

Chapter 8 - Lessons in Constitutional Law: Interrogation

1. Past Interrogation practices
 - a. **Trial by ordeal** - in the middle ages they believe that fate determined if a person was innocent or guilty (ex. Tie a cinderblock around neck and throw them in river and if they survive, they are innocent)
 - i. Now the 5th and 6th amendment protect us from this
 - b. **Adversarial Approach** - presumed innocent until proven otherwise
2. Wickersham Commission - in 1931 they investigated police interrogation practices
 - a. They uncovered heavy reliance on the **3th degree** - tactics used to coerce confessions
 - b. The Wickersham abolished all these outdated practices
3. Continued use of third-degree tactics
 - a. Although the Wickersham Commission worked to abolish these tactics, they continued
 - b. **Dragnets** - police swooping into an area, scouring it for anybody who possibly match the suspect's description, taking them into custody, and transporting them to another location for questioning
 - i. These practices forced the Supreme Court to focus on two aspects of confession
 1. Whether the suspect gave a valid and affirmative waiver of the right to counsel
 2. Whether the police obtained the confession voluntarily
4. Escobedo vs Illinois
 - a. Escobedo was denied right to see lawyer
 - b. Escobedo was coerced and did not confess voluntarily
 - c. Once an individual crossed the threshold from being a subject to a suspect, the inquiry shifted from an investigation to an interrogation
5. Miranda vs Arizona
 - a. Miranda was a prime suspect
 - i. After being questioned, he signed a full confession
 - b. He did not know he had the **right to counsel** (right to free defense lawyer)
 - c. Outcome - police now have to issue Miranda warning
6. The legal legacy of Miranda
 - a. Miranda applied only to custodial interrogations or post-arrest questioning
 - b. Originally a line was drawn between interviews and interrogations
 - c. The warnings were required at the precise moment the officer stopped regarding the person as a subject and began to think of the person as a suspect
 - d. Failure to warn
 - i. A confession cannot be involuntary unless there is a police coercion
 - ii. **Res gestae** - an "excited utterance" (a spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or conditions, or immediately thereafter)
 - iii. **Rescue Doctrine** - this type of a situation balances the dilemma of needing information to save a victim's life against the suspect's constitutional practices

(example: asking a suspect where his/her gun is. Public safety supersedes any one particular individual's rights)

- e. Invocation of Miranda
 - i. The officer must determine whether the suspect understands his or her rights and still wished to answer any questions
 - ii. Once a suspect exercises his/her right to counsel, the police must cease all interrogations
- f. A solution for Miranda difficulties
 - i. The Innocence Project - a national effort devoted to advancing ways that would prevent wrongful convictions, recommends continuous electronic recording of interrogations right from the moment that Miranda warnings are issued up to the conclusion of the session
- g. The Diffusion of Knowledge: A Bottleneck
 - i. The most pressing problem how to get information from the nation's capital to the officers who patrol the streets
 - ii. Most police officers indicate that the daily newspapers and professional new bulletins are most frequent sources for learning about Supreme Court decisions
 - iii. Most police officers are operating in a void. They are not informed of major court cases for a substantial period of time
 - 1. Most decision trickle down until the police find out about it
 - iv. There are two command steps missing between the police and the court
 - 1. Once there is a court decision, no one interprets that decision to the police on a working level.
 - 2. There is no one to set overall standards and goals for a rational, coherent system of criminal justice against which both the police and the prosecutor may assess their behavior
 - a. Prosecutors are overworked and can deal with these problems only on a case-by-case basis
 - b. Their involvement with the police is minimal

7. Summary

- a. One of the more sacrosanct freedoms that the Constitution guarantees is the protection from overzealous police interrogations and the right to consult with counsel
- b. The basic rule is that confessions are admissible in court only if they are given voluntarily, are not coerced, and following an intelligent waiver. The Miranda warning is intended to do just that. However, situations arise that test prior interpretations of case law and the boundaries that are in place
- c. Sometimes the police find themselves bound by rules that they have not heard about. While the gap between the courts and police is frustrating, it illustrates that the American criminal justice enterprise is not a unified system

Chapter 9 - The Arrest Decision

1. Introduction

- a. Arrest considered monumental because it carries a negative image that taints the arrestee for years to come (example: applying for a job)
- b. This chapter explores the guidelines that direct or control an officer's decision to arrest

2. Full versus Selective Enforcement

- a. **Full enforcement** - the police confront and deal with each and every single violation that comes to their attention
- b. **Selective enforcement** - the police do not enforce all the laws all the time against every single violator
- c. **Policy** - rules for officer behavior
- d. **Unarticulated improvisation** - officers lack the guidance of explicit policy and must make their own decisions without any administrative structuring. Carries 2 liabilities
 - i. The most disconcerting enigma is that the bottom rung of the organizational ladder is formulating and enacting policy. Called **de-facto** policy makers
 - ii. The establishment and enactment of policy by individual patrol officers do not ensure continuity or uniformity (these are examples of police discretion)

3. Reasons for Police Discretion

- a. LaFare researches what variables influence the officer's decision **not** to invoke the criminal process
- b. Unclear Laws
 - i. Some statutes are vague and unclear. These statutes invite officer interpretation of what they mean rather than provide straightforward application
 - ii. Obscenity laws are one example of the dilemma police face
 - 1. Court decisions have left the exact determination of what is obscene or pornographic to "community standards"
- c. Nuisance behavior
 - i. The officer may choose to arrest an intoxicated person or skip the arrest and arrange transportation to that person's house
- d. Broad Statutes
 - i. Sometimes criminal statutes are written in very broad and sweeping terms to prevent any possible loopholes (example: social gambling)
- e. Moral Standards
 - i. Some statutes express a moral, rather than criminal, standard (example: fornication, adultery)
- f. Outdated Laws
 - i. "blue laws"
 - ii. Many statutes that appear on the books are outdated relics from the past

4. Handling Calls for Service

- a. Police Operators and Dispatchers