong in thinking that precise knowledge of one's rights is a settled prerequisite under the Fifth Amendment to the loss of its protections. A number of lower federal court cases have held that grand jury witnesses need not always be warned of their privilege, e.g., United States v. Scully, 2 Cir., 225 F.2d 113, 116, and Wigmore states this to be the better rule for trial witnesses. See 8 Wigmore, Evidence s 2269 (McNaughton rev. 1961). Cf. Henry v. State of Mississippi, 379 U.S. 443, 451—452, 85 S.Ct. 564, 569, 13 L.Ed.2d 408 (waiver of constitutional rights by counsel despite defendant's ignorance held allowable). No Fifth Amendment precedent is cited for the Court's contrary view. There might of course be reasons apart from Fifth Amendment precedent for requiring warning or any other safeguard on questioning but that is a different matter entirely. See infra, pp. 1649—1650.

A closing word must be said about the Assistance of Counsel Clause of the Sixth Amendment, which is never expressly relied on by the Court but whose judicial precedents turn out to be linchpins of the confession rules announced today. To support its requirement of a knowing and intelligent waiver, the Court cites Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, ante, p. 1628; appointment of counsel for the indigent suspect is tied to Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, and Douglas v. People of State of California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811, ante, p. 1627; the silent-record doctrine is borrowed from Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70, ante, p. 1628, as is the right to an express offer of counsel, ante, p. 1626. All these cases imparting glosses to the Sixth Amendment concerned counsel at trial or on appeal. While the Court finds no petinent difference between judicial proceedings and police interrogation, I believe ***514** the differences are so vast as to disqualify wholly the Sixth Amendment precedents as suitable analogies in the present cases. [10]

The only attempt in this Court to carry the right to counsel into the station house occurred in Escobedo, the Court repeating several times that that stage was no less 'critical' than trial itself. See 378 U.S. 485—488, 84 S.Ct. 1762—1763. This is hardly persuasive when we consider that a grand jury inquiry, the filing of a certiorari petition, and certainly the purchase of narcotics by an undercover agent from a prospective defendant may all be equally 'critical' yet provision of counsel and advice on the score have never been **1649 thought compelled by the Constitution in such cases. The sound reason why this right is so freely extended for a criminal trial is the severe injustice risked by confronting an untrained defendant with a range of technical points of law, evidence, and tactics familiar to the prosecutor but not to himself. This danger shrinks markedly in the police station where indeed the lawyer in fulfilling his professional responsibilities of necessity may become an obstacle to truthfinding. See infra, n. 12. The Court's summary citation of the Sixth Amendment cases here seems to me best described as 'the domino method of constitutional adjudication * * * wherein every explanatory statement in a previous opinion is made the basis for extension to a wholly different situation.' Friendly, supra, n. 10, at 950.

III. POLICY CONSIDERATIONS.

Examined as an expression of public policy, the Court's new regime proves so dubious that there can be no due *515 compensation for its weakness in constitutional law. The foregoing discussion has shown, I think, how mistaken is the Court in implying that the Constitution has struck the balance in favor of the approach the Court takes. Ante, p. 1630. Rather, precedent reveals that the Fourteenth Amendment in practice has been construed to strike a different balance, that the Fifth Amendment gives the Court little solid support in this context, and that the Sixth Amendment should have no bearing at all. Legal history has been stretched before to satisfy deep needs of society. In this instance, however, the Court has not and cannot make the powerful showing that its new rules are plainly desirable in the context of our society, something which is surely demanded before those rules are engrafted onto the Constitution and imposed on every State and county in the land.

Without at all subscribing to the generally black picture of police conduct painted by the Court, I think it must be frankly recognized at the outset that police questioning allowable under due process precedents may inherently entail some pressure on the suspect and may seek advantage in his ignorance or weaknesses. The atmosphere and questioning techniques, proper and fair though they be, can in themselves exert a tug on the suspect to confess, and in this light '(t)o speak of any confessions of crime made after arrest as being 'voluntary' or 'uncoerced' is somewhat inaccurate, although traditional. A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser.' Ashcraft v. State of Tennessee, 322 U.S. 143, 161, 64 S.Ct. 921, 929, 88 L.Ed. 1192 (Jackson, J., dissenting). Until today, the role of the Constitution has been only to sift out undue pressure, not to assure spontaneous confessions. [11]

*516 The Court's new rules aim to offset these minor pressures and disadvantages intrinsic to any kind of police interrogation. The rules do not serve due process interests in preventing blatant coercion since, as I noted earlier, they do nothing to contain the policeman who is prepared to lie from the start. The rules work for reliability in confessions almost only in the Pickwickian sense that they can prevent some from being given at all. [12] **1650 In short, the benefit of this new regime is simply to lessen or wipe out the inherent compulsion and inequalities to which the Court devotes some nine pages of description. Ante, pp. 1614—1618.

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. [13] There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs *517 must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation. See, supra, n. 12.

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. Evidence on the role of confessions is notoriously incomplete, see Developments, supra, n. 2, at 941—944, and little is added by the Court's reference to the FBI experience and the resources believed wasted in

interrogation. See infra, n. 19, and text. We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, [14] and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

While passing over the costs and risks of its experiment, the Court portrays the evils of normal police questioning in terms which I think are exaggerated. Albeit stringently confined by the due process standards interrogation is no doubt often inconvenient and unpleasant for the suspect. However, it is no less so for a man to be arrested and jailed, to have his house searched, or to stand trial in court, yet all this may properly happen to the most innocent given probable cause, a warrant, or an indictment. Society has always paid a stiff price for law and order, and peaceful interrogation is not one of the dark moments of the law.

This brief statement of the competing considerations seems to me ample proof that the Court's preference is highly debatable at best and therefore not to be read into ***518** the Constitution. However, it may make the analysis more graphic to consider the actual facts of one of the four cases reversed by the Court. Miranda v. Arizona serves best, being neither the hardest nor easiest of the four under the Court's standards. [15]

On March 3, 1963, an 18-year-old girl was kidnapped and forcibly raped near Phoenix, Arizona. Ten days later, on the morning of March 13, petitioner Miranda was arrested and taken to the police station. At this time Miranda was 23 years ****1651** old, indigent, and educated to the extent of completing half the ninth grade. He had 'an emotional illness' of the schizophrenic type, according to the doctor who eventually examined him; the doctor's report also stated that Miranda was 'alert and oriented as to time, place, and person,' intelligent within normal limits, competent to stand trial, and sane within the legal definitoin. At the police station, the victim picked Miranda out of a lineup, and two officers then took him into a separate room to interrogate him, starting about 11:30 a.m. Though at first denying his guilt, within a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less without any force, threats or promises and—I will assume this though the record is uncertain, ante, 1636—1637 and nn. 66—67—without any effective warnings at all.

Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained ***519** during brief, daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country. [16]

The tenor of judicial opinion also falls well short of supporting the Court's new approach. Although Escobedo has widely been interpreted as an open invitation to lower courts to rewrite the law of confessions, a significant heavy majority of the state and federal decisions in point have sought quite narrow interpretations. [17] Of ***520** the courts that have accepted the invitation, it is hard to know how many have felt compelled by their best guess as to this Court's likely construction; but none of the state decisions saw fit to rely on the state privilege against self-incrimination, and no decision at all ****1652** has gone as far as this Court goes today. [18]

It is also instructive to compare the attitude in this case of those responsible for law enforcement with the official views that existed when the Court undertook three major revisions of prosecutorial practice prior to this case, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, and Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799. In Johnson, which established that appointed counsel must be offered the indigent in federal criminal trials, the Federal Government all but conceded the basic issue, which had in fact been recently fixed as Department of Justice policy. See Beaney, Right to Counsel 29—30, 36—42 (1955). In Mapp, which imposed the exclusionary rule on the States for Fourth Amendment violations, more than half of the States had

themselves already adopted some such rule. See 367 U.S., at 651, 81 S.Ct., at 1689. In Gideon, which extended Johnson v. Zerbst to the States, an amicus brief was filed by 22 States and Commonwealths urging that course; only two States besides that of the respondent came forward to protest. See 372 U.S., at 345, 83 S.Ct., at 797. By contrast, in this case new restrictions on police ***521** questioning have been opposed by the United States and in an amicus brief signed by 27 States and Commonwealths, not including the three other States which are parties. No State in the country has urged this Court to impose the newly announced rules, nor has any State chosen to go nearly so far on its own.

The Court in closing its general discussion invokes the practice in federal and foreign jurisdictions as lending weight to its new curbs on confessions for all the States. A brief re sume will suffice to show that none of these jurisdictions has struck so one-sided a balance as the Court does today. Heaviest reliance is placed on the FBI practice. Differing circumstances may make this comparison quite untrustworthy, [19] but in any event the FBI falls sensibly short of the Court's formalistic rules. For example, there is no indication that FBI agents must obtain an affirmative 'waiver' before they pursue their questioning. Nor is it clear that one invoking his right to silence may not be prevailed upon to change his mind. And the warning as to appointed counsel apparently indicates only that one will be assigned by the judge when the suspect appears before him; the thrust of the Court's rules is to induce the suspect to obtain appointed counsel before continuing the interview. See ante, pp. 1633—1634. Apparently American military practice, briefly mentioned by the Court, has these same limits and is still less favorable to the suspect than the FBI warning, making no mention of appointed counsel. Developments, supra, n. 2, at 1084—1089.

The law of the foreign countries described by the Court also reflects a more moderate conception of the rights of ***522** the accused as against those of society when other data are considered. Concededly, the English experience is most relevant. In that country, a caution as to silence but not counsel has long been mandated by the 'Judges' Rules,' which also place other somewhat imprecise limits on police cross-examination o suspects. However, in the courts discretion confessions can be and apparently quite frequently are admitted in evidence despite disregard of ****1653** the Judges' Rules, so long as they are found voluntary under the common-law test. Moreover, the check that exists on the use of pretrial statements is counterbalanced by the evident admissibility of fruits of an illegal confession and by the judge's often-used authority to comment adversely on the defendant's failure to testify. [20]

India, Ceylon and Scotland are the other examples chosen by the Court. In India and Ceylon the general ban on police-adduced confessions cited by the Court is subject to a major exception: if evidence is uncovered by police questioning, it is fully admissible at trial along with the confession itself, so far as it relates to the evidence and is not blatantly coerced. See Developments, supra, n. 2, at 1106—1110; Reg. v. Ramasamy (1965) A.C. 1 (P.C.). Scotland's limits on interrogation do measure up to the Court's; however, restrained comment at trial on the defendant's failure to take the stand is allowed the judge, and in many other respects Scotch law redresses the prosecutor's disadvantage in ways not permitted in this country. [21] The Court ends its survey by imputing ***523** added strength to our privilege against self-incrimination since, by contrast to other countries, it is embodied in a written Constitution. Considering the liberties the Court has today taken with constitutional history and precedent, few will find this emphasis persuasive.

In closing this necessarily truncated discussion of policy considerations attending the new confession rules, some reference must be made to their ironic untimeliness. There is now in progress in this country a massive re-examination of criminal law enforcement procedures on a scale never before witnessed. Participants in this undertaking include a Special Committee of the American Bar Association, under the chairmanship of Chief Judge Lumbard of the Court of Appeals for the Second Circuit; a distinguished study group of the American Law Institute, headed by Professors Vorenberg and Bator of the Harvard Law School; and the President's Commission on Law Enforcement and Administration of Justice, under the leadership of the Attorney General of the United States. [22] Studies are also being conducted by the District of Columbia Crime Commission, the Georgetown Law Center, and by others equipped to do practical research. [23] There are also signs that legislatures in some of the States may be preparing to re-examine the problem before us. [24]

***524** It is no secret that concern has been expressed lest long-range and lasting reforms be frustrated by this

Court's too rapid departure from existing constitutional standards. Despite the Court's **1654 disclaimer, the practical effect of the decision made today must inevitably be to handicap seriously sound efforts at reform, not least by removing options necessary to a just compromise of competing interests. Of course legislative reform is rarely speedy or unanimous, though this Court has been more patient in the past. [25] But the legislative reforms when they come would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs.

IV. CONCLUSIONS.

All four of the cases involved here present express claims that confessions were inadmissible, not because of coercion in the traditional due process sense, but solely because of lack of counsel or lack of warnings concerning counsel and silence. For the reasons stated in this opinion, I would adhere to the due process test and reject the new requirements inaugurated by the Court. On this premise my disposition of each of these cases can be stated briefly.

In two of the three cases coming from state courts, Miranda v. Arizona (No. 759) and Vignera v. New York (No. 760), the confessions were held admissible and no other errors worth comment are alleged by petitioners. *525 I would affirm in these two cases. The other state case is California v. Stewart (No. 584), where the state supreme court held the confession inadmissible and reversed the conviction. In that case I would dismiss the writ of certiorari on the ground that no final judgment is before us, 28 U.S.C. s 1257 (1964 ed.); putting aside the new trial open to the State in any event, the confession itself has not even been finally excluded since the California Supreme Court left the State free to show proof of a waiver. If the merits of the decision in Stewart be reached, then I believe it should be reversed and the case remanded so the state supreme court may pass on the other claims available to respondent.

In the federal case, Westover v. United States (No. 761), a number of issues are raised by petitioner apart from the one already dealt with in this dissent. None of these other claims appears to me tenable, nor in this context to warrant extended discussion. It is urged that the confession was also inadmissible because not voluntary even measured by due process standards and because federal-state cooperation brought the McNabb-Mallory rule into play under Anderson v. United States, 318 U.S. 350, 63 S.Ct. 599, 87 L.Ed. 829. However, the facts alleged fall well short of coercion in my view, and I believe the involvement of federal agents in pettioner's arrest and detention by the State too slight to invoke Anderson. I agree with the Government that the admission of the evidence now protested by petitioner was at most harmless error, and two final contentions—one involving weight of the evidence and another improper prosecutor comment—seem to me without merit. I would therefore affirm Westover's conviction.

In conclusion: Nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously *526 taken by the Court in the name of fulfulling its constitutional responsibilities. The foray which the Court makes today brings to mind the wise and farsighted words of Mr. Justice Jackson in Douglas v. City of Jeannette, 319 U.S. 157, 181, 63 S.Ct. 877, 889, 87 L.Ed. 1324 (separate opinion): 'This Court is forever adding new stories to the temples of **1655 constitutional law, and the temples have a way of collapsing when one story too many is added.'

Mr. Justice WHITE, with whom Mr. Justice HARLAN and Mr. Justice STEWART join, dissenting.

I.

The proposition that the privilege against self-incrimination forbids incustody interrogation without the warnings specified in the majority opinion and without a clear waiver of counsel has no significant support in the history of the privilege or in the language of the Fifth Amendment. As for the English authorities and the common-law history, the privilege, firmly established in the second half of the seventeenth century, was never applied except to prohibit compelled judicial interrogations. The rule excluding coerced confessions matured about 100 years later, '(b)ut there is nothing in the reports to suggest that the theory has its roots in the privilege against self-incrimination. And so far as the cases reveal, the privilege, as such, seems to have been given effect only in judicial proceedings, including the preliminary examinations by authorized magistrates.' Morgan, The Privilege Against Self-Incrimination, 34 Minn.L.Rev. 1, 18 (1949).

Our own constitutional provision provides that no person 'shall be compelled in any criminal case to be a witness against himself.' These words, when '(c) onsidered in the light to be shed by grammar and the dictionary * * * appear to signify simply that nobody shall be ***527** compelled to give oral testimony against himself in a criminal proceeding under way in which he is defendant.' Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich.L.Rev. 1, 2. And there is very little in the surrounding circumstances of the adoption of the Fifth Amendment or in the provisions of the then existing state constitutions or in state practice which would give the constitutional provision any broader meaning. Mayers, The Federal Witness' Privilege Against Self-Incrimination: Constitutional or Common-Law? 4 American Journal of Legal History 107 (1960). Such a construction, however, was considerably narrower than the privilege at common law, and when eventually faced with the issues, the Court extended the constitutional privilege to the compulsory production of books and papers, to the ordinary witness before the grand jury and to witnesses generally. Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746, and Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110. Both rules had solid support in common-law history, if not in the history of our own constitutional provision.

A few years later the Fifth Amendment privilege was similarly extended to encompass the then well-established rule against coerced confessions: 'In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the fifth amendment to the constitution of the United States, commanding that no person 'shall be compelled in any criminal case to be a witness against himself.'' Bram v. United States, 168 U.S. 532, 542, 18 S.Ct. 183, 187, 42 L.Ed. 568. Although this view has found approval in other cases, Burdeau v. McDowell, 256 U.S. 465, 475, 41 S.Ct. 574, 576, 65 L.Ed. 1048; Powers v. United States, 223 U.S. 303, 313, 32 S.Ct. 281, 283, 56 L.Ed. 448; Shotwell Mfg. Co. v. United States, 371 U.S. 341, 347, 83 S.Ct. 448, 453, 9 L.Ed.2d 357, it has also been questioned, see Brown v. State of Mississippi, 297 U.S. 278, 285, 56 S.Ct. 461, 464, 80 L.Ed. 682; United States v. Carignan, 342 U.S. 36, 41, 72 S.Ct. 97, 100, 96 L.Ed. 48; Stein v. People of State of New York, 346 U.S. 156, 191, n. 35, 73 S.Ct. 1077, 1095, 97 L.Ed. 1522, ***528** and finds scant support in either the English or American authorities, see generally Regina v. Scott, Dears. & Bell 47; 3 ****1656** Wigmore, Evidence s 823 (3d ed. 1940), at 249 ('a confession is not rejected because of any connection with the privilege against self-crimination'), and 250, n. 5 (particularly criticizing Bram); 8 Wigmore, Evidence s 2266, at 400—401 (McNaughton rev. 1961). Whatever the source of the rule excluding coerced confessions, it is clear that prior to the application of the privilege itself to state courts, Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653, the admissibility of a confession in a state criminal prosecution was tested by the same standards as were applied in federal prosecutions. Id., at 6—7, 10, 84 S.Ct., at 1492—1493, 1494.

Bram, however, itself rejected the proposition which the Court now espouses. The question in Bram was whether a confession, obtained during custodial interrogation, had been compelled, and if such interrogation was to be deemed inherently vulnerable the Court's inquiry could have ended there. After examining the English and American authorities, however, the Court declared that: 'In this court also it has been settled that the mere fact that the confession is made to a police officer, while the accused was under arrest in or out of prison, or was drawn out by his questions, does not necessarily render the confession involuntary; but, as one of the circumstances, such imprisonment or interrogation may be taken into account in determining whether or not the statements of the prisoner were voluntary.' 168 U.S., at 558, 18 S.Ct., at 192.

In this respect the Court was wholly consistent with prior and subsequent pronouncements in this Court.

Thus prior to Bram the Court, in Hopt v. People of Territory of Utah, 110 U.S. 574, 583—587, 4 S.Ct. 202, 206, 28 L.Ed. 262, had upheld the admissibility of a ***529** confession made to police officers following arrest, the record being silent concerning what conversation had occurred between the officers and the defendant in the short period preceding the confession. Relying on Hopt, the Court ruled squarely on the issue in Sparf and Hansen v. United States, 156 U.S. 51, 55, 15 S.Ct. 273, 275, 39 L.Ed. 343:

> 'Counsel for the accused insist that there cannot be a voluntary statement, a free, open confession, while a defendant is confined and in irons, under an accusation of having committed a capital offence. We have

> not been referred to any authority in support of that position. It is true that the fact of a prisoner being in custody at the time he makes a confession is a circumstance not to be overlooked, because it bears upon the inquiry whether the confession was voluntarily made, or was extorted by threats or violence or made under the influence of fear. But confinement or imprisonment is not in itself sufficient to justify the exclusion of a confession, if it appears to have been voluntary and was not obtained by putting the prisoner in fear or by promises. Whart(on's) Cr.Ev. (9th Ed.) ss 661, 663, and authorities cited.'

Accord, Pierce v. United States, 160 U.S. 355, 357, 16 S.Ct. 321, 322, 40 L.Ed. 454.

And in Wilson v. United States, 162 U.S. 613, 623, 16 S.Ct. 895, 899, 40 L.Ed. 1090, the Court had considered the significance of custodial interrogation without any antecedent warnings regarding the right to remain silent or the right to counsel. There the defendant had answered questions posed by a Commissioner, who had filed to advise him of his rights, and his answers were held admissible over his claim of involuntariness. 'The fact that (a defendant) is in custody and manacled does not necessarily render his statement involuntary, nor is that necessarily the effect of popular excitement shortly preceding. * * * And it is laid down ***530** that it is not essential to the admissibility of a confession ****1657** that it should appear that the person was warned that what he said would be used against him; but, on the contrary, if the confession was voluntary, it is sufficient, though it appear that he was not so warned.'

Since Bram, the admissibility of statements made during custodial interrogation has been frequently reiterated. Powers v. United States, 223 U.S. 303, 32 S.Ct. 281, cited Wilson approvingly and held admissible as voluntary statements the accused's testimony at a preliminary hearing even though he was not warned that what he said might be used against him. Without any discussion of the presence or absence of warnings, presumably because such discussion was deemed unnecessary, numerous other cases have declared that '(t) he mere fact that a confession was made while in the custody of the police does not render it inadmissible,' McNabb v. United States, 318 U.S. 332, 346, 63 S.Ct. 608, 615, 87 L.Ed. 819; accord, United States v. Mitchell, 322 U.S. 65, 64 S.Ct. 896, 88 L.Ed. 1140, despite its having been elicited by police examination. Ziang Sung Wan v. United States, 266 U.S. 1, 14, 45 S.Ct. 3; United States v. Carignan, 342 U.S. 36, 39, 72 S.Ct. 97, 99. Likewise, in Crooker v. State of California, 357 U.S. 433, 437, 78 S.Ct. 1287, 1290, 2 L.Ed.2d 1448, the Court said that '(t)he bare fact of police 'detention and police examination in private of one in official state custody' does not render involuntary a confession by the one so detained.' And finally, in Cicenia v. La Gay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed.2d 1523, a confession obtained by police interrogation after arrest was held voluntary even though the authorities refused to permit the defendant to consult with his attorney. See generally Culombe v. Connecticut, 367 U.S. 568, 587—602, 81 S.Ct. 1860, 1870, 6 L.Ed.2d 1037 (opinion of Frankfurter, J.); 3 Wigmore, Evidence s 851, at 313 (3d ed. 1940); see also Joy, Admissibility of Confessions 38, 46 (1842).

Only a tiny minority of our judges who have dealt with the question, including today's majority, have considered incustody interrogation, without more, to be a violation of the Fifth Amendment. And this Court, as ***531** every member knows, has left standing literally thousands of criminal convictions that rested at least in part on confessions taken in the course of interrogation by the police after arrest.

II.

That the Court's holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent does not prove either that the Court has exceeded its powers or that the Court is wrong or unwise in its present reinter-pretation of the Fifth Amendment. It does, however, underscore the obvious—that the Court has not discovered or found the law in making today's decision, nor has it derived it from some irrefutable sources; what it has done is to make new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution. [1] This is what the Court historically has done. Indeed, it is what it must do and will continue to do until and unless

there is some fundamental change in the constitutional distribution of governmental powers.

But if the Court is here and now to announce new and fundamental policy to govern certain aspects of our affairs, it is wholly legitimate to examine the mode of this or any other constitutional decision in this Court and to inquire into the advisability of its end product in **1658 terms of the long-range interest of the country. At the very least, the Court's text and reasoning should withstand analysis and be a fair exposition of the constitutional provision which its opinion interprets. Decisions *532 like these cannot rest alone on syllogism, metaphysics or some ill-defined notions of natural justice, although each will perhaps play its part. In proceeding to such constructions as it now announces, the Court should also duly consider all the factors and interests bearing upon the cases, at least insofar as the relevant materials are available; and if the necessary considerations are not treated in the record or obtainable from some other reliable source, the Court should not proceed to formulate fundamental policies based on speculation alone.

III.

First, we may inquire what are the textual and factual bases of this new fundamental rule. To reach the result announced on the grounds it does, the Court must stay within the confines of the Fifth Amendment, which forbids self-incrimination only if compelled. Hence the core of the Court's opinion is that because of the 'compulsion inherent in custodial surroundings, no statement obtained from (a) defendant (in custody) can truly be the product of his free choice,' ante, at 1619, absent the use of adequate protective devices as described by the Court. However, the Court does not point to any sudden inrush of new knowledge requiring the rejection of 70 years' experience. Nor does it assert that its novel conclusion reflects a changing consensus among state courts, see Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, or that a succession of cases had steadily eroded the old rule and proved it unworkable, see Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799. Rather than asserting new knowledge, the Court concedes that it cannot truly know what occurs during custodial questioning, because of the innate secrecy of such proceedings. It extrapolates a picture of what it conceives to be the norm from police investigatorial manuals, published in 1959 and 1962 or earlier, without any attempt to allow for adjustments in police practices that may *533 have occurred in the wake of more recent decisions of state appellate tribunals or this Court. But even if the relentless application of the described procedures could lead to involuntary confessions, it most assuredly does not follow that each and every case will disclose this kind of interrogation or this kind of consequence.[2] Insofar as appears from the Court's opinion, it has not examined a single transcript of any police interrogation, let alone the interrogation that took place in any one of these cases which it decides today. Judged by any of the standards for empirical investigation utilized in the social sciences the factual basis for the Court's premise is patently inadequate.

Although in the Court's view in-custody interrogation is inherently coercive, the Court says that the spontaneous product of the coercion of arrest and detention is still to be deemed voluntary. An accused, arrested on probable cause, may blurt out a confession which will be admissible despite the fact that he is alone and in custody, without any showing that **1659 he had any notion of his right to remain silent or of the consequences of his admission. Yet, under the Court's rule, if the police ask him a single question such as 'Do you have anything to say?' or 'Did you kill your wife?' his response, if there is one, has somehow been compelled, even if the accused has *534 been clearly warned of his right to remain silent. Common sense informs us to the contrary. While one may say that the response was 'involuntary' in the sense the question provoked or was the occasion for the response and thus the defendant was induced to speak out when he might have remained silent if not arrested and not questioned, it is patently unsound to say the response is compelled.

Today's result would not follow even if it were agreed that to some extent custodial interrogation is inherently coercive. See Ashcraft v. State of Tennessee, 322 U.S. 143, 161, 64 S.Ct. 921, 929, 88 L.Ed. 1192 (Jackson, J., dissenting). The test has been whether the totality of circumstances deprived the defendant of a 'free choice to admit, to deny, or to refuse to answer,' Lisenba v. People of State of California, 314 U.S. 219, 241, 62 S.Ct. 280, 292, 86 L.Ed. 166, and whether physical or psychological coercion was of such a degree that 'the defendant's will was overborne at the time he confessed,' Haynes v. State of Washington, 373 U.S. 503, 513, 83 S.Ct. 1336, 1343, 10 L.Ed.2d 513; Lynumn v. State of Illinois, 372 U.S. 528, 534, 83 S.Ct. 917, 920, 9 L.Ed.2d 922. The duration and nature of incommunicado

custody, the presence or absence of advice concerning the defendant's constitutional rights, and the granting or refusal of requests to communicate with lawyers, relatives or friends have all been rightly regarded as important data bearing on the basic inquiry. See, e.g., Ashcraft v. State of Tennessee, 322 U.S. 143, 64 S.Ct. 921; Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336.[3] ***535** But it has never been suggested, until today, that such questioning was so coercive and accused persons so lacking in hardihood that the very first response to the very first question following the commencement of custody must be conclusively presumed to be the product of an overborne will.

If the rule announced today were truly based on a conclusion that all confessions resulting from custodial interrogation are coerced, then it would simply have no rational foundation. Compare Tot v. United States, 319 U.S. 463, 466, 63 S.Ct. 1241, 1244, 87 L.Ed. 1519; United States v. Romano, 382 U.S. 136, 86 S.Ct. 279, 15 L.Ed.2d 210. A fortiori that would be true of the extension of the rule to exculpatory statements, which the Court effects after a brief discussion of why, in the Court's view, they must be deemed incriminatory but without any discussion of why they must be deemed coerced. See Wilson v. United States, 162 U.S. 613, 624, 16 S.Ct. 895, 900, 40 L.Ed. 1090. Even if one were to postulate that the Court's concern is not that all confessions induced by police interrogation are coerced but rather that some such confessions are coerced and present judicial procedures are believed to be inadequate to identify the confessions that are coerced ****1660** and those that are not, it would still not be essential to impose the rule that the Court has now fashioned. Transcripts or observers could be required, specific time limits, tailored to fit the cause, could be imposed, or other devices could be utilized to reduce the chances that otherwise indiscernible coercion will produce an inadmissible confession.

On the other hand, even if one assumed that there was an adequate factual basis for the conclusion that all confessions obtained during in-custody interrogation are the product of compulsion, the rule propounded by ***536** the Court will still be irrational, for, apparently, it is only if the accused is also warned of his right to counsel and waives both that right and the right against self-incrimination that the inherent compulsiveness of interrogation disappears. But if the defendant may not answer without a warning a question such as 'Where were you last night?' without having his answer be a compelled one, how can the Court ever accept his negative answer to the question of whether he wants to consult his retained counsel or counsel whom the court will appoint? And why if counsel is present and the accused nevertheless confesses, or counsel tells the accused to tell the truth, and that is what the accused does, is the situation any less coercive insofar as the accused is concerned? The Court apparently realizes its dilemma of foreclosing questioning without the necessary warnings but at the same time permitting the accused, sitting in the same chair in front of the same policemen, to waive his right to consult an attorney. It expects, however, that the accused will not often waive the right; and if it is claimed that he has, the State faces a severe, if not impossible burden of proof.

All of this makes very little sense in terms of the compulsion which the Fifth Amendment proscribes. That amendment deals with compelling the accused himself. It is his free will that is involved. Confessions and incriminating admissions, as such, are not forbidden evidence; only those which are compelled are banned. I doubt that the Court observes these distinctions today. By considering any answers to any interrogation to be compelled regardless of the content and course of examination and by escalating the requirements to prove waiver, the Court not only prevents the use of compelled confessions but for all practical purposes forbids interrogation except in the presence of counsel. That is, instead of confining itself to protection of the right against compelled ***537** self-incrimination the Court has created a limited Fifth Amendment right to counsel—or, as the Court expresses it, a 'need for counsel to protect the Fifth Amendment privilege * * *.' Ante, at 1625. The focus then is not on the will of the accused but on the will of counsel and how much influence he can have on the accused. Obviously there is no warrant in the Fifth Amendment for thus installing counsel as the arbiter of the privilege.

In sum, for all the Court's expounding on the menacing atmosphere of police interrogation procedures, it has failed to supply any foundation for the conclusions it draws or the measures it adopts.

IV.

Criticism of the Court's opinion, however, cannot stop with a demonstration that the factual and textual bases for the rule it proponds are, at best, less than compelling. Equally relevant is an assessment of the rule's

consequences measured against community values. The Court's duty to assess the consequences of its action is not satisfied by the utterance of the truth that a value of our system of criminal justice is 'to respect the inviolability of the human personality' and to require government to produce the evidence against the accused by its own independent labors. Ante, at 1620. More than the human dignity of the accused is involved; the human personality of others in the society must also be preserved. **1661 Thus the values reflected by the privilege are not the sole desideratum; society's interest in the general security is of equal weight.

The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. As the Court declares that the accused may not be interrogated without counsel present, absent a waiver of the right to counsel, and as the Court all but admonishes the lawyer to *538 advise the accused to remain silent, the result adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not. This is the not so subtle overtone of the opinion—that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub of this dissent. I see nothing wrong or immoral, and certainly nothing unconstitutional, in the police's asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife or in confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent, see Escobedo v. State of Illinois, 378 U.S. 478, 499, 84 S.Ct. 1758, 1769, 12 L.Ed.2d 977 (dissenting opinion). Until today, 'the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence.' Brown v. Walker, 161 U.S. 591, 596, 16 S.Ct. 644, 646, 40 L.Ed. 819, see also Hopt v. People of Territory of Utah, 110 U.S. 574, 584—585, 4 S.Ct. 202, 207. Particularly when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty. Moreover, it is by no means certain that the process of confessing is injurious to the accused. To the contrary it may provide psychological relief and enhance the prospects for rehabilitation.

This is not to say that the value of respect for the inviolability of the accused's individual personality should be accorded no weight or that all confessions should be indiscriminately admitted. This Court has long read the Constitution to proscribe compelled confessions, a salutary rule from which there should be no retreat. But I see no sound basis, factual or otherwise, and the Court gives none, for concluding that the present rule against the receipt of coerced confessions is inadequate for the *539 task of sorting out inadmissible evidence and must be replaced by the per se rule which is now imposed. Even if the new concept can be said to have advantages of some sort over the present law, they are far outweighed by its likely undesirable impact on other very relevant and important interests.

The most basic function of any government is to provide for the security of the individual and of his property. Lanzetta v. State of New Jersey, 306 U.S. 451, 455, 59 S.Ct. 618, 619, 83 L.Ed. 888. These ends of society are served by the criminal laws which for the most part are aimed at the prevention of crime. Without the reasonably effective performance of the task of preventing private violence and retaliation, it is idle to talk about human dignity and civilized values.

The modes by which the criminal laws serve the interest in general security are many. First the murderer who has taken the life of another is removed from the streets, deprived of his liberty and thereby prevented from repeating his offense. In view of the statistics on recidivism in this country [4] and of the number of instances **1662 *540 in which apprehension occurs only after repeated offenses, no one can sensibly claim that this aspect of the criminal law does not prevent crime or contribute significantly to the personal security of the ordinary citizen.

Secondly, the swift and sure apprehension of those who refuse to respect the personal security and dignity of their neighbor unquestionably has its impact on others who might be similarly tempted. That the criminal law is wholly or partly ineffective with a segment of the population or with many of those who have been apprehended and convicted is a very faulty basis for concluding that it is not effective with respect to the great bulk of our citizens or for thinking that without the criminal laws, *541 or in the absence of their enforcement, there would be no increase in crime. Arguments of this nature are not borne out by any kind of reliable evidence that I have been to this date.

Thirdly, the law concerns itself with those whom it has confined. The hope and aim of modern penology, fortunately, is as soon as possible to return the convict to society a better and more law-abiding man than when he left. Sometimes there is success, sometimes failure. But at least the effort is made, and it should be made to the very maximum extent of our present and future capabilities.

The rule announced today will measurably weaken the ability of the criminal law to perform these tasks. It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials.[5] Criminal trials, **1663 no *542 matter how efficient the police are, are not sure bets for the prosecution, nor should they be if the evidence is not forthcoming. Under the present law, the prosecution fails to prove its case in about 30% of the criminal cases actually tried in the federal courts. See Federal Offenders: 1964, supra, note 4, at 6 (Table 4), 59 (Table 1); Federal Offenders; 1963, supra, note 4, at 5 (Table 3); District of Columbia Offenders: 1963, supra, note 4, at 2 (Table 1). But it is something else again to remove from the ordinary criminal case all those confessions which heretofore have been held to be free and voluntary acts of the accused and to thus establish a new constitutional barrier to the ascertainment of truth by the judicial process. There is, in my view, every reason to believe that a good many criminal defendants who otherwise would have been convicted on what this Court has previously thought to be the most satisfactory kind of evidence will now under this new version of the Fifth Amendment, either not be tried at all or will be acquitted if the State's evidence, minus the confession, is put to the test of litigation.

I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.

In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. The real concern is not the unfortunate consequences of this new decision on the criminal law as an abstract, disembodied series of authoritative proscriptions, but the impact on those who rely on the public authority for protection and who without it can only engage in violent self-help with guns, knives and the help of their neighbors similarly inclined. There is, of *543 course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case.

Nor can this decision do other than have a corrosive effect on the criminal laws as an effective device to prevent crime. A major component in its effectiveness in this regard is its swift and sure enforcement. The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good common sense. If it were not, we should posthaste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct.

And what about the accused who has confessed or would confess in response to simple, noncoercive questioning and whose guilt could not otherwise be proved? Is it so clear that release is the best thing for him in every case? Has it so unquestionably been resolved that in **1664 each and every case it would be better for him not to confess and to return to his environment with no attempt whatsoever to help him? I think not. It may well be that in many cases it will be no less than a callous disregard for his own welfare as well as for the interests of his next victim.

There is another aspect to the effect of the Court's rule on the person whom the police have arrested on probable cause. The fact is that he may not be guilty at all and may be able to extricate himself quickly and simply if he were told the circumstances of his arrest and were asked to explain. This effort, and his release, must now await the hiring of a lawyer or his appointment by the court, consultation with counsel and then a session with the police or the prosecutor. Similarly, where probable cause exists to arrest several suspects, as where the body of the victim is discovered in a house having several residents, compare Johnson v. State, 238 Md. 140, 207 A.2d 643 (1965), cert. denied, 382 U.S. 1013, 86 S.Ct. 623, 15 L.Ed.2d 528, it will often *544 be true that a suspect may be cleared only through the results of interrogation of other suspects. Here too the release of the innocent may be delayed by the Court's rule.

Much of the trouble with the Court's new rule is that it will operate indiscriminately in all criminal cases, regardless of the severity of the crime or the circumstances involved. It applies to every defendant, whether the professional criminal or one committing a crime of momentary passion who is not part and parcel of organized crime. It will slow down the investigation and the apprehension of

confederates in those cases where time is of the essence, such as kidnapping, see Brinegar v. United States, 338 U.S. 160, 183, 69 S.Ct. 1302, 1314, 93 L.Ed. 1879 (Jackson, J., dissenting); People v. Modesto, 62 Cal.2d 436, 446, 42 Cal.Rptr. 417, 423, 398 P.2d 753, 759 (1965), those involving the national security, see United States v. Drummond, 354 F.2d 132, 147 (C.A.2d Cir. 1965) (en banc) (espionage case), pet. for cert. pending, No. 1203, Misc., O.T. 1965; cf. Gessner v. United States, 354 F.2d 726, 730, n. 10 (C.A.10th Cir. 1965) (upholding, in espionage case, trial ruling that Government need not submit classified portions of interrogation transcript), and some of those involving organized crime. In the latter context the lawyer who arrives may also be the lawyer for the defendant's colleagues and can be relied upon to insure that no breach of the organization's security takes place even though the accused may feel that the best thing he can do is to cooperate.

At the same time, the Court's per se approach may not be justified on the ground that it provides a 'bright line' permitting the authorities to judge in advance whether interrogation may safely be pursued without jeopardizing the admissibility of any information obtained as a consequence. Nor can it be claimed that judicial time and effort, assuming that is a relevant consideration, ***545** will be conserved because of the ease of application of the new rule. Today's decision leaves open such questions as whether the accused was in custody, whether his statements were spontaneous or the product of interrogation, whether the accused has effectively waived his rights, and whether nontestimonial evidence introduced at trial is the fruit of statements made during a prohibited interrogation, all of which are certain to prove productive of uncertainty during investigation and litigation during prosecution. For all these reasons, if further restrictions on police interrogation are desirable at this time, a more flexible approach makes much more sense than the Court's constitutional straitjacket which forecloses more discriminating treatment by legislative or rule-making pronouncements.

****1665** Applying the traditional standards to the cases before the Court, I would hold these confessions voluntary. I would therefore affirm in Nos. 759, 760, and 761, and reverse in No. 584.

All Citations

384 U.S. 436, 10 Ohio Misc. 9, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974, 36 O.O.2d 237, 39 O.O.2d 63

Footnotes

1 Compare United States v. Childress, 347 F.2d 448 (C.A.7th Cir. 1965), with Collins v. Beto, 348 F.2d 823 (C.A.5th Cir. 1965). Compare People v. Dorado, 62 Cal.2d 338, 42 Cal.Rptr. 169, 398 P.2d 361 (1964) with People v. Hartgraves, 31 Ill.2d 375, 202 N.E.2d 33 (1964).

2 See, e.g., Enker & Elsen, Counsel for the Suspect: Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 and Escobedo v. State of Illinois, 49 Minn.L.Rev. 47 (1964); Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 449 (1964); Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1 (1965); Dowling, Escobedo and Beyond: The Need for a Fourteenth Amendment Code of Criminal Procedure, 56 J.Crim.L., C. & P.S. 143, 156 (1965).
The complex problems also prompted discussions by jurists. Compare Bazelon, Law, Morality, and Civil Liberties, 12 U.C.L.A.L.Rev. 13 (1964), with Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif.L.Rev. 929 (1965).

3 For example, the Los Angeles Police Chief stated that 'If the police are required * * * to * * * establish that the defendant was apprised of his constitutional guarantees of silence and legal counsel prior to the uttering of any admission or confession, and that he intelligently waived these guarantees * * * a whole Pandora's box is opened as to under what circumstances * * * can a defendant intelligently waive these rights. * * * Allegations that modern criminal investigation can compensate for the lack of a confession of admission in every criminal case is totally absurd!' Parker, 40 L.A.Bar Bull. 603, 607, 642 (1965). His prosecutorial counterpart, District Attorney Younger, stated that '(I)t begins to appear that many of these seemingly restrictive decisions are going to contribute directly to a more effective, efficient and professional level of law enforcement.' L.A. Times, Oct. 2, 1965, p. 1. The former Police Commissioner of New York, Michael J. Murphy, stated of Escobedo: 'What the Court is doing is akin to requiring one boxer to fight by Marquis of Queensbury rules while permitting the other to butt, gouge and bite.' N.Y. Times, May 14, 1965, p. 39. The former United States Attorney for the District of Columbia, David C. Acheson, who is presently Special Assistant to the Secretary of the Treasury (for Enforcement), and directly in charge of the Secret Service and the Bureau of Narcotics, observed that 'Prosecution procedure has, at most,

only the most remote causal connection with crime. Changes in court decisions and prosecution procedure would have about the same effect on the crime rate as an aspirin would have on a tumor of the brain.' Quoted in Herman, supra, n. 2, at 500, n. 270. Other views on the subject in general are collected in Weisberg, Police Interrogation of Arrested Persons: A Skeptical View, 52 J.Crim.L., C. & P.S. 21 (1961).

4 This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused.

5 See, for example, IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement (1931) (Wickersham Report); Booth, Confessions and Methods Employed in Procuring Them, 4 So.Calif.L.Rev. 83 (1930); Kauper, Judicial Examination of the Accused—A Remedy for the Third Degree, 30 Mich.L.Rev. 1224 (1932). It is significant that instances of third-degree treatment of prisoners almost invariably took place during the period between arrest and preliminary examination. Wickersham Report, at 169; Hall, The Law of Arrest in Relation to Contemporary Social Problems, 3 U.Chi.L.Rev. 345, 357 (1936). See also Foote, Law and Polio Practice: Safeguards in the Law of Arrest, 52 Nw.U.L.Rev. 16 (1957).

6 Brown v. State of Mississippi, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936); Chambers v. State of Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 (1940); Canty v. State of Alabama, 309 U.S. 629, 60 S.Ct. 612, 84 L.Ed. 988 (1940); White v. State of Texas, 310 U.S. 530, 60 S.Ct. 1032, 84 L.Ed. 1342 (1940); Vernon v. State of Alabama, 313 U.S. 547, 61 S.Ct. 1092, 85 L.Ed. 1513 (1941); Ward v. State of Texas, 316 U.S. 547, 62 S.Ct. 1139, 86 L.Ed. 1663 (1942); Ashcraft v. State of Tennessee, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192 (1944); Malinski v. People of State of New York, 324 U.S. 401, 65 S.Ct. 781, 89 L.Ed. 1029 (1945); Leyra v. Denno, 347 U.S. 556, 74 S.Ct. 716, 98 L.Ed. 948 (1954). See also Williams v. United States, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951).

7 In addition, see People v. Wakat, 415 Ill. 610, 114 N.E.2d 706 (1953); Wakat v. Harlib, 253 F.2d 59 (C.A.7th Cir.1958) (defendant suffering from broken bones, multiple bruises and injuries sufficiently serious to require eight months' medical treatment after being manhandled by five policemen); Kier v. State, 213 Md. 556, 132 A.2d 494 (1957) (police doctor told accused, who was strapped to a chair completely nude, that he proposed to take hair and skin scrapings from anything that looked like blood or sperm from various parts of his body); Bruner v. People, 113 Colo. 194, 156 P.2d 111 (1945) (defendant held in custody over two months, deprived of food for 15 hours, forced to submit to a lie detector test when he wanted to go to the toilet); People v. Matlock, 51 Cal.2d 682, 336 P.2d 505, 71 A.L.R.2d 605 (1959) (defendant questioned incessantly over an evening's time, made to lie on cold board and to answer questions whenever it appeared he was getting sleepy). Other cases are documented in American Civil Liberties Union, Illinois Division, Secret Detention by the Chicago Police (1959); Potts, The Preliminary Examination and 'The Third Degree,' 2 Baylor L.Rev. 131 (1950); Sterling, Police Interrogation and the Psychology of Confession, 14 J.Pub.L. 25 (1965).

8 The manuals quoted in the text following are the most recent and representative of the texts currently available. Material of the same nature appeals in Kidd, Police Interrogation (1940); Mulbar, Interrogation (1951); Dienstein, Technics for the Crime Investigator 97—115 (1952). Studies concerning the observed practices of the police appear in LaFave, Arrest: The Decision To Take a Suspect Into Custody 244—437, 490—521 (1965); LaFave, Detention for Investigation by the Police: An Analysis of Current Practices, 1962 Wash.U.L.Q. 331; Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif.L.Rev. 11 (1962); Sterling, supra, n. 7, at 47—65.

9 The methods described in Inbau & Reid Criminal Interrogation and Confessions (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, Lie Detection and Criminal Interrogation (3d ed. 1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, Fundamentals of Criminal Investigation (1956), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.

10 Inbau & Reid, Criminal Interrogation and Confessions (1962), at 1.

11 O'Hara, supra, at 99.

12 Inbau & Reid, supra, at 34—43, 87. For example, in Leyra v. Denno, 347 U.S. 556, 74 S.Ct. 716, 98 L.Ed. 948 (1954), the interrogator-psychiatrist told the accused, 'We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things we aren't really responsible for,' id., at 562, 74 S.Ct. at 719, and again, 'We know that morally you were just in anger. Morally, you are not to be condemned,' id., at 582, 74 S.Ct. at 729.

13 Inbau & Reid, supra, at 43—55.

14 O'Hara, supra, at 112.

15 Inbau & Reid, supra, at 40.

16 Ibid.

17 O'Hara, supra, at 104, Inbau & Reid, supra, at 58—59. See Spano v. People of State of New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959). A variant on the technique of creating hostility is one of engendering fear. This is perhaps best described by the prosecuting attorney in Malinski v. People of State of New York, 324 U.S. 401, 407, 65 S.Ct. 781, 784, 89 L.Ed. 1029 (1945): 'Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology—let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking.'

18 O'Hara, supra, at 105—106.

19 Id., at 106.

20 Inbau & Reid, supra, at 111.

21 Ibid.

22 Inbau & Reid, supra, at 112.

23 Inbau & Reid, Lie Detection and Criminal Interrogation 185 (3d ed. 1953).

24 Interrogation procedures may even give rise to a false confession. The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was discovered, the prosecutor was reported as saying: 'Call it what you want—brain-washing, hypnosis, fright. They made him give an untrue confession. The only thing I don't believe is that Whitmore was beaten.' N.Y. Times, Jan. 28, 1965, p. 1, col. 5. In two other instances, similar events had occurred. N.Y. Times, Oct. 20, 1964, p. 22, col. 1; N.Y. Times, Aug. 25, 1965, p. 1, col. 1. In general, see Borchard, Convicting the Innocent (1932); Frank & Frank, Not Guilty (1957).

25 In the fourth confession case decided by the Court in the 1962 Term, Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), our disposition made it unnecessary to delve at length into the facts. The facts of the defendant's case there, however, paralleled those of his co-defendants, whose confessions were found to have resulted from continuous and coercive interrogation for 27 hours, with denial of requests for friends or attorney. See United States ex rel. Caminito v. Murphy, 222 F.2d 698 (C.A.2d Cir. 1955) (Frank, J.); People v. Bonino, 1 N.Y.2d 752, 152 N.Y.S.2d 298, 135 N.E.2d 51 (1956).

26 The absurdity of denying that a confession obtained under these circumstances is compelled is aptly portrayed by an example in Professor Sutherland's recent article, Crime and Confession, 79 Harv.L.Rev. 21, 37 (1965):
'Suppose a well-to-do testatrix says she intends to will her property to Elizabeth. John and James want her to bequeath it to them instead. They capture the testatrix, put her in a carefully designed room, out of touch with everyone but themselves and their convenient 'withnesses,' keep her secluded there for hours while they make insistent demands, weary her with contradictions of her assertions that she wants to leave her money to Elizabeth, and finally induce her to execute the will in their favor. Assume that John and James are deeply and correctly convinced that Elizabeth is unworthy and will make base use of the property if she gets her hands on it, whereas John and James have the noblest and most righteous intentions. Would any judge of probate accept the will so procured as the 'voluntary' act of the testatrix?'

27 Thirteenth century commentators found an analogue to the privilege grounded in the Bible. 'To sum up the matter, the principle that no man is to be declared guilty on his own admission is a divine decree.' Maimonides, Mishneh Torah (Code of Jewish Law), Book of Judges, Laws of the Sanhedrin, c. 18, 6, III Yale Judaica Series 52—53. See also Lamm, The Fifth Amendment and Its Equivalent in the Halakhan, 5 Judaism 53 (Winter 1956).

28 See Morgan, The Privilege Against Self-Incrimination, 34 Minn.L.Rev. 1, 9—11 (1949); 8 Wigmore, Evidence 285—295 (McNaughton rev. 1961). See also Lowell, The Judicial Use of Torture, Parts I and II, 11 Harv.L.Rev. 220, 290 (1897).

29 See Pittman, The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America, 21 Va.L.Rev. 763 (1935); Ullmann v. United States, 350 U.S. 422, 445—449, 76 S.Ct. 497, 510—512, 100 L.Ed. 511 (1956) (Douglas, J., dissenting).

30 Compare Brown v. Walker, 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819 (1896); Quinn v. United States, 349 U.S. 155, 75 S.Ct. 668, 99 L.Ed. 964 (1955).

31 Brief for the United States, p. 28. To the same effect, see Brief for the United States, pp. 40—49, n. 44, Anderson v. United States, 318 U.S. 350, 63 S.Ct. 599, 87 L.Ed. 829 (1943); Brief for the United States, pp. 17—18, McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608 (1943).

32 Our decision today does not indicate in any manner, of course, that these rules can be disregarded. When federal officials arrest an individual, they must as always comply with the dictates of the congressional legislation and cases thereunder. See generally, Hogan & Snee, The McNabb-Mallory Rule: Its Rise, Rationale and Rescue, 47 Geo.L.J. 1 (1958).

33 The decisions of this Court have guaranteed the same procedural protection for the defendant whether his confession was used in a federal or state court. It is now axiomatic that the defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. Rogers v. Richmond, 365 U.S. 534, 544, 81 S.Ct. 735, 741, 5 L.Ed.2d 760 (1961); Siang Sung Wan v. United States, 266 U.S. 1, 45 S.Ct. 1, 69 L.Ed. 131 (1924). This is so even if there is ample evidence aside from the confession to support the conviction, e.g., Malinski v. People of State of New York, 324 U.S. 401, 404, 65 S.Ct. 781, 783, 89 L.Ed. 1029 (1945); Bram v. United States, 168 U.S. 532, 540—542, 18 S.Ct. 183, 185—186 (1897). Both state and federal courts now adhere to trial procedures which seek to assure a reliable and clear-cut determination of the voluntariness of the confession offered at trial, Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 904 (1964); United States v. Carignan, 342 U.S. 36, 38, 72 S.Ct. 97, 98, 96 L.Ed. 48 (1951); see also Wilson v. United States, 162 U.S. 613, 624, 16 S.Ct. 895, 900, 40 L.Ed. 1090 (1896). Appellate review is exacting, see Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963); Blackburn v. State of Alabama, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960). Whether his conviction was in a federal or state court, the defendant may secure a post-conviction hearing based on the alleged involuntary character of his confession, provided he meets the procedural requirements, Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963); Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963). In addition, see Murphy v. Waterfront Comm. of New York Harbor, 378 U.S. 52, 84 S.Ct. 1594 (1964).

34 See Lisenba v. People of State of California, 314 U.S. 219, 241, 62 S.Ct. 280, 292, 86 L.Ed. 166 (1941); Ashcraft v. State of Tennessee, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192 (1944); Malinski v. People of State of New York, 324 U.S. 401, 65 S.Ct. 781 (1945); Spano v. People of State of New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959); Lynumn v. State of Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963); Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963).

35 The police also prevented the attorney from consulting with his client. Independent of any other constitutional proscription, this action constitutes a violation of the Sixth Amendment right to the assistance of counsel and excludes any statement obtained in its wake. See People v. Donovan, 13 N.Y.2d 148, 243 N.Y.S.2d 841, 193 N.E.2d 628 (1963) (Fuld, J.).

36 In re Groban, 352 U.S. 330, 340—352, 77 S.Ct. 510, 517—523, 1 L.Ed.2d 376 (1957) (Black, J., dissenting); Note, 73 Yale L.J. 1000, 1048—1051 (1964); Comment, 31 U.Chi.L.Rev. 313, 320 (1964) and authorities cited.

37 See p. 1617, supra. Lord Devlin has commented:

'It is probable that even today, when there is much less ignorance about these matters than formerly, there is still a general belief that you must answer all questions put to you by a policeman, or at least that it will be the worse for you if you do not.' Devlin, The Criminal Prosecution in England 32 (1958).

In accord with our decision today, it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation. Cf. Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); Malloy v. Hogan, 378 U.S. 1, 8, 84 S.Ct. 1489, 1493, 12 L.Ed.2d 653 (1964); Comment, 31 U.Chi.L.Rev. 556 (1964); Developments in the Law—Confessions, 79 Harv.L.Rev. 935, 1041—1044 (1966). See also Bram v. United States, 168 U.S. 532, 562, 18 S.Ct. 183, 194, 42 L.Ed. 568 (1897).

38 Cf. Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942), and the recurrent inquiry into special circumstances it necessitated. See generally, Kamisar, Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values, 61 Mich.L.Rev. 219 (1962).

39 See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 449, 480 (1964).

40 Estimates of 50—90% indigency among felony defendants have been reported. Pollock, Equal Justice in Practice, 45 Minn.L.Rev. 737, 738—739 (1961); Birzon, Kasanof & Forma, The Right to Counsel and the Indigent Accused in Courts of Criminal Jurisdiction in New York State, 14 Buffalo L.Rev. 428, 433 (1965).

41 See Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1, 64—81 (1965). As was stated in the Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice 9 (1963):

'When government chooses to exert its powers in the criminal area, its obligation is surely no less than that of taking reasonable measures to eliminate those factors that are irrelevant to just administration of the law but which, nevertheless, may occasionally affect determinations of the accused's liability or penalty. While government may not be required to

relieve the accused of his proverty, it may properly be required to minimize the influence of poverty on its administration of justice.'

42 Cf. United States ex rel. Brown v. Fay, 242 F.Supp. 273, 277 (D.C.S.D.N.Y.1965); People v. Witenski, 15 N.Y.2d 392, 259 N.Y.S.2d 413, 207 N.E.2d 358 (1965).

43 While a warning that the indigent may have counsel appointed need not be given to the person who is known to have an attorney or is known to have ample funds to secure one, the expedient of giving a warning is too simple and the rights involved too important to engage in ex post facto inquiries into financial ability when there is any doubt at all on that score.

44 If an individual indicates his desire to remain silent, but has an attorney present, there may be some circumstances in which further questioning would be permissible. In the absence of evidence of overbearing, statements them made in the presence of counsel might be free of the compelling influence of the interrogation process and might fairly be construed as a waiver of the privilege for purposes of these statements.

45 Although this Court held in Rogers v. United States, 340 U.S. 367, 71 S.Ct. 438, 95 L.Ed. 344 (1951), over strong dissent, that a witness before a grand jury may not in certain circumstanes decide to answer some questions and then refuse to answer others, that decision has no application to the interrogation situation we deal with today. No legislative or judicial fact-finding authority is involved here, nor is there a possibility that the individual might make self-serving statements of which he could make use at trial while refusing to answer incriminating statements.

46 The distinction and its significance has been aptly described in the opinion of a Scottish court:

'In former times such questioning, if undertaken, would be conducted by police officers visiting the house or place of business of the suspect and there questioning him, probably in the presence of a relation or friend. However convenient the modern practice may be, it must normally create a situation very unfavourable to the suspect.' Chalmers v. H. M. Advocate, (1954) Sess.Cas. 66, 78 (J.C.).

47 See People v. Dorado, 62 Cal.2d 338, 354, 42 Cal.Rptr. 169, 179, 398 P.2d 361, 371 (1965).

48 In accordance with our holdings today and in Escobedo v. State of Illinois, 378 U.S. 478, 492, 84 S.Ct. 1758, 1765; Crooker v. State of California, 357 U.S. 433, 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958) and Cicenia v. La Gay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed.2d 1523 (1958) are not to be followed.

49 In quoting the above from the dissenting opinion of Mr. Justice Brandeis we, of course, do not intend to pass on the constitutional questions involved in the Olmstead case.

50 Schaefer, Federalism and State Criminal Procedure, 70 Harv.L.Rev. 1, 26 (1956).

51 Miranda, Vignera, and Westover were identified by eyewitnesses. Marked bills from the bank robbed were found in Westover's car. Articles stolen from the victim as well as from several other robbery victims were found in Stewart's home at the outset of the investigation.

52 Dealing as we do here with constitutional standards in relation to statements made, the existence of independent corroborating evidence produced at trial is, of course, irrelevant to our decisions. Haynes v. State of Washington, 373 U.S. 503, 518—519, 83 S.Ct. 1336, 1345—1346 (1963); Lynumn v. State of Illinois, 372 U.S. 528, 537—538, 83 S.Ct. 917, 922, 9 L.Ed.2d 922 (1963); Rogers v. Richmond, 365 U.S. 534, 541, 81 S.Ct. 735, 739 (1961); Blackburn v. State of Alabama, 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960).

53 See, e.g., Report and Recommendations of the (District of Columbia) Commissioners' Committee on Police Arrests for Investigation (1962); American Civil Liberties Union, Secret Detention by the Chicago Police (1959). An extreme example of this practice occurred in the District of Columbia in 1958. Seeking three 'stocky' young Negroes who had robbed a restaurant, police rounded up 90 persons of that general description. Sixth-three were held overnight before being released for lack of evidence. A man not among the 90 arrested was ultimately charged with the crime. Washington Daily News, January 21, 1958, p. 5, col. 1; Hearings before a Subcommittee of the Senate Judiciary Committee on H.R. 11477, S. 2970, S. 3325, and S. 3355, 85th Cong., 2d Sess. (July 1958), pp. 40, 78.

54 In 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated:

'Law enforcement, however, in defeating the criminal, must maintain inviolate the historic liberties of the individual. To turn back the criminal, yet, by so doing, destroy the dignity of the individual, would be a hollow victory.

La

'We can have the Constitution, the best laws in the land, and the most honest reviews by courts—but unless the law enforcement profession is steeped in the democratic tradition, maintains the highest in ethics, and makes its work a career of honor, civil liberties will continually—and without end be violated. * * * The best protection of civil liberties is an alert, intelligent and honest law enforcement agency. There can be no alternative.

, c

'* * * Special Agents are taught that any suspect or arrested person, at the outset of an interview, must be advised that he is not required to make a statement and that any statement given can be used against him in court. Moreover, the individual must be informed that, if he desires, he may obtain the services of an attorney of his own choice.' Hoover, Civil Liberties and Law Enforcement: The Role of the FBI, 37 Iowa L.Rev. 175, 177—182 (1952).

55 We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver iis necessarily high. And, of course, the ultimate responsibility for resolving this constitutional question lies with the courts.

56 Among the crimes within the enforcement jurisdiction of the FBI are kidnapping, 18 U.S.C. s 1201 (1964 ed.), white slavery, 18 U.S.C. ss 2421—2423 (1964 ed.), bank robbery, 18 U.S.C. s 2113 (1964 ed.), interstate transportation and sale of stolen property, 18 U.S.C. ss 2311—2317 (1964 ed.), all manner of conspiracies, 18 U.S.C. s 371 (1964 ed.), and violations of civil rights, 18 U.S.C. ss 241—242 (1964 ed.). See also 18 U.S.C. s 1114 (1964 ed.) (murder of officer or employee of the United States).

57 (1964) Crim.L.Rev., at 166—170. These Rules provide in part:

'II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

'The caution shall be in the following terms:

"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.'

'When after being cantioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

'III. * * *

'(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted.

'IV. All written statements made after caution shall be taken in the following manner:

'(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says.

'He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. * * *

'(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

'(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.'

The prior Rules appear in Devlin, The Criminal Prosecution in England 137—141 (1958).

Despite suggestions of some laxity in enforcement of the Rules and despite the fact some discretion as to admissibility is invested in the trial judge, the Rules are a significant influence in the English criminal law enforcement system. See, e.g., (1964) Crim.L.Rev., at 182; and articles collected in (1960) Crim.L.Rev., at 298—356.

58 The introduction to the Judges' Rules states in part:

These Rules do not affect the principles

'(c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so. * * *' (1964) Crim.L.Rev., at 166—167.

59 As stated by the Lord Justice General in Chalmers v. H. M. Advocate, (1954) Sess.Cas. 66, 78 (J.C.):

'The theory of our law is that at the stage of initial investigation the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centred upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, e.g., to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. Once the accused has been apprehended and charged he has the statutory right to a private interview with a solicitor and to be brought before a magistrate with all convenient speed so that he may, if so advised, emit a declaration in presence of his solicitor under conditions which safeguard him against prejudice.'

60 'No confession made to a police officer shall be provided as against a person accused of any offense.' Indian Evidence Act s 25.
'No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.' Indian Evidence Act s 26. See 1 Ramaswami & Rajagopalan, Law of Evidence in India 553—569 (1962). To avoid any continuing effect of police pressure or inducement, the Indian Supreme Court has invalidated a confession made shortly after police brought a suspect before a magistrate, suggesting: '(I)t would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession.' Sarwan Singh v. State of Punjab, 44 All India Rep. 1957, Sup.Ct. 637, 644.

61 I Legislative Enactments of Ceylon 211 (1958).

62 10 U.S.C. s 831(b) (1964 ed.).

63 United States v. Rose, 24 CMR 251 (1957); United States v. Gunnels, 23 CMR 354 (1957).

64 Although no constitution existed at the time confessions were excluded by rule of evidence in 1872, India now has a written constitution which includes the provision that 'No person accused of any offence shall be compelled to be a witness against himself.' Constitution of India, Article 20(3). See Tope, The Constitution of India 63—67 (1960).

65 Brief for United States in No. 761, Westover v. United States, pp. 44—47; Brief for the State of New York as amicus curiae, pp. 35—39. See also Brief for the National District Attorneys Association as amicus curiae, pp. 23—26.

66 Miranda was also convicted in a separate trial on an unrelated robbery charge not presented here for review. A statement introduced at that trial was obtained from Miranda during the same interrogation which resulted in the confession involved here. At the robbery trial, one officer testified that during the interrogation he did not tell Miranda that anything he said would be held against him or that he could consult with an attorney. The other officer stated that they had both told Miranda that anything he said would be used against him and that he was not required by law to tell them anything.

67 One of the officers testified that he read this paragraph to Miranda. Apparently, however, he did not do so until after Miranda had confessed orally.

68 Vignera thereafter successfully attacked the validity of one of the prior convictions, Vignera v. Wilkins, Civ. 9901 (D.C.W.D.N.Y. Dec. 31, 1961) (unreported), but was then resentenced as a second-felony offender to the same term of imprisonment as the original sentence. R. 31—33.

69 The failure of defense counsel to object to the introduction of the confession at trial, noted by the Court of Appeals and emphasized by the Solicitor General, does not preclude our consideration of the issue. Since the trial was held prior to our decision in Escobedo and, of course, prior to our decision today making the objection available, the failure to object at trial does not constitute a waiver of the claim. See, e.g., United States ex rel. Angelet v. Fay, 333 F.2d 12, 16 (C.A.2d Cir. 1964), aff'd, 381 U.S. 654, 85 S.Ct. 1750, 14 L.Ed.2d 623 (1965). Cf. Ziffrin, Inc. v. United States, 318 U.S. 73, 78, 63 S.Ct. 465, 87 L.Ed. 621 (1943).

70 Because of this disposition of the case, the California Supreme Court did not reach the claims that the confession was coerced by police threats to hold his ailing wife in custody until he confessed, that there was no hearing as required by Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964), and that the trial judge gave an instruction condemned by the California Supreme Court's decision in People v. Morse, 60 Cal.2d 631, 36 Cal.Rptr. 201, 388 P.2d 33 (1964).

71 After certiorari was granted in this case, respondent moved to dismiss on the ground that there was no final judgment from which the State could appeal since the judgment below directed that he be retried. In the event respondent was successful in obtaining an acquittal on retrial, however, under California law the State would have no appeal. Satisfied that in these circumstances the decision below constituted a final judgment under 28 U.S.C. s 1257(3) (1964 ed.), we denied the motion. 383 U.S. 903, 86 S.Ct. 885.

1 E.g., Inbau & Reid, Criminal Interrogation and Confessions (1962); O'Hara, Fundamentals of Criminal Investigation (1956); Dienstein, Technics for the Crime Investigator (1952); Mulbar, Interrogation (1951); Kidd, Police Interrogation (1940).

2 As developed by my Brother HARLAN, post, pp. 1644—1649, such cases, with the exception of the long-discredited decision in Bram v. United States, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897), were adequately treated in terms of due process.

3 The Court points to England, Scotland, Ceylon and India as having equally rigid rules. As my Brother Harlan points out, post, pp. 1652—1653, the Court is mistaken in this regard, for it overlooks counterbalancing prosecutorial advantages. Moreover, the requirements of the Federal Bureau of Investigation do not appear from the Solicitor General's latter, ante, pp. 1633—1634, to be as strict as those imposed today in at least two respects: (1) The offer of counsel is articulated only as 'a right to counsel'; nothing is said about a right to have counsel present at the custodial interrogation. (See

also the examples cited by the Solicitor General, Westover v. United States, 342 F.2d 684, 685 (9 Cir., 1965) ('right to consult counsel'); Jackson v. United States, 119 U.S.App.D.C. 100, 337 F.2d 136, 138 (1964) (accused 'entitled to an attorney').) Indeed, the practice is that whenever the suspect 'decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point. * * * When counsel appears in person, he is permitted to confer with his client in private.' This clearly indicates that the FBI does not warn that counsel may be present during custodial interrogation. (2) The Solicitor General's letter states: '(T)hose who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, (are advised) of a right to free counsel if they are unable to pay, and the availability of such counsel from the Judge.' So phrased, this warning does not indicate that the agent will secure counsel. Rather, the statement may well be interpreted by the suspect to mean that the burden is placed upon himself and that he may have counsel appointed only when brought before the judge or at trial—but not at custodial interrogation. As I view the FBI practice, it is not as broad as the one laid down today by the Court.

4 In my view there is 'no significant support' in our cases for the holding of the Court today that the Fifth Amendment privilege, in effect, forbids custodial interrogation. For a discussion of this point see the dissenting opinion of my Brother WHITE, post, pp. 1655—1657.

1 My discussion in this opinion is directed to the main questions decided by the Court and necessary to its decision; in ignoring some of the collateral points, I do not mean to imply agreement.

2 The case was Bram v. United States, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (quoted, ante, p. 1621). Its historical premises were afterwards disproved by Wigmore, who concluded 'that no assertions could be more unfounded.' 3 Wigmore, Evidence s 823, at 250, n. 5 (3d ed. 1940). The Court in United States v. Carignan, 342 U.S. 36, 41, 72 S.Ct. 97, 100, 96 L.Ed. 48, declined to choose between Bram and Wigmore, and Stein v. People of State of New York, 346 U.S. 156, 191, n. 35, 73 S.Ct. 1077, 1095, 97 L.Ed. 1522, cast further doubt on Bram. There are, however, several Court opinions which assume in dicta the relevance of the Fifth Amendment privilege to confessions. Burdeau v. McDowell, 256 U.S. 465, 475, 41 S.Ct. 574, 576, 65 L.Ed. 1048; see Shotwell Mfg. Co. v. United States, 371 U.S. 341, 347, 83 S.Ct. 448, 453, 9 L.Ed.2d 357. On Bram and the federal confession cases generally, see Developments in the Law—Confessions, 79 Harv.L.Rev. 935, 959—961 (1966).

3 Comment, 31 U.Chi.L.Rev. 313 & n. 1 (1964), states that by the 1963 Term 33 state coerced-confession cases had been decided by this Court, apart from per curiams. Spano v. People of State of New York, 360 U.S. 315, 321, n. 2, 79 S.Ct. 1202, 1206, 3 L.Ed.2d 1265, collects 28 cases.

4 Bator & Vorenberg, Arrest, Detention, Interrogation and the Right to Counsel, 66 Col.L.Rev. 62, 73 (1966): 'In fact, the concept of involuntariness seems to be used by the courts as a shorthand to refer to practices which are repellent to civilized standards of decency or which, under the circumstances, are thought to apply a degree of pressure to an individual which unfairly impairs his capacity to make a rational choice.' See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 449, 452—458 (1964); Developments, supra, n. 2, at 964—984.

5 See the cases synopsized in Herman, supra, n. 4, at 456, nn. 36—39. One not too distant example is Stroble v. State of California, 343 U.S. 181, 72 S.Ct. 599, 96 L.Ed. 872, in which the suspect was kicked and threatened after his arrest, questioned a little later for two hours, and isolated from a lawyer trying to see him; the resulting confession was held admissible.

6 Among the examples given in 8 Wigmore, Evidence s 2266, at 401 (McNaughton rev. 1961), are these: the privilege applies to any witness, civil or criminal, but the confession rule protects only criminal defendants; the privilege deals only with compulsion, while the confession rule may exclude statements obtained by trick or promise; and where the privilege has been nullified—as by the English Bankruptcy Act—the confession rule may still operate.

7 Additionally, there are precedents and even historical arguments that can be arrayed in favor of bringing extra-legal questioning within the privilege. See generally Maguire, Evidence of Guilt s 2.03 at 15—16 (1959).

8 This, of course, is implicit in the Court's introductory announcement that '(o)ur decision in Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964) (extending the Fifth Amendment privilege to the States) necessitates an examination of the scope of the privilege in state cases as well.' Ante, p. 1622. It is also inconsistent with Malloy itself, in which extension of the Fifth Amendment to the States rested in part on the view that the Due Process Clause restriction on state confessions has in recent years been 'the same standard' as that imposed in federal prosecutions assertedly by the Fifth Amendment. 378 U.S., at 7, 84 S.Ct., at 1493.

9 I lay aside Escobedo itself; it contains no reasoning or even general conclusions addressed to the Fifth Amendment and indeed its citation in this regard seems surprising in view of Escobedo's primary reliance on the Sixth Amendment.

10 Since the Court conspicuously does not assert that the Sixth Amendment itself warrants its new police-interrogation rules, there is no reason now to draw out the extremely powerful historical and precedential evidence that the Amendment

will bear no such meaning. See generally Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif.L.Rev. 929, 943—948 (1965).

11 See supra, n. 4, and text. Of course, the use of terms like voluntariness involves questions of law and terminology quite as much as questions of fact. See Collins v. Beto, 5 Cir., 348 F.2d 823, 832 (concurring opinion); Bator & Vorenberg, supra, n. 4, at 72—73.

12 The Court's vision of a lawyer 'mitigat(ing) the dangers of untrustworthiness' ante, p. 1626) by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession. Watts v. State of Indiana, 338 U.S. 49, 59, 69 S.Ct. 1347, 1358, 93 L.Ed. 1801 (separate opinion of Jackson, J.): '(A)ny lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances.' See Enker & Elsen, Counsel for the Suspect, 49 Minn.L.Rev. 47, 66—68 (1964).

13 This need is, of course, what makes so misleading the Court's comparison of a probate judge readily setting aside as involuntary the will of an old lady badgered and beleaguered by the new heirs. Ante, p. 1619, n. 26. With wills, there is no public interest save in a totally free choice; with confessions, the solution of crime is a countervailing gain, however the balance is resolved.

14 See, e.g., the voluminous citations to congressional committee testimony and other sources collected in Culombe v. Connecticut, 367 U.S. 568, 578—579, 81 S.Ct. 1860, 1865, 1866, 6 L.Ed.2d 1037, (Frankfurter, J., announcing the Court's judgment and an opinion).

15 In Westover, a seasoned criminal was practically given the Court's full complement of warnings and did not heed them. The Stewart case, on the other hand, involves long detention and successive questioning. In Vignera, the facts are complicated and the record somewhat incomplete.

16 '(J)ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.' Snyder v. Commonwealth of Massachusetts, 291 U.S. 97, 122, 54 S.Ct. 330, 338, 78 L.Ed. 674 (Cardozo, J.).

17 A narrow reading is given in: United States v. Robinson, 354 F.2d 109 (C.A.2d Cir.); Davis v. State of North Carolina, 339 F.2d 770 (C.A.4th Cir.); Edwards v. Holman, 342 F.2d 679 (C.A.5th Cir.); United States ex rel. Townsend v. Ogilvie, 334 F.2d 837 (C.A.7th Cir.); People v. Hartgraves, 31 Ill.2d 375, 202 N.E.2d 33; State v. Fox, 131 N.W.2d 684 (Iowa); Rowe v. Commonwealth, 394 S.W.2d 751 (Ky.); Parker v. Warden, 236 Md. 236, 203 A.2d 418; State v. Howard, 383 S.W.2d 701 (Mo.); Bean v. State, 398 P.2d 251 (Nev.); State of New Jersey v. Hodgson, 44 N.J. 151, 207 A.2d 542; People v. Gunner, 15 N.Y.2d 226, 257 N.Y.S.2d 924, 205 N.E.2d 852; Commonwealth ex rel. Linde v. Maroney, 416 Pa. 331, 206 A.2d 288; Browne v. State, 24 Wis.2d 491, 129 N.W.2d 175, 131 N.W.2d 169.
An ample reading is given in: United States ex rel. Russo v. State of New Jersey, 351 F.2d 429 (C.A.3d Cir.); Wright v. Dickson, 336 F.2d 878 (C.A.9th Cir.); People v. Dorado, 62 Cal.2d 338, 42 Cal.Rptr. 169, 398 P.2d 361; State v. Dufour, 206 A.2d 82 (R.I.); State v. Neely, 239 Or. 487, 395 P.2d 557, modified 398 P.2d 482.
The cases in both categories are those readily available; there are certainly many others.

18 For instance, compare the requirements of the catalytic case of People v. Dorado, 62 Cal.2d 338, 42 Cal.Rptr. 169, 398 P.2d 361, with those laid down today. See also Traynor, The Devils of Due Process in Criminal Detection, Detention, and Trial, 33 U.Chi.L.Rev. 657, 670.

19 The Court's obiter dictum notwithstanding ante, p. 1634, there is some basis for believing that the staple of FBI criminal work differs importantly from much crime within the ken of local police. The skill and resources of the FBI may also be unusual.

20 For citations and discussion covering each of these points, see Developments, supra, n. 2, at 1091—1097, and Enker & Elsen, supra, n. 12, at 80 & n. 94.

21 On Comment, see Hardin, Other Answers: Search and Seizure, Coerced Confession, and Criminal Trial in Scotland, 113 U.Pa.L.Rev. 165, 181 and nn. 96—97 (1964). Other examples are less stringent search and seizure rules and no automatic exclusion for violation of them, id., at 167—169; guilt based on majority jury verdicts, id., at 185; and pre-trial discovery of evidence on both sides, id., at 175.

22 Of particular relevance is the ALI's drafting of a Model Code of Pre-Arraignment Procedure, now in its first tentative draft. While the ABA and National Commission studies have wider scope, the former is lending its advice to the ALI project and the executive director of the latter is one of the reporters for the Model Code.

23 See Brief for the United States in Westover, p. 45. The N.Y. Times, June 3, 1966, p. 41 (late city ed.) reported that the Ford Foundation has awarded $1,100,000 for a five-year study of arrests and confessions in New York.

24 The New York Assembly recently passed a bill to require certain warnings before an admissible confession is taken, though the rules are less strict than are the Court's. N.Y. Times, May 24, 1966, p. 35 (late city ed.).

25 The Court waited 12 years after Wolf v. People of State of Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782, declared privacy against improper state intrusions to be constitutionally safeguarded before it concluded in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, that adequate state remedies had not been provided to protect this interest so the exclusionary rule was necessary.

1 Of course the Court does not deny that it is departing from prior precedent; it expressly overrules Crooker and Cicenia, ante, at 1630, n. 48, and it acknowledges that in the instant 'cases we might not find the defendants' statements to have been involuntary in traditional terms,' ante, at 1618.

2 In fact, the type of sustained interrogation described by the Court appears to be the exception rather than the rule. A survey of 399 cases in one city found that in almost half of the cases the interrogation lasted less than 30 minutes. Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif.L.Rev. 11, 41—45 (1962). Questioning tends to be confused and sporadic and is usually concentrated on confrontations with witnesses or new items of evidence, as these are obtained by officers conducting the investigation. See generally LaFave, Arrest: The Decision to Take a Suspect into Custody 386 (1965); ALI, A Model Code of Pre-Arraignment Procedure, Commentary s 5.01, at 170, n. 4 (Tent.Draft No. 1, 1966).

3 By contrast, the Court indicates that in applying this new rule it 'will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given.' Ante, at 1625. The reason given is that assessment of the knowledge of the defendant based on information as to age, education, intelligence, or prior contact with authorities can never be more than speculation, while a warning is a clear-cut fact. But the officers' claim that they gave the requisite warnings may be disputed, and facts respecting the defendant's prior experience may be undisputed and be of such a nature as to virtually preclude any doubt that the defendant knew of his rights. See United States v. Bolden, 355 F.2d 453 (C.A.7th Cir.1965), petition for cert. pending No. 1146, O.T. 1965 (Secret Service agent); People v. Du Bont, 235 Cal.App.2d 844, 45 Cal.Rptr. 717, pet. for cert. pending No. 1053, Misc., O.T. 1965 (former police officer).

4 Precise statistics on the extent of recidivism are unavailable, in part because not all crimes are solved and in part because criminal records of convictions in different jurisdictions are not brought together by a central data collection agency. Beginning in 1963, however, the Federal Bureau of Investigation began collating data on 'Careers in Crime,' which it publishes in its Uniform Crime Reports. Of 92,869 offenders processed in 1963 and 1964, 76% had a prior arrest record on some charge. Over a period of 10 years the group had accumulated 434,000 charges. FBI, Uniform Crime Reports—1964, 27—28. In 1963 and 1964 between 23% and 25% of all offenders sentenced in 88 federal district courts (excluding the District Court for the District of Columbia) whose criminal records were reported had previously been sentenced to a term of imprisonment of 13 months or more. Approximately an additional 40% had a prior record less than prison (juvenile record, probation record, etc.). Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1964, x, 36 (hereinafter cited as Federal Offenders: 1964); Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1963, 25—27 (hereinafter cited as Federal Offenders: 1963). During the same two years in the District Court for the District of Columbia between 28% and 35% of those sentenced had prior prison records and from 37% to 40% had a prior record less than prison. Federal Offenders: 1964, xii, 64, 66; Administrative Office of the United States Courts, Federal Offenders in the United States District Court for the District of Columbia: 1963, 8, 10 (hereinafter cited as District of Columbia Offenders: 1963).

A similar picture is obtained if one looks at the subsequent records of those released from confinement. In 1964, 12.3% of persons on federal probation had their probation revoked because of the commission of major violations (defined as one in which the probationer has been committed to imprisonment for a period of 90 days or more, been placed on probation for over one year on a new offense, or has absconded with felony charges outstanding). Twenty-three and two-tenths percent of parolees and 16.9% of those who had been mandatorily released after service of a portion of their sentence likewise committed major violations. Reports of the Proceedings of the Judicial Conference of the United States and Annual Report of the Director of the Administrative Office of the United States Courts: 1965, 138. See also Mandel et al., Recidivism Studied and Defined, 56 J. Crim.L., C. & P.S. 59 (1965) (within five years of release 62.33% of sample had committed offenses placing them in recidivist category).

5 Eighty-eight federal district courts (excluding the District Court for the District of Columbia) disposed of the cases of 33,381 criminal defendants in 1964. Only 12.5% of those cases were actually tried. Of the remaining cases, 89.9% were terminated by convictions upon pleas of guilty and 10.1% were dismissed. Stated differently, approximately 90% of all convictions resulted from guilty pleas. Federal Offenders: 1964, supra, note 4, 3—6. In the District Court for the District of Columbia a higher percentage, 27%, went to trial, and the defendant pleaded guilty in approximately 78% of the cases terminated prior to trial. Id., at 58—59. No reliable statistics are available concerning the percentage of cases in which

guilty pleas are induced because of the existence of a confession or of physical evidence unearthed as a result of a confession. Undoubtedly the number of such cases is substantial.

Perhaps of equal significance is the number of instances of known crimes which are not solved. In 1964, only 388,946, or 23.9% of 1,626,574 serious known offenses were cleared. The clearance rate ranged from 89.8% for homicides to 18.7% for larceny. FBI, Uniform Crime Reports—1964, 20—22, 101. Those who would replace interrogation as an investigatorial tool by modern scientific investigation techniques significantly overestimate the effectiveness of present procedures, even when interrogation is included.

129 S.Ct. 2633
Supreme Court of the United States

SAFFORD UNIFIED SCHOOL DISTRICT # 1, et al., Petitioners,
v.
April REDDING.

No. 08–479.
|
Argued April 21, 2009.
|
Decided June 25, 2009.

Synopsis

Background: Middle school student, by her mother and legal guardian, brought § 1983 action against school district, assistant principal, administrative assistant, and school nurse alleging that strip search violated her Fourth Amendment rights. The United States District Court for the District of Arizona, Nancy Fiora, United States Magistrate Judge, granted summary judgment in favor of defendants. The United States Court of Appeals for the Ninth Circuit, 504 F.3d 828, affirmed. On rehearing en banc, the Court of Appeals, Kim McLane Wardlaw, Circuit Judge, 531 F.3d 1071, affirmed in part, reversed in part, and remanded. Certiorari was granted.

Holdings: The United States Supreme Court, Justice Souter, held that:

[1] assistant principal had reasonable suspicion that student was distributing contraband drugs;

[2] principal's reasonable suspicion did not justify strip search; but

[3] law regarding strip searches of students was not clearly established, and therefore the officials were entitled to qualified immunity.

Affirmed in part, reversed in part, and remanded.

Justice Stevens filed opinion concurring in part and dissenting in part in which Justice Ginsburg joined.

Justice Ginsburg filed opinion concurring in part and dissenting in part.

Justice Thomas filed opinion concurring in judgment and dissenting in part.

West Headnotes (7)

[1] **Searches and Seizures**
Probable Cause
Searches and Seizures
Probable or Reasonable Cause

Probable cause for search exists where the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed and that evidence bearing on that offense will be found in the place to be searched. U.S.C.A. Const.Amend. 4.

52 Cases that cite this headnote

[2] **Searches and Seizures**
Probable Cause
Searches and Seizures
Probable or Reasonable Cause

The required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a fair probability or a substantial chance of discovering evidence of criminal activity. U.S.C.A. Const.Amend. 4.

44 Cases that cite this headnote

[3] **Education**
Warrantless searches;reasonable suspicion

Assistant principal had reasonable suspicion that 13-year-old middle school student was

distributing contraband drugs, justifying search of student's backpack and outer clothing; principal knew students were bringing drugs on campus, when prohibited pills were found on a student she told the principal that the student in question had given her the pills, and the principal knew the two students were friends. U.S.C.A. Const.Amend. 4.

39 Cases that cite this headnote

[4] Education
Warrantless searches;reasonable suspicion

Assistant principal's reasonable suspicion that 13-year-old middle school student was distributing contraband drugs did not justify a strip search, in which student was directed to pull out her bra and the elastic band of her underpants; principal knew the pills in question were prescription-strength pain relievers, nature of drugs was of limited threat, principal had no reason to suspect that large amounts of drugs were being passed around or that individual students were receiving a great number of pills, and nothing suggested that the student was hiding common painkillers in her underwear. U.S.C.A. Const.Amend. 4.

47 Cases that cite this headnote

[5] Education
Warrantless searches;reasonable suspicion

The search of a student as actually conducted must be reasonably related in scope to the circumstances which justified the interference in the first place; the scope will be permissible, that is, when it is not excessively intrusive in light of the age and sex of the student and the nature of the infraction. U.S.C.A. Const.Amend. 4.

55 Cases that cite this headnote

[6] Civil Rights
Schools

A school official searching a student is entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment; to be established clearly, however, there is no need that the very action in question have previously been held unlawful. U.S.C.A. Const.Amend. 4.

117 Cases that cite this headnote

[7] Civil Rights
Schools

Law regarding strip searches of students at school was not clearly established to the extent that school officials should have known at time that their conduct in strip searching 13-year old middle school student in attempt to find contraband prescription-strength pain reliever drugs was unreasonable under the Fourth Amendment, and therefore the officials were entitled to qualified immunity from § 1983 liability. U.S.C.A. Const.Amend. 4; 42 U.S.C.A. § 1983.

94 Cases that cite this headnote

****2635** *Syllabus* *

After escorting 13–year–old Savana Redding from her middle school classroom to his office, Assistant Principal Wilson showed her a day planner containing knives and other contraband. She admitted owning the planner, but said that she had lent it to her friend Marissa and that the contraband was not hers. He then produced four prescription-strength, and one over-the-counter, pain relief pills, all of which are banned under school rules without advance permission. She denied knowledge of them, but Wilson said that he had a report that she was giving pills to fellow students. She denied it and agreed to let him search her belongings. He and Helen Romero, an administrative assistant, searched Savana's backpack, finding nothing. Wilson then had Romero take Savana to the school nurse's office to search her clothes for pills. After Romero and the nurse, Peggy Schwallier, had Savana remove her outer clothing, they

told her to pull her bra out and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found. Savana's mother filed suit against petitioner school district (Safford), Wilson, Romero, and Schwallier, alleging that the strip search violated Savana's Fourth Amendment rights. Claiming qualified immunity, the individuals (hereinafter petitioners) moved for summary judgment. The District Court granted the motion, finding that there was no Fourth Amendment violation, and the en banc Ninth Circuit reversed. Following the protocol for evaluating qualified immunity claims, see *Saucier v. Katz,* 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L.Ed.2d 272, the court held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey v. T.L. O.,* 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720. It then applied the test for qualified immunity. Finding that Savana's right was clearly established at the time of the search, it reversed the summary judgment as to Wilson, but affirmed as to Schwallier and Romero because they were not independent decisionmakers.

Held:

1. The search of Savana's underwear violated the Fourth Amendment. Pp. 2638 – 2643.

(a) For school searches, "the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause." *T.L. O.,* 469 U.S., at 341, 105 S.Ct. 733. Under the resulting reasonable suspicion standard, a school search "will be permissible ... when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.,* at 342, 105 S.Ct. 733. The required knowledge component of reasonable suspicion for a school administrator's evidence search is that it raise a moderate chance of finding evidence of wrongdoing. Pp. 2638 – 2640.

(b) Wilson had sufficient suspicion to justify searching Savana's backpack and outer clothing. A week earlier, a student, Jordan, had told the principal and Wilson that students were bringing drugs and weapons to school and that he had gotten sick from some pills. On the day of the search, Jordan gave Wilson a pill that he said came from Marissa. Learning that the pill was prescription strength, Wilson called Marissa out of class and was handed **2636 the day planner. Once in his office, Wilson, with Romero present, had Marissa turn out her pockets and open her wallet, producing, *inter alia,* an over-the-counter pill that Marissa claimed was Savana's. She also denied knowing about the day planner's contents. Wilson did not ask her when she received the pills from Savana or where Savana might be hiding them. After a search of Marissa's underwear by Romero and Schwallier revealed no additional pills, Wilson called Savana into his office. He showed her the day planner and confirmed her relationship with Marissa. He knew that the girls had been identified as part of an unusually rowdy group at a school dance, during which alcohol and cigarettes were found in the girls' bathroom. He had other reasons to connect them with this contraband, for Jordan had told the principal that before the dance, he had attended a party at Savana's house where alcohol was served. Thus, Marissa's statement that the pills came from Savana was sufficiently plausible to warrant suspicion that Savana was involved in pill distribution. A student who is reasonably suspected of giving out contraband pills is reasonably suspected of carrying them on her person and in her backpack. Looking into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing. Pp. 2640 – 2642.

(c) Because the suspected facts pointing to Savana did not indicate that the drugs presented a danger to students or were concealed in her underwear, Wilson did not have sufficient suspicion to warrant extending the search to the point of making Savana pull out her underwear. Romero and Schwallier said that they did not see anything when Savana pulled out her underwear, but a strip search and its Fourth Amendment consequences are not defined by who was looking and how much was seen. Savana's actions in their presence necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings. Savana's subjective expectation of privacy is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation is indicated by the common reaction of other young people similarly searched, whose adolescent vulnerability

intensifies the exposure's patent intrusiveness. Its indignity does not outlaw the search, but it does implicate the rule that "the search [be] 'reasonably related in scope to the circumstances which justified the interference in the first place.' " *T.L.O., supra,* at 34, 105 S.Ct. 733. Here, the content of the suspicion failed to match the degree of intrusion. Because Wilson knew that the pills were common pain relievers, he must have known of their nature and limited threat and had no reason to suspect that large amounts were being passed around or that individual students had great quantities. Nor could he have suspected that Savana was hiding common painkillers in her underwear. When suspected facts must support the categorically extreme intrusiveness of a search down to an adolescent's body, petitioners' general belief that students hide contraband in their clothing falls short; a reasonable search that extensive calls for suspicion that it will succeed. Nondangerous school contraband does not conjure up the specter of stashes in intimate places, and there is no evidence of such behavior at the school; neither Jordan nor Marissa suggested that ****2637** Savana was doing that, and the search of Marissa yielded nothing. Wilson also never determined when Marissa had received the pills from Savana; had it been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear. Pp. 2641 – 2643.

2. Although the strip search violated Savana's Fourth Amendment rights, petitioners Wilson, Romero, and Schwallier are protected from liability by qualified immunity because "clearly established law [did] not show that the search violated the Fourth Amendment," *Pearson v. Callahan,* 555 U.S. 223, 243 – 244, 129 S.Ct. 808, 172 L.Ed.2d 565. The intrusiveness of the strip search here cannot, under *T.L.O.,* be seen as justifiably related to the circumstances, but lower court cases viewing school strip searches differently are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt about the clarity with which the right was previously stated. Pp. 2643 – 2644.

3. The issue of petitioner Safford's liability under *Monell v. New York City Dept. of Social Servs.,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611, should be addressed on remand. P. 2644.

531 F.3d 1071, affirmed in part, reversed in part, and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined, and in which STEVENS and GINSBURG, JJ., joined as to Parts I–III. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, J., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part.

Attorneys and Law Firms

Matthew W. Wright, Phoenix, AZ, for petitioners.

David O'Neil for the United States as amicus curiae, by special leave of the Court, supporting reversal.

Adam B. Wolf, Santa Cruz, CA, for respondent.

Matthew W. Wright, Counsel of Record, David K. Pauole, Holm Wright Hyde & Hays PLC, Phoenix, AZ, for petitioners.

Bruce G. MacDonald, McNamara, Goldsmith, Jackson & MacDonald, P.C., Andrew J. Petersen, Humphrey & Petersen, P.C., Tucson, AZ, Daniel Joseph Pochoda, ACLU of Arizona, Phoenix, AZ, Adam B. Wolf, Counsel of Record, Graham A. Boyd, M. Allen Hopper, American Civil Liberties Union Foundation, Santa Cruz, CA, Steven R. Shapiro, American Civil Liberties Union Foundation, New York, NY, for respondent.

Opinion

Justice SOUTER delivered the opinion of the Court.

***368** The issue here is whether a 13–year–old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school. Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was ****2638** established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

I

The events immediately prior to the search in question began in 13–year–old Savana Redding's math class at Safford Middle School one October day in 2003. The assistant principal of the school, Kerry Wilson, came into the room and asked Savana to go to his office. There, he showed her a day planner, unzipped and open flat on his desk, in which there were several knives, lighters, a permanent marker, and a cigarette. Wilson asked Savana whether the planner was hers; she said it was, but that a few days before she had lent it to her friend, Marissa Glines. Savana stated that none of the items in the planner belonged to her.

Wilson then showed Savana four white prescription-strength ibuprofen 400–mg pills, and one over-the-counter blue naproxen 200–mg pill, all used for pain and inflammation but banned under school rules without advance permission. He asked Savana if she knew anything about the pills. Savana answered that she did not. Wilson then told Savana that he had received a report that she was giving these pills to fellow students; Savana denied it and agreed to let Wilson search her belongings. Helen Romero, an administrative assistant, came into the office, and together with Wilson they searched Savana's backpack, finding nothing.

***369** At that point, Wilson instructed Romero to take Savana to the school nurse's office to search her clothes for pills. Romero and the nurse, Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against Safford Unified School District # 1, Wilson, Romero, and Schwallier for conducting a strip search in violation of Savana's Fourth Amendment rights. The individuals (hereinafter petitioners) moved for summary judgment, raising a defense of qualified immunity. The District Court for the District of Arizona granted the motion on the ground that there was no Fourth Amendment violation, and a panel of the Ninth Circuit affirmed. 504 F.3d 828 (2007).

A closely divided Circuit sitting en banc, however, reversed. Following the two-step protocol for evaluating claims of qualified immunity, see *Saucier v. Katz,* 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), the Ninth Circuit held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey v. T.L.O.,* 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). 531 F.3d 1071, 1081–1087 (2008). The Circuit then applied the test for qualified immunity, and found that Savana's right was clearly established at the time of the search: " '[t]hese notions of personal privacy are "clearly established" in that they inhere in all of us, particularly middle school teenagers, and are inherent in the privacy component of the Fourth Amendment's proscription against unreasonable searches.' " *Id.,* at 1088–1089 (quoting *Brannum v. Overton Cty. School Bd.,* 516 F.3d 489, 499 (C.A.6 2008)). The upshot was reversal of summary judgment as to Wilson, while affirming the judgments in favor of Schwallier, the school nurse, and Romero, the administrative ***370** assistant, since they had not acted as independent decisionmakers. 531 F.3d, at 1089.

****2639** We granted certiorari, 555 U.S. 1130, 129 S.Ct. 987, 173 L.Ed.2d 171 (2009), and now affirm in part, reverse in part, and remand.

II

[1] The Fourth Amendment "right of the people to be secure in their persons ... against unreasonable searches and seizures" generally requires a law enforcement officer to have probable cause for conducting a search. "Probable cause exists where 'the facts and circumstances within [an officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed," *Brinegar v. United States,* 338 U.S. 160, 175–176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949) (quoting *Carroll v. United States,* 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925)), and that evidence bearing on that offense will be found in the place to be searched.

In *T.L.O.,* we recognized that the school setting "requires some modification of the level of suspicion of illicit activity

needed to justify a search," 469 U.S., at 340, 105 S.Ct. 733, and held that for searches by school officials "a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause," *id.,* at 341, 105 S.Ct. 733. We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator's search of a student, *id.,* at 342, 345, 105 S.Ct. 733, and have held that a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction," *id.,* at 342, 105 S.Ct. 733.

A number of our cases on probable cause have an implicit bearing on the reliable knowledge element of reasonable suspicion, as we have attempted to flesh out the knowledge component ***371** by looking to the degree to which known facts imply prohibited conduct, see, *e.g., Adams v. Williams,* 407 U.S. 143, 148, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *id.,* at 160, n. 9, 92 S.Ct. 1921 (Marshall, J., dissenting), the specificity of the information received, see, *e.g., Spinelli v. United States,* 393 U.S. 410, 416–417, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969), and the reliability of its source, see, *e.g., Aguilar v. Texas,* 378 U.S. 108, 114, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). At the end of the day, however, we have realized that these factors cannot rigidly control, *Illinois v. Gates,* 462 U.S. 213, 230, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and we have come back to saying that the standards are "fluid concepts that take their substantive content from the particular contexts" in which they are being assessed. *Ornelas v. United States,* 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

[2] Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a "fair probability," *Gates,* 462 U.S., at 238, 103 S.Ct. 2317, or a "substantial chance," *id.,* at 244, n. 13, 103 S.Ct. 2317, of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.

III

A

[3] In this case, the school's policies strictly prohibit the nonmedical use, possession, ****2640** or sale of any drug on school grounds, including " '[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted pursuant to Board policy.' " App. to Pet. for Cert. 128a.[1] A week before Savana was searched, another ***372** student, Jordan Romero (no relation of the school's administrative assistant), told the principal and Assistant Principal Wilson that "certain students were bringing drugs and weapons on campus," and that he had been sick after taking some pills that "he got from a classmate." App. 8a. On the morning of October 8, the same boy handed Wilson a white pill that he said Marissa Glines had given him. He told Wilson that students were planning to take the pills at lunch.

Wilson learned from Peggy Schwallier, the school nurse, that the pill was Ibuprofen 400 mg, available only by prescription. Wilson then called Marissa out of class. Outside the classroom, Marissa's teacher handed Wilson the day planner, found within Marissa's reach, containing various contraband items. Wilson escorted Marissa back to his office.

In the presence of Helen Romero, Wilson requested Marissa to turn out her pockets and open her wallet. Marissa produced a blue pill, several white ones, and a razor blade. Wilson asked where the blue pill came from, and Marissa answered, " 'I guess it slipped in when *she* gave me the IBU 400s.' " *Id.,* at 13a. When Wilson asked whom she meant, Marissa replied, " 'Savana Redding.' " *Ibid.* Wilson then enquired about the day planner and its contents; Marissa denied knowing anything about them. Wilson did not ask Marissa any followup questions to determine whether there was any likelihood that Savana presently had pills: neither asking when Marissa received the pills from Savana nor where Savana might be hiding them.

***373** Schwallier did not immediately recognize the blue pill, but information provided through a poison control hotline[2] indicated that the pill was a 200–mg dose of an anti-inflammatory drug, generically called naproxen, available over the counter. At Wilson's direction, Marissa was then subjected to a search of her bra and underpants

by Romero and Schwallier, as Savana was later on. The search revealed no additional pills.

It was at this juncture that Wilson called Savana into his office and showed her the **2641 day planner. Their conversation established that Savana and Marissa were on friendly terms: while she denied knowledge of the contraband, Savana admitted that the day planner was hers and that she had lent it to Marissa. Wilson had other reports of their friendship from staff members, who had identified Savana and Marissa as part of an unusually rowdy group at the school's opening dance in August, during which alcohol and cigarettes were found in the girls' bathroom. Wilson had reason to connect the girls with this contraband, for Wilson knew that Jordan Romero had told the principal that before the dance, he had been at a party at Savana's house where alcohol was served. Marissa's statement that the pills came from Savana was thus sufficiently plausible to warrant suspicion that Savana was involved in pill distribution.

This suspicion of Wilson's was enough to justify a search of Savana's backpack and outer clothing.[3] If a student is *374 reasonably suspected of giving out contraband pills, she is reasonably suspected of carrying them on her person and in the carryall that has become an item of student uniform in most places today. If Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making. And the look into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.

B

[4] Here it is that the parties part company, with Savana's claim that extending the search at Wilson's behest to the point of making her pull out her underwear was constitutionally unreasonable. The exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it. Romero and Schwallier directed Savana to remove her clothes down to her underwear, and then "pull out" her bra and the elastic band on her underpants. *Id.*, at 23a. Although Romero and Schwallier stated that they did not see anything when Savana followed their instructions, App. to Pet. for Cert. 135a, we would not define strip search and its Fourth Amendment consequences in a way that would guarantee litigation about who was looking and how much was seen. The very fact of Savana's pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Savana's subjective expectation of privacy against such a search is inherent in her account of it as embarrassing, *375 frightening, and humiliating. The reasonableness of her expectation (required by the Fourth Amendment standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the patent intrusiveness of the exposure. See Brief for National Association of Social Workers et al. as *Amici Curiae* 6–14; Hyman **2642 & Perone, The Other Side of School Violence: Educator Policies and Practices that may Contribute to Student Misbehavior, 36 J. School Psychology 7, 13 (1998) (strip search can "result in serious emotional damage"). The common reaction of these adolescents simply registers the obviously different meaning of a search exposing the body from the experience of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be, see, *e.g.,* New York City Dept. of Education, Reg. No. A–432, p. 2 (2005), online at http://docs.nycenet.edu/docushare/dsweb/Get/Document–21/A–432.pdf ("Under no circumstances shall a strip-search of a student be conducted").

[5] The indignity of the search does not, of course, outlaw it, but it does implicate the rule of reasonableness as stated in *T.L.O.,* that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." 469 U.S., at 341, 105 S.Ct. 733 (internal quotation marks omitted). The scope will be permissible, that is, when it is "not excessively

intrusive in light of the age and sex of the student and the nature of the infraction." *Id.,* at 342, 105 S.Ct. 733.

Here, the content of the suspicion failed to match the degree of intrusion. Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers equivalent to two Advil, or ***376** one Aleve.[4] He must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest, as a truth universally acknowledged, that "students ... hid[e] contraband in or under their clothing," Reply Brief for Petitioners 8, and cite a smattering of cases of students with contraband in their underwear, *id.,* at 8–9. But when the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off. But nondangerous school contraband does not raise the specter of stashes in intimate places, and there is no evidence in the record of any general practice among Safford Middle School students of hiding that sort of thing in underwear; neither Jordan nor Marissa suggested to Wilson that Savana was doing that, and the preceding search of Marissa that Wilson ordered yielded nothing. Wilson never even determined when Marissa had received the pills from Savana; if it had been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear.

In sum, what was missing from the suspected facts that pointed to Savana was ****2643** any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her ***377** underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. Parents are known to overreact to protect their children from danger, and a school official with responsibility for safety may tend to do the same. The difference is that the Fourth Amendment places limits on the official, even with the high degree of deference that courts must pay to the educator's professional judgment.

We do mean, though, to make it clear that the *T.L.O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

IV

[6] A school official searching a student is "entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment." *Pearson v. Callahan,* 555 U.S. 223, 243 – 244, 129 S.Ct. 808, 822, 172 L.Ed.2d 565(2009). To be established clearly, however, there is no need that "the very action in question [have] previously been held unlawful." *Wilson v. Layne,* 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999). The unconstitutionality of outrageous conduct obviously will be unconstitutional, this being the reason, as Judge Posner has said, that "[t]he easiest cases don't even arise." *K.H. v. Morgan,* 914 F.2d 846, 851 (C.A.7 1990). But even as to action less than an outrage, "officials can still be on notice that their conduct violates established ***378** law ... in novel factual circumstances." *Hope v. Pelzer,* 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).

[7] *T.L.O.* directed school officials to limit the intrusiveness of a search, "in light of the age and sex of the student and the nature of the infraction," 469 U.S., at 342, 105 S.Ct. 733, and as we have just said at some length, the intrusiveness of the strip search here cannot be seen as justifiably related to the circumstances. But we realize that the lower courts have reached divergent conclusions regarding how the *T.L.O.* standard applies to such searches.

A number of judges have read *T.L.O.* as the en banc minority of the Ninth Circuit did here. The Sixth Circuit upheld a strip search of a high school student for a drug, without any suspicion that drugs were hidden next to her body. *Williams v. Ellington,* 936 F.2d 881, 882–883, 887 (1991). And other courts considering qualified immunity for strip searches have read *T.L.O.* as "a series of abstractions, on the one hand, and a declaration of seeming deference to the judgments of school officials, on the other," *Jenkins v. Talladega City Bd. of Ed.,* 115 F.3d 821, 828 (C.A.11 1997) (en banc), which made it impossible "to establish clearly the contours of a Fourth Amendment right ... [in] the wide variety of possible school settings different from those involved in *T.L.O.*" itself. *Ibid.* See also *Thomas v. Roberts,* 323 F.3d 950 (C.A.11 2003) (granting qualified immunity to a teacher and police officer who conducted ****2644** a group strip search of a fifth grade class when looking for a missing $26).

We think these differences of opinion from our own are substantial enough to require immunity for the school officials in this case. We would not suggest that entitlement to qualified immunity is the guaranteed product of disuniform views of the law in the other federal, or state, courts, and the fact that a single judge, or even a group of judges, disagrees about the contours of a right does not automatically render the law unclear if we have been clear. That said, however, the cases viewing school strip searches differently ***379** from the way we see them are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt that we were sufficiently clear in the prior statement of law. We conclude that qualified immunity is warranted.

V

The strip search of Savana Redding was unreasonable and a violation of the Fourth Amendment, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability through qualified immunity. Our conclusions here do not resolve, however, the question of the liability of petitioner Safford Unified School District # 1 under *Monell v. New York City Dept. of Social Servs.,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), a claim the Ninth Circuit did not address. The judgment of the Ninth Circuit is therefore affirmed in part and reversed in part, and this case is remanded for consideration of the *Monell* claim.

It is so ordered.

Justice STEVENS, with whom Justice GINSBURG joins, concurring in part and dissenting in part.

In *New Jersey v. T.L.O.,* 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), the Court established a two-step inquiry for determining the reasonableness of a school official's decision to search a student. First, the Court explained, the search must be " 'justified at its inception' " by the presence of "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *Id.,* at 342, 105 S.Ct. 733. Second, the search must be "permissible in its scope," which is achieved "when the measures adopted are reasonably related to the objectives of the search and *not excessively intrusive in light of the age and sex of the student and the nature of the infraction*." *Ibid.* (emphasis added).

Nothing the Court decides today alters this basic framework. It simply applies *T.L.O.* to declare unconstitutional ***380** a strip search of a 13–year–old honors student that was based on a groundless suspicion that she might be hiding medicine in her underwear. This is, in essence, a case in which clearly established law meets clearly outrageous conduct. I have long believed that " '[i]t does not require a constitutional scholar to conclude that a nude search of a 13–year–old child is an invasion of constitutional rights of some magnitude.' " *Id.,* at 382, n. 25, 105 S.Ct. 733 (STEVENS, J., concurring in part and dissenting in part) (quoting *Doe v. Renfrow,* 631 F.2d 91, 92–93 (C.A.7 1980)). The strip search of Savana Redding in this case was both more intrusive and less justified than the search of the student's purse in *T.L.O.* Therefore, while I join Parts I–III of the Court's opinion, I disagree with its decision to extend qualified immunity to the school official who authorized this unconstitutional search.

The Court reaches a contrary conclusion about qualified immunity based on the fact that various Courts of Appeals have adopted seemingly divergent views about ****2645** *T.L.O.*'s application to strip searches. *Ante,* at 2643 – 2644. But the clarity of a well-established right should not depend on whether jurists have misread our precedents. And while our cases have previously noted the "divergence of views" among courts in deciding whether to extend qualified immunity, *e.g., Pearson v. Callahan,* (2009) 555

U.S. 223, 245, 129 S.Ct. 808, 823, 172 L.Ed.2d 565 (noting the unsettled constitutionality of the so-called "consent-once-removed" doctrine); *Wilson v. Layne,* 526 U.S. 603, 618, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999) (considering conflicting views on the constitutionality of law enforcement's practice of allowing the media to enter a private home to observe and film attempted arrests), we have relied on that consideration only to spare officials from having " 'to predict the *future course* of constitutional law,' " *Id.,* at 617, 119 S.Ct. 1692 (quoting *Procunier v. Navarette,* 434 U.S. 555, 562, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978); emphasis added). In this case, by contrast, we chart no new constitutional path. We merely decide whether the decision to strip search Savana Redding, on these facts, was ***381** prohibited under *T.L.O.* Our conclusion leaves the boundaries of the law undisturbed. [*]

The Court of Appeals properly rejected the school official's qualified immunity defense, and I would affirm that court's judgment in its entirety.

Justice GINSBURG, concurring in part and dissenting in part.

I agree with the Court that Assistant Principal Wilson's subjection of 13–year–old Savana Redding to a humiliating stripdown search violated the Fourth Amendment. But I also agree with JUSTICE STEVENS, *ante,* at 2644 – 2645, that our opinion in *New Jersey v. T.L.O.,* 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), "clearly established" the law governing this case.

Fellow student Marissa Glines, caught with pills in her pocket, accused Redding of supplying them. App. 13a. Asked where the blue pill among several white pills in Glines's pocket came from, Glines answered: "I guess it slipped in when *she* gave me the IBU 400s." *Ibid.* Asked next "who is *she* ?", Glines responded: "Savana Redding." *Ibid.* As the Court observes, *ante,* at 2640, 2642, no followup questions were asked. Wilson did not test Glines's accusation for veracity by asking Glines when did Redding give her the pills, where, for what purpose. Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing. Wilson had no cause to suspect, based on prior experience at the school or clues in this case, that Redding had hidden pills—containing the equivalent of two Advils or one Aleve—in her underwear or body. To make matters worse, Wilson did not release Redding, to return to class or to go home, after the ***382** search. Instead, he made her sit on a chair outside his office for over two hours. At no point did he attempt to call her parent. Abuse of authority of that order should not be shielded by official immunity.

In contrast to *T.L.O.,* where a teacher discovered a student smoking in the lavatory, and where the search was confined to the student's purse, the search of Redding involved her body and rested on the bare accusation of another student whose reliability ****2646** the Assistant Principal had no reason to trust. The Court's opinion in *T.L.O.* plainly stated the controlling Fourth Amendment law: A search ordered by a school official, even if "justified at its inception," crosses the constitutional boundary if it becomes "excessively intrusive in light of the age and sex of the student and the nature of the infraction." 469 U.S., at 342, 105 S.Ct. 733 (internal quotation marks omitted).

Here, "the nature of the [supposed] infraction," the slim basis for suspecting Savana Redding, and her "age and sex," *ibid.,* establish beyond doubt that Assistant Principal Wilson's order cannot be reconciled with this Court's opinion in *T.L.O.* Wilson's treatment of Redding was abusive and it was not reasonable for him to believe that the law permitted it. I join Justice STEVENS in dissenting from the Court's acceptance of Wilson's qualified immunity plea, and would affirm the Court of Appeals' judgment in all respects.

Justice THOMAS, concurring in the judgment in part and dissenting in part.

I agree with the Court that the judgment against the school officials with respect to qualified immunity should be reversed. See *ante,* at 2643 – 2644. Unlike the majority, however, I would hold that the search of Savana Redding did not violate the Fourth Amendment. The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in ***383** their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of *in loco parentis* under which "the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and

enforce rules and to maintain order." *Morse v. Frederick,* 551 U.S. 393, 414, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007) (THOMAS, J., concurring). But even under the prevailing Fourth Amendment test established by *New Jersey v. T.L.O.,* 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), all petitioners, including the school district, are entitled to judgment as a matter of law in their favor.

I

"Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." *Id.,* at 337, 105 S.Ct. 733. Thus, although public school students retain Fourth Amendment rights under this Court's precedent, see *id.,* at 333–337, 105 S.Ct. 733, those rights "are different ... than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children," *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 656, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995); see also *T.L.O.,* 469 U.S., at 339, 105 S.Ct. 733 (identifying "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds"). For nearly 25 years this Court has understood that "[m]aintaining order in the classroom has never been easy, but in more recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." *Ibid.* In schools, "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss v. Lopez,* 419 U.S. 565, 580, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); see also *T.L.O.,* 469 U.S., at 340, 105 S.Ct. 733 (explaining that schools have a "legitimate need ***384** to maintain ****2647** an environment in which learning can take place").

For this reason, school officials retain broad authority to protect students and preserve "order and a proper educational environment" under the Fourth Amendment. *Id.,* at 339, 105 S.Ct. 733. This authority requires that school officials be able to engage in the "close supervision of schoolchildren, as well as ... enforc[e] rules against conduct that would be perfectly permissible if undertaken by an adult." *Ibid.* Seeking to reconcile the Fourth Amendment with this unique public school setting, the Court in *T.L.O.* held that a school search is "reasonable" if it is " 'justified at its inception' " and " 'reasonably related in scope to the circumstances which justified the interference in the first place.' " *Id.,* at 341–342, 105 S.Ct. 733 (quoting *Terry v. Ohio,* 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). The search under review easily meets this standard.

A

A "search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *T.L.O.*, *supra,* at 341–342, 105 S.Ct. 733 (footnote omitted). As the majority rightly concedes, this search was justified at its inception because there were reasonable grounds to suspect that Redding possessed medication that violated school rules. See *ante,* at 2640 – 2641. A finding of reasonable suspicion "does not deal with hard certainties, but with probabilities." *United States v. Cortez,* 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); see also *T.L.O.*, *supra,* at 346, 105 S.Ct. 733 ("[T]he requirement of reasonable suspicion is not a requirement of absolute certainty"). To satisfy this standard, more than a mere "hunch" of wrongdoing is required, but "considerably" less suspicion is needed than would be required to "satisf[y] a preponderance of the evidence standard." *United States v.* ***385** *Arvizu,* 534 U.S. 266, 274, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (internal quotation marks omitted).

Furthermore, in evaluating whether there is a reasonable "particularized and objective" basis for conducting a search based on suspected wrongdoing, government officials must consider the "totality of the circumstances." *Id.,* at 273, 122 S.Ct. 744 (internal quotation marks omitted). School officials have a specialized understanding of the school environment, the habits of the students, and the concerns of the community, which enables them to " 'formulat[e] certain common-sense conclusions about human behavior.' " *United States v. Sokolow,* 490 U.S. 1, 8, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (quoting *Cortez, supra,* at 418, 101 S.Ct. 690). And like police officers, school officials are "entitled to make an assessment of the situation in light of [this] specialized training and familiarity with the customs of the [school]." See *Arvizu, supra,* at 276, 122 S.Ct. 744.

Here, petitioners had reasonable grounds to suspect that Redding was in possession of prescription and nonprescription drugs in violation of the school's prohibition of the "non-medical use, possession, or sale of a drug" on school property or at school events. 531 F.3d 1071, 1076 (C.A.9 2008) (en banc); see also *id.,* at 1107 (Hawkins, J., dissenting) (explaining that the school policy defined "drugs" to include " '[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted' "). As an initial matter, school officials were aware that a few years earlier, a ****2648** student had become "seriously ill" and "spent several days in intensive care" after ingesting prescription medication obtained from a classmate. App. 10a. Fourth Amendment searches do not occur in a vacuum; rather, context must inform the judicial inquiry. See *Cortez, supra,* at 417–418, 101 S.Ct. 690. In this instance, the suspicion of drug possession arose at a middle school that had "a history of problems with students using and distributing prohibited and illegal substances on campus." App. 7a, 10a.

***386** The school's substance-abuse problems had not abated by the 2003–2004 school year, which is when the challenged search of Redding took place. School officials had found alcohol and cigarettes in the girls' bathroom during the first school dance of the year and noticed that a group of students including Redding and Marissa Glines smelled of alcohol. *Ibid.* Several weeks later, another student, Jordan Romero, reported that Redding had hosted a party before the dance where she served whiskey, vodka, and tequila. *Id.,* at 8a, 11a. Romero had provided this report to school officials as a result of a meeting his mother scheduled with the officials after Romero "bec [a]me violent" and "sick to his stomach" one night and admitted that "he had taken some pills that he had got[ten] from a classmate." *Id.,* at 7a–8a, 10a–11a. At that meeting, Romero admitted that "certain students were bringing drugs and weapons on campus." *Id.,* at 8a, 11a. One week later, Romero handed the assistant principal a white pill that he said he had received from Glines. *Id.,* at 11a. He reported "that a group of students [were] planning on taking the pills at lunch." *Ibid.*

School officials justifiably took quick action in light of the lunchtime deadline. The assistant principal took the pill to the school nurse who identified it as prescription-strength 400–mg Ibuprofen. *Id.,* at 12a. A subsequent search of Glines and her belongings produced a razor blade, a Naproxen 200–mg pill, and several Ibuprofen 400–mg pills. *Id.,* at 13a. When asked, Glines claimed that she had received the pills from Redding. *Ibid.* A search of Redding's planner, which Glines had borrowed, then uncovered "several knives, several lighters, a cigarette, and a permanent marker." *Id.,* at 12a, 14a, 22a. Thus, as the majority acknowledges, *ante,* at 7, the totality of relevant circumstances justified a search of Redding for pills. [1]

***387** B

The remaining question is whether the search was reasonable in scope. Under *T.L.O.,* "a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." 469 U.S., at 342, 105 S.Ct. 733. The majority concludes that the school officials' search of Redding's underwear was not " 'reasonably related in scope to the circumstances which justified the interference in the first place,' " see *ante,* at 2641 – 2643, notwithstanding the officials' reasonable suspicion that Redding "was involved in pill distribution," *ante,* at 2641. According to the majority, to be reasonable, this school search required a showing of "danger to the students ****2649** from the power of the drugs or their quantity" or a "reason to suppose that [Redding] was carrying pills in her underwear." *Ante,* at 2643. Each of these additional requirements is an unjustifiable departure from bedrock Fourth Amendment law in the school setting, where this Court has heretofore read the Fourth Amendment to grant considerable leeway to school officials. Because the school officials searched in a location where the pills could have been hidden, the search was reasonable in scope under *T.L.O.*

1

The majority finds that "subjective and reasonable societal expectations of personal privacy support ... treat[ing]" this type of search, which it labels a "strip search," as "categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of ***388** clothing and belongings." *Ante,* at 2641. [2] Thus, in the majority's view, although the school officials had reasonable suspicion to believe that Redding had the pills on her person, see *ante,*

at 2641, they needed some greater level of particularized suspicion to conduct this "strip search." There is no support for this contortion of the Fourth Amendment.

The Court has generally held that the reasonableness of a search's scope depends only on whether it is limited to the area that is capable of concealing the object of the search. See, *e.g., Wyoming v. Houghton,* 526 U.S. 295, 307, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999) (Police officers "may inspect passengers' belongings found in the car that are capable of concealing the object of the search"); *Florida v. Jimeno,* 500 U.S. 248, 251, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991) ("The scope of a search is generally defined by its expressed object"); *United States v. Johns,* 469 U.S. 478, 487, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985) (search reasonable because "there is no plausible argument that the object of the search could not have been concealed in the packages"); *United States v. Ross,* 456 U.S. 798, 820, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) ("A lawful search ... generally extends to the entire area in which the object of the search may be found"). [3]

In keeping with this longstanding rule, the "nature of the infraction" referenced in *T.L.O.* delineates the proper scope of a search of students in a way that is identical to that permitted ***389** for searches outside the school —*i.e.,* the search must be limited to the areas where the object of that infraction could be concealed. See *Horton v. California,* 496 U.S. 128, 141, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990) ("Police with a warrant for a rifle may search only places where rifles might be" ****2650** (internal quotation marks omitted)); *Ross, supra,* at 824, 102 S.Ct. 2157 ("[P]robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase"). A search of a student therefore is permissible in scope under *T.L.O.* so long as it is objectively reasonable to believe that the area searched could conceal the contraband. The dissenting opinion below correctly captured this Fourth Amendment standard, noting that "if a student brought a baseball bat on campus in violation of school policy, a search of that student's shirt pocket would be patently unjustified." 531 F.3d, at 1104 (opinion of Hawkins, J.).

The analysis of whether the scope of the search here was permissible under that standard is straightforward. Indeed, the majority does not dispute that "general background possibilities" establish that students conceal "contraband in their underwear." *Ante,* at 2642. It acknowledges that school officials had reasonable suspicion to look in Redding's backpack and outer clothing because if "Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making." *Ante,* at 2641. The majority nevertheless concludes that proceeding any further with the search was unreasonable. See *ante,* at 2641 – 2643; see also *ante,* at 2645 (GINSBURG, J., concurring in part and dissenting in part) ("Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing"). But there is no support for this conclusion. The reasonable suspicion that Redding possessed the pills for distribution purposes did not dissipate simply because the search of her backpack turned up nothing. It was eminently reasonable to conclude that the backpack ***390** was empty because Redding was secreting the pills in a place she thought no one would look. See *Ross, supra,* at 820, 102 S.Ct. 2157 ("Contraband goods rarely are strewn" about in plain view; "by their very nature such goods must be withheld from public view").

Redding would not have been the first person to conceal pills in her undergarments. See Hicks, Man Gets 17–Year Drug Sentence, [Corbin, KY] Times–Tribune, Oct. 7, 2008, p. 1 (Drug courier "told officials she had the [Oxycontin] pills concealed in her crotch"); Conley, Whitehaven: Traffic Stop Yields Hydrocodone Pills, [Memphis] Commercial Appeal, Aug. 3, 2007, p. B3 ("An additional 40 hydrocodone pills were found in her pants"); Caywood, Police Vehicle Chase Leads to Drug Arrests, [Worcester] Telegram & Gazette, June 7, 2008, p. A7 (25–year–old "allegedly had a cigar tube stuffed with pills tucked into the waistband of his pants"); Hubartt, 23–Year–Old Charged With Dealing Ecstasy, The [Fort Wayne] Journal Gazette, Aug. 8, 2007, p. C2 ("[W]hile he was being put into a squad car, his pants fell down and a plastic bag containing pink and orange pills fell on the ground"); Sebastian Residents Arrested in Drug Sting, Vero Beach Press Journal, Sept. 16, 2006, p. B2 (Arrestee "told them he had more pills 'down my pants' "). Nor will she be the last after today's decision, which announces the safest place to secrete contraband in school.

2

The majority compounds its error by reading the "nature of the infraction" aspect of the *T.L.O.* test as a license to limit searches based on a judge's assessment of a particular school policy. According to the majority, the scope of the search was impermissible because the school official "must have been aware of the nature and limited threat of the specific drugs he was searching for" and because he "had no ****2651** reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving ***391** great numbers of pills." *Ante,* at 2642 – 2643. Thus, in order to locate a rationale for finding a Fourth Amendment violation in this case, the majority retreats from its observation that the school's firm no-drug policy "makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing." *Ante,* at 2640, n. 1.

Even accepting the majority's assurances that it is not attacking the rule's reasonableness, it certainly is attacking the rule's importance. This approach directly conflicts with *T.L.O.* in which the Court was "unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of school rules." 469 U.S., at 342, n. 9, 105 S.Ct. 733. Indeed, the Court in *T.L.O.* expressly rejected the proposition that the majority seemingly endorses—that "some rules regarding student conduct are by nature too 'trivial' to justify a search based upon reasonable suspicion." *Ibid.*; see also *id.,* at 343, n. 9, 105 S.Ct. 733 ("The promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school officials that such conduct is destructive of school order or of a proper educational environment. Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should as a general matter, defer to that judgment").

The majority's decision in this regard also departs from another basic principle of the Fourth Amendment: that law enforcement officials can enforce with the same vigor all rules and regulations irrespective of the perceived importance of any of those rules. "In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." *Virginia v. Moore,* 553 U.S. 164, 171, 128 S.Ct. 1598, 1604, 170 L.Ed.2d 559 (2008). The Fourth Amendment rule for searches is the same: Police officers are entitled to search regardless of the perceived triviality of the underlying law. ***392** As we have explained, requiring police to make "sensitive, case-by-case determinations of government need," *Atwater v. Lago Vista,* 532 U.S. 318, 347, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001), for a particular prohibition before conducting a search would "place police in an almost impossible spot," *id.,* at 350, 121 S.Ct. 1536.

The majority has placed school officials in this "impossible spot" by questioning whether possession of Ibuprofen and Naproxen causes a severe enough threat to warrant investigation. Had the suspected infraction involved a street drug, the majority implies that it would have approved the scope of the search. See *ante,* at 2642 (relying on the "limited threat of the specific drugs he was searching for"); *ante,* at 2642 (relying on the limited "power of the drugs" involved). In effect, then, the majority has replaced a school rule that draws no distinction among drugs with a new one that does. As a result, a full search of a student's person for prohibited drugs will be permitted only if the Court agrees that the drug in question was sufficiently dangerous. Such a test is unworkable and unsound. School officials cannot be expected to halt searches based on the possibility that a court might later find that the particular infraction at issue is not ****2652** severe enough to warrant an intrusive investigation. [4]

***393** A rule promulgated by a school board represents the judgment of school officials that the rule is needed to maintain "school order" and "a proper educational environment." *T.L.O.,* 469 U.S., at 343, n. 9, 105 S.Ct. 733. Teachers, administrators, and the local school board are called upon both to "protect the ... safety of students and school personnel" and "maintain an environment conducive to learning." *Id.,* at 353, 105 S.Ct. 733 (Blackmun, J., concurring in judgment). They are tasked with "watch[ing] over a large number of students" who "are inclined to test the outer boundaries of acceptable conduct and to imitate the misbehavior of a peer if that misbehavior is not dealt with quickly." *Id.,* at 352, 105 S.Ct. 733. In such an environment, something as simple as a "water pistol or peashooter can wreak [havoc] until it is taken away." *Ibid.* The danger posed by unchecked distribution and consumption of prescription pills by students certainly needs no elaboration.

Judges are not qualified to second-guess the best manner for maintaining quiet and order in the school environment. Such institutional judgments, like those concerning the selection of the best methods for "restrain[ing students] from assaulting one another, abusing drugs and alcohol, and committing other crimes," *id.,* at 342, n. 9, 105 S.Ct. 733, "involve a host of policy choices that must be made by locally elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country." *Collins v. Harker Heights,* 503 U.S. 115, 129, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992); cf. *Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 226, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985) (observing that federal courts are not "suited to evaluat[ing] the substance of the multitude of academic decisions" or disciplinary decisions "that are made daily by faculty members of public educational ***394** institutions"). It is a mistake for judges to assume the responsibility for deciding which school rules are important enough to allow for invasive searches and which rules are not.

3

Even if this Court were authorized to second-guess the importance of school rules, the Court's assessment of the importance of this district's policy is flawed. It is a crime to possess or use prescription-strength Ibuprofen without a prescription. ****2653** See Ariz.Rev.Stat. Ann. § 13–3406(A)(1) (West Supp.2008) ("A person shall not knowingly ... [p]ossess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to [state law]").[5] By prohibiting unauthorized prescription drugs on school grounds—and conducting a search to ensure students abide by that prohibition—the school rule here was consistent with a routine provision of the state criminal code. It hardly seems unreasonable for school officials to enforce a rule that, in effect, proscribes conduct that amounts to a crime.

Moreover, school districts have valid reasons for punishing the unauthorized possession of prescription drugs on school ***395** property as severely as the possession of street drugs; "[t]eenage abuse of over-the-counter and prescription drugs poses an increasingly alarming national crisis." Get Teens Off Drugs, The Education Digest 75 (Dec.2006). As one study noted, "more young people ages 12–17 abuse prescription drugs than any illicit drug except marijuana—more than cocaine, heroin, and methamphetamine combined." Executive Office of the President, Office of National Drug Control Policy (ONDCP), Prescription for Danger 1 (Jan.2008) (hereinafter Prescription for Danger). And according to a 2005 survey of teens, "nearly one in five (19 percent or 4.5 million) admit abusing prescription drugs in their lifetime." Columbia University, The National Center on Addiction and Substance Abuse (CASA), "You've Got Drugs!" V: Prescription Drug Pushers on the Internet 2 (July 2008); see also Dept. of Health and Human Services, National Institute on Drug Abuse, High School and Youth Trends 2 (Dec.2008) ("In 2008, 15.4 percent of 12th-graders reported using a prescription drug nonmedically within the past year").

School administrators can reasonably conclude that this high rate of drug abuse is being fueled, at least in part, by the increasing presence of prescription drugs on school campuses. See, *e.g.,* Gibson, Grand Forks Schools See Rise In Prescription Drug Abuse, Grand Forks Herald, Nov. 16, 2008, p. 1 (explaining that "prescription drug abuse is growing into a larger problem" as students "bring them to school and sell them or just give them to their friends"). In a 2008 survey, "44 percent of teens sa[id] drugs are used, kept or sold on the grounds of their schools." CASA, National Survey of American Attitudes on Substance Abuse XIII: Teens and Parents 19 (Aug.2008) (hereinafter National Survey). The risks posed by the abuse of these drugs are every bit as serious as the dangers of using a typical street drug.

Teenagers are nevertheless apt to "believe the myth that these drugs provide a medically safe high." ONDCP, Teens ***396** and Prescription Drugs: An Analysis of ****2654** Recent Trends on the Emerging Drug Threat 3 (Feb.2007) (hereinafter Teens and Prescription Drugs). But since 1999, there has "been a dramatic increase in the number of poisonings and even deaths associated with the abuse of prescription drugs." Prescription for Danger 4; see also Dept. of Health and Human Services, The NSDUH Report: Trends in Nonmedical Use of Prescription Pain Relievers: 2002 to 2007, p. 1 (Feb. 5, 2009) ("[A]pproximately 324,000 emergency department visits in 2006 involved the nonmedical use of pain relievers"); CASA, Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S., p. 25 (July 2005) ("In 2002, abuse of controlled prescription

drugs was implicated in at least 23 percent of drug-related emergency department admissions and 20.4 percent of all single drug-related emergency department deaths"). At least some of these injuries and deaths are likely due to the fact that "[m]ost controlled prescription drug abusers are poly-substance abusers," *id.,* at 3, a habit that is especially likely to result in deadly drug combinations. Furthermore, even if a child is not immediately harmed by the abuse of prescription drugs, research suggests that prescription drugs have become "gateway drugs to other substances of abuse." *Id.,* at 4; Healy, Skipping the Street, Los Angeles Times, Sept. 15, 2008, p. F1 ("Boomers made marijuana their 'gateway' ... but a younger generation finds prescription drugs an easier score"); see also National Survey 17 (noting that teens report "that prescription drugs are easier to buy than beer").

Admittedly, the Ibuprofen and Naproxen at issue in this case are not the prescription painkillers at the forefront of the prescription-drug-abuse problem. See Prescription for Danger 3 ("Pain relievers like Vicodin and OxyContin are the prescription drugs most commonly abused by teens"). But they are not without their own dangers. As nonsteroidal anti-inflammatory drugs (NSAIDs), they pose a risk of death from overdose. The Pill Book 821, 827 (H.Silverman, ***397** ed., 13th ed.2008) (observing that Ibuprofen and Naproxen are NSAIDs and "[p]eople have died from NSAID overdoses"). Moreover, the side-effects caused by the use of NSAIDs can be magnified if they are taken in combination with other drugs. See, *e.g.,* Reactions Weekly, p. 18 (Issue no. 1235, Jan. 17, 2009) ("A 17–year–old girl developed allergic interstitial nephritis and renal failure while receiving escitalopram and ibuprofen"); *id.,* at 26 (Issue no. 1232, Dec. 13, 2008) ("A 16–month–old boy developed iron deficiency anaemia and hypoalbuminaemia during treatment with naproxen"); *id.,* at 15 (Issue no. 1220, Sept. 20, 2008) (18–year–old "was diagnosed with pill-induced oesophageal perforation" after taking ibuprofen "and was admitted to the [intensive care unit]"); *id.,* at 20 (Issue no. 1170, Sept. 22, 2007) ("A 12–year–old boy developed anaphylaxis following ingestion of ibuprofen").

If a student with a previously unknown intolerance to Ibuprofen or Naproxen were to take either drug and become ill, the public outrage would likely be directed toward the school for failing to take steps to prevent the unmonitored use of the drug. In light of the risks involved, a school's decision to establish and enforce a school prohibition on the possession of any unauthorized drug is thus a reasonable judgment. [6]

****2655** * * *

In determining whether the search's scope was reasonable under the Fourth Amendment, it is therefore irrelevant whether officials suspected Redding of possessing ***398** prescription-strength Ibuprofen, nonprescription-strength Naproxen, or some harder street drug. Safford prohibited its possession on school property. Reasonable suspicion that Redding was in possession of drugs in violation of these policies, therefore, justified a search extending to any area where small pills could be concealed. The search did not violate the Fourth Amendment.

II

By declaring the search unreasonable in this case, the majority has " 'surrender[ed] control of the American public school system to public school students' " by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials. See *Morse,* 551 U.S., at 421, 127 S.Ct. 2618 (THOMAS, J., concurring) (quoting *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 526, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (Black, J., dissenting)). The Court's interference in these matters of great concern to teachers, parents, and students illustrates why the most constitutionally sound approach to the question of applying the Fourth Amendment in local public schools would in fact be the complete restoration of the common-law doctrine of *in loco parentis*.

"[I]n the early years of public schooling," courts applied the doctrine of *in loco parentis* to transfer to teachers the authority of a parent to " 'command obedience, to control stubbornness, to quicken diligence, and to reform bad habits.' " *Morse, supra,* at 413–414, 127 S.Ct. 2618 (THOMAS, J., concurring) (quoting *State v. Pendergrass,* 19 N.C. 365, 365–366 (1837)). So empowered, schoolteachers and administrators had almost complete discretion to establish and enforce the rules they believed were necessary to maintain control over their classrooms. See 2 J. Kent, Commentaries on American Law 205 (1873) ("So the power allowed by

law to the parent over the person of the child may be delegated to a tutor or instructor, the better to accomplish the purpose of education"); 1 W. ***399** Blackstone, Commentaries on the Laws of England 441 (1765) ("He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis,* and has such a portion of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed").[7] The perils of judicial policymaking inherent in applying Fourth Amendment protections to public schools counsel in favor of a return to the understanding that existed in this Nation's first public schools, which ****2656** gave teachers discretion to craft the rules needed to carry out the disciplinary responsibilities delegated to them by parents.

If the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of Redding would stand. There can be no doubt that a parent would have had the authority to conduct the search at issue in this case. Parents have "immunity from the strictures of the Fourth Amendment" when it comes to searches of a child or that child's belongings. *T.L.O.,* 469 U.S., at 337, 105 S.Ct. 733; see also *id.,* at 336, 105 S.Ct. 733 (A parent's authority is "not subject to the limits of the Fourth Amendment"); *Griffin v. Wisconsin,* 483 U.S. 868, 876, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) ("[P]arental custodial authority" does not require "judicial approval for [a] search of a minor child's room").

As acknowledged by this Court, this principle is based on the "societal understanding of superior and inferior" with respect to the "parent and child" relationship. *Georgia v. Randolph,* 547 U.S. 103, 114, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006). In light of this relationship, ***400** the Court has indicated that a parent can authorize a third-party search of a child by consenting to such a search, even if the child denies his consent. See *ibid.*; see also 4 W. LaFave, Search and Seizure § 8.3(d), p. 160 (4th ed. 2004) ("[A] father, as the head of the household with the responsibility and the authority for the discipline, training and control of his children, has a superior interest in the family residence to that of his minor son, so that the father's consent to search would be effective notwithstanding the son's contemporaneous on-the-scene objection" (internal quotation marks omitted)). Certainly, a search by the parent himself is no different, regardless of whether or not a child would prefer to be left alone. See *id.,* § 8.4(b), at 202 ("[E]ven [if] a minor child ... may think of a room as 'his,' the overall dominance will be in his parents" (internal quotation marks omitted)).

Restoring the common-law doctrine of *in loco parentis* would not, however, leave public schools entirely free to impose any rule they choose. "If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move." See *Morse,* 551 U.S., at 419, 127 S.Ct. 2618 (THOMAS, J., concurring). Indeed, parents and local government officials have proved themselves quite capable of challenging overly harsh school rules or the enforcement of sensible rules in insensible ways.

For example, one community questioned a school policy that resulted in "an 11–year–old [being] arrested, handcuffed, and taken to jail for bringing a plastic butter knife to school." Downey, Zero Tolerance Doesn't Always Add Up, The Atlanta Journal–Constitution, Apr. 6, 2009, p. A11. In another, "[a]t least one school board member was outraged" when 14 elementary-school students were suspended for "imitating drug activity" after they combined Kool–Aid and sugar in plastic bags. Grant, Pupils Trading Sweet Mix Get Sour ***401** Shot of Discipline, Pittsburgh Post–Gazette, May 18, 2006, p. B1. Individuals within yet another school district protested a " 'zero-tolerance' policy toward weapons" that had become "so rigid that it force[d] schools to expel any student who belongs to a military organization, a drum-and-bugle corps or any other legitimate extracurricular group and is simply transporting what amounts to harmless props." Richardson, School Gun Case Sparks Cries ****2657** For "Common Sense," Washington Times, Feb. 13, 2009, p. A1.[8]

These local efforts to change controversial school policies through democratic processes have proven successful in many cases. See, *e.g.,* Postal, Schools' Zero Tolerance Could Lose Some Punch, Orlando Sentinel, Apr. 24, 2009, p. B3 ("State lawmakers want schools to dial back strict zero-tolerance policies so students do not end up in juvenile detention for some 'goofy thing' "); Richardson, Tolerance Waning for Zero-tolerance Rules, Washington Times, Apr. 21, 2009, p. A3 ("[A] few states have moved to relax their laws. Utah now allows students to bring asthma inhalers to school without violating the zero-tolerance

policy on ***402** drugs"); see also Nussbaum, Becoming Fed Up With Zero Tolerance, New York Times, Sept. 3, 2000, Section 14, p. 1 (discussing a report that found that "widespread use of zero-tolerance discipline policies was creating as many problems as it was solving and that there were many cases around the country in which students were harshly disciplined for infractions where there was no harm intended or done").

In the end, the task of implementing and amending public school policies is beyond this Court's function. Parents, teachers, school administrators, local politicians, and state officials are all better suited than judges to determine the appropriate limits on searches conducted by school officials. Preservation of order, discipline, and safety in public schools is simply not the domain of the Constitution. And, common sense is not a judicial monopoly or a Constitutional imperative.

III

"[T]he nationwide drug epidemic makes the war against drugs a pressing concern in every school." *Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls,* 536 U.S. 822, 834, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002). And yet the Court has limited the authority of school officials to conduct searches for the drugs that the officials believe pose a serious safety risk to their students. By doing so, the majority has confirmed that a return to the doctrine of *in loco parentis* is required to keep the judiciary from essentially seizing control of public schools. Only then will teachers again be able to " 'govern the[ir] pupils, quicken the slothful, spur the indolent, restrain the impetuous, and control the stubborn' " by making " 'rules, giv [ing] commands, and punish[ing] disobedience' " without interference from judges. See *Morse, supra,* at 414, 127 S.Ct. 2618. By deciding that it is better equipped to decide what behavior should be permitted in schools, the Court has undercut student safety and undermined the authority of school administrators and local officials. Even more troubling, ***403** it has done so in a case in which ****2658** the underlying response by school administrators was reasonable and justified. I cannot join this regrettable decision. I, therefore, respectfully dissent from the Court's determination that this search violated the Fourth Amendment.

All Citations

557 U.S. 364, 129 S.Ct. 2633, 174 L.Ed.2d 354, 77 USLW 4591, 245 Ed. Law Rep. 626, 09 Cal. Daily Op. Serv. 7974, 2009 Daily Journal D.A.R. 9383, 21 Fla. L. Weekly Fed. S 1011

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 When the object of a school search is the enforcement of a school rule, a valid search assumes, of course, the rule's legitimacy. But the legitimacy of the rule usually goes without saying as it does here. The Court said plainly in *New Jersey v. T.L.O.,* 469 U.S. 325, 342, n. 9, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), that standards of conduct for schools are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed. Except in patently arbitrary instances, Fourth Amendment analysis takes the rule as a given, as it obviously should do in this case. There is no need here either to explain the imperative of keeping drugs out of schools, or to explain the reasons for the school's rule banning all drugs, no matter how benign, without advance permission. Teachers are not pharmacologists trained to identify pills and powders, and an effective drug ban has to be enforceable fast. The plenary ban makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing.

2 Poison control centers across the country maintain 24–hour help hotlines to provide "immediate access to poison exposure management instructions and information on potential poisons." American Association of Poison Control Centers, online at http://www.aapcc.org/dnn/ About/tabid/74/Default.aspx (all Internet materials as visited June 19, 2009, and available in Clerk of Court's case file).

3 There is no question here that justification for the school officials' search was required in accordance with the *T.L.O.* standard of reasonable suspicion, for it is common ground that Savana had a reasonable expectation of privacy covering the personal things she chose to carry in her backpack, cf. 469 U.S., at 339, and that Wilson's decision to look through it was a "search" within the meaning of the Fourth Amendment.

4 An Advil tablet, caplet, or gel caplet, contains 200 mg of ibuprofen. See Physicians' Desk Reference for Nonprescription Drugs, Dietary Supplements, and Herbs 674 (28th ed.2006). An Aleve caplet contains 200 mg naproxen and 20 mg sodium. See *id.,* at 675.

* In fact, in *T.L.O.* we cited with approval a Ninth Circuit case, *Bilbrey v. Brown,* 738 F.2d 1462 (1984), which held that a strip search performed under similar circumstances violated the Constitution. *New Jersey v. T.L.O.,* 469 U.S. 325, 332, n. 2, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985); *id.,* at 341, and n. 6, 105 S.Ct. 733 (adopting *Bilbrey* 's reasonable suspicion standard).

1 To be sure, Redding denied knowledge of the pills and the materials in her planner. App. 14a. But her denial alone does not negate the reasonable suspicion held by school officials. See *New Jersey v. T.L.O.,* 469 U.S. 325, 345, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) (finding search reasonable even though "T.L.O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all").

2 Like the dissent below, "I would reserve the term 'strip search' for a search that required its subject to fully disrobe in view of officials." 531 F.3d 1071, 1091, n. 1 (C.A.9 2008) (opinion of Hawkins, J.). The distinction between a strip search and the search at issue in this case may be slight, but it is a distinction that the law has drawn. See, *e.g., Sandin v. Conner,* 515 U.S. 472, 475, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) ("The officer subjected Conner to a strip search, complete with inspection of the rectal area"); *Bell v. Wolfish,* 441 U.S. 520, 558, and n. 39, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979) (describing visual inspection of body cavities as "part of a strip search").

3 The Court has adopted a different standard for searches involving an "intrusio[n] into the human body." *Schmerber v. California,* 384 U.S. 757, 770, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). The search here does not implicate the Court's cases governing bodily intrusions, however, because it did not involve a "physical intrusion, penetrating beneath the skin," *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989).

4 Justice GINSBURG suggests that requiring Redding to "sit on a chair outside [the assistant principal's] office for over two hours" and failing to call her parents before conducting the search constitutes an "[a]buse of authority" that "should not be shielded by official immunity." See *ante,* at 2645 – 2646. But the school was under no constitutional obligation to call Redding's parents before conducting the search: "[R]easonableness under the Fourth Amendment does not require employing the least intrusive means, because the logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." *Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls,* 536 U.S. 822, 837, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002) (internal quotation marks and brackets omitted). For the same reason, the Constitution did not require school officials to ask "followup questions" after they had already developed reasonable suspicion that Redding possessed drugs. See *ante,* at 2640, 2642 (majority opinion); *ante,* at 2645 (opinion of GINSBURG, J.). In any event, the suggestion that requiring Redding to sit in a chair for two hours amounted to a deprivation of her constitutional rights, or that school officials are required to engage in detailed interrogations before conducting searches for drugs, only reinforces the conclusion that the Judiciary is ill-equipped to second-guess the daily decisions made by public administrators. Cf. *Beard v. Banks,* 548 U.S. 521, 536–537, 126 S.Ct. 2572, 165 L.Ed.2d 697 (2006) (THOMAS, J., concurring in judgment).

5 Arizona's law is not idiosyncratic; many States have separately criminalized the unauthorized possession of prescription drugs. See, *e.g.,* Mo.Rev.Stat. § 577.628(1) (Supp.2008) ("No person less than twenty-one years of age shall possess upon the real property comprising a public or private elementary or secondary school or school bus prescription medication without a valid prescription for such medication"); Okla. Stat., Tit. 59, § 353.24(2) (Supp.2008) ("It shall be unlawful for any person, firm or corporation to ... [s]ell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except ... as provided by the State Board of Pharmacy"); Utah Code Ann. § 58–17b–501(12) (Lexis 2007) (" 'Unlawful conduct' includes: using a prescription drug ... for himself that was not lawfully prescribed for him by a practitioner"); see also Ala.Code § 34–23–7 (2002); Del.Code Ann., Tit. 16, § 4754A(a)(4) (Supp.2008); Fla. Stat. § 499.005(14) (2007); N.H.Rev.Stat. Ann. § 318:42(I) (Supp.2008).

6 Schools have a significant interest in protecting all students from prescription drug abuse; young female students are no exception. See Teens and Prescription Drugs 2 ("Prescription drugs are the most commonly abused drug among 12–13–year–olds"). In fact, among 12– to 17–year–olds, females are "more likely than boys to have abused prescription drugs" and have "higher rates of dependence or abuse involving prescription drugs." *Id.,* at 5. Thus, rather than undermining the relevant governmental interest here, Redding's age and sex, if anything, increased the need for a search to prevent the reasonably suspected use of prescription drugs.

7 The one aspect of school discipline with respect to which the judiciary at times became involved was the "imposition of excessive physical punishment." *Morse,* 551 U.S., at 416, 127 S.Ct. 2618 (THOMAS, J., concurring). Some early courts found corporal punishment proper "as long as the teacher did not act with legal malice or cause permanent injury;" while

other courts intervened only if the punishment was "clearly excessive." *Ibid.* (emphasis deleted and internal quotation marks omitted) (collecting decisions).

8 See also, *e.g.,* Smydo, Allderdice Parents Decry Suspensions, Pittsburgh Post–Gazette, Apr. 16, 2009, p. B1 (Parents "believe a one-day suspension for a first-time hallway infraction is an overreaction"); O'Brien & Buckham, Girl's Smooch on School Bus Leads to Suspension, Buffalo News, Jan. 6, 2008, p. B1 (Parents of 6–year–old say the "school officials overreacted" when they punished their daughter for "kissing a second-grade boy"); Stewart, Camera Phone Controversy: Dad Says School Overreacted, Houston Chronicle, Dec. 12, 2007, p. B5 ("The father of a 13–year–old ... said the school district overstepped its bounds when it suspended his daughter for taking a cell phone photo of another cheerleader getting out of the shower during a sleepover in his home"); Dumenigo & Mueller, "Cops and Robbers" Suspension Criticized at Sayreville School, The [New Jersey] Star–Ledger, Apr. 6, 2000, p. 15 (" 'I think it's ridiculous,' said the mother of one of the [kindergarten] boys. 'They're little boys playing with each other .... when did a finger become a weapon?").

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Williams v. Dobson-Davis, C.D.Cal., December 3, 2012

131 S.Ct. 2394
Supreme Court of the United States

J.D.B., Petitioner,
v.
NORTH CAROLINA.

No. 09–11121.
|
Argued March 23, 2011.
|
Decided June 16, 2011.

Synopsis

Background: Juvenile was adjudicated delinquent for committing felonious breaking and entering and larceny, and juvenile appealed. The Court of Appeals of North Carolina, Martin, C.J., 196 N.C.App. 234, 674 S.E.2d 795, affirmed, and juvenile appealed. The Supreme Court of North Carolina, Newby, J., 363 N.C. 664, 686 S.E.2d 135, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Sotomayor, held that a child's age properly informs the *Miranda* custody analysis, so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

Reversed and remanded.

Justice Alito filed a dissenting opinion, in which Chief Justice Roberts, Justice Scalia, and Justice Thomas joined.

West Headnotes (15)

[1] Criminal Law
Right to remain silent
Criminal Law
Right to counsel
Criminal Law
Use of statement

Prior to custodial interrogation, a suspect must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

61 Cases that cite this headnote

[2] Criminal Law
Waiver of rights

If a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a prerequisite to the statement's admissibility as evidence in the Government's case in chief, that the defendant voluntarily, knowingly and intelligently waived his rights.

44 Cases that cite this headnote

[3] Criminal Law
Necessity in general

Because *Miranda* warnings protect the individual against the coercive nature of custodial interrogation, they are required only where there has been such a restriction on a person's freedom as to render him in custody.

44 Cases that cite this headnote

[4] Criminal Law
Warnings

Whether a suspect is in custody, and thus is entitled to *Miranda* warnings prior to questioning, is an objective inquiry.

4 Cases that cite this headnote

[5] Criminal Law
Warnings

Two discrete inquiries are essential to the *Miranda* custody determination: (1) what were the circumstances surrounding the interrogation; and (2) given those circumstances, would a reasonable person

have felt he or she was at liberty to terminate the interrogation and leave.

151 Cases that cite this headnote

[6] Criminal Law
Warnings

Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry of the *Miranda* custody analysis: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

101 Cases that cite this headnote

[7] Criminal Law
Warnings

To determine whether a suspect is in custody, and thus is entitled to *Miranda* warnings prior to questioning, police officers and courts are required to examine all of the circumstances surrounding the interrogation, including any circumstance that would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave.

67 Cases that cite this headnote

[8] Criminal Law
Warnings

The subjective views harbored by either the interrogating officers or the person being questioned are irrelevant in determining whether the person is in custody for *Miranda* purposes.

56 Cases that cite this headnote

[9] Criminal Law
Warnings

The test for determining whether a suspect is in custody for *Miranda* purposes involves no consideration of the actual mindset of the particular suspect subjected to police questioning.

29 Cases that cite this headnote

[10] Criminal Law
Warnings

By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test for determining whether a suspect is in custody for *Miranda* purposes avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind.

62 Cases that cite this headnote

[11] Infants
Warnings and counsel;waivers

A child's age properly informs the *Miranda* custody analysis, so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer; a child's age differs from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action.

119 Cases that cite this headnote

[12] Criminal Law
Warnings

An interrogating officer's unarticulated, internal thoughts are never, in and of themselves, objective circumstances of an interrogation which are relevant in determining whether a suspect is in custody for *Miranda* purposes.

24 Cases that cite this headnote

[13] Criminal Law
Warnings

The whole point of the *Miranda* custody analysis is to determine whether, given the circumstances, a reasonable person would have felt he or she was at liberty to terminate the interrogation and leave.

116 Cases that cite this headnote

[14] Criminal Law
Warnings

The *Miranda* custody inquiry turns on the mindset of a reasonable person in the suspect's position.

13 Cases that cite this headnote

[15] Constitutional Law
Proceedings

Constitutional Law
Voluntariness, compulsory testimony, and self-incrimination in general

The due process test for determining whether a confession was voluntary permits consideration of a child's age, and it erects a barrier to admission of a defendant's inculpatory statements at trial. U.S.C.A. Const.Amends. 5, 14.

14 Cases that cite this headnote

****2396** *Syllabus* [*]

Police stopped and questioned petitioner J.D.B., a 13–year–old, seventh-grade student, upon seeing him near the site of two home break-ins. Five days later, after a digital camera matching one of the stolen items was found at J.D.B.'s school and seen in his possession, Investigator DiCostanzo went to the school. A uniformed police officer on detail to the school took J.D.B. from his classroom to a closed-door conference room, where police and school administrators questioned him for at least 30 minutes. Before beginning, they did not give him *Miranda* warnings or the opportunity to call his grandmother, his legal guardian, nor tell him he was free to leave the room. He first denied his involvement, but later confessed after officials urged him to tell the truth and told him about the prospect of juvenile detention. DiCostanzo only then told him that he could refuse to answer questions and was free to leave. Asked whether he understood, J.D.B. nodded and provided further detail, including the location of the stolen items. He also wrote a statement, at DiCostanzo's request. When the school day ended, he was permitted to leave to catch the bus home. Two juvenile petitions were filed against J.D.B., charging him with breaking and entering and with larceny. His public defender moved to suppress his statements and the evidence derived therefrom, arguing that J.D.B. had been interrogated in a custodial setting without being afforded *Miranda* warnings and that his statements were involuntary. The trial court denied the motion. J.D.B. entered a transcript of admission to the charges, but renewed his objection to the denial of his motion to suppress. The court adjudicated him delinquent, and the North Carolina Court of Appeals and State Supreme Court affirmed. The latter court declined to find J.D.B.'s age relevant to the determination whether he was in police custody.

Held: A child's age properly informs *Miranda* 's custody analysis. Pp. 2400 – 2408.

(a) Custodial police interrogation entails "inherently compelling pressures," *Miranda v. Arizona,* 384 U.S. 436, 467, 86 S.Ct. 1602, 16 L.Ed.2d 694, that "can induce ****2397** a frighteningly high percentage of people to confess to crimes they never committed," *Corley v. United States,* 556 U.S. 303, ——, 129 S.Ct. 1558, 1570, 173 L.Ed.2d 443. Recent studies suggest that risk is all the more acute when the subject of custodial interrogation is a juvenile. Whether a suspect is "in custody" for *Miranda* purposes is an objective determination involving two discrete inquires: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave." *Thompson v. Keohane,* 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (footnote omitted). The police and courts must "examine all of the circumstances surrounding the interrogation," *Stansbury v. California,* 511 U.S. 318, 322, 114 S.Ct. 1526, 128 L.Ed.2d 293, including those that "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave," *id.,* at 325, 114 S.Ct. 1526. However, the test involves no consideration of the particular suspect's "actual mindset." *Yarborough v.*

Alvarado, 541 U.S. 652, 667, 124 S.Ct. 2140, 158 L.Ed.2d 938. By limiting analysis to objective circumstances, the test avoids burdening police with the task of anticipating each suspect's idiosyncrasies and divining how those particular traits affect that suspect's subjective state of mind. *Berkemer v. McCarty,* 468 U.S. 420, 430–431, 104 S.Ct. 3138, 82 L.Ed.2d 317. Pp. 2400 – 2403.

(b) In some circumstances, a child's age "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave." *Stansbury,* 511 U.S., at 325, 114 S.Ct. 1526. Courts can account for that reality without doing any damage to the objective nature of the custody analysis. A child's age is far "more than a chronological fact." *Eddings v. Oklahoma,* 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed.2d 1. It is a fact that "generates commonsense conclusions about behavior and perception," *Alvarado,* 541 U.S., at 674, 124 S.Ct. 2140, that apply broadly to children as a class. Children "generally are less mature and responsible than adults," *Eddings,* 455 U.S., at 115, 102 S.Ct. 869; they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird,* 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797; and they "are more vulnerable or susceptible to ... outside pressures" than adults, *Roper v. Simmons,* 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1. In the specific context of police interrogation, events that "would leave a man cold and unimpressed can overawe and overwhelm a" teen. *Haley v. Ohio,* 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class—*e.g.,* limitations on their ability to marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.

Given a history "replete with laws and judicial recognition" that children cannot be viewed simply as miniature adults, *Eddings,* 455 U.S., at 115–116, 102 S.Ct. 869, there is no justification for taking a different course here. So long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to a reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances "unknowable" to them, *Berkemer,* 468 U.S., at 430, 104 S.Ct. 3138, nor to " ' "anticipat[e] the frailties or idiosyncrasies" **2398 of the particular suspect being questioned." ' " *Alvarado,* 541 U.S., at 662, 124 S.Ct. 2140. Precisely because childhood yields objective conclusions, considering age in the custody analysis does not involve a determination of how youth affects a particular child's subjective state of mind. In fact, were the court precluded from taking J.D.B.'s youth into account, it would be forced to evaluate the circumstances here through the eyes of a reasonable adult, when some objective circumstances surrounding an interrogation at school are specific to children. These conclusions are not undermined by the Court's observation in *Alvarado* that accounting for a juvenile's age in the *Miranda* custody analysis "could be viewed as creating a subjective inquiry," 541 U.S., at 668, 124 S.Ct. 2140. The Court said nothing about whether such a view would be correct under the law or whether it simply merited deference under the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. So long as the child's age was known to the officer, or would have been objectively apparent to a reasonable officer, including age in the custody analysis is consistent with the *Miranda* test's objective nature. This does not mean that a child's age will be a determinative, or even a significant, factor in every case, but it is a reality that courts cannot ignore. Pp. 2402 – 2406.

(c) Additional arguments that the State and its *amici* offer for excluding age from the custody inquiry are unpersuasive. Pp. 2406 – 2408.

(d) On remand, the state courts are to address the question whether J.D.B. was in custody when he was interrogated, taking account of all of the relevant circumstances of the interrogation, including J.D.B.'s age at the time. P. 2408.

363 N.C. 664, 686 S.E.2d 135, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C.J., and SCALIA and THOMAS, JJ., joined.

Attorneys and Law Firms

Barbara S. Blackman, Durham, NC, for Petitioner.

Roy Cooper, Attorney General, Raleigh, NC, for Respondent.

Eric J. Feigin, for United States as amicus curiae, by special leave of the Court, supporting the respondent.

Barbara S. Blackman, S. Hannah Demerit, Benjamin Dowling-Sendor, Assistant Appellate Defenders Staples S. Hughes, Appellate Defender, Office of the Appellate Defender, Durham, North Carolina, for Petitioner.

Roy Cooper, Attorney General of North Carolina, Christopher G. Browsing, Jr., Solicitor General of North Carolina, Robert C. Montgomery, Special Deputy Attorney General, LaToya B. Powell, Assistant Attorney General, North Carolina Department of Justice, Raleigh, NC, for Respondent.

Opinion

Justice SOTOMAYOR delivered the opinion of the Court.

***264** This case presents the question whether the age of a child subjected to police questioning is relevant to the custody analysis of *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances ***265** ****2399** would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis.

I

A

Petitioner J.D.B. was a 13–year–old, seventh-grade student attending class at Smith Middle School in Chapel Hill, North Carolina when he was removed from his classroom by a uniformed police officer, escorted to a closed-door conference room, and questioned by police for at least half an hour.

This was the second time that police questioned J.D.B. in the span of a week. Five days earlier, two home break-ins occurred, and various items were stolen. Police stopped and questioned J.D.B. after he was seen behind a residence in the neighborhood where the crimes occurred. That same day, police also spoke to J.D.B.'s grandmother—his legal guardian—as well as his aunt.

Police later learned that a digital camera matching the description of one of the stolen items had been found at J.D.B.'s middle school and seen in J.D.B.'s possession. Investigator DiCostanzo, the juvenile investigator with the local police force who had been assigned to the case, went to the school to question J.D.B. Upon arrival, DiCostanzo informed the uniformed police officer on detail to the school (a so-called school resource officer), the assistant principal, and an administrative intern that he was there to question J.D.B. about the break-ins. Although DiCostanzo asked the school administrators to verify J.D.B.'s date of birth, address, and parent contact information from school records, neither the police officers nor the school administrators contacted J.D.B.'s grandmother.

The uniformed officer interrupted J.D.B.'s afternoon social studies class, removed J.D.B. from the classroom, and ***266** escorted him to a school conference room. [1] There, J.D.B. was met by DiCostanzo, the assistant principal, and the administrative intern. The door to the conference room was closed. With the two police officers and the two administrators present, J.D.B. was questioned for the next 30 to 45 minutes. Prior to the commencement of questioning, J.D.B. was given neither *Miranda* warnings nor the opportunity to speak to his grandmother. Nor was he informed that he was free to leave the room.

Questioning began with small talk—discussion of sports and J.D.B.'s family life. DiCostanzo asked, and J.D.B. agreed, to discuss the events of the prior weekend. Denying any wrongdoing, J.D.B. explained that he had been in the neighborhood where the crimes occurred because he was seeking work mowing lawns. DiCostanzo pressed J.D.B. for additional detail about his efforts to obtain work; asked J.D.B. to explain a prior incident, when one of the victims returned home to find J.D.B. behind her house; and confronted J.D.B. with the stolen camera. The assistant principal urged J.D.B. to "do the right thing," warning J.D.B. that "the truth always comes out in the end." App. 99a, 112a.

Eventually, J.D.B. asked whether he would "still be in trouble" if he returned the "stuff." *Ibid.* In response, DiCostanzo explained that return of the stolen items

would be helpful, but "this thing is going **2400 to court" regardless. *Id.,* at 112a; *ibid.* ("[W]hat's done is done[;] now you need to help yourself by making it right"); see also *id.,* at 99a. DiCostanzo then warned that he may need to seek a secure custody order if he believed that J.D.B. would continue to break into other homes. When J.D.B. asked what a secure custody *267 order was, DiCostanzo explained that "it's where you get sent to juvenile detention before court." *Id.,* at 112a.

After learning of the prospect of juvenile detention, J.D.B. confessed that he and a friend were responsible for the break-ins. DiCostanzo only then informed J.D.B. that he could refuse to answer the investigator's questions and that he was free to leave.[2] Asked whether he understood, J.D.B. nodded and provided further detail, including information about the location of the stolen items. Eventually J.D.B. wrote a statement, at DiCostanzo's request. When the bell rang indicating the end of the schoolday, J.D.B. was allowed to leave to catch the bus home.

B

Two juvenile petitions were filed against J.D.B., each alleging one count of breaking and entering and one count of larceny. J.D.B.'s public defender moved to suppress his statements and the evidence derived therefrom, arguing that suppression was necessary because J.D.B. had been "interrogated by police in a custodial setting without being afforded *Miranda* warning[s]," App. 89a, and because his *268 statements were involuntary under the totality of the circumstances test, *id.,* at 142a; see *Schneckloth v. Bustamonte,* 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (due process precludes admission of a confession where "a defendant's will was overborne" by the circumstances of the interrogation). After a suppression hearing at which DiCostanzo and J.D.B. testified, the trial court denied the motion, deciding that J.D.B. was not in custody at the time of the schoolhouse interrogation and that his statements were voluntary. As a result, J.D.B. entered a transcript of admission to all four counts, renewing his objection to the denial of his motion to suppress, and the court adjudicated J.D.B. delinquent.

A divided panel of the North Carolina Court of Appeals affirmed. *In re J.D.B.,* 196 N.C.App. 234, 674 S.E.2d 795 (2009). The North Carolina Supreme Court held, over two dissents, that J.D.B. was not in custody when he confessed, "declin[ing] to extend the test for custody to include consideration of the age ... of an individual subjected to questioning by police." *In re J.D.B.,* 363 N.C. 664, 672, 686 S.E.2d 135, 140 (2009).[3]

**2401 We granted certiorari to determine whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age. 562 U.S. ——, 131 S.Ct. 502, 178 L.Ed.2d 368 (2010).

II

A

Any police interview of an individual suspected of a crime has "coercive aspects to it." *Oregon v. Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) *(per curiam)*. Only those interrogations that occur while a suspect is in police custody, however, "heighte[n] the risk" that statements obtained are not the *269 product of the suspect's free choice. *Dickerson v. United States,* 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).

By its very nature, custodial police interrogation entails "inherently compelling pressures." *Miranda,* 384 U.S., at 467, 86 S.Ct. 1602. Even for an adult, the physical and psychological isolation of custodial interrogation can "undermine the individual's will to resist and ... compel him to speak where he would not otherwise do so freely." *Ibid.* Indeed, the pressure of custodial interrogation is so immense that it "can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States,* 556 U.S. 303, ——, 129 S.Ct. 1558, 1570, 173 L.Ed.2d 443 (2009) (citing Drizin & Leo, The Problem of False Confessions in the Post–DNA World, 82 N.C.L.Rev. 891, 906–907 (2004)); see also *Miranda,* 384 U.S., at 455, n. 23, 86 S.Ct. 1602. That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile. See Brief for Center on Wrongful Convictions of Youth et al. as *Amici Curiae* 21–22 (collecting empirical studies that "illustrate the heightened risk of false confessions from youth").

[1] [2] Recognizing that the inherently coercive nature of custodial interrogation "blurs the line between

voluntary and involuntary statements," *Dickerson,* 530 U.S., at 435, 120 S.Ct. 2326, this Court in *Miranda* adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. Prior to questioning, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." 384 U.S., at 444, 86 S.Ct. 1602; see also *Florida v. Powell,* 559 U.S. ——, ——, 130 S.Ct. 1195, 1198, 175 L.Ed.2d 1009 (2010) ("The four warnings *Miranda* requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed"). And, if a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a "prerequisit[e]" to the statement's admissibility as evidence ***270** in the Government's case in chief, that the defendant "voluntarily, knowingly and intelligently" waived his rights.[4] *Miranda,* 384 U.S., at 444, 475–476, 86 S.Ct. 1602; *Dickerson,* 530 U.S., at 443–444, 120 S.Ct. 2326.

****2402** **[3]** **[4]** **[5]** **[6]** **[7]** **[8]** **[9]** Because these measures protect the individual against the coercive nature of custodial interrogation, they are required " 'only where there has been such a restriction on a person's freedom as to render him "in custody." ' " *Stansbury v. California,* 511 U.S. 318, 322, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) *(per curiam)* (quoting *Oregon v. Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) *(per curiam)*). As we have repeatedly emphasized, whether a suspect is "in custody" is an objective inquiry.

> "Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *Thompson v. Keohane,* 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995) (internal quotation marks, alteration, and footnote omitted).

See also *Yarborough v. Alvarado,* 541 U.S. 652, 662–663, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004); *Stansbury,* 511 U.S., at 323, 114 S.Ct. 1526; *Berkemer v. McCarty,* 468 U.S. 420, 442, and n. 35, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to "examine all of the circumstances ***271** surrounding the interrogation," *Stansbury,* 511 U.S., at 322, 114 S.Ct. 1526, including any circumstance that "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave," *id.,* at 325, 114 S.Ct. 1526. On the other hand, the "subjective views harbored by either the interrogating officers or the person being questioned" are irrelevant. *Id.,* at 323, 114 S.Ct. 1526. The test, in other words, involves no consideration of the "actual mindset" of the particular suspect subjected to police questioning. *Alvarado,* 541 U.S., at 667, 124 S.Ct. 2140; see also *California v. Beheler,* 463 U.S. 1121, 1125, n. 3, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983) *(per curiam)*.

[10] The benefit of the objective custody analysis is that it is "designed to give clear guidance to the police." *Alvarado,* 541 U.S., at 668, 124 S.Ct. 2140. But see *Berkemer,* 468 U.S., at 441, 104 S.Ct. 3138 (recognizing the "occasiona[l] ... difficulty" that police and courts nonetheless have in "deciding exactly when a suspect has been taken into custody"). Police must make in-the-moment judgments as to when to administer *Miranda* warnings. By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind. See *id.,* at 430–431, 104 S.Ct. 3138 (officers are not required to "make guesses" as to circumstances "unknowable" to them at the time); *Alvarado,* 541 U.S., at 668, 124 S.Ct. 2140 (officers are under no duty "to consider ... contingent psychological factors when deciding when suspects should be advised of their *Miranda* rights").

B

[11] The State and its *amici* contend that a child's age has no place in the custody analysis, no matter how young the child subjected to police questioning. We cannot agree. In some circumstances, a ****2403** child's age "would have affected how a reasonable ***272** person" in the suspect's

position "would perceive his or her freedom to leave." *Stansbury,* 511 U.S., at 325, 114 S.Ct. 1526. That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.

A child's age is far "more than a chronological fact." *Eddings v. Oklahoma,* 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); accord, *Gall v. United States,* 552 U.S. 38, 58, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007); *Roper v. Simmons,* 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Johnson v. Texas,* 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). It is a fact that "generates commonsense conclusions about behavior and perception." *Alvarado,* 541 U.S., at 674, 124 S.Ct. 2140 (BREYER, J., dissenting). Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children "generally are less mature and responsible than adults," *Eddings,* 455 U.S., at 115–116, 102 S.Ct. 869; that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird,* 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (plurality opinion); that they "are more vulnerable or susceptible to ... outside pressures" than adults, *Roper,* 543 U.S., at 569, 125 S.Ct. 1183; and so on. See *Graham v. Florida,* 560 U.S. ——, ——, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010) (finding no reason to "reconsider" these observations about the common "nature of juveniles"). Addressing the specific context of police interrogation, we have observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Haley v. Ohio,* 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948) (plurality opinion); see also *Gallegos v. Colorado,* 370 U.S. 49, 54, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962) ("[N]o matter how sophisticated," a juvenile subject of police interrogation "cannot be compared" to an ***273** adult subject). Describing no one child in particular, these observations restate what "any parent knows"—indeed, what any person knows—about children generally. *Roper,* 543 U.S., at 569, 125 S.Ct. 1183. [5]

Our various statements to this effect are far from unique. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. See, *e.g.,* 1 W. Blackstone, Commentaries on the Laws of England *464–*465 (hereinafter Blackstone) (explaining that limits on children's legal capacity under the common law "secure them from hurting themselves by their own improvident acts"). Like this Court's own generalizations, the legal disqualifications placed on children as a class—*e.g.,* limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled ****2404** understanding that the differentiating characteristics of youth are universal. [6]

***274** Indeed, even where a "reasonable person" standard otherwise applies, the common law has reflected the reality that children are not adults. In negligence suits, for instance, where liability turns on what an objectively reasonable person would do in the circumstances, "[a]ll American jurisdictions accept the idea that a person's childhood is a relevant circumstance" to be considered. Restatement (Third) of Torts § 10, Comment *b,* p. 117 (2005); see also *id.,* Reporters' Note, pp. 121–122 (collecting cases); Restatement (Second) of Torts § 283A, Comment *b,* p. 15 (1963–1964) ("[T]here is a wide basis of community experience upon which it is possible, as a practical matter, to determine what is to be expected of [children]").

As this discussion establishes, "[o]ur history is replete with laws and judicial recognition" that children cannot be viewed simply as miniature adults. *Eddings,* 455 U.S., at 115–116, 102 S.Ct. 869. We see no justification for taking a different course here. So long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances "unknowable" to them, *Berkemer,* 468 U.S., at 430, 104 S.Ct. 3138, nor to "anticipat[e] the frailties or idiosyncrasies" of the particular suspect whom they question, *Alvarado,* 541 U.S., at 662, 124 S.Ct. 2140 (internal quotation marks omitted). The same "wide basis of community experience" that makes it possible, as an objective matter, "to determine what is to be expected" of children in other contexts, Restatement (Second) of Torts § 283A, at 15; see

supra, at 2403, and n. 6, likewise makes it possible to know what to expect of children subjected to police questioning.

***275** In other words, a child's age differs from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action. *Alvarado,* holds, for instance, that a suspect's prior interrogation history with law enforcement has no role to play in the custody analysis because such experience could just as easily lead a reasonable person to feel free to walk away as to feel compelled to stay in place. 541 U.S., at 668, 124 S.Ct. 2140. Because the effect in any given case would be " contingent [on the] psycholog[y]" of the individual suspect, the Court explained, such experience cannot be considered without compromising the objective nature of the custody analysis. *Ibid.* A child's age, however, is different. Precisely because childhood yields objective conclusions like those we ****2405** have drawn ourselves —among others, that children are " most susceptible to influence," *Eddings,* 455 U.S., at 115, 102 S.Ct. 869, and "outside pressures," *Roper,* 543 U.S., at 569, 125 S.Ct. 1183—considering age in the custody analysis in no way involves a determination of how youth "subjectively affect[s] the mindset" of any particular child, Brief for Respondent 14. [7]

In fact, in many cases involving juvenile suspects, the custody analysis would be nonsensical absent some consideration of the suspect's age. This case is a prime example. Were the court precluded from taking J.D.B.'s youth into account, it would be forced to evaluate the circumstances present here through the eyes of a reasonable person of average years. In other words, how would a reasonable adult understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource ***276** officer; being encouraged by his assistant principal to "do the right thing"; and being warned by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker? To describe such an inquiry is to demonstrate its absurdity. Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.

Indeed, although the dissent suggests that concerns "regarding the application of the *Miranda* custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school," *post,* at 2417 (opinion of ALITO, J.), the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person "questioned in school" is a "minor," *ibid.,* the coercive effect of the schoolhouse setting is unknowable.

Our prior decision in *Alvarado* in no way undermines these conclusions. In that case, we held that a state-court decision that failed to mention a 17–year–old's age as part of the *Miranda* custody analysis was not objectively unreasonable under the deferential standard of review set forth by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214. Like the North Carolina Supreme Court here, see 363 N.C., at 672, 686 S.E.2d, at 140, we observed that accounting for a juvenile's age in the *Miranda* custody analysis "could be viewed as creating a subjective inquiry," 541 U.S., at 668, 124 S.Ct. 2140. We said nothing, however, of whether such a view would be correct under the law. Cf. *Renico v. Lett,* 559 U.S. ——, ——, n. 3, 130 S.Ct. 1855, 1865 n. 3, 176 L.Ed.2d 678 (2010) ("[W]hether ***277** the [state court] was right or wrong is not the pertinent question under AEDPA"). To the contrary, Justice O'Connor's concurring opinion explained that a suspect's age may indeed "be relevant to the 'custody' inquiry." *Alvarado,* 541 U.S., at 669, 124 S.Ct. 2140.

****2406 [12]** Reviewing the question *de novo* today, we hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. [8] This is not to say that a child's age will be a determinative, or even a significant, factor in every case. Cf. *ibid.* (O'Connor, J., concurring) (explaining that a state-court decision omitting any mention of the defendant's age was not unreasonable under AEDPA's deferential standard of review where the defendant "was almost 18 years old at the time of his interview"); *post,* at 2417 (suggesting that "teenagers nearing the age of majority" are likely to react to an interrogation as would

a "typical 18–year–old in similar circumstances"). It is, however, a reality that courts cannot simply ignore.

III

The State and its *amici* offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive.

***278** To start, the State contends that a child's age must be excluded from the custody inquiry because age is a personal characteristic specific to the suspect himself rather than an "external" circumstance of the interrogation. Brief for Respondent 21; see also *id.,* at 18–19 (distinguishing "personal characteristics" from "objective facts related to the interrogation itself" such as the location and duration of the interrogation). Despite the supposed significance of this distinction, however, at oral argument counsel for the State suggested without hesitation that at least some undeniably personal characteristics—for instance, whether the individual being questioned is blind—are circumstances relevant to the custody analysis. See Tr. of Oral Arg. 41. Thus, the State's quarrel cannot be that age is a personal characteristic, without more. [9]

The State further argues that age is irrelevant to the custody analysis because it "go[es] to how a suspect may internalize and perceive the circumstances of an interrogation." Brief for Respondent 12; see also Brief for United States as *Amicus Curiae* 21 (hereinafter U.S. Brief) (arguing that a child's age has no place in the custody analysis because it goes to whether a suspect is "particularly susceptible" to the external circumstances of the interrogation (some internal quotation marks omitted)). But the same can be said of every objective circumstance that the ****2407** State agrees is relevant to the custody analysis: Each circumstance goes to how a reasonable person would "internalize and perceive" every other. See, *e.g., Stansbury,* 511 U.S., at 325, 114 S.Ct. 1526. Indeed, this is the very reason that we ask whether the objective circumstances "add up to custody," *Keohane,* 516 U.S., at 113, 116 S.Ct. 457, instead of evaluating the circumstances one by one.

***279** **[13]** **[14]** In the same vein, the State and its *amici* protest that the "effect of ... age on [the] perception of custody is internal," Brief for Respondent 20, or "psychological," U.S. Brief 21. But the whole point of the custody analysis is to determine whether, given the circumstances, "a reasonable person [would] have felt he or she was ... at liberty to terminate the interrogation and leave." *Keohane,* 516 U.S., at 112, 116 S.Ct. 457. Because the *Miranda* custody inquiry turns on the mindset of a reasonable person in the suspect's position, it cannot be the case that a circumstance is subjective simply because it has an "internal" or " psychological" impact on perception. Were that so, there would be no objective circumstances to consider at all.

Relying on our statements that the objective custody test is "designed to give clear guidance to the police," *Alvarado,* 541 U.S., at 668, 124 S.Ct. 2140, the State next argues that a child's age must be excluded from the analysis in order to preserve clarity. Similarly, the dissent insists that the clarity of the custody analysis will be destroyed unless a "one-size-fits-all reasonable-person test" applies. *Post,* at 2415. In reality, however, ignoring a juvenile defendant's age will often make the inquiry more artificial, see *supra,* at 2404 – 2405, and thus only add confusion. And in any event, a child's age, when known or apparent, is hardly an obscure factor to assess. Though the State and the dissent worry about gradations among children of different ages, that concern cannot justify ignoring a child's age altogether. Just as police officers are competent to account for other objective circumstances that are a matter of degree such as the length of questioning or the number of officers present, so too are they competent to evaluate the effect of relative age. Indeed, they are competent to do so even though an interrogation room lacks the "reflective atmosphere of a [jury] deliberation room," *post,* at 2416. The same is true of judges, including those whose childhoods have long since passed, see *post,* at 2416. In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise ***280** in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7–year–old is not a 13–year–old and neither is an adult.

There is, however, an even more fundamental flaw with the State's plea for clarity and the dissent's singular focus on simplifying the analysis: Not once have we excluded from the custody analysis a circumstance that we determined was relevant and objective, simply to make the fault line between custodial and noncustodial "brighter." Indeed, were the guiding concern clarity and nothing else,

the custody test would presumably ask only whether the suspect had been placed under formal arrest. *Berkemer,* 468 U.S., at 441, 104 S.Ct. 3138; see *ibid.* (acknowledging the "occasiona[l] ... difficulty" police officers confront in determining when a suspect has been taken into custody). But we have rejected that "more easily administered line," recognizing that it would simply "enable the police to circumvent the constraints on custodial interrogations established by *Miranda*." *Ibid.*; see also *ibid.,* n. 33. [10]

2408 **[15] Finally, the State and the dissent suggest that excluding age from the custody analysis comes at no cost to juveniles' constitutional rights because the due process voluntariness test independently accounts for a child's youth. To be sure, that test permits consideration of a child's age, and it erects its own barrier to admission of a defendant's inculpatory statements at trial. See *Gallegos,* 370 U.S., at 53–55, 82 S.Ct. 1209; *Haley,* 332 U.S., at 599–601, 68 S.Ct. 302; see also *post,* ***281** at 2418 ("[C]ourts should be instructed to take particular care to ensure that [young children's] incriminating statements were not obtained involuntarily"). But *Miranda* 's procedural safeguards exist precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake. See 384 U.S., at 458, 86 S.Ct. 1602 ("Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice"); *Dickerson,* 530 U.S., at 442, 120 S.Ct. 2326 ("[R]eliance on the traditional totality-of-the-circumstances test raise[s] a risk of overlooking an involuntary custodial confession"); see also *supra,* at 2400 – 2401. To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.

* * *

The question remains whether J.D.B. was in custody when police interrogated him. We remand for the state courts to address that question, this time taking account of all of the relevant circumstances of the interrogation, including J.D.B.'s age at the time. The judgment of the North Carolina Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Justice ALITO, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join, dissenting.
The Court's decision in this case may seem on first consideration to be modest and sensible, but in truth it is neither. It is fundamentally inconsistent with one of the main justifications for the *Miranda* [1] rule: the perceived need for a clear ***282** rule that can be easily applied in all cases. And today's holding is not needed to protect the constitutional rights of minors who are questioned by the police.

Miranda 's prophylactic regime places a high value on clarity and certainty. Dissatisfied with the highly fact-specific constitutional rule against the admission of involuntary confessions, the *Miranda* **2409 Court set down rigid standards that often require courts to ignore personal characteristics that may be highly relevant to a particular suspect's actual susceptibility to police pressure. This rigidity, however, has brought with it one of *Miranda* 's principal strengths—"the ease and clarity of its application" by law enforcement officials and courts. See *Moran v. Burbine,* 475 U.S. 412, 425–426, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). A key contributor to this clarity, at least up until now, has been *Miranda* 's objective reasonable-person test for determining custody.

Miranda 's custody requirement is based on the proposition that the risk of unconstitutional coercion is heightened when a suspect is placed under formal arrest or is subjected to some functionally equivalent limitation on freedom of movement. When this custodial threshold is reached, *Miranda* warnings must precede police questioning. But in the interest of simplicity, the custody analysis considers only whether, under the circumstances, a hypothetical reasonable person would consider himself to be confined.

Many suspects, of course, will differ from this hypothetical reasonable person. Some, including those who have been hardened by past interrogations, may have no need for *Miranda* warnings at all. And for other suspects—those who are unusually sensitive to the pressures of police questioning—*Miranda* warnings may come too late

to be of any use. That is a necessary consequence of *Miranda* 's rigid standards, but it does not mean that the constitutional rights of these especially sensitive suspects are left unprotected. A vulnerable defendant can still turn to the constitutional rule ***283** against *actual* coercion and contend that that his confession was extracted against his will.

Today's decision shifts the *Miranda* custody determination from a one-size-fits-all reasonable-person test into an inquiry that must account for at least one individualized characteristic—age—that is thought to correlate with susceptibility to coercive pressures. Age, however, is in no way the only personal characteristic that may correlate with pliability, and in future cases the Court will be forced to choose between two unpalatable alternatives. It may choose to limit today's decision by arbitrarily distinguishing a suspect's age from other personal characteristics—such as intelligence, education, occupation, or prior experience with law enforcement—that may also correlate with susceptibility to coercive pressures. Or, if the Court is unwilling to draw these arbitrary lines, it will be forced to effect a fundamental transformation of the *Miranda* custody test—from a clear, easily applied prophylactic rule into a highly fact-intensive standard resembling the voluntariness test that the *Miranda* Court found to be unsatisfactory.

For at least three reasons, there is no need to go down this road. First, many minors subjected to police interrogation are near the age of majority, and for these suspects the one-size-fits-all *Miranda* custody rule may not be a bad fit. Second, many of the difficulties in applying the *Miranda* custody rule to minors arise because of the unique circumstances present when the police conduct interrogations at school. The *Miranda* custody rule has always taken into account the setting in which questioning occurs, and accounting for the school setting in such cases will address many of these problems. Third, in cases like the one now before us, where the suspect is especially young, courts applying the constitutional voluntariness standard can take special care to ensure that incriminating statements were not obtained through coercion.

****2410** ***284** Safeguarding the constitutional rights of minors does not require the extreme makeover of *Miranda* that today's decision may portend.

I

In the days before *Miranda,* this Court's sole metric for evaluating the admissibility of confessions was a voluntariness standard rooted in both the Fifth Amendment's Self–Incrimination Clause and the Due Process Clause of the Fourteenth Amendment. See *Bram v. United States,* 168 U.S. 532, 542, 18 S.Ct. 183, 42 L.Ed. 568 (1897) (Self–Incrimination Clause); *Brown v. Mississippi,* 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936) (due process). The question in these voluntariness cases was whether the particular "defendant's will" had been "overborne." *Lynumn v. Illinois,* 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963). Courts took into account both "the details of the interrogation" *and* "the characteristics of the accused," *Schneckloth v. Bustamonte,* 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973), and then "weigh[ed] ... the circumstances of pressure against the power of resistance of the person confessing." *Stein v. New York,* 346 U.S. 156, 185, 73 S.Ct. 1077, 97 L.Ed. 1522 (1953).

All manner of individualized, personal characteristics were relevant in this voluntariness inquiry. Among the most frequently mentioned factors were the defendant's education, physical condition, intelligence, and mental health. *Withrow v. Williams,* 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993); see *Clewis v. Texas,* 386 U.S. 707, 712, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967) ("only a fifth-grade education"); *Greenwald v. Wisconsin,* 390 U.S. 519, 520–521, 88 S.Ct. 1152, 20 L.Ed.2d 77 (1968) *(per curiam)* (had not taken blood-pressure medication); *Payne v. Arkansas,* 356 U.S. 560, 562, n. 4, 567, 78 S.Ct. 844, 2 L.Ed.2d 975 (1958) ("mentally dull" and " 'slow to learn' "); *Fikes v. Alabama,* 352 U.S. 191, 193, 196, 198, 77 S.Ct. 281, 1 L.Ed.2d 246 (1957) ("low mentality, if not mentally ill"). The suspect's age also received prominent attention in several cases, *e.g., Gallegos v. Colorado,* 370 U.S. 49, 54, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962), especially when the suspect was a "mere child." *Haley v. Ohio,* 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948) (plurality opinion). The weight assigned to any one consideration varied from case to case. But all of these factors, along with ***285** anything else that might have affected the "individual's ... capacity for effective choice," were relevant in determining whether the confession was coerced or compelled. See *Miranda v. Arizona,* 384 U.S.

436, 506–507, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (Harlan, J., dissenting).

The all-encompassing nature of the voluntariness inquiry had its benefits. It allowed courts to accommodate a "complex of values," *Schneckloth, supra,* at 223, 224, 93 S.Ct. 2041, and to make a careful, highly individualized determination as to whether the police had wrung "a confession out of [the] accused against his will." *Blackburn v. Alabama,* 361 U.S. 199, 206–207, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960). But with this flexibility came a decrease in both certainty and predictability, and the voluntariness standard proved difficult "for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Dickerson v. United States,* 530 U.S. 428, 444, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).

In *Miranda,* the Court supplemented the voluntariness inquiry with a "set of prophylactic measures" designed to ward off the " 'inherently compelling pressures' of custodial interrogation." See *Maryland* ****2411** *v. Shatzer,* 559 U.S. ——, ——, 130 S.Ct. 1213, 1216, 175 L.Ed.2d 1045 (2010) (quoting *Miranda,* 384 U.S., at 467, 86 S.Ct. 1602). *Miranda* greatly simplified matters by requiring police to give suspects standard warnings before commencing any custodial interrogation. See *id.,* at 479, 86 S.Ct. 1602. Its requirements are no doubt "rigid," see *Fare v. Michael C.,* 439 U.S. 1310, 1314, 99 S.Ct. 3, 58 L.Ed.2d 19 (1978) (Rehnquist, J., in chambers), and they often require courts to suppress "trustworthy and highly probative" statements that may be perfectly "voluntary under [a] traditional Fifth Amendment analysis." *Fare v. Michael C.,* 442 U.S. 707, 718, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979). But with this rigidity comes increased clarity. *Miranda* provides "a workable rule to guide police officers," *New York v. Quarles,* 467 U.S. 649, 658, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984) (internal quotation marks omitted), and an administrable standard for the courts. As has often been recognized, this gain in clarity and administrability is one of *Miranda* 's "principal advantages." *Berkemer v. McCarty,* 468 U.S. 420, 430, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); see ***286** also *Missouri v. Seibert,* 542 U.S. 600, 622, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004) (KENNEDY, J., concurring in judgment).

No less than other facets of *Miranda,* the threshold requirement that the suspect be in "custody" is "designed to give clear guidance to the police." *Yarborough v. Alvarado,* 541 U.S. 652, 668, 669, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004). Custody under *Miranda* attaches where there is a "formal arrest" or a "restraint on freedom of movement" akin to formal arrest. *California v. Beheler,* 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983) *(per curiam)* (internal quotation marks omitted). This standard is "objective" and turns on how a hypothetical "reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." *Stansbury v. California,* 511 U.S. 318, 322–323, 325, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) *(per curiam)* (internal quotation marks omitted).

Until today, the Court's cases applying this test have focused solely on the "objective circumstances of the interrogation," *id.,* at 323, 114 S.Ct. 1526, not the personal characteristics of the interrogated. *E.g., Berkemer, supra,* at 442, and n. 35, 104 S.Ct. 3138; but cf. *Schneckloth,* 412 U.S., at 226, 93 S.Ct. 2041 (voluntariness inquiry requires consideration of "the details of the interrogation" *and* "the characteristics of the accused"). Relevant factors have included such things as where the questioning occurred,[2] how long it lasted,[3] what was said,[4] any physical restraints placed on the suspect's movement,[5] and whether the suspect was allowed to leave when the questioning was through.[6] The totality of *these* circumstances—the external circumstances, that is, of the interrogation itself—is what has mattered in this Court's cases. Personal characteristics of suspects have consistently been rejected or ignored as irrelevant under a one-size-fits-all reasonable-person standard. *Stansbury, supra,* at 323, 114 S.Ct. 1526 ("[C]ustody ****2412** depends on the objective ***287** circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned").

For example, in *Berkemer v. McCarty, supra,* police officers conducting a traffic stop questioned a man who had been drinking and smoking marijuana before he was pulled over. *Id.,* at 423, 104 S.Ct. 3138. Although the suspect's inebriation was readily apparent to the officers at the scene, *ibid.,* the Court's analysis did not advert to this or any other individualized consideration. Instead, the Court focused only on the external circumstances of the interrogation itself. The opinion concluded that a typical "traffic stop" is akin to a "*Terry* stop"[7] and does not qualify as the equivalent of "formal arrest." *Id.,* at 439, 104 S.Ct. 3138.

California v. Beheler, supra, is another useful example. There, the circumstances of the interrogation were "remarkably similar" to the facts of the Court's earlier decision in *Oregon v. Mathiason,* 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) *(per curiam)*—the suspect was "not placed under arrest," he "voluntarily [came] to the police station," and he was "allowed to leave unhindered by police after a brief interview." 463 U.S., at 1123, 1121, 103 S.Ct. 3517. A California court in *Beheler* had nonetheless distinguished *Mathiason* because the police knew that Beheler "had been drinking earlier in the day" and was "emotionally distraught." 463 U.S., at 1124–1125, 103 S.Ct. 3517. In a summary reversal, this Court explained that the fact "[t]hat the police knew more" personal information about Beheler than they did about Mathiason was "irrelevant." *Id.,* at 1125, 103 S.Ct. 3517. Neither one of them was in custody under the objective reasonable-person standard. *Ibid.;* see also *Alvarado, supra,* at 668, 669, 124 S.Ct. 2140 (experience with law enforcement irrelevant to *Miranda* custody analysis "as a *de novo* matter"). [8]

***288** The glaring absence of reliance on personal characteristics in these and other custody cases should come as no surprise. To account for such individualized considerations would be to contradict *Miranda* 's central premise. The *Miranda* Court's decision to adopt its inflexible prophylactic requirements was expressly based on the notion that "[a]ssessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation." 384 U.S., at 468–469, 86 S.Ct. 1602.

II

In light of this established practice, there is no denying that, by incorporating age into its analysis, the Court is embarking on a new expansion of the established custody standard. And since *Miranda* is this Court's rule, "not a constitutional command," it is up to the Court "to justify its expansion." Cf. *Arizona v. Roberson,* 486 U.S. 675, 688, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988) (KENNEDY, J., dissenting). This the Court fails to do.

In its present form, *Miranda* 's prophylactic regime already imposes "high ****2413** cost[s]" by requiring suppression of confessions that are often "highly probative" and "voluntary" by any traditional standard. *Oregon v. Elstad,* 470 U.S. 298, 312, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985); see *Dickerson,* 530 U.S., at 444, 120 S.Ct. 2326 (under *Miranda* "statements which may be by no means involuntary, made by a defendant who is aware of his 'rights,' may nonetheless be excluded and a guilty defendant go free as a result"). Nonetheless, a "core virtue" of *Miranda* has been the clarity and precision of its guidance to "police and courts." *Withrow v. Williams,* 507 U.S. 680, 694, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (internal quotation marks omitted); see *Moran,* 475 U.S., at 425, 106 S.Ct. 1135 ("[O]ne of the principal advantages of *Miranda* is the ease and clarity of its application" (internal quotation marks omitted)). This ***289** increased clarity "has been thought to outweigh the burdens" that *Miranda* imposes. *Fare,* 442 U.S., at 718, 99 S.Ct. 2560. The Court has, however, repeatedly cautioned against upsetting the careful "balance" that *Miranda* struck, *Moran, supra,* at 424, 106 S.Ct. 1135, and it has "refused to sanction attempts to expand [the] *Miranda* holding" in ways that would reduce its " clarity." See *Quarles,* 467 U.S., at 658, 104 S.Ct. 2626 (citing cases). Given this practice, there should be a "strong presumption" against the Court's new departure from the established custody test. See *United States v. Patane,* 542 U.S. 630, 640, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004) (plurality opinion). In my judgment, that presumption cannot be overcome here.

A

The Court's rationale for importing age into the custody standard is that minors tend to lack adults' "capacity to exercise mature judgment" and that failing to account for that "reality" will leave some minors unprotected under *Miranda* in situations where they perceive themselves to be confined. See *ante,* at 2403 – 2404, 2402 – 2403. I do not dispute that many suspects who are under 18 will be more susceptible to police pressure than the average adult. As the Court notes, our pre-*Miranda* cases were particularly attuned to this "reality" in applying the constitutional requirement of voluntariness in fact. *Ante,* at 2403 (relying on *Haley,* 332 U.S., at 599, 68 S.Ct. 302 (plurality opinion), and *Gallegos,* 370 U.S., at 54, 82 S.Ct. 1209). It is no less a "reality," however, that many persons *over* the age of 18 are also more susceptible to police pressure than the hypothetical reasonable person. See *Payne,* 356 U.S., at 567, 78 S.Ct. 844 (fact that defendant

was a "mentally dull 19–year–old youth" relevant in voluntariness inquiry). Yet the *Miranda* custody standard has never accounted for the personal characteristics of these or any other individual defendants.

Indeed, it has always been the case under *Miranda* that the unusually meek or compliant are subject to the same fixed rules, including the same custody requirement, as those who are unusually resistant to police pressure. ***290** *Berkemer,* 468 U.S., at 442, and n. 35, 104 S.Ct. 3138 ("[O]nly relevant inquiry is how a reasonable man in the suspect's position would have understood his situation"). *Miranda* 's rigid standards are both overinclusive and underinclusive. They are overinclusive to the extent that they provide a windfall to the most hardened and savvy of suspects, who often have no need for *Miranda* 's protections. Compare *Miranda, supra,* at 471–472, 86 S.Ct. 1602 ("[N]o amount of circumstantial evidence that the person may have been aware of" his rights can overcome *Miranda* 's requirements), with *Orozco v. Texas,* 394 U.S. 324, 329, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969) (White, J., dissenting) ("Where the defendant himself [w]as a lawyer, policeman, professional ****2414** criminal, or otherwise has become aware of what his right to silence is, it is sheer fancy to assert that his answer to every question asked him is compelled unless he is advised of those rights with which he is already intimately familiar"). And *Miranda* 's requirements are underinclusive to the extent that they fail to account for " frailties," "idiosyncrasies," and other individualized considerations that might cause a person to bend more easily during a confrontation with the police. See *Alvarado,* 541 U.S., at 662, 124 S.Ct. 2140 (internal quotation marks omitted). Members of this Court have seen this rigidity as a major weakness in *Miranda* 's "code of rules for confessions." See 384 U.S., at 504, 86 S.Ct. 1602 (Harlan, J., dissenting); *Fare,* 439 U.S., at 1314, 99 S.Ct. 3 (Rehnquist, J., in chambers) ("[T]he rigidity of [*Miranda* 's] prophylactic rules was a principal weakness in the view of dissenters and critics outside the Court"). But if it is, then the weakness is an inescapable consequence of the *Miranda* Court's decision to supplement the more holistic voluntariness requirement with a one-size-fits-all prophylactic rule.

That is undoubtedly why this Court's *Miranda* cases have never before mentioned "the suspect's age" or any other individualized consideration in applying the custody standard. See *Alvarado, supra,* at 666, 124 S.Ct. 2140. And unless the *Miranda* custody rule is now to be radically transformed into one that takes into account the wide range of individual characteristics ***291** that are relevant in determining whether a confession is voluntary, the Court must shoulder the burden of explaining why age is different from these other personal characteristics.

Why, for example, is age different from intelligence? Suppose that an officer, upon going to a school to question a student, is told by the principal that the student has an I.Q. of 75 and is in a special-education class. Cf. *In re J.D.B.,* 363 N.C. 664, 666, 686 S.E.2d 135, 136–137 (2009). Are those facts more or less important than the student's age in determining whether he or she "felt ... at liberty to terminate the interrogation and leave"? See *Thompson v. Keohane,* 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995). An I.Q. score, like age, is more than just a number. *Ante,* at 2403 ("[A]ge is far 'more than a chronological fact' "). And an individual's intelligence can also yield "conclusions" similar to those "we have drawn ourselves" in cases far afield of *Miranda*. *Ante,* at 2404 – 2405. Compare *ibid.* (relying on *Eddings v. Oklahoma,* 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), and *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)), with *Smith v. Texas,* 543 U.S. 37, 44–45, 125 S.Ct. 400, 160 L.Ed.2d 303 (2004) *(per curiam)*.

How about the suspect's cultural background? Suppose the police learn (or should have learned, see *ante,* at 11) that a suspect they wish to question is a recent immigrant from a country in which dire consequences often befall any person who dares to attempt to cut short any meeting with the police. [9] Is this really less relevant than the fact that a suspect is a month or so away from his 18th birthday?

The defendant's education is another personal characteristic that may generate "conclusions about behavior and perception." *Ante,* at 2403 (internal quotation marks omitted). Under today's decision, why should police officers and courts ***292** ****2415** "blind themselves," *ante,* at 2399, to the fact that a suspect has "only a fifth-grade education"? See *Clewis,* 386 U.S., at 712, 87 S.Ct. 1338 (voluntariness case). Alternatively, what if the police know or should know that the suspect is "a college-educated man with law school training"? See *Crooker v. California,* 357 U.S. 433, 440, 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958), overruled by *Miranda, supra,* at 479, and n. 48, 86 S.Ct. 1602. How are these individual considerations meaningfully different from age in their "relationship to a reasonable person's understanding

of his freedom of action"? *Ante,* at 2404. The Court proclaims that "[a] child's age ... is different," *ante,* at 2404, but the basis for this *ipse dixit* is dubious.

I have little doubt that today's decision will soon be cited by defendants—and perhaps by prosecutors as well—for the proposition that all manner of other individual characteristics should be treated like age and taken into account in the *Miranda* custody calculus. Indeed, there are already lower court decisions that take this approach. See *United States v. Beraun–Panez,* 812 F.2d 578, 581, modified 830 F.2d 127 (C.A.9 1987) ("reasonable person who was an alien"); *In re Jorge D.,* 202 Ariz. 277, 280, 43 P.3d 605, 608 (App.2002) (age, maturity, and experience); *State v. Doe,* 130 Idaho 811, 818, 948 P.2d 166, 173 (1997) (same); *In re Joshua David C.,* 116 Md.App. 580, 594, 698 A.2d 1155, 1162 (1997) ("education, age, and intelligence").

In time, the Court will have to confront these issues, and it will be faced with a difficult choice. It may choose to distinguish today's decision and adhere to the arbitrary proclamation that "age ... is different." *Ante,* at 2404. Or it may choose to extend today's holding and, in doing so, further undermine the very rationale for the *Miranda* regime.

B

If the Court chooses the latter course, then a core virtue of *Miranda*—the "ease and clarity of its application"—will be lost. *Moran,* 475 U.S., at 425, 106 S.Ct. 1135; see *Fare,* 442 U.S., at 718, 99 S.Ct. 2560 (noting that the clarity of *Miranda* 's requirements "has been ***293** thought to outweigh the burdens that the decision ... imposes"). However, even today's more limited departure from *Miranda* 's one-size-fits-all reasonable-person test will produce the very consequences that prompted the *Miranda* Court to abandon exclusive reliance on the voluntariness test in the first place: The Court's test will be hard for the police to follow, and it will be hard for judges to apply. See *Dickerson v. United States,* 530 U.S. 428, 444, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).

The Court holds that age must be taken into account when it "was known to the officer at the time of the interview," or when it "would have been objectively apparent" to a reasonable officer. *Ante,* at 2404. The first half of this test overturns the rule that the "initial determination of custody" does not depend on the "subjective views harbored by ... interrogating officers." *Stansbury,* 511 U.S., at 323, 114 S.Ct. 1526. The second half will generate time-consuming satellite litigation over a reasonable officer's perceptions. When, as here, the interrogation takes place in school, the inquiry may be relatively simple. But not all police questioning of minors takes place in schools. In many cases, courts will presumably have to make findings as to whether a particular suspect had a sufficiently youthful look to alert a reasonable officer to the possibility that the suspect was under 18, or whether a reasonable officer would have recognized that a suspect's I.D. was a fake. The inquiry will be both "time-consuming and disruptive" for the police and the courts. ****2416** See *Berkemer,* 468 U.S., at 432, 104 S.Ct. 3138 (refusing to modify the custody test based on similar considerations). It will also be made all the more complicated by the fact that a suspect's dress and manner will often be different when the issue is litigated in court than it was at the time of the interrogation.

Even after courts clear this initial hurdle, further problems will likely emerge as judges attempt to put themselves in the shoes of the average 16–year–old, or 15–year–old, or 13–year–old, as the case may be. Consider, for example, a 60–year–old judge attempting to make a custody determination ***294** through the eyes of a hypothetical, average 15–year–old. Forty-five years of personal experience and societal change separate this judge from the days when he or she was 15 years old. And this judge may or may not have been an average 15–year–old. The Court's answer to these difficulties is to state that "no imaginative powers, knowledge of developmental psychology, [or] training in cognitive science" will be necessary. *Ante,* at 2407. Judges "simply need the common sense," the Court assures, "to know that a 7–year–old is not a 13–year–old and neither is an adult." *Ante,* at 2407. It is obvious, however, that application of the Court's new rule demands much more than this.

Take a fairly typical case in which today's holding may make a difference. A 16 ½-year-old moves to suppress incriminating statements made prior to the administration of *Miranda* warnings. The circumstances are such that, if the defendant were at least 18, the court would not find that he or she was in custody, but the defendant argues that a reasonable 16 ½-year-old would view the situation differently. The judge will not have the luxury of merely

saying: "It is common sense that a 16 ½-year-old is not an 18–year–old. Motion granted." Rather, the judge will be required to determine whether the differences between a typical 16 ½-year-old and a typical 18–year–old with respect to susceptibility to the pressures of interrogation are sufficient to change the outcome of the custody determination. Today's opinion contains not a word of actual guidance as to how judges are supposed to go about making that determination.

C

Petitioner and the Court attempt to show that this task is not unmanageable by pointing out that age is taken into account in other legal contexts. In particular, the Court relies on the fact that the age of a defendant is a relevant factor under the reasonable-person standard applicable in negligence suits. *Ante,* at 2404 (citing Restatement (Third) of ***295** Torts § 10, Comment *b,* p. 117 (2005)). But negligence is generally a question for the jury, the members of which can draw on their varied experiences with persons of different ages. It also involves a *post hoc* determination, in the reflective atmosphere of a deliberation room, about whether the defendant conformed to a standard of care. The *Miranda* custody determination, by contrast, must be made in the first instance by police officers in the course of an investigation that may require quick decisionmaking. See *Quarles,* 467 U.S., at 658, 104 S.Ct. 2626 (noting "the importance" under *Miranda* of providing "a workable rule 'to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront' "); *Alvarado,* 541 U.S., at 668, 669, 124 S.Ct. 2140 ("[T]he custody inquiry states an objective rule designed to give clear guidance to the police").

Equally inapposite are the Eighth Amendment cases the Court cites in support ****2417** of its new rule. *Ante,* at 2403, 2404, 2404 – 2405 (citing *Eddings,* 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1, *Roper,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, and *Graham v. Florida,* 560 U.S. ——, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)). Those decisions involve the "judicial exercise of independent judgment" about the constitutionality of certain punishments. *E.g., id.,* at ——, 130 S.Ct., at 2026. Like the negligence standard, they do not require on-the-spot judgments by the police.

Nor do state laws affording extra protection for juveniles during custodial interrogation provide any support for petitioner's arguments. See Brief for Petitioner 16–17. States are free to enact additional restrictions on the police over and above those demanded by the Constitution or *Miranda.* In addition, these state statutes generally create clear, workable rules to guide police conduct. See Brief for Petitioner 16–17 (citing statutes that require or permit parents to be present during custodial interrogation of a minor, that require minors to be advised of a statutory right to communicate with a parent or guardian, and that require parental consent to custodial interrogation). Today's decision, by ***296** contrast, injects a new, complicating factor into what had been a clear, easily applied prophylactic rule. See *Alvarado, supra,* at 668–669, 124 S.Ct. 2140. [10]

III

The Court's decision greatly diminishes the clarity and administrability that have long been recognized as "principal advantages" of *Miranda* 's prophylactic requirements. See, *e.g., Moran,* 475 U.S., at 425, 106 S.Ct. 1135. But what is worse, the Court takes this step unnecessarily, as there are other, less disruptive tools available to ensure that minors are not coerced into confessing.

As an initial matter, the difficulties that the Court's standard introduces will likely yield little added protection for most juvenile defendants. Most juveniles who are subjected to police interrogation are teenagers nearing the age of majority. [11] These defendants' reactions to police pressure are unlikely to be much different from the reaction of a typical 18–year–old in similar circumstances. A one-size-fits-all *Miranda* ***297** custody rule thus provides a roughly reasonable fit for these defendants.

In addition, many of the concerns that petitioner raises regarding the application of the *Miranda* custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school. See Brief for ****2418** Petitioner 10–11 (reciting at length the factors petitioner believes to be relevant to the custody determination here, including the fact that petitioner was removed from class by a police officer, that the interview took place in a school conference room, and that a uniformed officer and a vice principal were present).

The *Miranda* custody rule has always taken into account the setting in which questioning occurs, restrictions on a suspect's freedom of movement, and the presence of police officers or other authority figures. See *Alvarado, supra,* at 665, 124 S.Ct. 2140; *Maryland v. Shatzer,* 559 U.S. ——, ——, 130 S.Ct. 1213, 1216, 175 L.Ed.2d 1045 (2010). It can do so here as well. [12]

Finally, in cases like the one now before us, where the suspect is much younger than the typical juvenile defendant, courts should be instructed to take particular care to ensure that incriminating statements were not obtained involuntarily. The voluntariness inquiry is flexible and accommodating by nature, see *Schneckloth,* 412 U.S., at 224, 93 S.Ct. 2041, and the Court's precedents already make clear that "special care" must be exercised in applying the voluntariness test where the confession of a "mere child" is at issue. *Haley,* 332 U.S., at 599, 68 S.Ct. 302 (plurality opinion). If *Miranda* 's rigid, one-size-fits-all standards fail to account for the unique needs of juveniles, the response should be to rigorously apply the constitutional rule against coercion to ensure that the rights of ***298** minors are protected. There is no need to run *Miranda* off the rails.

* * *

The Court rests its decision to inject personal characteristics into the *Miranda* custody inquiry on the principle that judges applying *Miranda* cannot "blind themselves to ... commonsense reality." *Ante,* at 2399, 2402 – 2403, 2403 – 2404, 2406. But the Court's shift is fundamentally at odds with the clear prophylactic rules that *Miranda* has long enforced. *Miranda* frequently requires judges to blind themselves to the reality that many un-Mirandized custodial confessions are "by no means involuntary" or coerced. *Dickerson,* 530 U.S., at 444, 120 S.Ct. 2326. It also requires police to provide a rote recitation of *Miranda* warnings that many suspects already know and could likely recite from memory. [13] Under today's new, "reality"-based approach to the doctrine, perhaps these and other principles of our *Miranda* jurisprudence will, like the custody standard, now be ripe for modification. Then, bit by bit, *Miranda* will lose the clarity and ease of application that has long been viewed as one of its chief justifications.

I respectfully dissent.

All Citations

564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310, 79 USLW 4504, 11 Cal. Daily Op. Serv. 7346, 2011 Daily Journal D.A.R. 8827, 22 Fla. L. Weekly Fed. S 1135

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Although the State suggests that the "record is unclear as to who brought J.D.B. to the conference room, and the trial court made no factual findings on this specific point," Brief for Respondent 3, n. 1, the State agreed at the certiorari stage that "the SRO [school resource officer] escorted petitioner" to the room, Brief in Opposition 3.

2 The North Carolina Supreme Court noted that the trial court's factual findings were "uncontested and therefore ... binding" on it. *In re J.D.B.,* 363 N.C. 664, 668, 686 S.E.2d 135, 137 (2009). The court described the sequence of events set forth in the text. See *id.,* at 670–671, 686 S.E.2d, at 139. ("Immediately following J.D.B.'s initial confession, Investigator DiCostanzo informed J.D.B. that he did not have to speak with him and that he was free to leave" (internal quotation marks and alterations omitted)). Though less than perfectly explicit, the trial court's order indicates a finding that J.D.B. initially confessed prior to DiCostanzo's warnings. See App. 99a.

Nonetheless, both parties' submissions to this Court suggest that the warnings came after DiCostanzo raised the possibility of a secure custody order but before J.D.B. confessed for the first time. See Brief for Petitioner 5; Brief for Respondent 5. Because we remand for a determination whether J.D.B. was in custody under the proper analysis, the state courts remain free to revisit whether the trial court made a conclusive finding of fact in this respect.

3 J.D.B.'s challenge in the North Carolina Supreme Court focused on the lower courts' conclusion that he was not in custody for purposes of *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The North Carolina Supreme Court did not address the trial court's holding that the statements were voluntary, and that question is not before us.

4 *Amici* on behalf of J.D.B. question whether children of all ages can comprehend *Miranda* warnings and suggest that additional procedural safeguards may be necessary to protect their *Miranda* rights. Brief for Juvenile Law Center et al. as *Amici Curiae* 13–14, n. 7. Whatever the merit of that contention, it has no relevance here, where no *Miranda* warnings were administered at all.

5 Although citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions, the literature confirms what experience bears out. See, *e.g., Graham v. Florida,* 560 U.S. ——, ——, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds").

6 See, *e.g.,* 1 E. Farnsworth, Contracts § 4.4, p. 379, and n. 1 (1990) ("Common law courts early announced the prevailing view that a minor's contract is 'voidable' at the instance of the minor" (citing 8 W. Holdsworth, History of English Law 51 (1926))); 1 D. Kramer, Legal Rights of Children § 8.1, p. 663 (rev.2d ed. 2005) ("[W]hile minor children have the right to acquire and own property, they are considered incapable of property management" (footnote omitted)); 2 J. Kent, Commentaries on American Law *78–*79, *90 (G. Comstock ed., 11th ed. 1867); see generally *id.,* at *233 (explaining that, under the common law, "[t]he necessity of guardians results from the inability of infants to take care of themselves ... and this inability continues, in contemplation of law, until the infant has attained the age of [21]"); 1 Blackstone *465 ("It is generally true, that an infant can neither aliene his lands, nor do any legal act, nor make a deed, nor indeed any manner of contract, that will bind him"); *Roper v. Simmons,* 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) ("In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent").

7 Thus, contrary to the dissent's protestations, today's holding neither invites consideration of whether a particular suspect is "unusually meek or compliant," *post,* at 2413 (opinion of ALITO, J.), nor "expan[ds]" the *Miranda* custody analysis, *post,* at 2412 – 2413, into a test that requires officers to anticipate and account for a suspect's every personal characteristic, see *post,* at 2414 – 2415.

8 This approach does not undermine the basic principle that an interrogating officer's unarticulated, internal thoughts are never—in and of themselves—objective circumstances of an interrogation. See *supra,* at 2402; *Stansbury v. California,* 511 U.S. 318, 323, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) *(per curiam)*. Unlike a child's youth, an officer's purely internal thoughts have no conceivable effect on how a reasonable person in the suspect's position would understand his freedom of action. See *id.,* at 323–325, 114 S.Ct. 1526; *Berkemer v. McCarty,* 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). Rather than "overtur[n]" that settled principle, *post,* at 2415, the limitation that a child's age may inform the custody analysis only when known or knowable simply reflects our unwillingness to require officers to "make guesses" as to circumstances "unknowable" to them in deciding when to give *Miranda* warnings, *Berkemer,* 468 U.S., at 430–431, 104 S.Ct. 3138.

9 The State's purported distinction between blindness and age—that taking account of a suspect's youth requires a court "to get into the mind" of the child, whereas taking account of a suspect's blindness does not, Tr. of Oral Arg. 41–42—is mistaken. In either case, the question becomes how a reasonable person would understand the circumstances, either from the perspective of a blind person or, as here, a 13–year–old child.

10 Contrary to the dissent's intimation, see *post,* at 2412 – 2413, *Miranda* does not answer the question whether a child's age is an objective circumstance relevant to the custody analysis. *Miranda* simply holds that warnings must be given once a suspect is in custody, without "paus[ing] to inquire in individual cases whether the defendant was aware of his rights without a warning being given." 384 U.S., at 468, 86 S.Ct. 1602; see also *id.,* at 468–469, 86 S.Ct. 1602 ("Assessments of the knowledge the defendant possessed, based on information as to age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact" (footnote omitted)). That conclusion says nothing about whether age properly informs whether a child is in custody in the first place.

1 See *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

2 *Maryland v. Shatzer,* 559 U.S. ——, ——, 130 S.Ct. 1213, 1216–17, 175 L.Ed.2d 1045 (2010).

3 *Berkemer v. McCarty,* 468 U.S. 420, 437–438, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

4 *Oregon v. Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) *(per curiam)*.

5 *New York v. Quarles,* 467 U.S. 649, 655, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984).

6 *California v. Beheler,* 463 U.S. 1121, 1122–1123, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983) *(per curiam)*.

7 See *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

8 The Court claims that "[n]ot once" have any of our cases "excluded from the custody analysis a circumstance that we determined was relevant and objective, simply to make the fault line between custodial and noncustodial 'brighter.' " *Ante,* at 2407. Surely this is incorrect. The very act of adopting a reasonable-person test necessarily excludes all sorts

of "relevant and objective" circumstances—for example, all the objective circumstances of a suspect's life history—that might otherwise bear on a custody determination.

9 Cf. *United States v. Chalan,* 812 F.2d 1302, 1307 (C.A.10 1987) (rejecting claim that Native American suspect was "in custody" for *Miranda* purposes because, by custom, obedience to tribal authorities was "expected of all tribal members").

10 The Court also relies on North Carolina's concession at oral argument that a court could take into account a suspect's blindness as a factor relevant to the *Miranda* custody determination. *Ante,* at 2406, and n. 9. This is a far-fetched hypothetical, and neither the parties nor their *amici* cite any case in which such a problem has actually arisen. Presumably such a case would involve a situation in which a blind defendant was given "a typed document advising him that he [was] free to leave." See Brief for Juvenile Law Center as *Amicus Curiae* 23. In such a case, furnishing this advice in a form calculated to be unintelligible to the suspect would be tantamount to failing to provide the advice at all. And advice by the police that a suspect is or is not free to leave at will has always been regarded as a circumstance regarding the conditions of the interrogation that must be taken into account in making the *Miranda* custody determination.

11 See Dept of Justice, Federal Bureau of Investigation, 2008 Crime in the United States (Sept.2009), online at http://www2.fbi.gov/ ucr/cius2008/data/table_38.html (all Internet materials as visited June 8, 2011, and available in Clerk of Court's case file) (indicating that less than 30% of juvenile arrests in the United States are of suspects who are under 15).

12 The Court thinks it would be "absur[d]" to consider the school setting without accounting for age, *ante,* at 2406 – 2407, but the real absurdity is for the Court to require police officers to get inside the head of a reasonable minor while making the quick, on-the-spot determinations that *Miranda* demands.

13 Surveys have shown that "[l]arge majorities" of the public are aware that "individuals arrested for a crime" have a right to "remai[n] silent (81%)," a right to "a lawyer (95%)," and a right to have a lawyer "appointed" if the arrestee "cannot afford one (88%)." See Belden, Russonello & Stewart, Developing a National Message for Indigent Defense: Analysis of National Survey 4 (Oct.2001), online at http://www.nlada.org/ DMS/Documents/1211996548.53/Pollingr#esultsr#eport.pdf.

87 S.Ct. 1428
Supreme Court of the United States

Application of Paul L. GAULT and
Marjorie Gault, Father and Mother of
Gerald Francis Gault, a Minor, Appellants.

No. 116.
|
Argued Dec. 6, 1966.
|
Decided May 15, 1967.

Proceeding on appeal from a judgment of the Supreme Court of Arizona, 99 Ariz. 181, 407 P.2d 760, affirming dismissal of petition for writ of habeas corpus filed by parents to secure release of their 15-year-old son who had been committed as juvenile delinquent to state industrial school. The United States Supreme Court, Mr. Justice Fortas, held that juvenile has right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination.

Judgment reversed and cause remanded with directions.

Mr. Justice Harlan dissented in part; Mr. Justice Stewart dissented.

West Headnotes (37)

[1] Constitutional Law
Children and minors, rights of

Constitutional Law
Children and the unborn

Constitutional Law
Children and minors

Neither Fourteenth Amendment nor Bill of Rights is for adults alone. U.S.C.A.Const. Amend. 14.

146 Cases that cite this headnote

[2] Constitutional Law
Due Process

Due process of law is primary and indispensable foundation of individual freedom. U.S.C.A.Const. Amend. 14.

11 Cases that cite this headnote

[3] Infants
Access and dissemination;confidentiality

State may, if it deems it appropriate, provide and improve provision for confidentiality of records of police contacts and court action relating to juveniles.

37 Cases that cite this headnote

[4] Constitutional Law
Juvenile Justice

Due process clause of Fourteenth Amendment requires that juvenile court delinquency hearing measure up to essentials of due process and fair treatment. U.S.C.A.Const. Amend. 14.

180 Cases that cite this headnote

[5] Constitutional Law
Proceedings

Where no notice of delinquency hearing was given to juvenile's parents at time juvenile was taken into custody, juvenile's mother was informed orally on same evening that there would be hearing on next afternoon and was then told reason why juvenile was in custody, and only written notice that parents received at any time was note on plain paper from probation officer that judge had set specified date for further hearing on delinquency, notice of hearing was inadequate to comply with requirements of due process. U.S.C.A.Const. Amend. 14; A.R.S. § 8–224.

81 Cases that cite this headnote

[6] Constitutional Law
Proceedings

Notice of juvenile delinquency proceedings to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth alleged misconduct with particularity. U.S.C.A.Const. Amend. 14; A.R.S. § 8–224.

304 Cases that cite this headnote

[7] Infants
Notice and process

Notice at time of hearing on merits in juvenile delinquency proceeding is not timely.

19 Cases that cite this headnote

[8] Infants
Notice and process

Child and his parents or guardian must be notified, in writing, of specific charge or factual allegations to be considered at juvenile delinquency hearing, and such written notice must be given at earliest practicable time, and in any event sufficiently in advance of hearing to permit preparation. U.S.C.A.Const. Amend. 14.

271 Cases that cite this headnote

[9] Constitutional Law
Proceedings

Due process requires that notice of juvenile delinquency proceeding be of type that would be deemed constitutionally adequate in civil or criminal proceeding. U.S.C.A.Const. Amend. 14.

95 Cases that cite this headnote

[10] Constitutional Law
Proceedings

Due process of law does not allow juvenile delinquency hearing to be held, in which youth's freedom and his parents' right to his custody are at stake, without giving them timely notice, in advance of hearing, of specific issues they must meet. U.S.C.A.Const. Amend. 14.

430 Cases that cite this headnote

[11] Infants
Notice and process

Where 15-year-old boy and his parents had no counsel at juvenile delinquency proceedings and were not told of their right to counsel, their failure to object to lack of constitutionally adequate notice of hearing did not constitute waiver of requirement of adequate notice. A.R.S. § 8–224.

55 Cases that cite this headnote

[12] Infants
For defense

Neither probation officer, who was also superintendent of detention home, and whose role in adjudicatory delinquency hearing, by statute and in fact, was arresting officer and witness against child, nor judge presiding over delinquency hearing could represent or act as counsel for child. A.R.S.Const. art. 6, § 15; A.R.S. §§ 8–201, 8–202, 8–204, subsec. C.

12 Cases that cite this headnote

[13] Infants
Right to Counsel

There is no material difference, with respect to right to counsel, between adult and juvenile proceedings in which adjudication of delinquency is sought.

233 Cases that cite this headnote

[14] Infants
Nature, Form, and Purpose of Proceedings

Proceeding wherein issue is whether child will be found to be delinquent and subjected to loss of his liberty for years is comparable in seriousness to felony prosecution.

45 Cases that cite this headnote

[15] Infants
Right to Counsel

Juvenile charged with delinquency needs assistance of counsel to cope with problems of law, to make skilled inquiry into facts, and to insist upon regularity of proceedings, and to ascertain whether he has defense and to prepare and submit it.

116 Cases that cite this headnote

[16] Infants
Stage or Condition of Cause

Child charged with delinquency requires guiding hand of counsel at every step of delinquency proceedings against him.

18 Cases that cite this headnote

[17] Infants
Right to Counsel

Assistance of counsel is essential for purposes of determination of juvenile delinquency. U.S.C.A.Const. Amend. 14.

30 Cases that cite this headnote

[18] Constitutional Law
Proceedings

As component part of fair hearing required by due process, notice of right to counsel should be required at all juvenile delinquency proceedings and counsel provided on request when family is financially unable to employ counsel. U.S.C.A.Const. Amend. 14.

152 Cases that cite this headnote

[19] Constitutional Law
Proceedings

Due process clause of Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to institution in which juvenile's freedom is curtailed, child and his parents be notified of child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent child. U.S.C.A.Const. Amend. 14.

613 Cases that cite this headnote

[20] Infants
Waiver;self-representation

Knowledge by alleged juvenile delinquent's mother that she could have appeared at delinquency hearing with counsel did not constitute waiver of right to counsel.

12 Cases that cite this headnote

[21] Infants
Right to Counsel

Infants
Indigents and paupers;public defenders

Juvenile charged with delinquency and his parents had right expressly to be advised that they might retain counsel and to be confronted with need for specific consideration of whether they did or did not choose to waive that right, and, if they were unable to afford to employ counsel, they were entitled, in view of seriousness of charge and potential commitment, to appointed counsel unless they chose waiver. U.S.C.A.Const. Amend. 14.

105 Cases that cite this headnote

[22] Constitutional Law
Fifth Amendment

Privilege against self-incrimination is applicable to state proceedings. U.S.C.A.Const. Amends. 5, 14.

34 Cases that cite this headnote

[23] Criminal Law
Compelling Self-Incrimination

Privilege against self-incrimination is related to question of safeguards necessary to assure that admissions or confessions are reasonably trustworthy and that they are not mere fruits of fear or coercion but are reliable expressions of the truth. U.S.C.A.Const. Amends. 5, 14.

20 Cases that cite this headnote

[24] Criminal Law
Compelling Self-Incrimination

Privilege against self-incrimination has broader and deeper thrust than rule preventing use of confessions which are products of coercion because coercion is thought to carry with it danger of unreliability. U.S.C.A.Const. Amends. 5, 14.

3 Cases that cite this headnote

[25] Criminal Law
Compelling Self-Incrimination

One of purposes of privilege against self-incrimination is to prevent state, whether by force or by psychological domination, from overcoming mind and will of person under investigation and depriving him of freedom to decide whether to assist state in securing his conviction. U.S.C.A.Const. Amends. 5, 14.

17 Cases that cite this headnote

[26] Criminal Law
Compelling Self-Incrimination

Scope of privilege against self-incrimination is comprehensive. U.S.C.A.Const. Amends. 5, 14.

1 Cases that cite this headnote

[27] Criminal Law
Compelling Self-Incrimination

Privilege against self-incrimination can be claimed in any proceeding, whether criminal or civil, administrative or judicial, investigatory or adjudicatory. U.S.C.A.Const. Amends. 5, 14.

27 Cases that cite this headnote

[28] Witnesses
Self-Incrimination

Privilege against self-incrimination protects any disclosures which witness may reasonably apprehend could be used in criminal prosecution or which could lead to other evidence that might be so used. U.S.C.A.Const. Amends. 5, 14.

51 Cases that cite this headnote

[29] Criminal Law
Compelling Self-Incrimination

Availability of privilege against self-incrimination does not turn upon type of proceeding in which its protection is invoked, but upon nature of statement or admission and exposure which it invites. U.S.C.A.Const. Amends. 5, 14.

99 Cases that cite this headnote

[30] Criminal Law
Compelling Self-Incrimination

Privilege against self-incrimination may be claimed in civil or administrative proceeding, of statement is or may be inculpatory. U.S.C.A.Const. Amends. 5, 14.

23 Cases that cite this headnote

[31] Criminal Law
Compelling Self-Incrimination

Juvenile proceedings to determine delinquency, which may lead to commitment to state institution, must be regarded as criminal for purposes of privilege against self-incrimination. U.S.C.A.Const. Amends. 5, 14.

127 Cases that cite this headnote

[32] Criminal Law
Compelling Self-Incrimination

Constitution guarantees that no person shall be compelled to be a witness against himself when he is threatened with deprivation of his liberty. U.S.C.A.Const. Amends. 5, 14.

21 Cases that cite this headnote

[33] Criminal Law

Compelling Self-Incrimination

Constitutional privilege against self-incrimination is applicable in case of juveniles as it is with respect to adults. U.S.C.A.Const. Amends. 5, 14.

122 Cases that cite this headnote

[34] Infants

Warnings and counsel;waivers

If counsel is not present, for some permissible reason, when admission is obtained from juvenile, greatest care must be taken to assure that admission was voluntary, in sense not only that it has not been coerced or suggested, but also that it is not product of ignorance of rights or of adolescent fantasy, fright or despair.

222 Cases that cite this headnote

[35] Courts

Procedure

Infants

Reception of evidence;witnesses

Same rule applies with respect to sworn testimony in juvenile courts as applies in adult tribunals.

123 Cases that cite this headnote

[36] Infants

Effect of confession, admission, or statement

In absence of valid confession adequate to support determination of juvenile court, confrontation and sworn testimony by witnesses available for cross-examination were essential for finding of delinquency and order committing 15-year-old boy to state institution for maximum of six years. A.R.S. § 8–201, subsec. 6(a, d); U.S.C.A.Const. Amends. 6, 14.

339 Cases that cite this headnote

[37] Infants

Effect of confession, admission, or statement

Absent valid confession, determination of delinquency and order of commitment to state institution cannot be sustained in absence of sworn testimony subjected to opportunity for cross-examination. U.S.C.A.Const. Amends. 6, 14.

20 Cases that cite this headnote

Attorneys and Law Firms

****1431** ***3** Norman Dorsen, New York City, for appellants.

Frank A. Parks, Phoenix, Ariz., for appellee, pro hac vice, by special leave of Court.

Merritt W. Green, Toledo, Ohio, for Ohio Ass'n of Juvenile Court Judges, as amicus curiae.

Opinion

Mr. Justice FORTAS delivered the opinion of the Court.

This is an appeal under 28 U.S.C. s 1257 (2) from a judgment of the Supreme Court of Arizona affirming the ***4** dismissal of a petition for a writ of habeas corpus. 99 Ariz. 181, 407 P.2d 760 (1965). The petition sought the release of Gerald Francis Gault, appellants' 15-year-old son, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. The Supreme Court of Arizona affirmed dismissal of the writ against various arguments which included an attack upon the constitutionality of the Arizona Juvenile Code because of its alleged denial of procedural due process rights to juveniles charged with being 'delinquents.' The court agreed that the constitutional guarantee of due process of law is applicable in such proceedings. It held that Arizona's

Juvenile Code is to be read as 'impliedly' implementing the 'due process concept.' It then proceeded to identify and describe 'the particular elements which constitute due process in a juvenile hearing.' It concluded that the proceedings ending in commitment of Gerald Gault did not offend those requirements. We do not agree, and we reverse. We begin with a statement of the facts.

I.

On Monday, June 8, 1964, at about 10 a.m., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerald was then still subject to a six months' probation order which had been entered on February 25, 1964, as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse. The police action on June 8 was taken as the result of a verbal ****1432** complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

***5** At the time Gerald was picked up, his mother and father were both at work. No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested. Gerald was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, Gerald was not there. Gerald's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then that Gerald was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault 'why Jerry was there' and said that a hearing would be held in Juvenile Court at 3 o'clock the following day, June 9.

Officer Flagg filed a petition with the court on the hearing day, June 9, 1964. It was not served on the Gaults. Indeed, none of them saw this petition until the habeas corpus hearing on August 17, 1964. The petition was entirely formal. It made no reference to any factual basis for the judicial action which it initiated. It recited only that 'said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; (and that) said minor is a delinquent minor.' It prayed for a hearing and an order regarding 'the care and custody of said minor.' Officer Flagg executed a formal affidavit in support of the petition.

On June 9, Gerald, his mother, his older brother, and Probation Officers Flagg and Henderson appeared before the Juvenile Judge in chambers. Gerald's father was not there. He was at work out of the city. Mrs. Cook, the complainant, was not there. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. Our information about the proceedings ***6** and the subsequent hearing on June 15, derives entirely from the testimony of the Juvenile Court Judge,[1] Mr. and Mrs. Gault and Officer Flagg at the habeas corpus proceeding conducted two months later. From this, it appears that at the June 9 hearing Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg recalled that Gerald had admitted making the lewd remarks. Judge McGhee testified that Gerald 'admitted making one of these (lewd) statements.' At the conclusion of the hearing, the judge said he would 'think about it.' Gerald was taken back to the Detention Home. He was not sent to his own home with his parents. On June 11 or 12, after having been detained since June 8, Gerald was released and driven home.[2] There is no explanation in the record as to why he was kept in the Detention Home or why he was released. At 5 p.m. on the day of Gerald's release, Mrs. Gault received a note signed by Officer Flagg. It was on ****1433** plain paper, not letterhead. Its entire text was as follows:

'Mrs. Gault:
'Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency

'/s/ Flagg'

***7** At the appointed time on Monday, June 15, Gerald, his father and mother, Ronald Lewis and his father, and Officers Flagg and Henderson were present before Judge McGhee. Witnesses at the habeas corpus proceeding differed in their recollections of Gerald's testimony at the June 15 hearing. Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number and that the other boy had made the remarks. Officer

Flagg agreed that at this hearing Gerald did not admit making the lewd remarks.[3] But Judge McGhee recalled that 'there was some admission again of some of the lewd statements. He—he didn't admit any of the more serious lewd statements.'[4] Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present 'so she could see which boy that done the talking, the dirty talking over the phone.' The Juvenile Judge said 'she didn't have to be present at that hearing.' The judge did not speak to Mrs. Cook or communicate with her at any time. Probation Officer Flagg had talked to her once —over the telephone on June 9.

At this June 15 hearing a 'referral report' made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge as 'Lewd Phone Calls.' At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School 'for the period of his minority (that is, until 21), unless sooner discharged ***8** by due process of law.' An order to that effect was entered. It recites that 'after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.'

No appeal is permitted by Arizona law in juvenile cases. On August 3, 1964, a petition for a writ of habeas corpus was filed with the Supreme Court of Arizona and referred by it to the Superior Court for hearing.

At the habeas corpus hearing on August 17, Judge McGhee was vigorously cross-examined as to the basis for his actions. He testified that he had taken into account the fact that Gerald was on probation. He was asked 'under what section of * * * the code you found the boy delinquent?'

His answer is set forth in the margin.[5] In substance, he concluded that Gerald came within ARS s 8—201, subsec. 6(a), which specifies that a 'delinquent child' ****1434** includes one 'who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.' The law which Gerald was found to have violated is ARS s 13—377. This section of the Arizona Criminal Code provides that a person who 'in the presence or hearing of any woman or child * * * uses vulgar, abusive or obscene language, is guilty of a misdemeanor * * *.' The penalty specified in the Criminal Code, which would ***9** apply to an adult, is $5 to $50, or imprisonment for not more than two months. The judge also testified that he acted under ARS s 8—201, subsec. 6(d) which includes in the definition of a 'delinquent child' one who, as the judge phrased it, is 'habitually involved in immoral matters.'[6]

Asked about the basis for his conclusion that Gerald was 'habitually involved in immoral matters,' the judge testified, somewhat vaguely, that two years earlier, on July 2, 1962, a 'referral' was made concerning Gerald, 'where the boy had stolen a baseball glove from another boy and lied to the Police Department about it.' The judge said there was 'no hearing,' and 'no accusation' relating to this incident, 'because of lack of material foundation.' But it seems to have remained in his mind as a relevant factor. The judge also testified that Gerald had admitted making other nuisance phone calls in the past which, as the judge recalled the boy's testimony, were 'silly calls, or funny calls, or something like that.'

The Superior Court dismissed the writ, and appellants sought review in the Arizona Supreme Court. That court stated that it considered appellants' assignments of error as urging (1) that the Juvenile Code, ARS s 8—201 to s 8—239, is unconstitutional because it does not require that parents and children be apprised of the specific charges, does not require proper notice of a hearing, and does not provide for an appeal; and (2) that the proceedings ***10** and order relating to Gerald constituted a denial of due process of law because of the absence of adequate notice of the charge and the hearing; failure to notify appellants of certain constitutional rights including the rights to counsel and to confrontation, and the privilege against self-incrimination; the use of unsworn hearsay testimony; and the failure to make a record of the proceedings. Appellants further asserted that it was error for the Juvenile Court to remove Gerald from the custody of his parents without a showing and finding of their unsuitability, and alleged a miscellany of other errors under state law.

The Supreme Court handed down an elaborate and wide-ranging opinion affirming dismissal of the writ and stating the court's conclusions as to the issues raised by appellants and other aspects of the juvenile process. In their jurisdictional statement and brief in this Court, appellants do not urge upon us all of the points passed upon by the Supreme Court of Arizona. They urge that we hold the Juvenile Code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which

the Juvenile Court has virtually unlimited discretion, and **1435 in which the following basic rights are denied:

1. Notice of the charges;

2. Right to counsel;

3. Right to confrontation and cross-examination;

4. Privilege against self-incrimination;

5. Right to a transcript of the proceedings; and

6. Right to appellate review.

We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize *11 that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution. [7]

*12 II.

The Supreme Court of Arizona held that due process of law is requisite to the constitutional validity of proceedings in which a court reaches the conclusion that a juvenile has been at fault, has engaged in conduct prohibited by law, or has otherwise misbehaved with the consequence that he is committed to an institution in which his freedom is curtailed. This conclusion is in accord with the decisions of a number of courts under both federal and state constitutions. [8]

**1436 [1] This Court has not heretofore decided the precise question. In Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), we considered the requirements for a valid waiver of the 'exclusive' jurisdiction of the Juvenile Court of the District of Columbia so that a juvenile could be tried in the adult criminal court of the District. Although our decision turned upon the language of the statute, we emphasized the necessity that 'the basic requirements of due process and fairness' he satisfied in such proceedings. [9] Haley v. State of Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948), involved the admissibility, in a state criminal court of general jurisdiction, of a confession by a 15-year-old boy. The Court held that the Fourteenth Amendment applied to *13 prohibit the use of the coerced confession. Mr. Justice Douglas said, 'Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.' [10] To the same effect is Gallegos v. State of Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962). Accordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.

We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile 'delinquents.' For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. See note 48, infra. We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play. [11] The problem is to ascertain *14 the precise impact of the due process requirement upon such proceedings.

From the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon—between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case, for example, it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury. [12] It is frequent practice that rules governing the arrest and interrogation of adults **1437 by the police are not observed in the case of juveniles. [13]

The history and theory underlying this development are well-known, but a recapitulation is necessary for purposes of this opinion. The Juvenile Court movement began in this country at the end of the last century. From the juvenile court statute adopted in Illinois in 1899, the system has spread to every State in the Union, the District of Columbia, and Puerto Rico. [14] The constitutionality

***15** of juvenile court laws has been sustained in over 40 jurisdictions against a variety of attacks.[15]

The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but 'What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.'[16] The child—essentially good, as they saw it—was to be made 'to feel that he is the object of (the state's) care and solicitude,'[17] not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was ***16** to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae.[18] The Latin phrase proved to be ****1438** a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child.[19] But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders.[20] In these old days, ***17** the state was not deemed to have authority to accord them fewer procedural rights than adults.

The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is 'delinquent'—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the 'custody' to which the child is entitled.[21] On this basis, proceedings involving juveniles were described as 'civil' not 'criminal' and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.[22]

Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the Kent case, supra, the results have ***18** not been entirely satisfactory.[23] Juvenile Court history has again ****1439** demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: 'The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts * * *.'[24] The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently ***19** resulted not in enlightened procedure, but in arbitrariness. The Chairman of the Pennsylvania Council of Juvenile Court Judges has recently observed: 'Unfortunately, loose procedures, high-handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process.'[25]

[2] Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate ***20** or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may ****1440** exercise.[26] As Mr. Justice ***21** Frankfurter has said: 'The history of American freedom is, in no small measure, the history of

procedure.'[27] But, in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. 'Procedure is to law what 'scientific method' is to science.'[28]

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process.[29] But it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings ***22** as that reported in an exceptionally reliable study of repeaters ****1441** or recidivism conducted by the Standford Research Institute for the President's Commission on Crime in the District of Columbia. This Commission's Report states:
'In fiscal 1966 approximately 66 percent of the 16- and 17-year-old juveniles referred to the court by the Youth Aid Division had been before the court previously. In 1965, 56 percent of those in the Receiving Home were repeaters. The SRI study revealed that 61 percent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that 42 percent had been referred at least twice before.' Id., at 773.

Certainly, these figures and the high crime rates among juveniles to which we have referred (supra, n. 26), could not lead us to conclude that the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders. We do not mean by this to denigrate the juvenile court process or to suggest that there are not aspects of the juvenile system relating to offenders which are valuable. But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication. For example, the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion.[30] Further, we are ***23** told that one of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a 'criminal.' The juvenile offender is now classed as a 'delinquent.' There is, of course, no reason why this should not continue. It is disconcerting, ***24** however, that this term has come to involve only slightly less ****1442** stigma than the term 'criminal' applied to adults.[31] It is also emphasized that in practically all jurisdictions, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify him for civil service appointment.[32] There is no reason why the application of due process requirements should interfere with such provisions.

Beyond this, it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior. As the Supreme Court of Arizona phrased it in the present case, the summary procedures of Juvenile Courts are sometimes defended by a statement that it is the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.' This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers.[33] Of more importance are police records. In most States the police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of ***25** juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply.[34] Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.[35]

[3] In any event, there is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and

court action relating to juveniles. It is interesting to note, however, that the Arizona Supreme Court used the confidentiality argument as a justification for the type of notice which is here attacked as inadequate for due process purposes. The parents were given merely general notice that their child was charged with 'delinquency.' No facts were specified. The Arizona court held, however, as we shall discuss, that in addition to this general 'notice,' the child and his parents must be advised 'of the facts involved in the case' no later than the initial hearing by the judge. Obviously, this does not 'bury' the word about the child's transgressions. It merely defers the time of disclosure to a point when it is of limited use to the child or his parents in preparing his defense or explanation.

Further, it is urged that the juvenile benefits from informal proceedings in the court. The early conception ***26** of the ****1443** Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help 'to save him from downward career.'[36] Then, as now, goodwill and compassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. For example, in a recent study, the sociologists Wheeler and Cottrell observe that when the procedural laxness of the 'parens patriae' attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed. They conclude as follows: 'Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.'[37] Of course, it is not suggested that juvenile court judges should fail appropriately to take account, in their demeanor and conduct, of the emotional and psychological attitude of the juveniles with whom they ***27** are confronted. While due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite, nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child.

Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional hours * * *.'[38] Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness[39] to rape and homicide.

****1444** In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and ***28** the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it—was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected?[40] Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility that the boy could be disciplined and dealt with at home, despite his previous transgressions.[41] Indeed, so far as appears in the record before us, except for some conversation with Gerald about his school work and his 'wanting to go to * * * Grand Canyon with his father,' the points to which the judge directed his attention were little different from those that would be involved ***29** in determining any charge of violation of a penal statute.[42] The essential difference between Gerald's case

and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18.

If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings.[43] For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search, and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, **1445 confrontation and opportunity for cross-examination would be guaranteed. So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere *30 verbiage, and reasons more persuasive than cliche can provide. As Wheeler and Cottrell have put it, 'The rhetoric of the juvenile court movement has developed without any necessarily close correspondence to the realities of court and institutional routines.'[44]

[4] In Kent v. United States, supra, we stated that the Juvenile Court Judge's exercise of the power of the state as parens patriae was not unlimited. We said that 'the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.'[45] With respect to the waiver by the Juvenile Court to the adult court of jurisdiction over an offense committed by a youth, we said that 'there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.'[46] We announced with respect to such waiver proceedings that while 'We do not mean * * * to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.'[47] We reiterate this view, here in connection with a juvenile court adjudication of 'delinquency,' as a requirement *31 which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution.[48]

We now turn to the specific issues which are presented to us in the present case.

III.

NOTICE OF CHARGES.

Appellants allege that the Arizona Juvenile Code is unconstitutional or alternatively that the proceedings before the Juvenile Court were constitutionally defective because of failure to provide adequate notice of the hearings. No notice was given to Gerald's parents when he was taken into custody on Monday, June 8. On that night, when Mrs. Gault went to the Detention Home, she was orally informed that there would be a hearing the next afternoon and was told the reason why Gerald was in custody. The only written notice Gerald's parents received at any time was a note on plain paper from Officer Flagg delivered on Thursday or Friday, June 11 or 12, to the effect that the judge had set Monday, June 15, 'for further Hearings on Gerald's delinquency.'

**1446 A 'petition' was filed with the court on June 9 by Officer Flagg, reciting only that he was informed and believed that 'said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare.' The applicable Arizona *32 statute provides for a petition to be filed in Juvenile Court, alleging in general terms that the child is 'neglected, dependent or delinquent.' The statute explicitly states that such a general allegation is sufficient, 'without alleging the facts.'[49] There is no requirement that the petition be served and it was not served upon, given to, or shown to Gerald or his parents.[50]

The Supreme Court of Arizona rejected appellants' claim that due process was denied because of inadequate notice. It stated that 'Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the

detention home.' The court also pointed out that the Gaults appeared at the two hearings 'without objection.' The court held that because 'the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past,' advance notice of the specific charges or basis for taking the juvenile into custody and for the hearing is not necessary. It held that the appropriate rule is that 'the infant and his parents or guardian will receive a petition only reciting a conclusion of delinquency.[51] But no later than the initial hearing by the judge, they must be advised of the facts involved in the ***33** case. If the charges are denied, they must be given a reasonable period of time to prepare.'

[5] **[6]** **[7]** **[8]** **[9]** **[10]** **[11]** We cannot agree with the court's conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'[52] It is obvious, as we have discussed above, that no purpose of shielding the child from the public stigma of knowledge of his having been taken into custody and scheduled for hearing is served by the procedure approved by the court below. The 'initial hearing' in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a ****1447** civil or criminal proceeding.[53] It does ***34** not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived.[54]

IV.

RIGHT TO COUNSEL

[12] **[13]** **[14]** **[15]** **[16]** **[17]** Appellants charge that the Juvenile Court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed out that '(t)here is disagreement (among the various jurisdictions) as to whether the court must advise the infant ***35** that he has a right to counsel.'[55] It noted its own decision in Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298 (1956), to the effect 'that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing.' (Emphasis added.) It referred to a provision of the Juvenile Code which it characterized as requiring 'that the probation officer shall look after the interests of neglected, delinquent and dependent children,' including representing their interests in ****1448** court.[56] The court argued that 'The parent and the probation officer may be relied upon to protect the infant's interests.' Accordingly it rejected the proposition that 'due process requires that an infant have a right to counsel.' It said that juvenile courts have the discretion, but not the duty, to allow such representation; it referred specifically to the situation in which the Juvenile Court discerns conflict between the child and his parents as an instance in which this discretion might be exercised. We do not agree. Probation ***36** officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the Detention Home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and in fact, is as arresting officer and witness against the child. Nor can the judge represent the child. There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. In adult proceedings, this contention has been foreclosed by decisions of this Court.[57] A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel

to cope with problems of law,[58] to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'[59] Just as in Kent v. United States, supra, 383 U.S., at 561—562, 86 S.Ct., at 1057—1058, we indicated our agreement with the United States Court of Appeals for the District of Columbia Circuit that the assistance of counsel is essential for purposes of waiver proceedings, so we hold now that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration ***37** in a state institution until the juvenile reaches the age of 21.[60]

During the last decade, court decisions,[61] experts,[62] and legislatures[63] ****1449** have demonstrated increasing recognition of this view. In at least one-third of the States, statutes ***38** now provide for the right of representation by retained counsel in juvenile delinquency proceedings, notice of the right, or assignment of counsel, or a combination of these. In other States, court rules have similar provisions.[64]

[18] The President's Crime Commission has recently recommended that in order to assure 'procedural justice for the child,' it is necessary that 'Counsel * * * be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.'[65] As stated by the authoritative ****1450** 'Standards ***39** for Juvenile and Family Courts,' published by the Children's Bureau of the United States Department of Health, Education, and Welfare:

'As a component part of a fair hearing required by due process guaranteed under the 14th amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the family is financially unable to employ counsel.' Standards, p. 57.

***40** This statement was 'reviewed' by the National Council of Juvenile Court Judges at its 1965 Convention and they 'found no fault' with it.[66] The New York Family Court Act contains the following statement:

'This act declares that minors have a right to the assistance of counsel of their own choosing or of law guardians[67] in neglect proceedings under article three and in proceedings to determine juvenile delinquency and whether a person is in need of supervision under article seven. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.'[68]

The Act provides that 'At the commencement of any hearing' under the ****1451** delinquency article of the statute, the juvenile and his parent shall be advised of the juvenile's ***41** 'right to be represented by counsel chosen by him or his parent * * * or by a law guardian assigned by the court * * *.'[69] The California Act (1961) also requires appointment of counsel.[70]

[19] We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

[20] **[21]** At the habeas corpus proceeding, Mrs. Gault testified that she knew that she could have appeared with counsel ***42** at the juvenile hearing. This knowledge is not a waiver of the right to counsel which she and her juvenile son had, as we have defined it. They had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver. Mrs. Gault's knowledge that she could employ counsel was not an 'intentional relinquishment or abandonment' of a fully known right.[71]

V.

CONFRONTATION, SELF-INCRIMINATION, CROSS-EXAMINATION

[22] Appellants urge that the writ of habeas corpus should have been granted because of the denial of the rights of confrontation and cross-examination in the

Juvenile Court hearings, and because the privilege against self-incrimination was not observed. The Juvenile Court Judge testified at the habeas corpus hearing that he had proceeded on the basis of Gerald's admissions at the two hearings. Appellants attack this on the ground that the admissions were obtained in disregard of the privilege against self-incrimination.[72] **1452 If the confession is disregarded, appellants argue that the delinquency conclusion, since it was fundamentally based on a finding that Gerald had made lewd remarks during the phone call to Mrs. Cook, is fatally defective for failure to accord the rights of confrontation and cross-examination which the Due Process Clause of the Fourteenth Amendment of the *43 Federal Constitution guarantees in state proceedings generally.[73]

Our first question, then, is whether Gerald's admission was improperly obtained and relied on as the basis of decision, in conflict with the Federal Constitution. For this purpose, it is necessary briefly to recall the relevant facts.

Mrs. Cook, the complainant, and the recipient of the alleged telephone call, was not called as a witness. Gerald's mother asked the Juvenile Court Judge why Mrs. Cook was not present and the judge replied that 'she didn't have to be present.' So far as appears, Mrs. Cook was spoken to only once, by Officer Flagg, and this was by telephone. The judge did not speak with her on any occasion. Gerald had been questioned by the probation officer after having been taken into custody. The exact circumstances of this questioning do not appear but any admissions Gerald may have made at this time do not appear in the record.[74] Gerald was also questioned by the Juvenile Court Judge at each of the two hearings. The judge testified in the habeas corpus proceeding that Gerald admitted making 'some of the lewd statements * * * (but not) any of the more serious lewd statements.' There was conflict and uncertainty among the witnesses at the habeas corpus proceeding—the Juvenile Court Judge, Mr. and Mrs. Gault, and the probation officer—as to what Gerald did or did not admit.

We shall assume that Gerald made admissions of the sort described by the Juvenile Court Judge, as quoted avove. Neither Gerald nor his parents were advised that *44 he did not have to testify or make a statement, or that an incriminating statement might result in his commitment as a 'delinquent.'

The Arizona Supreme Court rejected appellants' contention that Gerald had a right to be advised that he need not incriminate himself. It said: 'We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.'

In reviewing this conclusion of Arizona's Supreme Court, we emphasize again that we are here concerned only with a proceeding to determine whether a minor is a 'delinquent' and which may result in commitment to a state institution. Specifically, the question is whether, in such a proceeding, an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent. In light of Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), we must also consider whether, if the privilege against self-incrimination is available, it can effectively be waived unless counsel is present or the right to counsel has been waived.

**1453 It has long been recognized that the eliciting and use of confessions or admissions require careful scrutiny. Dean Wigmore states:
'The ground of distruct of confessions made in certain situations is, in a rough and indefinite way, judicial experience. There has been no careful collection of statistics of untrue confessions, nor has any great number of instances been even loosely reported * * * but enough have been verified to fortify the conclusion, based on ordinary observation of human conduct, that under certain stresses a person, especially one of defective mentality or peculiar *45 temperament, may falsely acknowledge guilt. This possibility arises wherever the innocent person is placed in such a situation that the untrue acknowledgment of guilt is at the time the more promising of two alternatives between which he is obliged to choose; that is, he chooses any risk that may be in falsely acknowledging guilt, in preference to some worse alternative associated with silence.

'The principle, then, upon which a confession may be excluded is that it is, under certain conditions, testimonially untrustworthy * * *. (T)he essential feature is that the principle of exclusion is a testimonial one,

analogous to the other principles which exclude narrations as untrustworthy * * *.' [75]

This Court has emphasized that admissions and confessions of juveniles require special caution. In Haley v. State of Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224, where this Court reversed the conviction of a 15-year-old boy for murder, Mr. Justice Douglas said:
'What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man could and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight ***46** to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.' [76]

In Haley, as we have discussed, the boy was convicted in an adult court, and not a juvenile court. In notable decisions, the New York Court of Appeals and the Supreme Court of New Jersey have recently considered decisions of Juvenile Courts in which boys have been adjudged 'delinquent' on the basis of confessions obtained in circumstances comparable to those in Haley. In both instances, the ****1454** State contended before its highest tribunal that constitutional requirements governing inculpatory statements applicable in adult courts do not apply to juvenile proceedings. In each case, the State's contention was rejected, and the juvenile court's determination of delinquency was set aside on the grounds of inadmissibility of the confession. In Matters of W. and S., 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966) (opinion by Keating, J.), and In Interests of Carlo and Stasilowicz, 48 N.J. 224, 225 A.2d 110 (1966) (opinion by Proctor, J.).

***47** **[23]** **[24]** **[25]** The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and—in a philosophical sense—insists upon the equality of the individual and the state. [77] In other words, the privilege has a broader and deeper thrust than the rule which prevents the use of confessions which are the product of coercion because coercion is thought to carry with it the danger of unreliability. One of its purposes is to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction. [78]

[26] **[27]** **[28]** It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive. As Mr. Justice White, concurring, stated in Murphy v. Waterfront Commission, 378 U.S. 52, 94, 84 S.Ct. 1594, 1611, 12 L.Ed.2d 678 (1964):
'The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory. * * * it protects any disclosures ***48** which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used.' [79] (Emphasis added.)

With respect to juveniles, both common observation and expert opinion emphasize that the 'distrust of confessions made in certain situations' to which Dean Wigmore referred in the passage quoted supra, at 1453, is imperative in the case of children from an early age through adolescence. In New York, for example, the recently

enacted Family Court Act provides that the juvenile and his parents must be advised at the start of the hearing of his right to remain silent.[80] The New York statute also provides that the police must attempt to communicate with the juvenile's parents before questioning him,[81] and that absent **1455 'special circumstances' a confession may not be obtained from a child prior to notifying his parents or relatives and releasing the child either to them or to the Family Court.[82] In In Matters of W. and S., referred to above, the New York Court of Appeals held that the privilege against self-incrimination applies in juvenile delinquency cases and requires the exclusion of involuntary confessions, and that *49 People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001 (1932), holding the contrary, had been specifically overruled by statute.

The authoritative 'Standards for Juvenile and Family Courts' concludes that, 'Whether or not transfer to the criminal court is a possibility, certain procedures should always be followed. Before being interviewed (by the police), the child and his parents should be informed of his right to have legal counsel present and to refuse to answer questions or be fingerprinted[83] if he should so decide.'[84]

[29] [30] Against the application to juveniles of the right to silence, it is argued that juvenile proceedings are 'civil' and not 'criminal,' and therefore the privilege should not apply. It is true that the statement of the privilege in the Fifth Amendment, which is applicable to the States by reason of the Fourteenth Amendment, is that no person 'shall be compelled in any criminal case to be a witness against himself.' However, it is also clear that the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites. The privilege may, for example, be claimed in a civil or administrative proceeding, if the statement is or may be inculpatory.[85]

[31] [32] It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to 'criminal' involvement. In the first place, juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal' for purposes of the privilege against self-incrimination. To hold *50 otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings. Indeed, in over half of the States, there is not even assurance that the juvenile will be kept in separate institutions, apart from adult 'criminals.' In those States juveniles may be placed in or transferred to adult penal institutions[86] after having been found 'delinquent' by a juvenile court. For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.' And our Constitution guarantees that no person shall be 'compelled' to be a witness against himself when he is threatened with deprivation of his liberty—a command which this Court has broadly applied and generously implemented in accordance with the teaching of the history of the privilege and its **1456 great office in mankind's battle for freedom.[87]

In addition, apart from the equivalence for this purpose of exposure to commitment as a juvenile delinquent and exposure to imprisonment as an adult offender, the fact of the matter is that there is little or no assurance in Arizona, as in most if not all of the States, that a juvenile apprehended and interrogated by the police or even by the Juvenile Court itself will remain outside of the reach of adult courts as a consequence of the offense for which he has been taken into custody. In Arizona, as in other States, provision is made for Juvenile Courts to relinquish *51 or waive jurisdiction to the ordinary criminal courts.[88] In the present case, when Gerald Gault was interrogated concerning violation of a section of the Arizona Criminal Code, it could not be certain that the Juvenile Court Judge would decide to 'suspend' criminal prosecution in court for adults by proceeding to an adjudication in Juvenile Court.[89]

It is also urged, as the Supreme Court of Arizona here asserted, that the juvenile and presumably his parents should not be advised of the juvenile's right to silence because confession is good for the child as the commencement of the assumed therapy of the juvenile court process, and he should be encouraged to assume an attitude of trust and confidence toward the officials of the juvenile process. This proposition has been subjected to widespread challenge on the basis of current reappraisals of the rhetoric and realities of the handling of juvenile offenders.

In fact, evidence is accumulating that confessions by juveniles do not aid in 'individualized treatment,' as the

court below put it, and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose. In light of the observations of Wheeler and Cottrell, [90] and others, it seems probable that where children are induced to confess by 'paternal' urgings on the part of officials and the confession is then followed ***52** by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished. [91]

Further, authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children. This Court's observations in Haley v. State of Ohio are set forth above. The recent decision of the New York Court of Appeals referred to above, In Matters of W. and S. deals with a dramatic and, it is to be hoped, extreme example. Two 12-year-old Negro boys were ****1457** taken into custody for the brutal assault and rape of two aged domestics, one of whom died as the result of the attack. One of the boys was schizophrenic and had been locked in the security ward of a mental institution at the time of the attacks. By a process that may best be described as bizarre, his confession was obtained by the police. A psychiatrist testified that the boy would admit 'whatever he thought was expected so that he could get out of the immediate situation.' The other 12-year-old also 'confessed.' Both confessions were in specific detail, albeit they contained various inconsistencies. The Court of Appeals, in an opinion by Keating, J., concluded that the confessions were products of the will of the police instead of the boys. The confessions were therefore held involuntary and the order of the Appellate Division affirming the order of the Family Court adjudging the defendants to be juvenile delinquents was reversed.

A similar and equally instructive case has recently been decided by the Supreme Court of New Jersey. In Interests of Carlo and Stasilowicz, supra. The body of a 10-year-old girl was found. She had been strangled. Neighborhood boys who knew the girl were questioned. ***53** The two appellants, aged 13 and 15, confessed to the police, with vivid detail and some inconsistencies. At the Juvenile Court hearing, both denied any complicity in the killing. They testified that their confessions were the product of fear and fatigue due to extensive police grilling. The Juvenile Court Judge found that the confessions were voluntary and admissible. On appeal, in an extensive opinion by Proctor, J., the Supreme Court of New Jersey reversed. It rejected the State's argument that the constitutional safeguard of voluntariness governing the use of confessions does not apply in proceedings before the Juvenile Court. It pointed out that under New Jersey court rules, juveniles under the age of 16 accused of committing a homicide are tried in a proceeding which 'has all of the appurtenances of a criminal trial,' including participation by the county prosecutor, and requirements that the juvenile be provided with counsel, that a stenographic record be made, etc. It also pointed out that under New Jersey law, the confinement of the boys after reaching age 21 could be extended until they had served the maximum sentence which could have been imposed on an adult for such a homicide, here found to be second-degree murder carrying up to 30 years' imprisonment. [92] The court concluded that the confessions were involuntary, stressing that the boys, contrary to statute, were placed in the police station and there interrogated; [93] that the parents of both boys were not allowed to see them while they ***54** were being interrogated; [94] that inconsistencies appeared among the various statements of the boys and with the objective evidence of the crime; and that there were protracted periods of questioning. The court noted the State's contention that both boys were advised of their constitutional rights before they made their statements, but it held that this should not be given 'significant weight in our ****1458** determination of voluntariness.' [95] Accordingly, the judgment of the Juvenile Court was reversed.

In a recent case before the Juvenile Court of the District of Columbia, Judge Ketcham rejected the proffer of evidence as to oral statements made at police headquarters by four juveniles who had been taken into custody for alleged involvement in an assault and attempted robbery. In the Matter of Four Youths, Nos. 28—776—J, 28—778—J, 28—783—J, 28—859—J, Juvenile Court of the District of Columbia, April 7, 1961. The court explicitly stated that it did not rest its decision on a showing that ***55** the statements were involuntary, but because they were untrustworthy. Judge Ketcham said:

> 'Simply stated, the Court's decision in this case rests upon the considered opinion—after nearly four busy years on the Juvenile Court bench during which the testimony of thousands of such juveniles has been heard—that

> the statements of adolescents under 18 years of age who are arrested and charged with violations of law are frequently untrustworthy and often distort the truth.'

[33] **[34]** We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair. [96]

***56** **[35]** **[36]** The 'confession' of Gerald Gault was first obtained by Officer Flagg, out of the presence of Gerald's parents, without counsel and without advising him of his right to silence, as far as appears. The judgment of the Juvenile Court was stated by the judge to be based on Gerald's admissions in court. Neither 'admission' was reduced to writing, and, to say the least, the process by which the 'admissions,' were obtained and received must be characterized as lacking the certainty and order which are required of proceedings of such formidable ****1459** consequences. [97] Apart from the 'admission,' there was nothing upon which a judgment or finding might be based. There was no sworn testimony. Mrs. Cook, the complainant, was not present. The Arizona Supreme Court held that 'sworn testimony must be required of all witnesses including police officers, probation officers and others who are part of or officially related to the juvenile court structure.' We hold that this is not enough. No reason is suggested or appears for a different rule in respect of sworn testimony in juvenile courts than in adult tribunals. Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of 'delinquency' and an order committing Gerald to a state institution for a maximum of six years.

The recommendations in the Children's Bureau's 'Standards for Juvenile and Family Courts' are in general accord with our conclusions. They state that testimony should be under oath and that only competent, material and relevant evidence under rules applicable ***57** to civil cases should be admitted in evidence. [98] The New York Family Court Act contains a similar provision. [99]

[37] As we said in Kent v. United States, 383 U.S. 541, 554, 86 S.Ct. 1045, 1053, 16 L.Ed.2d 84 (1966), with respect to waiver proceedings, 'there is no place in our system of law of reaching a result of such tremendous consequences without ceremony * * *.' We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.

VI.

APPELLATE REVIEW AND TRANSCRIPT OF PROCEEDINGS.

Appellants urge that the Arizona statute is unconstitutional under the Due Process Clause because, as construed by its Supreme Court, 'there is no right of appeal ***58** from a juvenile court order * * *.' The court held that there is no right to a transcript because there is no right to appeal and because the proceedings are confidential and any record must be destroyed after a prescribed period of time. [100] Whether a transcript or other recording is made, it held, is a matter for the discretion of the juvenile court.

This Court has not held that a State is required by the Federal Constitution ****1460** 'to provide appellate courts or a right to appellate review at all.' [101] In view of the fact that we must reverse the Supreme Court of Arizona's affirmance of the dismissal of the writ of habeas corpus for other reasons, we need not rule on this question in the present case or upon the failure to provide a transcript or recording of the hearings—or, indeed, the failure of the Juvenile Judge to state the grounds for his conclusion. Cf. Kent v. United States, supra, 383 U.S., at 561, 86 S.Ct., at 1057, where we

said, in the context of a decision of the juvenile court waiving jurisdiction to the adult court, which by local law, was permissible: '* * * it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor.' As the present case illustrates, the consequences of failure to provide an appeal, to record the proceedings, or to make findings or state the grounds for the juvenile court's conclusion may be to throw a burden upon the machinery for habeas corpus, to saddle the reviewing process with the burden of attempting to reconstruct a record, and to impose upon the Juvenile Judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him. [102]

***59** For the reasons stated, the judgment of the Supreme Court of Arizona is reversed and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Judgment reversed and cause remanded with directions.

Mr. Justice BLACK, concurring.

The juvenile court laws of Arizona and other States, as the Court points out, are the result of plans promoted by humane and forward-looking people to provide a system of courts, procedures, and sanctions deemed to be less harmful and more lenient to children than to adults. For this reason such state laws generally provide less formal and less public methods for the trial of children. In line with this policy, both courts and legislators have shrunk back from labeling these laws as 'criminal' and have preferred to call them 'civil.' This, in part, was to prevent the full application to juvenile court cases of the Bill of Rights safeguards, including notice as provided in the Sixth Amendment, [1] the right to counsel guaranteed by the Sixth, [2] the right against self- ***60** incrimination guaranteed by the Fifth, [3] and the right to confrontation guaranteed ****1461** by the Sixth. [4] The Court here holds, however, that these four Bill of Rights safeguards apply to protect a juvenile accused in a juvenile court on a charge under which he can be imprisoned for a term of years. This holding strikes a well-nigh fatal blow to much that is unique about the juvenile courts in the Nation. For this reason, there is much to be said for the position of my Brother STEWART that we should not pass on all these issues until they are more squarely presented. But since the majority of the Court chooses to decide all of these questions, I must either do the same or leave my views unexpressed on the important issues determined. In these circumstances, I feel impelled to express my views.

The juvenile court planners envisaged a system that would practically immunize juveniles from 'punishment' for 'crimes' in an effort to save them from youthful indiscretions and stigmas due to criminal charges or convictions. I agree with the Court, however, that this exalted ideal has failed of achievement since the beginning of the system. Indeed, the state laws from the first one on contained provisions, written in emphatic terms, for arresting and charging juveniles with violations of state criminal laws, as well as for taking juveniles by force of law away from their parents and turning them over to different individuals or groups or for confinement within some state school or institution for a number of years. The latter occurred in this case. Young Gault was arrested and detained on a charge of violating an Arizona penal law by using vile and offensive language to a lady on the telephone. If an adult, he ***61** could only have been fined or imprisoned for two months for his conduct. As a juvenile, however, he was put through a more or less secret, informal hearing by the court, after which he was ordered, or more realistically, 'sentenced,' to confinement in Arizona's Industrial School until he reaches 21 years of age. Thus, in a juvenile system designed to lighten or avoid punishment for criminality, he was ordered by the State to six years' confinement in what is in all but name a penitentiary or jail.

Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards. I consequently agree with the Court that the Arizona law as applied here denied to the parents and their son the right of notice, right to counsel, right against self-incrimination, and right to confront the witnesses against young Gault. Appellants are entitled to these rights, not because 'fairness, impartiality and orderliness—in short, the essentials of due process'—

require them and not because they are 'the procedural rules which have been fashioned from the generality of due process,' but because they are specifically and unequivocally granted by provisions of the Fifth and Sixth Amendments which the Fourteenth Amendment makes applicable to the States.

A few words should be added because of the opinion of my Brother HARLAN who rests his concurrence and ***62** dissent on the Due Process Clause alone. He reads that clause alone as allowing this ****1462** Court 'to determine what forms of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings' 'in a fashion consistent with the 'traditions and conscience of our people.'' Cf. Rochin v. People of California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183. He believes that the Due Process Clause gives this Court the power, upon weighing a 'compelling public interest,' to impose on the States only those specific constitutional rights which the Court deems 'imperative' and 'necessary' to comport with the Court's notions of 'fundamental fairness.'

I cannot subscribe to any such interpretation of the Due Process Clause. Nothing in its words or its history permits it, and 'fair distillations of relevant judicial history' are no substitute for the words and history of the clause itself. The phrase 'due process of law' has through the years evolved as the successor in purpose and meaning to the words 'law of the land' in Magna Charta which more plainly intended to call for a trial according to the existing law of the land in effect at the time an alleged offense had been committed. That provision in Magna Charta was designed to prevent defendants from being tried according to criminal laws or proclamations specifically promulgated to fit particular cases or to attach new consequences to old conduct. Nothing done since Magna Charta can be pointed to as intimating that the Due Process Clause gives courts power to fashion laws in order to meet new conditions, to fit the 'decencies' of changed conditions, or to keep their consciences from being shocked by legislation, state or federal.

And, of course, the existence of such awesome judicial power cannot be buttressed or created by relying on the word 'procedural.' Whether labeled as 'procedural' or 'substantive,' the Bill of Rights safeguards, far from ***63** being mere 'tools with which' other unspecified 'rights could be fully vindicated,' are the very vitals of a sound constitutional legal system designed to protect and safeguard the most cherished liberties of a free people. These safeguards were written into our Constitution not by judges but by Constitution makers. Freedom in this Nation will be far less secure the very moment that it is decided that judges can determine which of these safeguards 'should' or 'should not be imposed' according to their notions of what constitutional provisions are consistent with the 'traditions and conscience of our people.' Judges with such power, even though they profess to 'proceed with restraint,' will be above the Constitution, with power to write it, not merely to interpret it, which I believe to be the only power constitutionally committed to judges.

There is one ominous sentence, if not more, in my Brother HARLAN's opinion which bodes ill, in my judgment, both for legislative programs and constitutional commands. Speaking of procedural safeguards in the Bill of Rights, he says:

> 'These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments, but that, conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for achieving the purposes of legislative programs. * * * (T)he court should necessarily proceed with restraint.'

It is to be noted here that this case concerns Bill of Rights Amendments; that the 'procedure' power my Brother HARLAN claims for the Court here relates solely to Bill of Rights safeguards; and that he is here claiming for the Court a supreme power to fashion new Bill of Rights safeguards according to the Court's notions of ***64** what fits tradition and conscience. I do not believe that the Constitution vests any ****1463** such power in judges, either in the Due Process Clause or anywhere else. Consequently, I do not vote to invalidate this Arizona law on the ground that it is 'unfair' but solely on the ground that it violates the Fifth and Sixth Amendments made obligatory on the States by the Fourteenth Amendment. Cf. Pointer v. State of Texas, 380 U.S. 400, 412, 85 S.Ct. 1065, 1072, 13 L.Ed.2d 923 (Goldberg, J., concurring). It is enough for me that the Arizona law as here applied collides head-on with the Fifth and Sixth Amendments in

the four respects mentioned. The only relevance to me of the Due Process Clause is that it would, of course, violate due process or the 'law of the land' to enforce a law that collides with the Bill of Rights.

Mr. Justice WHITE, concurring.

I join the Court's opinion except for Part V. I also agree that the privilege against compelled self-incrimination applies at the adjudicatory stage of juvenile court proceedings. I do not, however, find an adequate basis in the record for determination whether that privilege was violated in this case. The Fifth Amendment protects a person from being 'compelled' in any criminal proceeding to be a witness against himself. Compulsion is essential to a violation. It may be that when a judge, armed with the authority he has or which people think he has, asks questions of a party or a witness in an adjudicatory hearing, that person, especially if a minor, would feel compelled to answer, absent a warning to the contrary or similar information from some other source. The difficulty is that the record made at the habeas corpus hearing, which is the only information we have concerning the proceedings in the juvenile court, does not directly inform us whether Gerald Gault or his parents were told of Gerald's right to remain silent; nor does it reveal whether the parties ***65** were aware of the privilege from some other source, just as they were already aware that they had the right to have the help of counsel and to have witnesses on their behalf. The petition for habeas corpus did not raise the Fifth Amendment issue nor did any of the witnesses focus on it.

I have previously recorded my views with respect to what I have deemed unsound applications of the Fifth Amendment. See, for example, Miranda v. State of Arizona, 384 U.S. 436, 526, 86 S.Ct. 1602, 1654, 16 L.Ed.2d 694, and Malloy v. Hogan, 378 U.S. 1, 33, 84 S.Ct. 1489, 1506, 12 L.Ed.2d 653, dissenting opinions. These views, of course, have not prevailed. But I do hope that the Court will proceed with some care in extending the privilege, with all its vigor, to proceedings in juvenile court, particularly the nonadjudicatory stages of those proceedings.

In any event, I would not reach the Fifth Amendment issue here. I think the Court is clearly ill-advised to review this case on the basis of Miranda v. State of Arizona, since the adjudication of delinquency took place in 1964, long before the Miranda decision. See Johnson v. State of New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882. Under these circumstances, this case is a poor vehicle for resolving a difficult problem. Moreover, no prejudice to appellants is at stake in this regard. The judgment below must be reversed on other grounds and in the event further proceedings are to be had, Gerald Gault will have counsel available to advise him.

For somewhat similar reasons, I would not reach the questions of confrontation and cross-examination which are also dealt with in Part V of the opinion.

Mr. Justice HARLAN, concurring in part and dissenting in part.

Each of the 50 States has created a system of juvenile or family courts, in which distinctive rules are employed and special consequences imposed. The jurisdiction of ***66** these courts commonly extends ****1464** both to cases which the States have withdrawn from the ordinary processes of criminal justice, and to cases which involve acts that, if performed by an adult, would not be penalized as criminal. Such courts are denominated civil, not criminal, and are characteristically said not to administer criminal penalties. One consequence of these systems, at least as Arizona construes its own, is that certain of the rights guaranteed to criminal defendants by the Constitution are withheld from juveniles. This case brings before this Court for the first time the question of what limitations the the Constitution places upon the operation of such tribunals. [1] For reasons which follow, I have concluded that the Court has gone too far in some respects, and fallen short in others, in assessing the procedural requirements demanded by the Fourteenth Amendment.

I.

I must first acknowledge that I am unable to determine with any certainty by what standards the Court decides that Arizona's juvenile courts do not satisfy the obligations of due process. The Court's premise, itself the product of reasoning which is not described, is that the 'constitutional and theoretical basis' of state systems of juvenile and family courts is 'debatable'; it buttresses these doubts by marshaling a body of opinion which suggests that the accomplishments of these courts have often fallen short of expectations. [2] The Court does not ***67** indicate at what points or for what purposes such views, held

either by it or by other observers, might be pertinent to the present issues. Its failure to provide any discernible standard for the measurement of due process in relation to juvenile proceedings unfortunately might be understood to mean that the Court is concerned principally with the wisdom of having such courts at all.

If this is the source of the Court's dissatisfaction, I cannot share it. I should have supposed that the constitutionality of juvenile courts was beyond proper question under the standards now employed to assess the substantive validity of state legislation under the Due Process Clause of the Fourteenth Amendment. It can scarcely be doubted that it is within the State's competence to adopt measures reasonably calculated to meet more effectively the persistent problems of juvenile delinquency; as the opinion for the Court makes abundantly plain, these are among the most vexing and ominous of the concerns which now face communities throughout the country.

The proper issue here is, however, not whether the State may constitutionally treat juvenile offenders through a system of specialized courts, but whether the proceedings in Arizona's juvenile courts include procedural guarantees which satisfy the requirements of the Fourteenth Amendment. Among the first premises of our constitutional system is the obligation to conduct any proceeding in which an individual may be deprived of liberty or property in a fashion consistent with the 'traditions and conscience of our people.' Snyder v. Commonwealth of Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674. The importance of these procedural guarantees is doubly intensified here. First, many of the problems with which Arizona is concerned ***68** are among those ****1465** traditionally confined to the processes of criminal justice; their disposition necessarily affects in the most direct and substantial manner the liberty of individual citizens. Quite obviously, systems of specialized penal justice might permit erosion, or even evasion, of the limitations placed by the Constitution upon state criminal proceedings. Second, we must recognize that the character and consequences of many juvenile court proceedings have in fact closely resembled those of ordinary criminal trials. Nothing before us suggests that juvenile courts were intended as a device to escape constitutional constraints, but I entirely agree with the Court that we are nonetheless obliged to examine with circumspection the procedural guarantees the State has provided.

The central issue here, and the principal one upon which I am divided from the Court, is the method by which the procedural requirements of due process should be measured. It must at the outset be emphasized that the protections necessary here cannot be determined by resort to any classification of juvenile proceedings either as criminal or as civil, whether made by the State or by this Court. Both formulae are simply too imprecise to permit reasoned analysis of these difficult constitutional issues. The Court should instead measure the requirements of due process by reference both to the problems which confront the State and to the actual character of the procedural system which the State has created. The Court has for such purposes chiefly examined three connected sources: first, the 'settled usages and modes of proceeding,' Den ex dem. Murray v. Hoboken Land & Improvement Co., 18 How. 272, 277, 15 L.Ed. 372; second, the 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'. Hebert v. State of Louisiana, 272 U.S. 312, 316, 47 S.Ct. 103, 104, 71 L.Ed. 270 and third, the character and requirements of the circumstances presented in each situation. FCC v. WJR, The Goodwill Station, 337 U.S. 265, 277, 69 S.Ct. 1097, 1104, 93 L.Ed. 1353; ***69** Yakus v. United States, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834. See, further, my dissenting opinion in Poe v. Ullman, 367 U.S. 497, 522, 81 S.Ct. 1752, 1765, 6 L.Ed.2d 989, and compare my opinion concurring in the result in Pointer v. State of Texas, 380 U.S. 400, 408, 85 S.Ct. 1065, 1070. Each of these factors is relevant to the issues here, but it is the last which demands particular examination.

The Court has repeatedly emphasized that determination of the constitutionally required procedural safeguards in any situation requires recognition both of the 'interests affected' and of the 'circumstances involved.' FCC v. WJR, The Goodwill Station, supra, 337 U.S. at 277, 69 S.Ct. at 1104. In particular, a 'compelling public interest' must, under our cases, be taken fully into account in assessing the validity under the due process clauses of state or federal legislation and its application. See, e.g., Yakus v. United States, supra, 321 U.S. at 442, 64 S.Ct. at 675; Bowles v. Willingham, 321 U.S. 503, 520, 64 S.Ct. 641, 650, 88 L.Ed. 892; Miller v. Schoene, 276 U.S. 272, 279, 48 S.Ct. 246, 247, 72 L.Ed. 568. Such interests would never warrant arbitrariness or the diminution of any specifically assured constitutional right, Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398, 426, 54 S.Ct. 231, 235, 78 L.Ed. 413, but they are an essential element of the context

through which the legislation and proceedings under it must be read and evaluated.

No more evidence of the importance of the public interests at stake here is required than that furnished by the opinion of the Court; it indicates that 'some 601,000 children under 18, or 2% of all children between 10 and 17, came before juvenile courts' in 1965, and that 'about one-fifth of all arrests for serious crimes' in 1965 were of juveniles. The Court adds that the rate of juvenile **1466 crime is steadily rising. All this, as the Court suggests, indicates the importance of these due process issues, but it mirrors no less vividly that state authorities are confronted by formidable and immediate problems involving the most fundamental social values. The state legislatures have determined that the most hopeful solution for *70 these problems is to be found in specialized courts, organized under their own rules and imposing distinctive consequences. The terms and limitations of these systems are not identical, nor are the procedural arrangements which they include, but the States are uniform in their insistence that the ordinary processes of criminal justice are inappropriate, and that relatively informal proceedings, dedicated to premises and purposes only imperfectly reflected in the criminal law, are instead necessary.

It is well settled that the Court must give the widest deference to legislative judgments that concern the character and urgency of the problems with which the State is confronted. Legislatures are, as this Court has often acknowledged, the 'main guardian' of the public interest, and, within their constitutional competence, their understanding of that interest must be accepted as 'wellnigh' conclusive. Berman v. Parker, 348 U.S. 26, 32, 75 S.Ct. 98, 102, 99 L.Ed. 27. This principle does not, however, reach all the questions essential to the resolution of this case. The legislative judgments at issue here embrace assessments of the necessity and wisdom of procedural guarantees; these are questions which the Constitution has entrusted at least in part to courts, and upon which courts have been understood to possess particular competence. The fundamental issue here is, therefore, in what measure and fashion the Court must defer to legislative determinations which encompass constitutional issues of procedural protection.

It suffices for present purposes to summarize the factors which I believe to be pertinent. It must first be emphasized that the deference given to legislators upon substantive issues must realistically extend in part to ancillary procedural questions. Procedure at once reflects and creates substantive rights, and every effort of courts since the beginnings of the common law to separate the two has proved essentially futile. The distinction between them is particularly inadequate here, where the *71 legislature's substantive preferences directly and unavoidably require judgments about procedural issues. The procedural framework is here a principal element of the substantive legislative system; meaningful deference to the latter must include a portion of deference to the former. The substantive-procedural dichotomy is, nonetheless, an indispensable tool of analysis, for it stems from fundamental limitations upon judicial authority under the Constitution. Its premise is ultimately that courts may not substitute for the judgments of legislators their own understanding of the public welfare, but must instead concern themselves with the validity under the Constitution of the methods which the legislature has selected. See e.g., McLean v. State of Arkansas, 211 U.S. 539, 547, 29 S.Ct. 206, 208, 53 L.Ed. 315; Olsen v. State of Nebraska, 313 U.S. 236, 246—247, 61 S.Ct. 862, 865, 85 L.Ed. 1305. The Constitution has in this manner created for courts and legislators areas of primary responsibility which are essentially congruent to their areas of special competence. Courts are thus obliged both by constitutional command and by their distinctive functions to bear particular responsibility for the measurement of procedural due process. These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments, but that, conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for **1467 achieving the purposes of legislative programs. Plainly, courts can exercise such care only if they have in each case first studied thoroughly the objectives and implementation of the program at stake; if, upon completion of those studies, the effect of extensive procedural restrictions upon valid legislative purposes cannot be assessed with reasonable certainty, the court should necessarily proceed with restraint.

The foregoing considerations, which I believe to be fair distillations of relevant judicial history, suggest *72 three criteria by which the procedural requirements of due process should be measured here: first, no more restrictions should be imposed than are imperative to assure the proceedings' fundamental fairness; second, the restrictions which are imposed should be those which preserve, so far as possible, the essential elements of

the State's purpose; and finally, restrictions should be chosen which will later permit the orderly selection of any additional protections which may ultimately prove necessary. In this way, the Court may guarantee the fundamental fairness of the proceeding, and yet permit the State to continue development of an effective response to the problems of juvenile crime.

II.

Measured by these criteria, only three procedural requirements should, in my opinion, now be deemed required of state juvenile courts by the Due Process Clause of the Fourteenth Amendment: first, timely notice must be provided to parents and children of the nature and terms of any juvenile court proceeding in which a determination affecting their rights or interests may be made; second, unequivocal and timely notice must be given that counsel may appear in any such proceeding in behalf of the child and its parents, and that in cases in which the child may be confined in an institution, counsel may, in circumstances of indigency, be appointed for them; and third, the court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings. These requirements would guarantee to juveniles the tools with which their rights could be fully vindicated, and yet permit the States to pursue without unnecessary hindrance the purposes which they believe imperative in this field. Further, their imposition now would later ***73** permit more intelligent assessment of the necessity under the Fourteenth Amendment of additional requirements, by creating suitable records from which the character and deficiencies of juvenile proceedings could be accurately judged. I turn to consider each of these three requirements.

The Court has consistently made plain that adequate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding. See, e.g., Roller v. Holly, 176 U.S. 398, 409, 20 S.Ct. 410, 413, 44 L.Ed. 520; Coe v. Armour Fertilizer Works, 237 U.S. 413, 424, 35 S.Ct. 625, 628, 59 L.Ed. 1027. Notice is ordinarily the prerequisite to effective assertion of any constitutional or other rights; without it, vindication of those rights must be essentially fortuitous. So fundamental a protection can neither be spared here nor left to the 'favor or grace' of state authorities. Central of Georgia Ry. v. Wright, 207 U.S. 127, 138, 28 S.Ct. 47, 51, 52 L.Ed. 134; Coe v. Armour Fertilizer Works, supra, 237 U.S. at 425, 35 S.Ct. at 628.

Provision of counsel and of a record, like adequate notice, would permit the juvenile to assert very much more effectively his rights and defenses, both in the juvenile proceedings and upon direct or collateral review. The Court has frequently emphasized their importance in proceedings in which an individual may be deprived of his liberty, see Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, and Griffin v. People of State of Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891; this reasoning must include with special force those who are ****1468** commonly inexperienced and immature. See Powell v. State of Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158. The facts of this case illustrate poignantly the difficulties of review without either an adequate record or the participation of counsel in the proceeding's initial stages. At the same time, these requirements should not cause any substantial modification in the character of juvenile court proceedings: counsel, although now present in only a small percentage of juvenile cases, have apparently already appeared without ***74** incident in virtually all juvenile courts;[3] and the maintenance of a record should not appreciably alter the conduct of these proceedings.

The question remains whether certain additional requirements, among them the privilege against self-incrimination, confrontation, and cross-examination, must now, as the Court holds, also be imposed. I share in part the views expressed in my Brother WHITE'S concurring opinion, but believe that there are other, and more deep-seated, reasons to defer, at least for the present, the imposition of such requirements.

Initially, I must vouchsafe that I cannot determine with certainty the reasoning by which the Court concludes that these further requirements are now imperative. The Court begins from the premise, to which it gives force at several points, that juvenile courts need not satisfy 'all of the requirements of a criminal trial.' It therefore scarcely suffices to explain the selection of these particular procedural requirements for the Court to declare that juvenile court proceedings are essentially criminal, and thereupon to recall that these are requisites for a criminal trial. Nor does the Court's voucher of 'authoritative opinion,' which consists of four extraordinary juvenile cases, contribute materially to the solution of these issues. The Court has, even under its own premises, asked the wrong questions: the problem here is to determine what forms of procedural protection are necessary to guarantee

the fundamental fairness of juvenile proceedings, and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts.

***75** In my view, the Court should approach this question in terms of the criteria, described above, which emerge from the history of due process adjudication. Measured by them, there are compelling reasons at least to defer imposition of these additional requirements. First, quite unlike notice, counsel, and a record, these requirements might radically alter the character of juvenile court proceedings. The evidence from which the Court reasons that they would not is inconclusive,[4] and other available evidence suggests that they very likely would.[5] At ****1469** the least, it is plain that these additional requirements would contribute materially to the creation in these proceedings of the atmosphere of an ordinary criminal trial, and would, even if they do no more, thereby largely frustrate a central purpose of these specialized courts. Further, these are restrictions intended to conform to the demands of an intensely adversary system of criminal justice; the broad purposes which they represent might be served in juvenile courts with equal effectiveness by procedural devices more consistent with the premises of proceedings ***76** in those courts. As the Court apparently acknowledges, the hazards of self-accusation, for example, might be avoided in juvenile proceedings without the imposition of all the requirements and limitations which surround the privilege against self-incrimination. The guarantee of adequate notice, counsel, and a record would create conditions in which suitable alternative procedures could be devised; but, unfortunately, the Court's haste to impose restrictions taken intact from criminal procedure may well seriously hamper the development of such alternatives. Surely this illustrates that prudence and the principles of the Fourteenth Amendment alike require that the Court should now impose no more procedural restrictions than are imperative to assure fundamental fairness, and that the States should instead be permitted additional opportunities to develop without unnecessary hindrance their systems of juvenile courts.

I find confirmation for these views in two ancillary considerations. First, it is clear that an uncertain, but very substantial number of the cases brought to juvenile courts involve children who are not in any sense guilty of criminal misconduct. Many of these children have simply the misfortune to be in some manner distressed; others have engaged in conduct, such as truancy, which is plainly not criminal.[6] Efforts are now being made to develop effective, and entirely noncriminal, methods of treatment for these children.[7] In such cases, the state authorities ***77** are in the most literal sense acting in loco parentis; they are, by any standard, concerned with the child's protection, and not with his punishment. I do not question that the methods employed in such cases must be consistent with the constitutional obligation to act in accordance with due process, but certainly the Fourteenth Amendment does not demand that they be constricted by the procedural guarantees devised for ordinary criminal prosecutions. Cf. State of Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 60 S.Ct. 523, 84 L.Ed. 744. It must be remembered that the various classifications of juvenile court proceedings are, as the vagaries of the available statistics illustrate, often arbitrary or ambiguous; it would therefore be imprudent, at the least, to build upon these classifications rigid systems of procedural requirements which would be applicable, or not, in accordance with the descriptive label given to the particular proceeding. It is better, it seems to me, to begin by now requiring the essential elements of fundamental fairness in juvenile courts, whatever the label given by the State to the proceedings; in this way the Court could avoid imposing unnecessarily rigid restrictions, and yet escape dependence upon classifications which may often prove to be illusory. Further, the provision of notice, counsel, ****1470** and a record would permit orderly efforts to determine later whether more satisfactory classifications can be devised, and if they can, whether additional procedural requirements are necessary for them under the Fourteenth Amendment.

Second, it should not be forgotten that juvenile crime and juvenile courts are both now under earnest study throughout the country. I very much fear that this Court, by imposing these rigid procedural requirements, may inadvertently have served to discourage these efforts to find more satisfactory solutions for the problems of juvenile crime, and may thus now hamper enlightened development of the systems of juvenile courts. It is ***78** appropriate to recall that the Fourteenth Amendment does not compel the law to remain passive in the midst of change; to demand otherwise denies 'every quality of the law but its age'. Hurtado v. People of State of California, 110 U.S. 516, 529, 4 S.Ct. 111, 117, 28 L.Ed. 232.

III.

Finally, I turn to assess the validity of this juvenile court proceeding under the criteria discussed in this opinion. Measured by them, the judgment below must, in my opinion, fall. Gerald Gault and his parents were not provided adequate notice of the terms and purposes of the proceedings in which he was adjudged delinquent; they were not advised of their rights to be represented by counsel; and no record in any form was maintained of the proceedings. It follows, for the reasons given in this opinion, that Gerald Gault was deprived of his liberty without due process of law, and I therefore concur in the judgment of the Court.

Mr. Justice STEWART, dissenting.

The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the Nation restrictions that the Constitution made applicable to adversary criminal trials. [1] I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected ***79** child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.

In the last 70 years many dedicated men and women have devoted their professional lives to the enlightened task of bringing us out of the dark world of Charles Dickens in meeting our responsibilities to the child in our society. The result has been the creation in this century of a system of juvenile and family courts in each of the 50 States. There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of the courageous pioneers who first conceived them. For a variety of reasons, the reality has sometimes not even approached the ideal, and much remains to be accomplished in the administration of public juvenile and family agencies—in personnel, in planning, in financing, perhaps in the formulation of wholly new approaches.

****1471** I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution.

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a ***80** child was tried in a conventional criminal court will all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by hanging. The sentence was executed. It was all very constitutional. [2]

A State in all its dealings must, of course, accord every person due process of law. And due process may require that some of the same restrictions which the Constitution has placed upon criminal trials must be imposed upon juvenile proceedings. For example, I suppose that all would agree that a brutally coerced confession could not constitutionally be considered in a juvenile court hearing. But it surely does not follow that the testimonial privilege against self-incrimination is applicable in all juvenile proceedings. [3] Similarly, due process clearly ***81** requires timely notice of the purpose and scope of any proceedings affecting the relationship of parent and child. Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62. But it certainly does not follow that notice of a juvenile hearing must be framed with all the technical niceties of a criminal indictment. See Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240.

In any event, there is no reason to deal with issues such as these in the present ****1472** case. The Supreme Court of Arizona found that the parents of Gerald Gault 'knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against

Gerald and the possible consequences of a finding of delinquency.' 99 Ariz. 181, 185, 407 P.2d 760, 763. It further found that 'Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home.' 99 Ariz., at 193, 407 P.2d, at 768. And, as Mr. Justice WHITE correctly points out, p. 1463, ante, no issue of compulsory self-incrimination is presented by this case.

I would dismiss the appeal.

All Citations

387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527, 40 O.O.2d 378

Footnotes

1 Under Arizona law, juvenile hearings are conducted by a judge of the Superior Court, designated by his colleagues on the Superior Court to serve as Juvenile Court Judge. Arizona Const., Art. 6, s 15, A.R.S.; Arizona Revised Statutes (hereinafter ARS) ss 8—201, 8—202.

2 There is a conflict between the recollection of Mrs. Gault and that of Officer Flagg. Mrs. Gault testified that Gerald was released on Friday, June 12, Officer Flagg that it had been on Thursday, June 11. This was from memory; he had no record, and the note hereafter referred to was undated.

3 Officer Flagg also testified that Gerald had not, when questioned at the Detention Home, admitted having made any of the lewd statements, but that each boy had sought to put the blame on the other. There was conflicting testimony as to whether Ronald had accused Gerald of making the lewd statements during the June 15 hearing.

4 Judge McGhee also testified that Gerald had not denied 'certain statements' made to him at the hearing by Officer Henderson.

5 'Q. All right. Now, Judge, would you tell me under what section of the law or tell me under what section of—of the code you found the boy delinquent?
'A. Well, there is a—I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law, that when one person uses lewd language in the presence of another person, that it can amount to—and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8—201, Subsection (d), habitually involved in immoral matters.'

6 ARS s 8—201, subsec. 6, the section of the Arizona Juvenile Code which defines a delinquent child, reads:
"Delinquent child' includes:
'(a) A child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.
'(b) A child who, by reason of being incorrigible, wayward or habitually disobedient, is uncontrolled by his parent, guardian or custodian.
'(c) A child who is habitually truant from school or home.
'(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.'

7 For example, the laws of Arizona allow arrest for a misdemeanor only if a warrant is obtained or if it is committed in the presence of the officer. ARS s 13—1403. The Supreme Court of Arizona held that this is inapplicable in the case of juveniles. See ARS s 8—221 which relates specifically to juveniles. But compare Two Brothers and a Case of Liquor, Juv.Ct.D.C., Nos. 66—2652—J, 66—2653—J, December 28, 1966 (opinion of Judge Ketcham); Standards for Juvenile and Family Courts, Children's Bureau Pub. No. 437—1966, p. 47 (hereinafter cited as Standards); New York Family Court Act s 721 (1963) (hereinafter cited as N.Y.Family Court Act).
The court also held that the judge may consider hearsay if it is 'of a kind on which reasonable men are accustomed to rely in serious affairs.' But compare Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv.L.Rev. 775, 794—795 (1966) (hereinafter cited as Harvard Law Review Note):
'The informality of juvenile court hearings frequently leads to the admission of hearsay and unsworn testimony. It is said that 'close adherence to the strict rules of evidence might prevent the court from obtaining important facts as to the child's character and condition which could only be to the child's detriment.' The assumption is that the judge will give normally inadmissible evidence only its proper weight. It is also declared in support of these evidentiary practices that the juvenile court is not a criminal court, that the importance of the hearsay rule has been overestimated, and that allowing an attorney to make 'technical objections' would disrupt the desired informality of the proceedings. But to the extent that the rules of evidence are not merely technical or historical, but like the hearsay rule have a sound basis in human experience, they should not be rejected in any judicial inquiry. Juvenile court judges in Los Angeles, Tucson,

and Wisconsin Rapids, Wisconsin report that they are satisfied with the operation of their courts despite application of unrelaxed rules of evidence.' (Footnote omitted.)

It ruled that the correct burden of proof is that 'the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act.' Compare the 'preponderance of the evidence' test, N.Y.Family Court Act s 744 (where maximum commitment is three years, ss 753, 758). Cf. Harvard Law Review Note, p. 795.

8 See, e.g., In Matters of W. and S., 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966); In Interests of Carlo and Stasilowicz, 48 N.J. 224, 225 A.2d 110 (1966); People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956); Pee v. United States, 107 U.S.App.D.C., 47, 274 F.2d 556 (1959); Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205, 67 A.L.R. 1075 (1930); Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325 (1928); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217 (1944); Application of Johnson, 178 F.Supp. 155 (D.C.N.J.1957).

9 383 U.S., at 553, 86 S.Ct., at 1053.

10 332 U.S., at 601, 68 S.Ct., at 304 (opinion for four Justices).

11 See Report by the President's Commission on Law Enforcement and Administration of Justice, 'The Challenge of Crime in a Free Society' (1967) (hereinafter cited as Nat'l Crime Comm'n Report), pp. 81, 85—86; Standards, p. 71; Gardner, The Kent Case and the Juvenile Court: A Challenge to Lawyers, 52 A.B.A.J. 923 (1966); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547 (1957); Ketcham, The Legal Renaissance in the Juvenile Court, 60 Nw.U.L.Rev. 585 (1965); Allen, The Borderland of Criminal Justice (1964), pp. 19—23; Harvard Law Review Note, p. 791; Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281 (1967); Comment, Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal, 114 U.Pa.L.Rev. 1171 (1966).

12 See Kent v. United States, 383 U.S. 541, 555, 86 S.Ct. 1045, 1054 and n. 22 (1966).

13 See n. 7, supra.

14 See National Council of Juvenile Court Judges, Directory and Manual (1964), p. 1. The number of Juvenile Judges as of 1964 is listed as 2,987, of whom 213 are full-time Juvenile Court Judges. Id., at 305. The Nat'l Crime Comm'n Report indicates that half of these judges have no undergraduate degree, a fifth have no college education at all, a fifth are not members of the bar, and three-quarters devote less than one-quarter of their time to juvenile matters. See also McCune, Profile of the Nation's Juvenile Court Judges (monograph, George Washington University, Center for the Behavioral Sciences, 1965), which is a detailed statistical study of Juvenile Court Judges, and indicates additionally that about a quarter of these judges have no law school training at all. About one-third of all judges have no probation and social work staff available to them; between eighty and ninety percent have no available psychologist or psychiatrist. Ibid. It has been observed that while 'good will, compassion, and similar virtues are * * * admirably prevalent throughout the system * * * expertise, the keystone of the whole venture, is lacking.' Harvard Law Review Note, p. 809. In 1965, over 697,000 delinquency cases (excluding traffic) were disposed of in these courts, involving some 601,000 children, or 2% of all children between 10 and 17. Juvenile Court Statistics—1965, Children's Bureau Statistical Series No. 85 (1966), p. 2.

15 See Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Review 167, 174.

16 Julian Mack, The Juvenile Court, 23 Harv.L.Rev. 104, 119—120 (1909).

17 Id., at 120.

18 Id., at 109; Paulsen, op. cit. supra, n. 15, at 173—174. There seems to have been little early constitutional objection to the special procedures of juvenile courts. But see Waite, How Far Can Court Procedure Be Socialized Without Impairing Individual Rights, 12 J.Crim.L. & Criminology 339, 340 (1922): 'The court which must direct its procedure even apparently to do something to a child because of what he has done, is parted from the court which is avowedly concerned only with doing something for a child because of what he is and needs, by a gulf too wide to be bridged by any humanity which the judge may introduce into his hearings, or by the habitual use of corrective rather than punitive methods after conviction.'

19 Paulsen, op. cit. supra, n. 15, at 173; Hurley, Origin of the Illinois Juvenile Court Law, in The Child, The Clinic, and the Court (1925), pp. 320, 328.

20 Julian Mack, The Chancery Procedure in the Juvenile Court, in The Child, The Clinic, and the Court (1925), p. 310.

21 See, e.g., Shears, Legal Problems Peculiar to Children's Courts, 48 A.B.A.J. 719, 720 (1962) ('The basic right of a juvenile is not to liberty but to custody. He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so.'); Ex parte Crouse, 4 Whart. 9, 11 (Sup.Ct.Pa.1839); Petition of Ferrier, 103 Ill. 367, 371—373 (1882).

22 The Appendix to the opinion of Judge Prettyman in Pee v. United States, 107 U.S.App.D.C. 47, 274 F.2d 556 (1959), lists authority in 51 jurisdictions to this effect. Even rules required by due process in civil proceedings, however, have not generally been deemed compulsory as to proceedings affecting juveniles. For example, constitutional requirements

as to notice of issues, which would commonly apply in civil cases, are commonly disregarded in juvenile proceedings, as this case illustrates.

23 'There is evidence * * * that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.' 383 U.S., at 556, 86 S.Ct., at 1054, citing Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7; Harvard Law Review Note; and various congressional materials set forth in 383 U.S., at 546, 86 S.Ct., at 1050, n. 5.

On the other hand, while this opinion and much recent writing concentrate upon the failures of the Juvenile Court system to live up to the expectations of its founders, the observation of the Nat'l Crime Comm'n Report should be kept in mind: 'Although its shortcomings are many and its results too often disappointing, the juvenile justice system in many cities is operated by people who are better educated and more highly skilled, can call on more and better facilities and services, and has more ancillary agencies to which to refer its clientele than its adult counterpart.' Id., at 78.

24 Foreword to Young, Social Treatment in Probation and Delinquency (1937), p. xxvii. The 1965 Report of the United States Commission on Civil Rights, 'Law Enforcement—A Report on Equal Protection in the South,' pp. 80—83, documents numerous instances in which 'local authorities used the broad discretion afforded them by the absence of safeguards (in the juvenile process)' to punish, intimidate, and obstruct youthful participants in civil rights demonstrations. See also Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif.L.Rev. 694, 707—709 (1966).

25 Lehman, A Juvenile's Right to Counsel in a Delinquency Hearing, 17 Juvenile Court Judges Journal 53, 54 (1966). Compare the observation of the late Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, in a foreword to Virtue, Basic Structure for Children's Services in Michigan (1953), p. x:

'In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.'

We are warned that the system must not 'degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and morals on indigent people * * *.' Judge Marion G. Woodward, letter reproduced in 18 Social Service Review 366, 368 (1944). Doctor Bovet, the Swiss psychiatrist, in his monograph for the World Health Organization, Psychiatric Aspects of Juvenile Delinquency (1951), p. 79, stated that: 'One of the most definite conclusions of this investigation is that few fields exist in which more serious coercive measures are applied, on such flimsy objective evidence, than in that of juvenile delinquency.' We are told that 'The judge as amateur psychologist, experimenting upon the unfortunate children who must appear before him, is neither an attractive nor a convincing figure.' Harvard Law Review Note, at 808.

26 The impact of denying fundamental procedural due process to juveniles involved in 'delinquency' charges is dramatized by the following considerations: (1) In 1965, persons under 18 accounted for about one-fifth of all arrests for serious crimes (Nat'l Crime Comm'n, Report, p. 55) and over half of all arrests for serious property offenses (id., at 56), and in the same year some 601,000 children under 18, or 2% of all children between 10 and 17, came before juvenile courts (Juvenile Court Statistics—1965, Children's Bureau Statistical Series No. 85 (1966) p. 2). About one out of nine youths will be referred to juvenile court in connection with a delinquent act (excluding traffic offenses) before he is 18 (Nat'l Crime Comm'n Report, p. 55). Cf. also Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), p. 2; Report of the President's Commission on Crime in the District of Columbia (1966) (hereinafter cited as D.C.Crime Comm'n Report), p. 773. Furthermore, most juvenile crime apparently goes undetected or not formally punished. Wheeler & Cottrell, supra, observe that '(A)lmost all youngsters have committed at least one of the petty forms of theft and vandalism in the course of their adolescence.' Id., at 28—29. See also Nat'l Crime Comm'n Report, p. 55, where it is stated that 'self-report studies reveal that perhaps 90 percent of all young people have committed at least one act for which they could have been brought to juvenile court.' It seems that the rate of juvenile delinquency is also steadily rising. See Nat'l Crime Comm'n Report, p. 56; Juvenile Court Statistics, supra, pp. 2—3. (2) In New York, where most juveniles are represented by counsel (see n. 69, infra) and substantial procedural rights are afforded (see, e.g., nn. 80, 81, 99, infra), out of a fiscal year 1965—1966 total of 10,755 juvenile proceedings involving boys, 2,242 were dismissed for failure of proof at the fact-finding hearing; for girls, the figures were 306 out of a total of 1,051. New York Judicial Conference, Twelfth Annual Report, pp. 314, 316 (1967). (3) In about one-half of the States, a juvenile may be transferred to an adult penal institution after a juvenile court has found him 'delinquent' (Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415—1964, p. 1). (4) In some jurisdictions a juvenile may be subjected to criminal prosecution

for the same offense for which he has served under a juvenile court commitment. However, the Texas procedure to this effect has recently been held unconstitutional by a federal district court judge, in a habeas corpus action. Sawyer v. Hauck, 245 F.Supp. 55 (D.C.W.D.Tex.1965). (5) In most of the States the juvenile may end in criminal court through waiver (Harvard Law Review Note, p. 793).

27 Malinski v. People of State of New York, 324 U.S. 401, 414, 65 S.Ct. 781, 787, 89 L.Ed. 1029 (1945) (separate opinion).

28 Foster, Social Work, the Law, and Social Action, in Social Casework, July 1964, pp. 383, 386.

29 See Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321, and passim (1967).

30 Here again, however, there is substantial question as to whether fact and pretension, with respect to the separate handling and treatment of children, coincide. See generally infra.

While we are concerned only with procedure before the juvenile court in this case, it should be noted that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a quid pro quo. As to the problem and importance of special care at the adjudicatory stage, cf. nn. 14 and 26, supra.

As to treatment, see Nat'l Crime Comm'n Report, pp. 80, 87; D.C.Crime Comm'n Report, pp. 665—676, 686—687 (at p. 687 the Report refers to the District's 'bankruptcy of dispositional resources'), 692—695, 700-718 (at p. 701 the Report observes that 'The Department of Public Welfare currently lacks even the rudiments of essential diagnostic and clinical services'); Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), pp. 32—35; Harvard Law Review Note, p. 809; Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif.L.Rev. 694, 709—712 (1966); Polier, A View From the Bench (1964). Cf. Also, In the Matter of the Youth House, Inc., Report of the July 1966 'A' Term of the Bronx County Grand Jury, Supreme Court of New York, County of Bronx, Trial Term, Part XII, March 21, 1967 (cf. New York Times, March 23, 1967, p. 1, col. 8). The high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles. See D.C.Crime Comm'n Report, p. 773; Nat'l Crime Comm'n Report, pp. 55, 78.

In fact, some courts have recently indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment. See Creek v. Stone, 379 F.2d 106 (D.C.Cir. 1967); Kautter v. Reid, 183 F.Supp. 352 (D.C.D.C.1960); White v. Reid, 125 F.Supp. 647 (D.C.D.C.1954). See also Elmore v. Stone, 122 U.S.App.D.C. 416, 355 F.2d 841 (1966) (separate statement of Bazelon, C.J.); Clayton v. Stone, 123 U.S.App.D.C. 181, 358 F.2d 548 (1966) (separate statement of Bazelon, C.J.). Cf. Wheeler & Cottrell, supra, pp. 32, 35; In re Rich, 125 Vt. 373, 216 A.2d 266 (1966). Cf. also Rouse v. Cameron, 125 U.S.App.D.C. 366, 373 F.2d 451 (1966); Millard v. Cameron, 125 U.S.App.D.C. 383, 373 F.2d 468 (1966).

31 '(T)he word 'delinquent' has today developed such invidious connotations that the terminology is in the process of being altered; the new descriptive phrase is 'persons in need of supervision,' usually shortened to 'pins.'' Harvard Law Review Note, p. 799, n. 140. The N.Y. Family Court Act s 712 distinguishes between 'delinquents' and 'persons in need of supervision.'

32 See, e.g., the Arizona provision, ARS s 8—228.

33 Harvard Law Review Note, pp. 784—785, 800. Cf. Nat'l Crime Comm'n Report, pp. 87—88; Ketcham, The Unfulfilled Promise of the Juvenile Court, 7 Crime & Delin. 97, 102—103 (1961).

34 Harvard Law Review Note, pp. 785—787.

35 Id., at 785, 800. See also, with respect to the problem of confidentiality of records, Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 286—289 (1967). Even the privacy of the juvenile hearing itself is not always adequately protected. Id., at 285—286.

36 Mack, The Juvenile Court, 23 Harv.L.Rev. 104, 120 (1909).

37 Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 33. The conclusion of the Nat'l Crime Comm'n Report is similar: '(T)here is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.' Id., at 85. See also Allen, The Borderland of Criminal Justice (1964), p. 19.

38 Holmes' Appeal, 379 Pa. 599, 616, 109 A.2d 523, 530 (1954) (Musmanno, J., dissenting). See also The State (Sheerin) v. Governor, (1966) I.R. 379 (Supreme Court of Ireland); Trimble v. Stone, 187 F.Supp. 483, 485—486 (D.C.D.C.1960); Allen, The Borderland of Criminal Justice (1964), pp. 18, 52—56.

39 Cf. the Juvenile Code of Arizona, ARS s 8—201, subsec. 6.

40 Cf., however, the conclusions of the D.C. Crime Comm'n Report, pp. 692—693, concerning the inadequacy of the 'social study records' upon which the Juvenile Court Judge must make this determination and decide on appropriate treatment.

41 The Juvenile Judge's testimony at the habeas corpus proceeding is devoid of any meaningful discussion of this. He appears to have centered his attention upon whethed Gerald made the phone call and used lewd words. He was impressed by the fact that Gerald was on six months' probation because he was with another boy who allegedly stole a purse—a different sort of offense, sharing the feature that Gerald was 'along'. And he even referred to a report which he said was not investigated because 'there was no accusation' 'because of lack of material foundation.'
With respect to the possible duty of a trial court to explore alternatives to involuntary commitment in a civil proceeding, cf. Lake v. Cameron, 124 U.S.App.D.C. 264, 364 F.2d 657 (1966), which arose under statutes relating to treatment of the mentally ill.

42 While appellee's brief suggests that the probation officer made some investigation of Gerald's home life, etc., there is not even a claim that the judge went beyond the point stated in the text.

43 ARS ss 8—201, 8—202.

44 Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 35. The gap between rhetoric and reality is also emphasized in the Nat'l Crime Comm'n Report, pp. 80—81.

45 383 U.S., at 555, 86 S.Ct., at 1054.

46 383 U.S., at 554, 86 S.Ct., at 1053. The Chief Justice stated in a recent speech to a conference of the National Council of Juvenile Court Judges, that a juvenile court 'must function within the framework of law and * * * in the attainment of its objectives it cannot act with unbridled caprice.' Equal Justice for Juveniles, 15 Juvenile Court Judges Journal, No. 3, pp. 14, 15 (1964).

47 383 U.S., at 562, 86 S.Ct., at 1057.

48 The Nat'l Crime Comm'n Report recommends that 'Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication.' Id., at 84. See also D.C.Crime Comm'n Report, pp. 662—665. Since this 'consent decree' procedure would involve neither adjudication of delinquency nor institutionalization, nothing we say in this opinion should be construed as expressing any views with respect to such procedure. The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process.

49 ARS s 8—222, subsec. B.

50 Arizona's Juvenile Code does not provide for notice of any sort to be given at the commencement of the proceedings to the child or his parents. Its only notice provision is to the effect that if a person other than the parent or guardian is cited to appear, the parent or guardian shall be notified 'by personal service' of the time and place of hearing. ARS s 8—224. The procedure for initiating a proceeding, as specified by the statute, seems to require that after a preliminary inquiry by the court, a determination may be made 'that formal jurisdiction should be acquired.' Thereupon the court may authorize a petition to be filed. ARS s 8—222. It does not appear that this procedure was followed in the present case.

51 No such petition we served or supplied in the present case.

52 Nat'l Crime Comm'n Report, p. 87. The Commission observed that 'The unfairness of too much informality is * * * reflected in the inadequacy of notice to parents and juveniles about charges and hearings.' Ibid.

53 For application of the due process requirement of adequate notice in a criminal context, see, e.g., Cole v. State of Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); In re Oliver, 333 U.S. 257, 273—278, 68 S.Ct. 499, 507—510, 92 L.Ed. 682 (1948). For application in a civil context, see, e.g., Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Cf. also Chaloner v. Sherman, 242 U.S. 455, 37 S.Ct. 136, 61 L.Ed. 427 (1917). The Court's discussion in these cases of the right to timely and adequate notice forecloses any contention that the notice approved by the Arizona Supreme Court, or the notice actually given the Gaults, was constitutionally adequate. See also Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L.Q. 387, 395 (1961); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 557 (1957). Cf. Standards, pp. 63—65; Procedures and Evidence in the Juvenile Court, A Guidebook for Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency (1962), pp. 9—23 (and see cases discussed therein).

54 Mrs. Gault's 'knowledge' of the charge against Gerald, and/or the asserted failure to object, does not excuse the lack of adequate notice. Indeed, one of the purposes of notice is to clarify the issues to be considered, and as our discussion of the facts, supra, shows, even the Juvenile Court Judge was uncertain as to the precise issues determined at the two 'hearings.' Since the Gaults had no counsel and were not told of their right to counsel, we cannot consider their failure to object to the lack of constitutionally adequate notice as a waiver of their rights. Because of our conclusion that notice given only at the first hearing is inadequate, we need not reach the question whether the Gaults ever received adequately

specific notice even at the June 9 hearing, in light of the fact they were never apprised of the charge of being habitually involved in immoral matters.

55 For recent cases in the District of Columbia holding that there must be advice of the right to counsel, and to have counsel appointed if necessary, see, e.g., Shioutakon v. District of Columbia, 98 U.S.App.D.C. 371, 236 F.2d 666, 60 A.L.R.2d 686 (1956); Black v. United States, 122 U.S.App.D.C. 393, 355 F.2d 104 (1965); In re Poff, 135 F.Supp. 224 (D.C.D.C.1955). Cf. also In re Long, 184 So.2d 861, 862 (Sup.Ct.Miss., 1966); People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956).

56 The section cited by the court, ARS s 8—204, subsec. C, reads as follows:

'The probation officer shall have the authority of a peace officer. He shall:

'1. Look after the interests of neglected, delinquent and dependent children of the county.

'2. Make investigations and file petitions.

'3. Be present in court when cases are heard concerning children and represent their interests.

'4. Furnish the court information and assistance as it may require.

'5. Assist in the collection of sums ordered paid for the support of children.

'6. Perform other acts ordered by the court.'

57 Powell v. State of Alabama, 287 U.S. 45, 61, 53 S.Ct. 55, 61, 77 L.Ed. 158 (1932); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

58 In the present proceeding, for example, although the Juvenile Judge believed that Gerald's telephone conversation was within the condemnation of ARS s 13—377, he suggested some uncertainty because the statute prohibits the use of vulgar language 'in the presence or hearing of' a woman or child.

59 Powell v. State of Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 64 (1932).

60 This means that the commitment, in virtually all cases, is for a minimum of three years since jurisdiction of juvenile courts is usually limited to age 18 and under.

61 See cases cited in n. 55, supra.

62 See, e.g., Schinitsky, 17 The Record 10 (N.Y. City Bar Assn. 1962); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 568—573 (1957); Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L.Q. 387, 404—407 (1961); Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 187—189; Ketcham, The Legal Renaissance in the Juvenile Court, 60 Nw.U.L.Rev. 585 (1965); Elson, Juvenile Courts & Due Process, in Justice for the Child (Rosenheim ed.) 95, 103—105 (1962); Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321—327 (1967). See also Nat'l Probation and Parole Assn., Standard Family Court Act (1959) s 19, and Standard Juvenile Court Act (1959) s 19, in 5 NPPA Journal 99, 137, 323, 367 (1959) (hereinafter cited as Standard Family Court Act and Standard Juvenile Court Act, respectively).

63 Only a few state statutes require advice of the right to counsel and to have counsel appointed. See N. Y. Family Court Act ss 241, 249, 728, 741; Calif.Welf. & Inst'ns Code ss 633, 634, 659, 700 (1966) (appointment is mandatory only if conduct would be a felony in the case of an adult); Minn.Stat.Ann. s 260.155(2) (1966 Supp.) (see Comment of Legislative Commission accompanying this section); District of Columbia Legal Aid Act, D.C.Code Ann. s 2—2202 (1961) (Legal Aid Agency 'shall make attorneys available to represent indigents * * * in proceedings before the juvenile court * * *.' See Black v. United States, 122 U.S.App.D.C. 393, 395—396, 355 F.2d 104, 106—107 (1965), construing this Act as providing a right to appointed counsel and to be informed of that right). Other state statutes allow appointment on request, or in some classes of cases, or in the discretion of the court, etc. The state statutes are collected and classified in Riederer, The Role of Counsel in the Juvenile Court, 2 J.Fam.Law 16, 19—20 (1962), which, however, does not treat the statutes cited above. See also Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321—322 (1967).

64 Skoler & Tenney, Attorney Representation in Juvenile Court, 4 J.Fam.Law 77, 95—96 (1964); Riederer, The Role of Counsel in the Juvenile Court, 2 J.Fam.Law 16 (1962).

Recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed, it seems that counsel can play an important role in the process of rehabilitation. See Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 324—327 (1967).

65 Nat'l Crime Comm'n Report, pp. 86—87. The Commission's statement of its position is very forceful:

'The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal have substantial meaning for the overwhelming majority of persons brought before the juvenile court only if they

are provided with competent lawyers who can invoke those rights effectively. The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge. But with lawyers come records of proceedings; records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability.

'Fears have been expressed that lawyers would make juvenile court proceedings adversary. No doubt this is partly true, but it is partly desirable. Informality is often abused. The juvenile courts deal with cases in which facts are disputed and in which, therefore, rules of evidence, confrontation of witnesses, and other adversary procedures are called for. They deal with many cases involving conduct that can lead to incarceration or close supervision for long periods, and therefore juveniles often need the same safeguards that are granted to adults. And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.

'Fears also have been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims of the court. But informality has no necessary connection with therapy; it is a devide that has been used to approach therapy, and it is not the only possible device. It is quite possible that in many instances lawyers, for all their commitment to formality, could do more to further therapy for their clients than can the small, overworked social staffs of the courts. * * *

'The Commission believes it is essential that counsel be appointed by the juvenile court for those who are unable to provide their own. Experience under the prevailing systems in which children are free to seek counsel of their choice reveals how empty of meaning the right is for those typically the subjects of juvenile court proceedings. Moreover, providing counsel only when the child is sophisticated enough to be aware of his need and to ask for one or when he fails to waive his announced right (is) not enough, as experience in numerous jurisdictions reveals.

'The Commission recommends:

'COUNSEL SHOULD BE APPOINTED AS A MATTER OF COURSE WHEREVER COERCIVE ACTION IS A POSSIBILITY, WITHOUT REQUIRING ANY AFFIRMATIVE CHOICE BY CHILD OR PARENT.'

66 Lehman, A Juvenile's Right to Counsel in A Delinquency Hearing, 17 Juvenile Court Judge's Journal 53 (1966). In an interesting review of the 1966 edition of the Children's Bureau's 'Standards,' Rosenheim, Standards for Juvenile and Family Courts: Old Wine in a New Bottle, 1 Fam.L.Q. 25, 29 (1967), the author observes that 'The 'Standards' of 1966, just like the 'Standards' of 1954, are valuable precisely because they represent a diligent and thoughtful search for an accommodation between the aspirations of the founders of the juvenile court and the grim realities of life against which, in part, the due process of criminal and civil law offers us protection.'

67 These are lawyers designated, as provided by the statute, to represent minors. N.Y.Family Court Act s 242.

68 N.Y.Family Court Act s 241.

69 N.Y.Family Court Act s 741. For accounts of New York practice under the new procedures, see Isaacs, The Role of the Lawyer in Representing Minors in the New Family Court, 12 Buffalo L.Rev. 501 (1963); Dembitz, Ferment and Experiment in New York: Juvenile Cases in the New Family Court, 48 Cornell L.Q. 499, 508—512 (1963). Since introduction of the law guardian system in September of 1962, it is stated that attorneys are present in the great majority of cases. Harvard Law Review Note, p. 796. See New York Judicial Conference, Twelfth Annual Report, pp. 288—291 (1967), for detailed statistics on representation of juveniles in New York. For the situation before 1962, see Schinitsky, The Role of the Lawyer in Children's Court, 17 The Record 10 (N.Y. City Bar Assn. 1962). In the District of Columbia, where statute and court decisions require that a lawyer be appointed if the family is unable to retain counsel, see n. 63, supra, and where the juvenile and his parents are so informed at the initial hearing, about 85% to 90% do not choose to be represented and sign a written waiver form. D.C. Crime Comm'n Report, p. 646. The Commission recommends adoption in the District of Columbia of a 'law guardian' system similar to that of New York, with more effective notification of the right to appointed counsel, in order to eliminate the problems of procedural fairness, accuracy of factfinding, and appropriateness of disposition which the absence of counsel in so many juvenile court proceedings involves. Id., at 681—685.

70 See n. 63, supra.

71 Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938); Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962); United States ex rel. Brown v. Fay, 242 F.Supp. 273 (D.C.S.D.N.Y.1965).

72 The privilege is applicable to state proceedings. Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

73 Pointer v. State of Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); Douglas v. State of Alabama, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965).

74 For this reason, we cannot consider the status of Gerald's alleged admissions to the probation officers. Cf., however, Comment, Miranda Guarantees in the California Juvenile Court, 7 Santa Clara Lawyer 114 (1966).

75 3 Wigmore, Evidence s 822 (3d ed. 1940).

76 332 U.S., at 599—600, 68 S.Ct., at 303 (opinion of Mr. Justice Douglas, joined by Justices Black, Murphy and Rutledge; Justice Frankfurter concurred in a separate opinion).

77 See Fortas, The Fifth Amendment, 25 Cleveland Bar Assn. Journal 91 (1954).

78 See Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961); Culombe v. Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961) (opinion of Mr. Justice Frankfurter, joined by Mr. Justice Stewart); Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

79 See also Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S.Ct. 16, 17, 69 L.Ed. 158 (1924).

80 N.Y.Family Court Act s 741.

81 N.Y.Family Court Act s 724(a). In In Matter of Williams, 49 Misc.2d 154, 267 N.Y.S.2d 91 (1966), the New York Family Court held that 'The failure of the police to notify this child's parents that he had been taken into custody, if not alone sufficient to render his confession inadmissible, is germane on the issue of its voluntary character * * *.' Id., at 165, 267 N.Y.S.2d, at 106. The confession was held involuntary and therefore inadmissible.

82 N.Y.Family Court Act s 724 (as amended 1963, see Supp.1966). See In Matter of Addison, 20 A.D.2d 90, 245 N.Y.S.2d 243 (1963).

83 The issues relating to fingerprinting of juveniles are not presented here, and we express no opinion concerning them.

84 Standards, p. 49.

85 See n. 79, supra, and accompanying text.

86 Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415—1964, p. 1.

87 See, e.g., Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967); Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 636, 17 L.Ed.2d 574 (1967); Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963); Culombe v. State of Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961); Rogers v. Richmond, 365 U.S. 534, 84 S.Ct. 735, 5 L.Ed.2d 760 (1961); Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).

88 Arizona Constitution, Art. 6. s 15 (as amended 1960); ARS ss 8—223, 8—228, subsec. A; Harvard Law Review Note, p. 793. Because of this possibility that criminal jurisdiction may attach it is urged that '* * * all of the procedural safeguards in the criminal law should be followed.' Standards, p. 49. Cf. Harling v. United States, 111 U.S.App.D.C. 174, 295 F.2d 161 (1961).

89 ARS s 8—228, subsec. A.

90 Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966).

91 Id., at 33. See also the other materials cited in n. 37, supra.

92 N.J.Rev.Stat. s 2A:4—37(b)(2), N.J.S.A. (Supp.1966); N.J.Rev.Stat. 2A:113—4, N.J.S.A.

93 N.J.Rev.Stat. s 2A:4—32, 33, N.J.S.A. The court emphasized that the 'frightening atmosphere' of a police station is likely to have 'harmful effects on the mind and will of the boy,' citing In Matter of Rutane, 37 Misc.2d 234, 234 N.Y.S.2d 777 (Fam.Ct.Kings County, 1962).

94 The court held that this alone might be enough to show that the confessions were involuntary 'even though, as the police testified, the boys did not wish to see their parents' (citing Gallegos v. State of Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962)).

95 The court quoted the following passage from Haley v. State of Ohio, supra, 332 U.S., at 601, 68 S.Ct., at 304:
'But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.'

96 The N.Y.Family Court Act s 744(b) provides that 'an uncorroborated confession made out of court by a respondent is not sufficient' to constitute the required 'preponderance of the evidence.'

See United States v. Morales, 233 F.Supp. 160 (D.C.Mont.1964), holding a confession inadmissible in proceedings under the Federal Juvenile Delinquency Act (18 U.S.C. s 5031 et seq.) because, in the circumstances in which it was made, the District Court could not conclude that it 'was freely made while Morales was afforded all of the requisites of due process required in the case of a sixteen year old boy of his experience.' Id., at 170.

97 Cf. Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964); Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 694 (1966).

98 Standards, pp. 72—73. The Nat'l Crime Comm'n Report concludes that 'the evidence admissible at the adjudicatory hearing should be so limited that findings are not dependent upon or influenced by hearsay, gossip, rumor, and other unreliable types of information. To minimize the danger that adjudication will be affected by inappropriate considerations, social investigation reports should not be made known to the judge in advance of adjudication.' Id., at 87 (bold face eliminated). See also Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 336 (1967): 'At the adjudication stage, the use of clearly incompetent evidence in order to prove the youth's involvement in the alleged misconduct * * * is not justifiable. Particularly in delinquency cases, where the issue of fact is the commission of a crime, the introduction of hearsay—such as the report of a policeman who did not witness the events—contravenes the purposes underlying the sixth amendment right of confrontation.' (Footnote omitted.)

99 N.Y.Family Court Act s 744(a). See also Harvard Law Review Note, p. 795. Cf. Willner v. Committee on Character, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963).

100 ARS s 8—238.

101 Griffin v. People of State of Illinois, 351 U.S. 12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1956).

102 'Standards for Juvenile and Family Courts' recommends 'written findings of fact, some form of record of the hearing' 'and the right to appeal.' Standards, p. 8. It recommends verbatim recording of the hearing by stenotypist or mechanical recording (p. 76) and urges that the judge make clear to the child and family their right to appeal (p. 78). See also, Standard Family Court Act ss 19, 24, 28; Standard Juvenile Court Act ss 19, 24, 28. The Harvard Law Review Note, p. 799, states that 'The result (of the infrequency of appeals due to absence of record, indigency, etc.) is that juvenile court proceedings are largely unsupervised.' The Nat'l Crime Comm'n Report observes, p. 86, that 'records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability.'

1 'In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * *.' Also requiring notice is the Fifth Amendment's provision that 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *.'

2 'In all criminal prosecutions, the accused shall * * * have the Assistance of Counsel in his defence.'

3 'No person * * * shall be compelled in any criminal case to be a witness against himself * * *.'

4 'In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him * * *.'

1 Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84, decided at the 1965 Term, did not purport to rest on constitutional grounds.

2 It is appropriate to observe that, whatever the relevance the Court may suppose that this criticism has to present issues, many of the critics have asserted that the deficiencies of juvenile courts have stemmed chiefly from the inadequacy of the personnel and resources available to those courts. See, e.g., Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 191—192; Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7, 46.

3 The statistical evidence here is incomplete, but see generally Skoler & Tenney, Attorney Representation in Juvenile Court, 4 J. Fam.Law 77. They indicate that some 91% of the juvenile court judges whom they polled favored representation by counsel in their courts. Id., at 88.

4 Indeed, my Brother BLACK candidly recognizes that such is apt to be the effect of today's decision, ante, p. 1460. The Court itself is content merely to rely upon inapposite language from the recommendations of the Children's Bureau, plus the terms of a single statute.

5 The most cogent evidence of course consists of the steady rejection of these requirements by state legislatures and courts. The wide disagreement and uncertainty upon this question are also reflected in Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 186, 191. See also Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 561—562; McLean, An Answer to the Challenge of Kent, 53 A.B.A.J. 456, 457; Alexander, Constitutional Rights in Juvenile Court, 46 A.B.A.J. 1206; Shears, Legal Problems Peculiar to Children's Courts, 48 A.B.A.J. 719; Siler, The Need for Defense Counsel in the Juvenile Court, 11 Crime & Delin. 45, 57—58. Compare Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7, 32.

6 Estimates of the number of children in this situation brought before juvenile courts range from 26% to some 48%; variation seems chiefly a product both of the inadequacy of records and of the difficulty of categorizing precisely the conduct with which juveniles are charged. See generally Sheridan, Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System? 31 Fed.Probation 26, 27. By any standard, the number of juveniles involved is 'considerable.' Ibid.

7 Id., at 28—30.

1 I find it strange that a Court so intent upon fastening an absolute right to counsel upon nonadversary juvenile proceedings has not been willing even to consider whether the Constitution requires a lawyer's help in a criminal prosecution upon a misdemeanor charge. See Winters v. Beck, 385 U.S. 907, 87 S.Ct. 207, 17 L.Ed.2d 137; DeJoseph v. Connecticut, 385 U.S. 982, 87 S.Ct. 526, 17 L.Ed.2d 443.

2 State v. Guild, 5 Halst. 163, 10 N.J.L. 163, 18 Am.Dec. 404.
'Thus, also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bedfellow, there appearing in his whole behavior plain tokens of a mischievous discretion; and as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment.' 4 Blackstone, stone, Commentaries 23 (Wendell ed. 1847).

3 Until June 13, 1966, it was clear that the Fourteenth Amendment's ban upon the use of a coerced confession is constitutionally quite a different thing from the Fifth Amendment's testimonal privilege against self-incrimination. See, for example, the Court's unanimous opinion in Brown v. State of Mississippi, 297 U.S. 278, at 285—286, 56 S.Ct. 461, 464—465, 80 L.Ed. 682, written by Chief Justice Hughes and joined by such distinguished members of this Court as Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo. See also Tehan v. United States ex rel. Shott, 382 U.S. 406, 86 S.Ct. 459, 15 L.Ed.2d 453, decided January 19, 1966, where the Court emphasized the 'contrast' between 'the wrongful use of a coerced confession' and 'the Fifth Amendment's privilege against self-incrimination'. 382 U.S., at 416, 86 S.Ct., at 465. The complete confusion of these separate constitutional doctrines in Part V of the Court's opinion today stems, no doubt, from Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, a decision which I continue to believe was constitutionally erroneous.