

CRIMINAL PROCEDURE I
DEAN SUNI
INTERROGATION AND CONFESSIONS OUTLINE

I. INTRODUCTION

In addressing any incriminating statement by a defendant, you should consider, at least at a threshold level, whether admission of the statement may violate the defendant's *Miranda*, Sixth Amendment and/or Due Process rights. To trigger *Miranda*, there must be custodial interrogation. To trigger the Sixth Amendment, there must be AJP for that offense. To make a plausible case for a DP violation, there must be police overreaching in the form of actual coercion, a credible threat of violence or improper promises. Where there is plausible evidence of the triggering facts, you should discuss that option as a possible means of suppressing the statement in question.

II. MIRANDA REQUIREMENTS

A. Is Miranda implicated? Requires police-dominated atmosphere (police blue) that creates inherent compulsion to speak (*Perkins*). Must have **custodial interrogation**.

1. Is there **custody**? Requires formal arrest or restraint on freedom of movement of a degree associated with formal arrest (*Beheler*); stop not enough (*Berkemeier*)

Need not be at station (*Orozco*), but fact at station not enough in itself (*Mathiasen*, *Beheler*)

Focus on reasonable person in deft's situation, officer's subjective intentions/beliefs irrelevant unless communicated to deft. (*Stansbury*).

2. Is there **interrogation**?

a) express questioning or

b) functional equivalent: words or actions by police that they should know are reasonably likely to elicit an incriminating response (*Innis*) or kind of psychological ploy likely to create compelling influences (*Mauro*)

c) not mere routine aspect of custody or booking (*Muniz*) or within immediate needs of public safety (*Quarles*)

Test focuses on perceptions of a reasonable deft w/ particular susceptibilities of suspect (*Innis*, fn 8), although intent of officer is relevant (*Innis*, fn 7)

B. If Miranda implicated, were **adequate warnings** given?

Advise of right to silence, right to counsel, and right to have counsel appointed. No "magic words" required (*Prysock*); OK if essence conveyed (*Eagan*). No additional warnings required (*Spring*)

If adequate warnings not given, statements made by deft will be suppressed in government's case-in-chief. Violation of *Miranda* is not basis for civil action where statements not used against deft (*Chavez*).

C. If adequate warnings were given:

1. (First-level analysis): If statement is given after warnings but prior to invocation, question is: did deft validly **waive** Fifth Amendment rights? Burden on government to establish k & i waiver in the totality of circumstances by preponderance of evidence. (Focus on "internal" events only [*Burbine*]). If not valid waiver, suppress.

2. (Second-level analysis): If statement is not given right after warnings, ask:*

a) Did deft **invoke right to silence**** (indicate in some manner a desire not to talk or cut off questioning)(*Davis??*)?

If so, **no custodial interrogation is permitted** unless deft's right to silence is **scrupulously honored** (*Mosley*). Question is whether deft can take seriously right to cut off and control questioning. Factors include passage of time; different officers, location, offense; new warnings.

b) Did deft **invoke right to counsel**** (express desire to deal with police only through counsel - Must be unambiguous statement made to police such that a reasonable police officer would understand it as a request for counsel (*Davis*) - Sixth Amendment assertion not sufficient (*McNeil*))?

If so, police may not reinterrogate deft about this or other crimes (*Roberson*) unless deft **initiates** communication with police (*Edwards*) regarding the general subject matter of the investigation (*Bradshaw*), even if deft has had an opportunity to consult w/counsel (*Minnick*).

If police do not scrupulously honor and/or govt initiates, statement must be suppressed. If police do scrupulously honor and/or deft initiates, question is knowing and intelligent **waiver**.

*Note: If the statement is NOT the result of CI, *Miranda* is not implicated. Therefore, if LEO's initiate but that initiation DOES NOT CONSTITUTE INTERROGATION, *Miranda* is not implicated. You must analyze the situation immediately prior to the taking of any statement to determine if there is CI. ONLY if there is CI do you get to second-level analysis.

**Note also that invocation may not be anticipatory.

III. DUE PROCESS VOLUNTARINESS

Underlying question of due process **voluntariness** in totality of circumstances may always be raised (did police overreaching cause an involuntary confession in violation of due process? (*Connelly*)?; was the confession obtained by means of coercion, a credible threat of physical violence (*Fulminante*), or improper promises?). Mere deception not enough to render a confession involuntary.

Burden of proof on government by preponderance of the evidence (*Lego*).

IV. SIXTH AMENDMENT REQUIREMENTS

A. Have **adversary judicial proceedings** commenced against deft? (indictment, information, arraignment)? Sixth Amendment rights arise only if so (*Burbine*).

B. If AJP: have police

(1) **deliberately elicited** an incriminating statement (*Massiah*, *Brewer*) (need not constitute interrogation - *Fellers*) or

(2) **intentionally created a situation likely to elicit** an incriminating response (*Henry*) or

(3) **knowingly exploited** an opportunity to confront the accused without counsel (*Moulton*)?

Concern is knowing circumvention of the accused's right to have counsel present at confrontations between the accused and the state or state agent (*Moulton*). Mere passive listening is not enough (*Kuhlmann*).

C. If no, no critical stage; 6th A. is therefore not implicated.

If yes and police conduct:

Did deft **assert his/her right to counsel** (express desire to deal only thru counsel; at arraignment or in other manner known by or imputed to police)?

If yes, did deft **initiate** communication with police? If deft initiated, question is waiver (see below). If police initiated, suppress (as to any offense for which AJP) (*Jackson*)

If no assertion, question is K&I **waiver**.

Waiver of sixth amendment right to counsel must be knowing and intelligent. Not a higher standard than for 5th amendment right to counsel. *Miranda* warnings, if understood, can establish knowledge necessary for valid waiver of 6th amendment rights (*Patterson*).

If yes and surreptitious conduct:

Suppress as to any offense for which AJP (*Henry*,
Moulton)

D. Note: If statements meet *Massiah* or *Henry* tests, they are **admissible** as to offenses for which no AJP at time taken, and **inadmissible** as to offenses for which AJP have commenced at time of statement (*Moulton*, n.16). Sixth amendment rights do not apply to related offenses - when 6th amendment right attaches, it encompasses only crimes that constitute the "same offense" (*Cobb*)

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