ARREST, SEARCH AND SEIZURE

From this lesson the Explorer should have an understanding of the legal authorities as they pertain to the role of the peace officer and the rights of citizens regarding arrest.

The Explorer needs to be able to identify the conditions for arrest.

When a person is arrested

Intent
Authority
Seize and detain
Understanding of the individual being arrested

Constructive Custody

Understanding on behalf of the individual being arrested that he is arrested without any physical control being demonstrated by the officer. The individual submits.

Restraint
Definitions - Custody
CCP 11.21
CCP 11.22
PC 38.01 (1) (A) (B)

In the absence of other effective measures the following procedures to safeguard the Fifth Amendment privilege must be observed: The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. Miranda v. Arizona 384 US 436 (1966)

Duties of arresting officer and magistrate

Advisor should include "How to use a law library."

The Explorer should be able to explain the circumstances for “warrant-less” arrests.

Offense Within View
Within View of a Magistrate
Authority of a Peace Officer
When Felony has been Committed
Preventing the Consequences of Theft
Uniform Criminal Extradition Act
Diplomatic Immunity
Mandatory Arrest Authority

The Explorer should be able to explain procedures for obtaining a warrant of arrest.

Warrant of Arrest
Requisites of Warrants
Magistrate May Issue Warrant or Summons
Complaint
Requisites of Complaint
Warrant extended to every part of State
Warrants Issued by Other Magistrates
The Explorer should be able to identify the process for arresting with a warrant.

How A Warrant is Executed   CCP 15.16
Duties of Arresting Officer and Magistrate    CCP 15.17
Arrest for Out-of-County Offense   CCP 15.18
Notice of Arrest   CCP 15.19
Time of Arrest   CCP 15.23
What Force May be Used   CCP 15.24
Authority to Arrest Must Be Made Known   CCP 15.26
Capias   CCP 23.01
Bench Warrant   CCP 24.13

The Explorer should be able to identify suspicious circumstances.

Definitions:

Black’s Law Dictionary: "the act of imagining--or of doubt--the apprehension of something without proof, or on slight evidence."

Authority of Peace Officers   CCP 14.03(b)
Warrant of arrest   CCP 15.01
Requisites of warrant   CCP 15.02
Magistrate may issue warrant or summons   CCP 15.03
Complaint   CCP 15.04
Requisites of complaint   CCP 15.05
Warrant extends to every part of the state   CCP 15.06
Warrant issued by other magistrate   CCP 15.07
How warrant is executed   CCP 15.16
Duties of arresting officer and magistrate   CCP 15.17
Arrest for out-of-county offense   CCP 15.18
Notice of arrest   CCP 15.19
When a person is arrested   CCP 15.22
Time of Arrest   CCP 15.23
What force may be used   CCP 15.24
May break door   CCP 15.25
Authority to arrest must be made known   CCP 15.26

Examples of suspicion:
What you see, hear or smell that indicates there may be criminal activity.

Application of suspicion:
What can a peace officer do with mere suspicion?
   An investigation may be conducted to determine what, if anything is occurring.
   Persons may be approached and questions asked, but they:
      May not be required to identify themselves
      May refuse to answer any questions
      May not be detained.

Should the approach culminate in an arrest or seizure of contraband, you must be able to articulate (document) your initial suspicions to justify the initial contact made or action taken.

The Explorer should be able to apply probable cause and related elements.

Black’s Law Dictionary: "an apparent state of facts found to exist upon reasonable inquiry, (that is, such inquiry as the given case renders convenient and proper) which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged."
Elements which can be used to establish Probable Cause:

- High crime rate area
- Time of day or night
- Location
- Furtive Act
- Abnormal demeanor
- Officer's own knowledge of facts and circumstances—should articulate the facts surrounding establishing probable cause.

- Recognition through senses:
  - Smell
  - Sight
  - Hearing
  - Touch

- Possession of, or close proximity to:
  - Tools of crime
  - Fruits of a crime
  - Contraband

- Officer's past experience and training:
  - Dress
  - Clothing
  - Physical condition of suspect.

- Conflicting stories about activities by two or more suspects in company with each other

- Information provided by an informant engaged in criminal activity.

Application of Probable Cause:
Arrest for that offense which the probable cause leads you to believe is occurring, is about to occur, or has occurred.

The Explorer should be able to identify lawful action to be taken for temporary detention.

Definitions:
Black's Law Dictionary: "Temporary" defined as, "that which is to last for a limited time only, as distinguished from that which is indefinite, in its duration."

Black's Law Dictionary: "Detention: defined as, "the act of keeping back or withholding, by design, a person."

Consolidating these definitions, we may say: "Holding a person for a limited time, but who, as yet, is not answerable to a criminal offense."

Elements required for temporary detention:
- Reasonable suspicion by a peace officer that some activity out of the ordinary is or has taken place.
- Some indication to connect the person, to be detained, with the suspicious activity.
- Some indication the suspicious activity is related to a specific offense.

- An officer may be conducting an interview to determine what, if anything is occurring.
  - You can interview; no statutory warning required.
  - You can frisk --if the situation calls for it. If there is reasonable fear that the suspect may be in possession of a weapon.

A person cannot be required to identify himself, even when stop is lawful. You may orally command the person to remain for a reasonable length of time that can be satisfactorily accounted for, while actively involved in the investigation at hand. You may take the person with you to check out a possible crime scene.

*Adams v. Williams, 407 U.S. 143 at 145-46 (1972)*

**Failure to Identify**

PC 38.02

The Explorer should be able to identify circumstances when frisking is permitted.

**Definition**

A “pat down” of the outer clothing of a person whom you have stopped:

- To protect the safety of the officer
- Not a fishing expedition.
- Permitted anytime an officer is in contact with another person and can articulate reasons that he feared for his safety; whenever an officer has reason to believe another has a weapon on or about his person that can be used to cause injury or death.

*Terry v. Ohio, 392 U.S. 1 (1968)*

The Explorer should be able to distinguish who and what may be frisked and what may be seized during the frisk.

**Persons**

- Pat down entire body

**Vehicles**

- Area under immediate control

**Seizure**

- Illegal weapons, file appropriate charges.

**Only force necessary may be used to frisk**

The Explorer will be able to identify the categories of evidence for which a search may be conducted.

*Black’s Law Dictionary Definition:*

"An examination of a man's house or other building or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he was charged. A prying into hidden places for that which is concealed and it is not a search to observe that which is open to view."


The Explorer should be able to identify circumstances which justify a lawful search.

**Search Warrant**

**Incidental to Lawful arrest**

- Arrest must be lawful
- Search area within immediate control
- Contemporaneous with arrest
- Other exceptions to the search requirement are listed in Section 6 - Code of Criminal Procedure

The Explorer should be able to explain the legal authority of a search warrant.

Define
Grounds for Issuance

CCP 18.01(a)
CCP 18.02

*Franks v. Delaware, 483 U.S. 154 (1978)*

May Order Arrest
Contents of Warrant
Execution of Warrants
Seized Property and Person
Subject to Court Order
How Return Made

CCP 18.03
CCP 18.04
CCP 18.06 thru 18.11
CCP 47.01
CCP 18.10

The Explorer should be able to identify who and what may be searched and discuss the consent to search.

Persons

Vehicles

Carroll v. U.S., U.S. 132 (1925)

Places

Open Fields

"Begin where the curtilage ends."

*Curtilage is generally considered to be that area of open space surrounding a dwelling which is so immediately adjacent to the dwelling that it is considered part of the house.*

Voluntary Consent

Note: see local D.A./County Attorney regarding consent to search form.


Abandoned Property

Exigent/Emergency Circumstances when there is not enough time to obtain a warrant and the officer must establish probable cause.

Plain view

Search vs. Inventory

*Define inventory: Black's Law Dictionary - A detailed list of articles of property: a list or schedule of property, containing a designation or description of each specific article.*


The Explorer should be able to indicate how the exclusionary rule applies.
Fruit of the Poisonous Tree

The poisonous tree doctrine is the notion that evidence obtained after illegal government action will be excluded from evidence. This pertains not only to physical or tangible materials generally subject to the Exclusionary Rule, but also intangibles such as subsequent confessions, admissions, identifications, and testimony obtained as a result of the initial unlawful activity. [See Wong Sun v. United States, 371 U. S. 471 (1963)] (Holtz & Spencer, Texas Contemporary Criminal Procedure).

Evidence not to be used.

Exceptions to the Exclusionary Rule

CCP 38.23
ARREST, SEARCH, AND SEIZURE

PURPOSE:  Provide Explorers with knowledge of when a person is arrested and differences in restraint, custody, and constrictive custody.

ACTIVITY:  Role-Play

1. Select 1 or 2 Explorers to participate as officers.
2. Select 2 Explorers to participate as suspects.
3. Instruct Explorer suspects that one of them has committed the offense of theft of a vehicle. Answer all questions directed to them by Explorer officers except those directly related to the offense.
4. Instruct Explorer officers that they received a call regarding suspected auto theft suspects and to go to the scene and investigate.
5. Stress to Explorer officers to separate suspects and lead officer will interview both suspects. Instruct lead officer to state to one suspect "stay here, I'll be right back", then he walks to second suspect and questions him.
6. Divide class into groups of equal numbers. Groups designate spokesman and arrive at majority decision and report findings.
7. Is suspect being told to "stay here, I'll be right back" arrested, restrained, in custody or constrictive custody?
8. If yes, why they believe so? If no, why not?
9. Place group responses on chalk board and discuss differences, elaborating on when a person is arrested and differences in restraint, custody and constructive custody.
ARREST, SEARCH AND SEIZURE

PURPOSE: Provide Explorer with knowledge of when a warrant-less arrest can occur.

ACTIVITY: Role Play

1. Select one Explorer officer, one Explorer suspect and one Explorer complainant.
2. Instruct suspect and complainant that they are in a family fight in a bar room. The suspect is hitting the complainant with his fists. The complainant does not defend him/herself.
3. Instruct officer that he has received a disturbance call at a bar room and he must go investigate. He arrives and observes the fight.
4. Officer arrests/does not arrest.
5. Divide class into groups of equal numbers. Groups designate spokesman and arrive at majority decision and report findings.
6. Did officer make a legal arrest or not?
7. If not, why not?
8. If so, on what authority?
9. Place responses on chalk board and discuss differences. Elaborate on circumstances when a warrant-less arrest can occur.
ARREST, SEARCH, AND SEIZURE

PURPOSE: To provide the Explorer with knowledge of the definition of frisk, purpose of a frisk and circumstances when a frisk may be permitted.

ACTIVITY: Role Play

1. Select two Explorer suspects and two Explorer officers.
2. Two suspects (known drug dealers) meet in local drug store. They are at the back of the store partially out of view of the officers. One suspect is known to carry a pistol.
3. Officers are given a call to drug store regarding two suspicious men.
4. Officers arrive at scene.
5. Suspects observe officer in presence and attempt to leave scene.
6. Officers approach suspects and stop both of them.
7. Divide class into equal number groups. Each group should select spokesman to respond to questions.
8. Can the officers legally frisk?
9. What authority?
10. What can the officers frisk for?
11. What authority?
12. List responses on chalkboard and discuss responses. Elaborate on who and what may be frisked and what may be seized.
MIRANDA V. ARIZONA
Supreme Court of the United States, 1966
384 US 436

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.

We dealt with certain phases of this problem recently in Escobedo v Illinois, 378 US 478 (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.

We granted certiorari in these cases 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 concrete constitutional guidelines for law enforcement agencies and courts to follow.

We started 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 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. In stating the obligation of the judiciary to apply these constitutional rights, this Court declared in Weems v United States, 217 US 349, 373(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 by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The 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 over-zealous 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” 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.

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. As for procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their rights 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 process that 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.

I

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 that in this country they have largely taken place incommunicado. The Commission on Civil Rights in 1961 found much evidence to indicate that "some policemen still resort to physical force to obtain confessions." 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, 205 N. E. 2d 857 (1965).

The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of connect. 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.

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 Florida, 309 US 227, 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." Interrogation still takes place in privacy. Privacy results in secrecy and this in turns 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. These texts are used by law enforcement agencies themselves as guides. 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 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."

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, to cast blame on the victim or on society. 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 manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt.

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.

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." Then the questioning resumes “as though there were no doubt about the guilt of the subject.” A variation on this technique is called the "reverse line-up":

Texas Association of Police Explorers
Texas Explorer's Guide to Law Enforcement Training
www.TexasPoliceExplorers.com
“The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with different 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.”

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 the subject with the apparent fairness of his interrogator.” After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect’s refusal to talk.

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.” 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 described above, the very fact of custodial interrogation exacts a heavy toll on individual 494 liberty and trades on the weakness of individuals.

In cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In Miranda v Arizona, the police arrested the defendant and took him to a special interrogation room where they secured a confession. In 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 Westover v United States, the defendant was handed over to the Federal Bureau of Investigation by 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 signet statements from the defendant. Lastly, 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 fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grand. 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 that product of free choice.

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. The current practice of incommunicado interrogation is at odds with one of our 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. Perhaps 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. 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.”

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 during his trial gained popular acceptance in England. These sentiments worked their way over to the Colonies and were implanted after great struggle into the Bill of Rights. 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.” The privilege was elevated to constitutional status and has always been “as broad as the mischief against which it seeks to guard.” We cannot depart from this noble heritage.

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 rightfully to be recognized in part as an individual's substantive right, “right to a private enclave where he may lead a private life. That right is the hallmark of our democracy.” 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," 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. 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."

The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation. In this Court, the privilege has consistently been accorded a liberal construction. We are satisfied that all the principles embodied in the privilege apply to informal compulsion exerted by 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.

In Bram v United States, 168 US 532 (1897), this court held: 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...”

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, Wan v United States, 266 US l. 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 judicial proceeding or otherwise.”

In addition to the expansive historical development of the privilege and the sound policies which have nurtured its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation.

Because of the adoption by Congress of Rule 5 (a) of the Federal Rules of Criminal Procedure, and this Court’s effectuation of that Rule in McNabb v United States, 318 US 332 (1943), and Mallory v United States, 354 US 449 (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.
Our decision in Malloy v Hogan, 378 US 1(1964), necessitates an examination of the scope of the privilege in state cases as well. In Malloy, we squarely held the privilege applicable to the States, and held that the substantive standards underlying the privilege applied with full force to state court proceedings. There, 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. The voluntariness 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 making a free and rational choice. The implications of this proposition were elaborated in our decision in Escobedo v Illinois, 378 US 478, 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 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. 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 that counsel is present when 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.

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.

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.

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and 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. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

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 as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clear-cut 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.
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.

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 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.” Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Thus, the need for counsel to protect 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.

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 may be the person who most needs counsel.

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 said can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of 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.

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 of the individual has no relationship to the scope of the rights involved here. The presence of counsel at an individual’s 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 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.” Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Thus, the need for counsel to protect 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.

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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 of the individual has no relationship to the scope of the rights involved here. 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. 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.

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. As with the warning 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.

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this 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 can not obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

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.

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. This Court has always set high standards of proof for the waiver of constitutional rights, and we re-assert these standards as applied to in-custody 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.

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. 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 some information on his own prior to invoking his right to remain silent when interrogated.

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. 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.

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 of 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 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 inadmissible in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement.

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.

Our decision is not intended to hamper the traditional function of police officers in investigating crime. 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 responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.

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, 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.

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 subjected to questioning, the privilege against self incrimination is jeopardized. Procedural safeguards must be employed to 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.

IV

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.

Custodial interrogation 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, 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.

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.

The practice of the FBI and 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.

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. 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. Judicial solutions to problems of constitution 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. Where rights secured by 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
the relationship of the Fifth Amendment privilege to police interrogation without specific
of 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.

**Miranda v Arizona**

On March 13, 1963, petitioner, Emesto Miranda, was arrested at his home and taken in custody to a
Phoenix police station. He was 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 Marinade was not advised that he had a right to have an attorney present. Two hours later, the
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 promise of
immunity and “with full knowledge of my legal rights, understanding any statement I make may be used against
me.”

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. In reaching its decision, the court
emphasized heavily the fact that Miranda did not specifically request counsel.

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.

**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 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 a 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 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 of lender
and sentenced to 30 to 60 years imprisonment the conviction was affirmed without opinion by the Appellate
Division, Second Department, and by the Court of Appeals, also without opinion. 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.

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.

**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 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.

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.

We reverse. On the facts of this case we cannot find that Westover knowingly and intelligently waived his right to consult with counsel prior to the time he made the statement. At the 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 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.

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 its original surroundings, and the 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 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.

**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.

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, 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.

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. 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.

We affirm. 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 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 privileges.