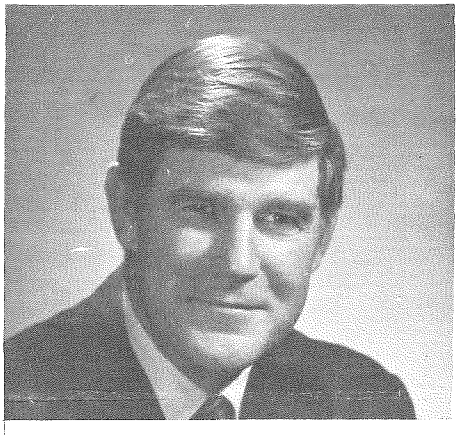
MAY 1971

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE



MESSAGE FROM THE ATTORNEY GENERAL JAMES S. ERWIN

A bill that would help to streamline the criminal justice system in Maine is presently being considered by the State Legislature. It is Legislative Document 1265, entitled An Act Relating to Election of Jury Trials in Misdemeanor Proceedings.

This proposed act would require a defendant charged with a misdemeanor to choose the court he will be tried in, depending on whether or not he wants a jury trial. If a defendant chooses to waive the jury, his case will be heard in the District Court, with any appeal to the Superior Court limited to points of law only. If a defendant desires a jury trial, the case shall be removed to the appropriate Superior Court for trial without a prior evidentiary hearing in the District Court.

Passage of this Bill will lighten the work load of our courts, thereby eliminating a rapidly developing backlog of cases, as well as decreasing the amount of time that police officers must spend in court.

By thus eliminating the present procedure of two trials in misdemeanor cases, a policy which has no rational justification and which in some measure affords greater protection to those accused of a misdemeanor than to those accused of a felony, the Legislature will take a large step toward building a more efficient system of criminal justice in the State of Maine.

James S. Erwin

JAMES S. ERWIN
Attorney General

MIRANDA I

In the April 1971 issue of ALERT, in the discussion of exceptions to the hearsay rule of evidence, the topic of admissions and confessions was dealt with briefly. It was stated there that before an admission tending to prove guilt or a confession made *to the police* could be admitted in court as an exception to the hearsay rule, the standards announced in *Miranda v. Arizona,* 384 U.S. 436 (U.S. Supreme Court, 1966) must be shown to have been met. This article will discuss the *Miranda* case, its background, and meanings and implications for law enforcement officers. A large number of court decisions will be cited in the article, and it is strongly suggested that the law enforcement officer read the *Miranda* decision and several others in order to fully appreciate the manner in which the courts handle problems in this area of the law.

Historical Background

Prior to 1964, the principal test for the admissibility of a defendant admission or confession in court was its "voluntariness", that is, the confession had to have been given voluntarily without threats, promises, force, or any form of pressure, physical or psychological. Courts determined voluntariness by looking to the "totality of the circumstances" surrounding the confession in each case. Under this test, significant factors to be considered were actions of the interrogators (e.g. promises, threats, brutality), omissions of the interrogators (e.g. failure to bring before a magistrate, failure to warn of the right to counsel and the right to remain silent), and inherent weaknesses of the accused himself (e.g. education, mental capacity). *Payne v. Arkansas,* 356 U.S. 560 (U.S. Supreme Court, 1958), *Fikes v. Alabama,* 352 U.S. 191 (U.S. Supreme Court, 1957).

In June 1964, a major change took place. In the case of *Escobedo v. Illinois,* 378 U.S. 478, the U.S. Supreme Court held that:

> "where . . . the investigation is no longer an inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, *the suspect has requested and been denied an opportunity to consult with his lawyer,* and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' . . . and that no statement elicited by the police during the interrogation may be used against him at a criminal trial." *Escobedo v. Illinois,* Supra. (Emphasis supplied)

Escobedo was significant because it accepted a *per se* rule and, for the first time, did not follow a "totality of the circumstances" approach. Instead, the Court took a circumstance it had previously regarded as one relevant factor among many and elevated it to the level of the single determinative factor in all cases where it occurs.

Miranda v. Arizona, decided two years later in June of 1966, again adopted the *per se* approach of *Escobedo* and rejected the totality of the circumstances method. In short, the court required that, under certain specified conditions, certain specified procedures must be followed or any statements by defendant will be inadmissible in court regardless of the fact that they were voluntary. We turn now to a discussion of the details of the *Miranda* decision.

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Facts and Holding

The Court's opinion in *Miranda v. Arizona* actually covers three other cases besides *Miranda,* all dealing with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation. A brief discription of the facts of each of these cases is helpful in understanding the scope of the opinion.

In *Miranda v. Arizona,* the petitioner was arrested for rape at his home and taken into custody at a police station where he was identified by the complaining witness. Then he was interrogated and within two hours signed a written confession. At no time was he informed of his right to consult with an attorney, to have an attorney present during the interrogation, nor of his right not to be compelled to incriminate himself. In *Vignera v. New York,* the petitioner was picked up in connection with a robbery and transported to a detective squad headquarters. He was removed to another squad headquarters where he was interrogated and confessed. He was then locked up and about eight hours later was questioned again and gave a written statement. At no time was he informed of any of his rights. In *Westover v. U.S.,* the petitioner was arrested by municipal police as a robbery suspect. The F.B.I. indicated to the police that he was wanted in another state on a felony charge. He was placed in a lineup and booked. Petitioner was interrogated by the municipal police during the evening and then again the next morning. The F.B.I. conducted an interrogation that same afternoon in an interrogation room in the municipal police department. After two hours, the petitioner signed two confessions. The court noted that the F.B.I. interrogation was conducted following the State interrogation in the same police station – in the same compelling surroundings. In *California v. Stewart,* the petitioner was arrested at his home where robbery proceeds were found. He was then taken to a police station and placed in a cell where, over a period of five days, he was interrogated nine times. The court noted that the defendant was isolated with his interrogators at all times except when he was being confronted by an accusing witness.

The purpose of the above fact summaries is to give an idea of the type of situation to which the court was addressing itself. In each case 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 the 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 statements and in three of them, signed statements as well, which were admitted into evidence at trial. Thus, all the cases share the features of incommunicado interrogation of individuals in a police dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

Given this background, and after a detailed discussion of specific police interrogation techniques, the court said:

> "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." (384 U.S. 457-58).

The court then went on to establish procedural safeguards to protect the privilege against self-incrimination which take the form of the *Miranda* warnings so familiar to all law enforcement personnel.

Briefly stated, whenever an individual is taken into custody or otherwise deprived of his freedom by police authorities in any significant way, he *must* be given the following warnings before any questioning takes place:

1. He must be informed clearly and unequivocally that he has the right to remain silent.
2. 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.
3. The individual must be informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.
4. 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.

Opportunity to exercise these rights must be afforded the individual 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.

Issues in Miranda

The *Miranda* decision gives rise to many issues but, roughly speaking, they fall into two categories:

1. The first general issue is whether *Miranda* requirements are applicable to the particular case. Under this general heading are questions of whether the defendant was in custody, whether his statements were the product of interrogation, whether the interrogator was a policeman or police agent, and whether the seriousness of the offense is significant.
2. The second general issue is whether *Miranda* requirements have been met in cases where they are applicable. Under this general heading are questions of whether the warnings were adequate, whether waiver of rights is clearly shown, whether the suspect was competent to waive, and whether a second interrogation or multiple interrogations are consistent with *Miranda.*

In short, the great issues of *Miranda* can be said to revolve around the meaning of four words: "custody", "interrogation", "warning", and "waiver". These issues, along with some additional miscellaneous ones, are the subject of the remainder of this article.

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CUSTODY

"Custody" and "Focus"

One of the central issues of *Miranda* is the scope of the phrase "custodial interrogation". It is, and will always be, a complex issue simply because the determination of whether an interrogation is "custodial" depends upon a consideration of many circumstances. Before dealing with these various circumstances, it is necessary first to clear up any confusion that may arise between the concepts of "focus" and "custody".

The *Miranda* decision has been generally understood to have abandoned the "focus of investigation" test of the *Escobedo* case to determine when an interrogated suspect is entitled to warnings. *Lowe v. U.S.*, 407 F.2d 1391, 1396 (9th Circuit Court of Appeals, 1969). The test now, under *Miranda*, is whether the individual being questioned is in custody or has been deprived of his freedom of action in any significant way. Therefore, it has generally been held that (1) the fact that an officer knows the suspect committed the crime, or (2) intends to arrest the suspect at the end of the interview, or (3) would not allow the suspect to leave if he tried, does not require that *Miranda* warnings be given if the interview is not otherwise custodial. *State v. Hall*, 468 P.2d 598 (Court of Appeals of Arizona, 1970); *People v. Hazel*, 60 Cal. Rptr. 437 (California Court of Appeals, 1967).

Many courts have adopted an "objective" test of custody, i.e. whether, under the circumstances of the case, a reasonable man would reasonably believe himself to be in custody or deprived of his freedom of action in any significant way. Under this "objective" test, a court will not accept the mere assertion of a suspect that he considered himself in custody or deprived of his freedom, but will look at all the circumstances to determine the reasonableness of this belief. *Freije v. U.S.*, 408 F.2d 100 (1st Circuit Court of Appeals, 1969).

The focus concept, however, may still have some vitality as one of the circumstances to be considered by the court in determining the custody issue. In a case in which three agents interviewed a suspect in his home, the court, discussing the custody issue, said that in the absence of actual arrest, something must be said or done by the authorities either in their manner or approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or allowed the suspect to do so. The court went on to say:

> "This is not to say that the amount of information possessed by the police and the consequent acuity of their 'focus' is irrelevant. The more cause for believing the suspect committed the crime, the greater the tendency to bear down in interrogation and to create the kind of atmosphere of significant restraint that triggers Miranda." *U.S. v. Hall*, 421 F.2d 540, 545 (2nd Circuit Court of Appeals, 1969).

Therefore, it would seem that an interview with a suspect could initially be non-custodial in all respects. However, as the questioning became more intense and pointed, a reasonable person might feel that he was no longer free to go about his affairs. At this time, a court might decide that the person was significantly deprived of his freedom of action and thus entitled to *Miranda* warnings.

In short, then, for purposes of requiring the *Miranda* warnings, the existence of "custody" or "deprivation of freedom in a significant way" is to be determined from a consideration of all the facts and circumstances, one of which may be the "focus" of the investigation on the suspect. We turn now to the various other facts and circumstances upon which a determination of custody may be based.

DETERMINATION OF CUSTODY

It is often difficult for a law enforcement officer to determine when a person will be considered by a court to be in "custody" or be "deprived of his freedom in a significant way" such as to be entitled to the *Miranda* warnings. A safe policy to follow is to give the warnings whenever there is any doubt as to whether or not they apply. However, there are several situations under which the warnings are clearly not required. The following discussion of particular facts and circumstances should help to clarify this issue for the law enforcement officer.

The Place of Interrogation

Court decisions interpreting the *Miranda* requirements have indicated that the place of interrogation is a vital factor in determining custody. It is not, however, a conclusive factor and other things like the familiarity of the surroundings and the actual physical circumstances of the interview must also be considered.

Police Stations and Police Vehicles — In all four of the cases decided under *Miranda*, the suspect was questioned in a police station after arrest. There would seem to be no question that custody exists in this type of situation. Other courts have held that even if the person is not arrested but is present at a police station for questioning at the *command* of the police, he is in custody. *U.S. v. Pierce*, 397 F.2d 128 (4th Circuit Court of Appeals, 1968)

Nevertheless, there are numerous cases in which the presence of a suspect at a police station was clearly non-custodial. Where the individual came to the police station voluntarily, either on his own initiative or at police request, questioning has been held to be non-custodial. *People v. Hill*, 452 P.2d 329 (California Supreme Court, 1969); *Hicks v. U.S.*, 382 F.2d 158 (District of Columbia Circuit Court of Appeals, 1967). Police station interrogation has also been held non-custodial where the person questioned is present as a witness. *Clark v. U.S.*, 400 F.2d 83 (9th Circuit Court of Appeals, 1968). Cases dealing with the questioning of suspects in police vehicles have given few helpful guidelines for law enforcement officers. The safest policy to follow in the police station or vehicle interrogation situation is to give the *Miranda* warnings unless the individual is clearly there voluntarily.

Jails — The generally accepted rule is that if the suspect is in jail, he is in custody for purposes of any interrogation. Thus, a person who was incarcerated in a penitentiary for one offense was held to be in custody for purposes of interrogation conducted by I.R.S. agents with respect to another offense. *Mathis v. U.S.*, 391 U.S. 1 (U.S. Supreme Court, 1968).

Homes — Ordinarily, interrogation in a suspect's home is not custodial. The reasoning is that the person is in familiar surroundings and there is the absence of a "police dominated atmosphere". However, this principle is not absolute. In the landmark case of *Orozco v. Texas*, 394 U.S. 324 (U.S. Supreme Court, 1969), a suspect was

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questioned at 4:00 A.M. in his bedroom by four officers, one of whom later testified that the suspect was under arrest. The Court held that the suspect was the subject of custodial interrogation even though the questioning was brief and took place in his own bedroom. The key factors in the decision were the time of the interrogation, the number of officers, and the somewhat unclear evidence of formal arrest.

Most cases of interrogation at homes involve less severe circumstances and generally the holding is that questioning a suspect in his own home without arrest is not custodial interrogation. *U.S. v. Agy,* 374 F.2d 94 (6th Circuit Court of Appeals, 1967).

Places of Business — Interrogation of a suspect in his place of business is usually non-custodial. As in the case of homes, the place of business represents a familiar surrounding. *Archer v. U.S.,* 393 F.2d 124 (5th Circuit Court of Appeals, 1968).

Stores and Places of Public Accommodations — The rationale of familiar surroundings applicable to questioning in homes and offices does not invariably apply when the interrogation occurs in a restaurant, store, bar, etc. However, the usual view in such cases is that the interrogation is not custodial. This result is due to the fact that the suspect is, if not in a completely familiar place, at least in a place of his own choosing. Another significant factor is the lack of isolation from the outside world and the distinct absence of a police dominated atmosphere. *Lucas v. U.S.,* 408 F.2d 835 (9th Circuit Court of Appeals, 1969).

Hospitals — Questioning of a suspect who is confined in a hospital as a patient but who is not under arrest is not usually held to be a custodial interrogation. *State v. Zucconi,* 235 A.2d 193 (New Jersey Supreme Court, 1967). The reasons usually relied on are the lack of a compelling atmosphere, the routine nature of the questioning, and the lack of any deprivation of freedom. However, this is not a hard and fast rule and factors such as intense and pointed questioning of a very sick or highly drugged suspect might cause a hospital interview to be held custodial in nature. *State v. Ross,* 157 N.W.2d 860 (Supreme Court of Nebraska, 1968).

Automobiles — Most instances in which a suspect is questioned in his automobile are usually dealt with as "on-the-scene" questioning or as a traffic stop. Both these situations are discussed further on in the article. Some cases emphasize the fact that a suspect in his own car is in familiar surroundings. Under any of these rationales, the cases generally find a lack of custody.

Crime Scenes — The *Miranda* decision itself gives some guidance to the law enforcement officer as to whether warnings are required when investigating the scene of a crime. The court said that its decision was:

> "not intended to hamper the traditional function of police officers in investigating crime . . . 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 incustody interrogation is not necessarily present." (384 U.S. at 477-78).

In general, courts have held that the questioning of a suspect prior to arrest near the scene of a crime is not custodial interrogation. *People v. Schwartz,* 292 N.Y.S.2d 518 (Supreme Court of N.Y., Appellate Division, 1968). An example of crime scene questioning in a homicide situation is a case in which the defendant shot the victim in the defendant's home. The police arrived and asked what happened. The defendant replied that he shot him. The Court held that the defendant was not in custody or deprived of his freedom and that the questioning did not fall within the meaning and intent of *Miranda.* "We do not interpret this important decision *[Miranda]* to exclude statements made at the scene of an investigation when nobody has been arrested, detained, or charged." *State v. Oxentine,* 154 S.E.2d 529, 531 (Supreme Court of North Carolina, 1967).

It is likely that a law enforcement officer would be allowed to briefly detain all potential witnesses at the scene of a crime for questioning and this questioning would not come within the scope of *Miranda.* An ordinary innocent person directed by an officer not to leave the scene of a crime would not consider himself in custody or under arrest and it is unlikely that a court would consider him such. *Arnold v. U.S.,* 382 F.2d 4 (9th Circuit Court of Appeals, 1967).

Street Encounters "On the Scene" — Another form of general investigative questioning occurs when an officer makes inquiries of persons on the public ways under suspicious circumstances. An example of this is a case where a suspect was walking on a highway near a car known to be stolen and officers stopped him and asked him if the car was his. The suspect made incriminating admissions in response and the court held that this situation did not require the giving of *Miranda* warnings. *State v. Whitney,* 431 P.2d 711 (Supreme Court of Washington, 1967).

The basic premise underlying decisions in this area is that the officers were confronted with suspicious circumstances which could have been resolved with an explanation from the person questioned. There also is usually an absence of a custodial atmosphere in an "on the scene" street encounter. However, the courts tend to emphasize the purely investigative nature of these encounters in holding that *Miranda* does not apply.

It is important at this stage of the discussion to reiterate that the place where the interrogation occurs is only one factor to be considered in determining whether the person questioned is in custody for purposes of *Miranda.* Many of the cases cited above might have been decided differently if other surrounding facts and circumstances had been different. We turn now to a discussion of some of those other facts and circumstances.

Time of Interrogation

An interrogation carried out in a non-custodial setting during business hours is less likely to be considered custodial than one carried out during odd hours of the day. For example, the time of the interrogation was a significant factor in holding the interrogation at the suspect's home to be custodial in the *Orozco* case (see above under *Homes*). Had the questioning of the suspect taken place during business hours, the decision might have gone the other way. It is not unlikely that a reasonable man would consider his freedom significantly re-

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strained when approached by police for questioning in the early hours of the morning.

The Persons Present

The language of the *Miranda* decision expressly indicated a concern for the suspect who is "cut off from the outside world." (384 U.S. at 445). Courts have taken this to mean that the presence of family, friends, or neutrals during the questioning of a suspect may cause it to be considered non-custodial. *People v. Butterfield,* 65 Cal. Rptr. 765 (California Court of Appeals, 1968). By the same token, the deliberate removal of a suspect from the presence of his family and friends tends to support a finding of custody. *Commonwealth v. Sites,* 235 A.2d 387 (Pennsylvania Supreme Court, 1967). Some courts speak of a "balance of power" and find custody to exist in cases where the sheer number of police indicates a police-dominated atmosphere. *State v. Ross,* 157 N.W.2d 860 (Nebraska Supreme Court, 1968); *Orozco v. Texas,* 394 U.S. 324 (1969).

Arrest and the Indicia of Arrest

If a suspect is told he is under arrest, then he is definitely in custody for *Miranda* purposes. *Duckett v. State,* 240 A.2d 332 (Court of Special Appeals of Maryland, 1968). Of course, this also works the other way around and the officer who tells a suspect that he is not under arrest and is free to leave at any time has fairly definitely established that the interview is non-custodial. *U.S. v. Manglona,* 414 F.2d 642 (9th Circuit Court of Appeals, 1969).

Short of actual arrest, the courts have generally recognized that the existence of physical restraint is a significant factor in determining questions of custody. In cases where physical restraint was present, courts have almost invariably found there to be custody. *State v. Saunders,* 435 P.2d 39 (Supreme Court of Arizona, 1967). By the same token, an absence of physical restraint has led several courts to the conclusion that the defendant was not under arrest or in custody. *People v. Merchant,* 67 Cal. Rptr. 459 (California Court of Appeals, 1968).

Holding a gun on a suspect creates a clearly custodial situation. *People v. Shivers,* 233 N.E.2d 836 (N.Y. Court of Appeals, 1967). However, the fact that a suspect is himself armed should be weighed strongly against a finding of custody. *Yates v. U.S.,* 384 F.2d 586 (5th District Court of Appeals, 1967). This is a potentially important situation because armed felons often make damaging admissions when holding off the police.

The absence of other indicia of arrest such as frisk or search, fingerprinting, photographing, and other booking procedures are indicative of a non-custodial interview. *Hicks v. U.S.,* 382 F.2d 158 (District of Columbia Circuit Court of Appeals, 1967); *U.S. v. Thomas,* 396 F.2d 310 (2nd Circuit Court of Appeals, 1968). The use of these procedures may of course lead to the contrary conclusion. *People v. Ellingsen,* 65 Cal. Rptr. 744 (California Court of Appeals, 1968).

Length and Form of Questions

The length and nature of the interrogation is of considerable significance in determining custody for purposes of *Miranda.* Almost all of the cases approving crime scene and street interrogations conducted without warnings rely upon the additional fact that questioning was brief – consuming little time and involving a few, very general inquiries. Brief, routine police inquiries are indicative of a non-custodial interview designed to clarify a questionable situation.

An example of this type of situation is a case where an officer stopped a car being driven by defendant in an unusual manner. There was a passenger in the car who was bleeding and injured. The driver gave some suspicious answers to the officer's questions and the officer asked the passenger if he had been beaten and by whom he had been beaten. The passenger mumbled incoherently and pointed at the driver. The officer asked the driver if he had done it and the driver said yes. The Court held that the officer had to clarify the situation and that he did so properly by asking routine questions. The court found that such questioning was permissible under *Miranda* and pointed out that warnings hamper and perhaps demean routine police investigation and make cooperative citizens nervous. *Allen v. U.S.,* 390 F.2d 476 (District of Columbia Circuit Court of Appeals, 1968).

Summoning of Police and Initiation of Interviews.

The fact that a suspect summons the police and/or initiates the interview supports the premise that the interview was non-custodial. The rationale is similar to that underlying the admission of volunteered statements – the element of compulsion is lacking and the statements are not solely the result of police action.

An example of this situation is a case where a defendant flagged down a police car, voluntarily got into the police car, and stated that he shot a would-be robber. The Court held that the defendant was not in custody when the police questioned him about the incident. *People v. Lee,* 308 N.Y.S. 2d 412 (N.Y. Court of Appeals, 1970).

Statements to Undercover Agents or Informers.

If a suspect does not know he is speaking to a policeman, he can hardly be said to have a reasonable belief that he is in custody. Therefore, the ordinary situation involving an undercover agent is clearly non-custodial in all respects. *Hoffa v. U.S.,* 385 U.S. 293 (U.S. Supreme Court, 1966); *People v. Ward,* 72 Cal. Rptr. 46 (California Court of Appeals, 1968).

Statements After Traffic Stops

The questioning of a driver of a vehicle stopped for traffic violations or for general investigation is generally held by courts to be non-custodial. This result is justified by several elements usually present in a traffic stop case: (1) the traffic stop is a common everyday occurrence endured by most citizens one or more times and is not likely to create a belief that one is under arrest or in custody; (2) the questions are usually brief and non-accusatory, (3) the situation is often a typical "on-the-scene" general investigation and there is usually no "focus" on the person questioned with respect to a specific crime. *Lowe v. U.S.,* 407 F.2d 1391 (9th Circuit Court of Appeals, 1969).

Statements During the Course of Stop and Frisk

Although the issue is not settled, most courts seem to agree that a short period of on-the-street questioning in connection with a stop and frisk does not require *Miranda* warnings.

The rationale behind this is first that formal custody does not exist in stop and frisk. Secondly, the *Miranda* opinion specifically refers to a deprivation of freedom of action in any

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significant way. A stop and frisk is a deprivation of freedom of action but in most cases is not a significant deprivation and thus *Miranda* should not be applicable. *People v. Manis*, 74 Cal. Rptr. 423 (California Court of Appeals, 1969). Again, a determination of whether there is custody or a significant deprivation of freedom of action depends on all the surrounding facts and circumstances, and not cut and dried rule can be formulated in the stop and frisk situation.

SUMMARY

As the foregoing discussion indicates, the determination of whether an interrogation is custodial for purposes of *Miranda* requires a consideration of many factors. No-one can predict for sure how a court will react to a given set of facts and circumstances in deciding whether *Miranda* warnings are required. As was mentioned earlier, the safe procedure is to give the warnings whenever there is doubt as to whether they apply. However, although *Miranda* is designed to protect the individual and inform him of his rights, it is not intended to hamper effective law enforcement. The cases discussed above clearly indicate that law enforcement officers may ask routine questions, investigate suspicious circumstances, enlist the aid of cooperative citizens, etc., without being required to give *Miranda* warnings in every instance. Making the proper decision in borderline cases will require a combination of knowledge, experience, and confidence. Hopefully, the above guidelines will give the law enforcement officer a basic understanding of his rights and limitations in this delicate area of his duties.

NOTE: The remaining issues of *Miranda* will be dealt with in the June ALERT Bulletin. Topics that will be covered will be Interrogation, Warning, Waiver, and several miscellaneous issues.

IMPORTANT RECENT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Speedy Trial J P

Defendant was convicted of robbery, larceny, and assault. On appeal, defendant contended that a 16 month delay between his indictment and trial deprived him of his constitutional and statutory right to a prompt trial.

The court found that the delay was not attributable to either the prosecutor or defense lawyer who were both steadily ready for trial. Rather, the delay was attributable to the congestion of the criminal trial calendar and the well-founded policy to process indictments in the sequence of their presentment. The total situation, said the court, may reasonably be charged to the rapid growth of the county in population, to the increase in crime, and to the State and community lag in providing additional facilities to process criminal cases. Therefore, there was "good cause" for not dismissing the indictment. *People v. Ganci*, 318 N.Y.S. 2d 484 (Court of Appeals of N.Y., January 1971).

Search and Seizure L

Defendant was convicted of possession of narcotics. Police officers with a search warrant for narcotics had entered defendant's apartment. One of the officers observed defendant seated on a bed with one hand tightly closed. Together, the officers forced open defendant's hand and found heroin. On appeal, defendant contended that the police did not have probable cause to believe that she was engaged in criminal activity, and that the search and seizure violated her Fourth Amendment rights.

The court held that since the warrant authorized a search of the premises for narcotics, it was not unreasonable for the officers to believe that some of those narcotics might be secreted in the defendant's closed hand and was likely to be destroyed. Citing *Terry v. Ohio*, 392 U.S. 1 (U.S. Supreme Court, 1968), the court said that the circumstances justified a contemporaneous search to prevent destruction of evidence on the same basis that a search for weapons might be justified to protect an officer from assault. To hold otherwise would be to suggest that a warrant to search premises could be frustrated by simply picking up the guilty object and holding it in one's hand. *Nicks v. U.S.*, 273 A.2d 256 (District of Columbia Court of Appeals, February 1971).

MAINE COURT DECISIONS

Post Conviction Habeas Corpus J

Petitioner was confined in a Nevada prison as a result of a felony conviction in that State. He would have been eligible for parole in Nevada except for two prior Maine felony convictions from which he had been discharged from sentence. He therefore attempted, through a habeas corpus proceeding in Maine, to prove that the Maine convictions had been obtained through a deprivation of his constitutional rights.

The Supreme Judicial Court held that statutes governing habeas corpus petitions preclude state courts from hearing requests for post-conviction relief except when the petitioner is under some form of restraint, actual or technical, under Maine law. *Staples v. State*, 274 A.2d 715 (Supreme Judicial Court of Maine, March 1971).

Corrections J

Petitioner had been transferred from the Men's Correctional Center to the Maine State Prison without notice or hearing. He claimed, through a habeas corpus proceeding, that the statute authorizing this procedure was unconstitutional.

The Supreme Judicial Court held that constitutional requirements did not apply to administrative transfers between two penal institutions no more "functionally distinct" than these two institutions. *Brown v. State*, 274 A.2d 715 (Supreme Judicial Court of Maine, March 1971).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is information for the criminal law community only. If there is any question as to the subject matter contained herein, the cases cited should be consulted. Nothing contained herein shall be considered as an Official Attorney General's opinion unless otherwise indicated.

Any change in personnel, or change in address of present personnel should be reported to this office immediately.

James S. Erwin — **Attorney General**
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