US Supreme Court weakens “Miranda” rights of criminal suspects

By John Burton
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The US Supreme Court on June 1 repudiated by a 5-4 vote the key provision of the landmark 1966 *Miranda v. Arizona* decision requiring criminal suspects to affirmatively waive their right to remain silent before statements made during police interrogations can be used against them in trials.

The ruling is the latest in a string of Supreme Court rulings eroding the basic civil liberties principle spelled out by the Fifth Amendment, which guarantees that no person “shall be compelled in any criminal case to be a witness against himself.”

The Obama administration, which last month called for eliminating Miranda rights for alleged terrorists, supported the right-wing majority on the court in attacking the rights of those arrested and held in police custody. The ruling opens the door to police abuse and intimidation of suspects to extract statements despite attempts by those detained to remain silent.

After Van Chester Thompkins was arrested in 2000 for a drive-by shooting in Southfield, Michigan, two detectives sat him in a small chair in an 8-by-10 room. They recited the familiar *Miranda* admonitions—”You have the right to remain silent, you have the right to an attorney” and so forth—and asked Thompkins to sign a form confirming he understood them. Thompkins refused to sign and sat virtually mute as the detectives badgered him about his alleged involvement in the crime.

Two hours and 45 minutes later, a detective asked, “Do you believe in God?” After Thompkins replied “Yes,” the detective asked, “Do you pray to God to forgive you for shooting that boy down?” Thompkins again answered “Yes.”

The Court of Appeals for the Sixth Circuit, which covers Michigan and several other northeastern states, reversed Thompkins’s murder conviction on the basis that *Miranda* barred the use of this incriminating statement at trial. The Supreme Court on Tuesday reversed the appeals court, reinstating the conviction.

The controlling precedent is clear. *Miranda* directs: “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…. 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.”

Associate Justice Anthony Kennedy, presently considered the high court’s “swing vote,” authored the majority opinion, joined by the right-wing bloc consisting of Chief Justice John Roberts and Associate Justices Antonin Scalia, Clarence Thomas and Samuel Alito.

Instead of following the law that police interrogators bear a “heavy burden” to prove that a suspect understood and waived his constitutional right to not “be a witness against himself,” the Supreme Court majority ruled, “Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.”

The newest associate justice, Sonia Sotomayor, wrote the dissent, joined by the three more liberal associate justices, Stephen Breyer, Ruth Bader Ginsburg and retiring Justice John Paul Stevens.

“Today’s decision turns *Miranda* upside down,” Sotomayor observed. “Criminal suspects must now unambiguously invoke their right to remain silent—which, counter-intuitively, requires them to speak. At the same time, suspects will be legally presumed to have waived their rights even if they have given no clear expression of their intent to do so. Those results, in my view, find no basis in *Miranda* or our subsequent cases and are inconsistent with the fair?trial principles on which those

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precedents are grounded."

Although Obama nominated Sotomayor, his representatives before the Supreme Court took the opposite position in the case. At the oral argument, Assistant Solicitor General Nicole Saharsky, a subordinate of Elena Kagan, President Obama's nominee to replace Justice Stevens, answered "no" in response to Justice Kennedy's question: "Do you read *Miranda* as saying that there cannot be questioning unless there is a waiver?"

When Kennedy asked, "Why don't we tell the police, there must be a waiver before you can continue to interrogate?" Sararsky responded, "That would exact a substantial price on law enforcement."

In other words, the position of the Obama administration, like that of the Bush administration before it, is that constitutional rights must be curtailed to increase the police powers of the state.

The Obama administration's courtroom advocacy is of a piece with last month's announcement by Attorney General Eric Holder that he would work with Congress to expand the so-called "public safety exception" to deny Miranda rights to terrorist suspects. (See: "Obama administration backs stripping 'terror' suspects of *Miranda* rights".)

The *Miranda* decision itself is a monument of a bygone era, when the Supreme Court led by Chief Justice Earl Warren (1953-1969)—a Republican appointed by President Eisenhower—issued a series of precedents outlawing racial segregation, prohibiting government sponsorship of religion, curtailing the use of illegally seized evidence and permitting civil-rights lawsuits against governmental entities, among other things.

Warren himself authored *Miranda*, citing its origins "in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which have long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, were not uncommon even in England."

Warren continued: "So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment."

Warren did not limit his concerns about abusive interrogations to brutality—the notorious "third degree." He referred to the techniques described in contemporary police interrogation manuals: "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."

The use of such inherently coercive interrogation techniques—exactly those used on Thompkins—to obtain evidence of guilt often leads to the conviction of innocents. One recent study documented 125 false confessions to serious felonies based on subsequent DNA analysis. The report by Professors Steven A. Drizin and Richard A. Leo is available here.

Warren court rulings have been undermined by judicial decisions dating back to the 1980s. The pace is quickening with the addition of Chief Justice Roberts and Associate Justice Alito, both confirmed with key Democratic support despite their obvious authoritarian tendencies.

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