of this project which proved to be successful was to obtain "testimony" from some person to prove that petitioner had alcohol in his blood at the time he was arrested. And the purpose of the project was certainly "communicative" in that the analysis of the blood was to supply information to enable a witness to communicate to the court and jury that petitioner was more or less drunk. . . .

How can it reasonably be doubted that the blood test evidence was not in all respects the actual equivalent of "testimony" taken from petitioner when the result of the test was offered as testimony, was considered by the jury as testimony, and the jury's verdict of guilt rests in part on that testimony? The refined, subtle reasoning and balancing process used here to narrow the scope of the Bill of Rights' safeguard against self-incrimination provides a handy instrument for further narrowing of that constitutional protection, as well as others, in the future. Believing with the Framers that these constitutional safeguards broadly construed by independent tribunals of justice provide our best hope for keeping our people free from governmental oppression, I deeply regret the Court's holding. . . .

Questions for Discussion

1. What is the holding of the Supreme Court in *Schmerber*? Is Justice Brennan's decision consistent or inconsistent with the purposes of the privilege against self-incrimination?
2. Summarize the argument of the dissenting judges.
3. How would you rule in this case?
4. Does the extraction of DNA evidence from a suspect in a criminal case violate an individual's right against self-incrimination?
5. *Problems in policing.* Explain why it is important to understand the difference between testimonial and nontestimonial evidence in regard to self-incrimination. Give some examples of nontestimonial evidence.

MIRANDA V. ARIZONA

In 1966, in *Miranda v. Arizona*, a five-judge majority of the U.S. Supreme Court held that the prosecution may not use statements stemming from the custodial interrogation absent procedural safeguards to protect a defendant's Fifth Amendment privilege against self-incrimination. The Court majority concluded that absent a three-part *Miranda* warning, the "inherently coercive" pressures of police interrogation had been proven to overwhelm individuals' capacity to exercise their right against self-incrimination, and no confession given under these conditions "can truly be the product of a suspect's free choice."

What were these coercive pressures? According to the Court, individuals held in detention were isolated from friends, family, and lawyers in unfamiliar surroundings and were subject to sophisticated psychological tactics, manipulation, and trickery designed to wear down their resistance. The Court pointed to police manuals instructing officers to engage in tactics such as displaying confidence in a suspect's guilt, minimizing the seriousness of the offense, wearing down individuals through continuous interrogation, and using the "Mutt and Jeff" strategy in which one officer berates a suspect and the other gains the suspect's trust by playing the part of his or her protector. The "false lineup" involves placing a suspect in a lineup and using fictitious witnesses to identify the suspect as the perpetrator. In another scenario, fictitious witnesses identify the defendant as the perpetrator of a previously undisclosed serious crime, and the defendant panics and confesses to the offense under investigation.

Before you begin to read the *Miranda* decision, you may find it interesting to learn about Ernesto Miranda, the individual whose name is attached to one of the most important U.S. Supreme Court decisions in recent history. Miranda was in constant trouble as a young man and committed a felony car theft in 1954 while in the eighth grade. This arrest was followed by a string of convictions and brief detentions for burglary, attempted rape and assault, curfew violations, "Peeping Tom" activities, and car theft. In 1959, Miranda was sentenced to a year in prison and, following his release, seemingly settled down and found a regular job, moved in with a woman, and fathered a child. In 1963, Miranda reverted to his previous pattern of criminal behavior and kidnapped and raped eighteen-year-old "Jane Doe." The victim identified him in a lineup, and his car had been seen in the neighborhood of the attack. Miranda confessed in less than two hours and was convicted and sentenced to not less than twenty nor more than thirty years in prison. Miranda's conviction was affirmed by the Arizona Supreme Court, and his lawyers appealed to the U.S. Supreme Court.

In reading *Miranda v. Arizona*, pay attention to the procedural protections the Supreme Court requires that the police provide a suspect. Why are these specific protections required?

Was Miranda's confession admissible at trial?

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

Facts

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 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 promises 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.

Miranda was found guilty of kidnapping and rape. He was sentenced to twenty to thirty 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. . . . The Court emphasized the fact that Miranda did not specifically request counsel. . . .

Issue

The constitutional issue we decide . . . 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 of the four cases before the Court, 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. . . .

Reasoning

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 reexamination 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. . . .

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. From extensive factual studies undertaken in the early 1930s, 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. . . . [However] we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. Interrogation still takes place in privacy. . . . A valuable source of information about present police practices . . . 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. . . . [T]he 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. . . .

In the 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 signed statements from the defendant. Lastly, in *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. . . . 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 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.

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.

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 . . . 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. . . .

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.

Holding

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. . . . 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. . . .

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.

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. . . .

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. . . . [T]he 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. . . . 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 stated 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 need for counsel in order to protect the privilege exists for the indigent as well as the affluent. . . . 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. 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. 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.

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 cannot 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. . . . 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. . . .

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. . . .

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. . . . 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.

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 can readily be emulated by state and local enforcement agencies. . . . The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. . . . 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. . . .

Dissenting, *Clark, J.*

Rather than employing the arbitrary Fifth Amendment rule 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 . . . 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 change 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. . . .

Dissenting, *White, J.,* joined by *Harlan, J.,* and *Stewart, J.*

The proposition that the privilege against self-incrimination forbids in custody 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. . . . [T]he 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. . . .

The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. . . . [T]he rule announced today [is] a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty, and to increase the number of trials. . . . [I]t 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 . . . 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 acquitted if the State's evidence, minus the confession, is put to the test of litigation. . . . [W]here probable cause exists to arrest several suspects, . . . it will often 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 . . . in all criminal cases, regardless of the severity of the crime or the circumstances involved. . . . It will slow down the investigation and the apprehension of confederates in those cases where time is of the essence, such as kidnapping, those involving the national security, [and] some organized crime situations. . . .

Questions for Discussion

1. Outline the *Miranda* rule. Explain the purpose of the required warnings.
2. Why did the Supreme Court base *Miranda* on the Fifth rather than the Sixth Amendment?
3. Do the *Miranda* warnings adequately counteract the pressure that the majority describes as inherent in custodial interrogation?
4. Compare and contrast the requirements of the due process voluntariness test and the *Miranda* rule.
5. Are you persuaded by the arguments of the dissent? Is the majority distrustful of confessions as alleged by the defense?
6. Is it realistic to expect defendants to invoke their *Miranda* rights and for the police to fully follow the requirements of the Miranda ruling?
7. *Problems in policing.* What is required of police officers under the *Miranda* rule?

Cases and Comments

1. ***Miranda.*** Miranda was retried for kidnapping and rape. The twenty-one-year-old Jane Doe testified against him but, on cross-examination, admitted that she was unable to positively identify Miranda as the perpetrator. Miranda's common law wife, however, came forward and testified that Miranda had confided in her that he had committed the kidnapping and rape and that he had asked her to tell Doe that he would marry her if she would drop the charges. Miranda then asked his wife to show Doe their baby daughter and to ask her to drop the charges so that the baby could be with her father. Miranda was once again convicted and was sentenced to serve twenty to thirty years in prison. In 1972, at the age of thirty, Miranda was paroled. He was returned to prison when he was found with a gun and illegal drugs in violation of the terms of his parole. Miranda was released in 1975 and sold autographed "*Miranda* warning cards" to raise money. In January 1976, while drinking and playing cards, he got involved in a bar fight and was stabbed to death. You can read about the *Miranda* case in Baker (1983).

2. **Interrogation Techniques.** Saul M. Kassin and Gisli H. Gudjonsson are two of the most prominent psychologists working in the area of interrogation and confessions. The two scholars found that a number of suspects waive their *Miranda* rights because of an inability to fully comprehend the warnings. This may result from youth, a lack of intelligence or education, or an inability to understand their rights. Some commentators suggest that individuals who lack confidence or who are inexperienced in the criminal justice process also may a have a difficult time asserting their rights in the presence of the police.

Individuals who waive their rights may confront sophisticated police interrogation tactics. Kassin and Gudjonsson (2005) find that police interrogation techniques result in confessions from roughly 42 percent of individuals subjected to police interrogation. They write that the police are advised to conduct interrogations in a small, sparsely furnished room in order to isolate the suspect and to make him or her uncomfortable and feel cramped and confined. The police are taught to align themselves with the suspect by justifying or excusing the crime. This, for example, might entail portraying the act as understandable under the circumstances. The police also are instructed to stress that the victim's behavior contributed to the crime and to minimize the seriousness of the suspect's actions. Another tactic is to display a certainty in the suspect's guilt and to immediately interrupt and challenge the suspect's denial of guilt or claim that he or she acted out of self-defense. The police also are instructed to encourage the suspect to unburden his or her guilt and to provide a written or oral account of the crime. Kassin and Gudjonsson observe that although most people confess for a variety of reasons, the most powerful factor is the suspect's belief that the police have evidence implicating him or her in the crime, such as fingerprint, hair, or blood evidence.

Miller v. Fenton is a leading case on police interrogation tactics. Frank Miller was a suspect in a murder, and he accompanied the police to a state police barracks. He was read and waived his *Miranda* rights. The issue was whether Detective Boyce had employed tactics during the fifty-three-minute interrogation that "were sufficiently manipulative to overbear the will of a person with [the defendant's] characteristics." The majority concluded that Miller's confession was voluntary "under the circumstances."

Miller was thirty-two, had some high school education, and previously had served time in prison. During the interrogation, Boyce falsely told Miller that the deceased was alive, hoping that the possibility that the victim would identify Miller as the assailant would persuade him to confess to the crime and to "cut a deal." Boyce, having met with no success, arranged to receive a phone call during the interrogation and announced with mock surprise that the victim had just died. Boyce, with apparent concern, then sympathetically related that he knew that Miller suffered from mental problems and that Boyce would like to ensure that Miller received psychological help. Boyce next stressed that Miller was "not responsible" or a "criminal," that the death must be "eating you up," that "you've got to come forward," and that he wanted to help Miller "unburden his inner tensions." Roughly one hour passed before Miller confessed and collapsed in a robot-like state onto the floor and was taken to the hospital.

The two-judge majority indicated that Boyce's interrogation "did not produce psychological pressure strong enough to overbear the will of a mature, experienced man [like Miller] who was suffering from no mental or physical illness and was interrogated for less than an hour at a police station close to home." Judge Gibbons, in dissent, criticized the majority for adopting a test that asked the court to speculate on the impact of Boyce's "promises and lies" on Miller. Gibbons, instead, argued that when the police resort to promises of psychological help and assure suspects that they will not be punished, the confession should be ruled inadmissible. Do you agree with the two-judge majority or with Judge Gibbons? See *Miller v. Fenton,* 796 F.2d 598 (3d Cir. 1986).

You Decide

8.2 Robert L. Brown was charged in a Louisiana court with unlawful possession of heroin. He was convicted and sentenced to ten years in prison. Brown was apprehended when he unsuccessfully attempted to flee from a police raid of a drug house. He was advised that he had a right to speak or remain silent, that anything he said might be used against him, and that he had a right to counsel. During the reading of the *Miranda* warnings, Brown proclaimed, "I know all that." Brown then confessed that he used narcotics and, in fact, had injected earlier in the day.

A federal district court pointed out that Brown was not told that he had the right to have an attorney present if he decided to make a statement and that he was not told that a lawyer would be appointed to represent him in the event that he lacked funds. One of the arresting officers also testified that he did not afford the defendant "any opportunity to procure a lawyer." Did Brown's statement that "I know all that" constitute a waiver of Brown's right to receive the full *Miranda* warnings? Cite language from the *Miranda* decision in support of your answer. See *Brown v. Heyd*, 277 F. Supp. 899 (E.D. La. 1967).

You can find the answer by referring to the Student Study Site, edge.sagepub.com/lippmancp3e.

Legal Equation

Fifth Amendment privilege against self-incrimination and police interrogation

= The prosecution may not use inculpatory or exculpatory statements stemming from custodial interrogation of the defendant unless it demonstrates use of procedural safeguards effective to secure privilege against self-incrimination

+ Custodial interrogation is questioning initiated by law enforcement officers after an individual has been taken into custody or deprived of his or her freedom of action in a significant way

+ Prior to any questions, the suspect must be clearly and unequivocally informed that he or she has the right to remain silent, that any statement he or she makes may be used as evidence against him or her, and that he or she has the right to the presence of an attorney, appointed or retained

+ The *Miranda* decision also provides that the defendant may voluntarily, knowingly, and intelligently waive any or all of these rights; the fact that a defendant answers some questions does not prohibit a defendant from invoking his or her right to silence or to a lawyer

+ A heavy burden rests on the prosecution to prove that a defendant waived his or her right against self-incrimination and/or the right to a lawyer; silence does not constitute a waiver, and a defendant who invokes his or her right to silence is not subject to additional interrogation

+ A defendant who invokes his or her right to a lawyer may not be questioned outside the presence of the attorney

+ A prosecutor may not penalize a defendant's invocation of his or her right against self-incrimination by commenting on the invocation of this right at trial

+ Statements in violation of *Miranda* may not be introduced into evidence.

Miranda and the Constitution

Miranda, as we have seen, supplemented the due process voluntariness test by requiring that the police read suspects subjected to custodial interrogation the *Miranda* warnings. The decision in *Miranda* sparked a wave of criticism, and in 1968, the U.S. Congress took the aggressive step of passing legislation that required federal judges to apply the voluntariness test. The Omnibus Crime Control and Safe Streets Act provided that a confession shall be admissible as evidence in federal court if it is "voluntarily given." The act listed a number of factors that judges were to consider in determining whether a confession was voluntary.

In 2000, in *Dickerson v. United States*, Chief Justice William Rehnquist, who himself had been a constant critic of *Miranda*, held that *Miranda* was a "constitutional decision" that is required by the Fifth Amendment to ensure that detainees are able to exercise their right against self-incrimination in the inherently coercive atmosphere of custodial interrogation. This is an important statement because laws passed by Congress are required to conform to the U.S. Constitution, in this instance, the Fifth Amendment. Congress accordingly lacked authority to instruct the judiciary to disregard the requirements of *Miranda* and to rely solely on the voluntariness test. Justice Rehnquist also stressed that *Miranda* has become "embedded in routine police practice to the point where the warnings have become part of our national culture" (*Dickerson v. United States,* 530 U.S. 428 [2000]). We now will examine the central elements of the *Miranda* rule:

- custodial interrogation,
- public safety exception,
- three-part warning,
- invocation of *Miranda* rights,
- interrogation, and
- waiver of and right to counsel.

In reading this section of the chapter, you will see that although the Supreme Court affirmed the constitutional status of the *Miranda* decision, the requirements of *Miranda* are constantly being adjusted in an effort to balance *Miranda*'s protection of suspects against society's interest in obtaining confessions. As you read on, ask yourself whether the *Miranda* warnings provide adequate protection for defendants. In the alternative, does *Miranda* handcuff the police? In addition, consider whether the *Miranda* rules are too complex to be easily absorbed by police, lawyers, and judges. We start by examining custodial interrogation.

CUSTODIAL INTERROGATION

The *Miranda* warnings are triggered when an individual is in custody and interrogated. The *Miranda* decision defines **custodial interrogation** as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." In *Beckwith v. United States*, the Supreme Court clarified that a *focus* by law enforcement on an individual is not sufficient to require the reading of the *Miranda* rights. In *Beckwith,* two Internal Revenue Service (IRS) agents interviewed Beckwith for three hours in a private home; the conversation was described by one of the agents as "friendly" and "relaxed." The Supreme Court held that being the focus of an investigation does not involve the inherently coercive pressures that *Miranda* described as inherent in incommunicado custodial interrogation (*Beckwith v. United States,* 425 U.S. 341 [1976]).

What, then, is meant by custodial interrogation? *Miranda* stated that it is not considered custody, and the *Miranda* warnings are not required when the police engage in general questioning at a crime scene or other general investigative questioning of potential witnesses. The *Miranda* warnings also need not be given to an individual who voluntarily enters a police station and wishes to confess to a crime or to a person who voluntarily calls the police to offer a confession or other statement. On the other hand, the *Miranda* warnings are required when an individual is subjected to a custodial arrest and to interrogation. At this point, an individual is under the control of the police and likely will be subjected to incommunicado interrogation in an isolated and unfamiliar environment.

The challenge is to determine at what point, short of being informed that he or she is under custodial arrest, an individual is exposed to pressures that are the "functional equivalent of custodial arrest" and the *Miranda* rights must be read. What if you are walking home and are stopped by the police late at night and they ask what you are doing in the neighborhood? This has important consequences for law enforcement. Requiring *Miranda*

warnings whenever an officer comes in contact with a citizen would impede questioning. This might make sense because every citizen interaction with an officer is somewhat intimidating and coercive. On the other hand, requiring a clearly coercive environment before the *Miranda* warnings must be given would limit the *Miranda* warnings to a narrow set of circumstances. How does the Supreme Court resolve these considerations? At what point short of a custodial arrest are the *Miranda* warnings required?

The Supreme Court adopted an "objective test" for custodial interrogation that requires judges to evaluate the totality of the circumstances. In *Stansbury v. California*, the Supreme Court held that "the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned" (*Stansbury v. California,* 511 U.S. 318, 323 [1994]).

Custodial interrogation is not based solely on the seriousness of the crime for which you have been stopped and questioned or based simply on the location of the interrogation. Custody is based on whether, in the totality of the circumstances, a reasonable person would believe that he or she is subjected to formal arrest or to police custody to a degree associated with a formal arrest (i.e., the functional equivalent of formal arrest).

Courts typically *ask whether a reasonable person would feel free to leave.* In evaluating the totality of circumstances, judges consider a number of factors. Remember, no single factor is crucial in determining whether a reasonable person would believe that he or she is subject to custodial interrogation (not free to leave). The factors to be considered include the following:

- The number of police officers
- Whether the officer tells the individual that he or she is free to leave or not free to leave
- The length and intensity of the questioning
- Whether the officer employs physical force to restrain the individual
- Whether the stop is in public or in private
- The location of the interrogation
- Whether a reasonable person would believe that the stop would be brief or whether the stop would result in a custodial arrest
- Whether the individual is in familiar or unfamiliar surroundings
- Whether the suspect is permitted to leave following the interrogation

The totality-of-the-circumstances test means that custody is determined on a case-by-case basis. Consider the Supreme Court decisions in the following cases.

Home. In *Orozco v. Texas*, the Supreme Court held that the defendant was subjected to custodial interrogation when four police officers entered his bedroom at 4:00 A.M. to interrogate him regarding a shooting (*Orozco v. Texas,* 394 U.S. 324 [1969]).

Parole interview. Murphy, a probationer, agreed to meet his probation officer regarding his "treatment plan" and, during the meeting, admitted that he had committed a rape and murder. The Supreme Court found that Murphy was familiar both with the surroundings and with his probation officer and that he was not physically restrained and could have left at any time. The possibility that terminating the meeting would lead to revocation of probation, in the view of the Court, was not comparable to the pressure on a criminal suspect who is not free to walk away from interrogation by the police (*Minnesota v. Murphy,* 465 U.S. 420 [1984]).

Police station. In *Oregon v. Mathiason,* Carl Mathiason, a parolee, voluntarily appeared at the police station at the request of an officer. Mathiason confessed after the officer stated that he believed that the suspect was involved in a recent burglary, falsely told Mathiason that his fingerprints had been discovered at the scene of the crime, and explained that truthfulness would possibly be considered in mitigation at sentencing. The Supreme Court determined that there was no custodial interrogation because the defendant voluntarily came to the station house, was informed that he was not under arrest, and left following the interview (*Oregon v. Mathiason,* 429 U.S. 492 [1977]).

Prison. In *Howes v. Fields*, the Supreme Court held that whether the questioning of an inmate who is "removed from the general prison population" and interrogated about "events that occurred outside the prison" is custodial depends on the totality of circumstances. The Court stressed that there was no "categorical rule" that the interrogation of an inmate "always" is custodial. The objective circumstances of the interrogation

were consistent with an interrogation environment in which a reasonable person would "have felt free to terminate the interview and leave." Fields was escorted by a corrections officer to a conference room where he was questioned for between five and seven hours by two sheriff's deputies about his alleged sexual molestation of a twelve-year-old boy. Fields was informed that he could leave and return to his cell at any time, was not physically restrained or threatened, was interrogated in a well-lit conference room, was offered food and water, and the door was occasionally left open. An inmate does not suffer the fear and anxiety of an individual who is arrested and feels isolated and alone in an alien environment, will not be persuaded to confess to obtain his or her release, and is aware that his interrogators do not have the authority to prolong his or her detention (*Howes v. Fields,* 132 S. Ct. 1181, 565 U.S. ___ [2012]).

Traffic stop. In *Berkemer v. McCarty*, McCarty was stopped by Highway Patrol Officer Williams who observed McCarty's automobile weaving in and out of a lane. Williams observed that McCarty experienced difficulty with his balance when he exited the vehicle and concluded that he would charge him with a traffic arrest and take him into custody. McCarty was unable to successfully complete a field sobriety test and, in response to questions, admitted that he had consumed several beers and had smoked marijuana. McCarty was taken into custody without being read his *Miranda* rights, and he made several additional incriminating statements. McCarty was subsequently convicted of the first-degree misdemeanor of operating a motor vehicle while under the influence of drugs or alcohol. McCarty appealed and argued that he was in custody when pulled over by Officer Williams and should have been read his *Miranda* rights.

The Supreme Court rejected the argument that the *Miranda* warnings are required only for felonies. The Court nonetheless ruled that McCarty was not in custody when initially required to pull over, ruling that a traffic stop normally does not exert pressures that significantly impair an individual's exercise of his or her Fifth Amendment right against self-incrimination. Traffic stops presumably are brief and public and typically are not police dominated. The Supreme Court also held that between the initial stop and the custodial arrest, McCarty was not subject to constraints "comparable" to formal arrest. During this relatively short period, Williams did not communicate his intent to arrest McCarty, and his unarticulated plan was considered to have little relevance to the question of custody. The relevant inquiry in determining whether an individual is in custody is how a reasonable person in the suspect's situation would understand his or her situation. Would a reasonable person feel free to leave (not in custody), or would a reasonable person feel that his or her freedom of movement was restricted (custody)? In this case, a single police officer asked a limited number of questions and requested that McCarty perform a field sobriety test. The Supreme Court held that McCarty was not subjected to the "functional equivalent of formal arrest" (*Berkemer v. McCarty,* 468 U.S. 420 [1984]).

In *Yarborough v. Alvarado*, Michael Alvarado's parents responded to a police request to bring their eighteen-year-old son to the police station. Alvarado's parents waited in the lobby while he was interviewed by Officer Cheryl Comstock. Comstock assured Alvarado's parents that the interview was not going to be "long." Comstock did not give Alvarado the *Miranda* warnings. Alvarado, when interrogated, admitted helping Paul Soto steal a truck and stated that he had helped conceal the murder weapon following Soto's killing of the driver. Comstock, throughout the two-hour interview, focused on Soto's crimes rather than on Alvarado's role in the killing, and Alvarado was not threatened with arrest or prosecution. At the end of the interview, Comstock twice asked Alvarado if he needed to take a bathroom break. Following the interview Alvarado was released to return home with his parents.

The Supreme Court recognized that although this was a "close case," the state court had acted reasonably in deciding that Alvarado had not been subjected to custodial interrogation. The Court held that whether Alvarado "would have felt that he was at liberty to terminate the interrogation and leave" was to be evaluated based on an objective test and that an individual's age and inexperience was not to be considered. In dissent, Justice Breyer and three other justices argued that Alvarado's age was "relevant" to determining whether a "reasonable person in Alvarado's position [would] have felt free . . . to get up and walk out of the . . . station house." According to the dissenting judges, it was not persuasive to evaluate Alvarado on the same standard as a "middle-aged gentleman, well-versed in police practices" (*Yarborough v. Alvarado,* 541 U.S. 652 [2004]).

In 2011, in *J.D.B. v. North Carolina*, the next case in the text, the U.S. Supreme Court reversed course and held that the age of a juvenile subjected to police questioning is "relevant to the custody analysis" of *Miranda v. Arizona*. The Court stressed that "it is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave." The Court held 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 the test for custodial interrogation (*J.D.B. v. North Carolina*, 131 S. Ct. 2394, 564 U.S. ___ [2011]).

You will find Illinois v. Perkins *and* Howes v. Fields *on the Student Study Site, edge.sagepub.com/lippmancp3e.*