CASES FOR A MOOT COURT OR MOCK TRIAL\footnote{A large portion of the case materials presented in this appendix is reproduced from DeAnne P. Sobul, What Are The Rights Of The Accused?, (1968), one of four cases studies developed through a grant to the Constitutional Rights Foundation from the Taconic Fund of New York. This material is reproduced with the permission of DeAnne P. Sobul and the Constitutional Rights Foundation.}

This appendix contains all of the materials you will need to understand the constitutional issues posed in the cases Miranda v. Arizona,\footnote{The United States Supreme Court has granted certiorari to review two cases involving the Miranda warning doctrine. In Muse v. North Carolina, 280 N.C. 31 (N.C. Sup.Ct. 1971), appeal docketed, 40 U.S.L.W. 3471 (U.S. March 1, 1972) (No. 71-1111), the accused, while in custody for receiving stolen goods, made statements to police officers. The North Carolina Supreme Court upheld the conviction. It affirmed the trial court's finding that the statements made by the accused did not fall within the Miranda warning doctrine, since the information was not solicited by the police nor induced by any hope of reward. In Bailey v. North Carolina, 12 N.C. App. 494, 183 S.E.2d 885 (N.C. Ct.App. 1971), appeal docketed, 40 U.S.L.W. 3471 (U.S. March 4, 1972) (No. 71-1127), the accused, charged with heroin possession, made statements on the night of his arrest while in custody. He was advised of all his Miranda rights except his right to court-appointed counsel if he were indigent. The North Carolina Court of Appeals affirmed the trial court's admission into evidence of the accused's statements since there was no contention on the part of the defendant that he is or was indigent, there was nothing in the record to indicate that the defendant was unable to employ competent counsel, and, at his trial and on appeal, the defendant was represented by privately-employed counsel.} 384 U.S. 436 (1966), and Harris v. New York, 401 U.S. 222 (1971). These two cases will provide important background information for a moot court or mock trial and class discussion on the Fifth and Sixth Amendments.

The cases in this appendix include United States and State Supreme Court decisions directly bearing on the right to counsel and the privilege against self-incrimination. They are not in the form in which you would find them in United States Reports. They have been edited so as to provide you with information essential to your understanding of the pertinent constitutional issues. The portion of each case entitled "Decision of the Court" is an excerpt of the Court's opinion, with limited changes in vocabulary, taken directly from the majority and dissenting opinions.
APPENDIX

FIRST PROBLEM CASE

Setting of the Case

Ernesto Miranda was found guilty by an Arizona court of kidnapping and attacking an 18-year-old girl. On appeal, this conviction was upheld by the Arizona Supreme Court. In this appellate action, Miranda is asking the United States Supreme Court to review and overrule the decision of the Arizona Supreme Court on the grounds that he was denied his rights under the Fifth and Fourteenth Amendments to remain silent and under the Sixth and Fourteenth Amendments to the advice of an attorney during the time of questioning by the police.

Facts

On March 3, 1963, an 18-year-old girl was kidnapped and attacked near Phoenix, Arizona. Ten days later, on March 13, Ernesto Miranda, 23 years old, was arrested for the crime and taken to the police station. He was not told he had a legal right to the assistance of counsel. Miranda was very poor, had completed only half of the ninth grade, and, according to a doctor who eventually examined him, had an "emotional illness." At the police station, he was placed in a line-up and subsequently identified by the young woman. He was then taken into an interrogation room and questioned by two police officers for two hours. At first Miranda denied his guilt, but eventually he gave a detailed, oral confession. Miranda then wrote a brief confession describing and admitting the crime. At the
top of the paper was typed a paragraph saying 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 Miranda's trial, the written confession was admitted into evidence over the objection of his attorney, and the police officers were permitted to testify to Miranda's prior oral confession made during the interrogation. The jury verdict was "guilty" of kidnapping and attacking the girl. Miranda was sentenced to 20 to 39 years imprisonment.

On appeal, the Arizona Supreme Court said that Miranda's constitutional rights were not violated and affirmed the conviction. They emphasized that Miranda did not specifically request an attorney. Miranda then sought review by the United States Supreme Court.

SECOND PROBLEM CASE

Assume that the facts remain the same except that the Miranda case has been decided. The prosecutor does not use the confession because he knows that it is invalid under the holdings of the Supreme Court. However, the accused takes the stand to defend himself. The prosecutor asks him on cross-examination if he committed the crime in question. The accused responds negatively. Then, the prosecutor refers to the accused's prior inadmissible confession to impeach his credibility.

In the hypothetical, the accused is convicted but on appeal to the Supreme Court, he argues that his Miranda rights were denied by the prosecutor's reference to his prior inadmissible confession.
APPENDIX

BROWN v. MISSISSIPPI
297 U.S. 278 (1936)

Facts

Three blacks, Ed Brown, Yank Ellington and Henry Shields, were convicted of murdering Raymond Stewart on the night of March 30, 1934, in Mississippi. The only evidence against the three men was their confessions. During the trial, the defendants testified that they had confessed in order to stop the police from beating them. Evidence was submitted that the three men had been beaten prior to their confessions. It consisted of the following: On the night Stewart's body was found, a deputy sheriff accompanied by several other men went to Ellington's house and asked him to go with them to the house of the dead man. A number of other white men were at Stewart's house when they arrived. The men accused Ellington of the murder, and, when he denied it, they grabbed him and, with the participation of the deputy, they hanged him from a tree limb by his neck, let him down, hanged him again, and then let him down again. Ellington still contended he was innocent. He was then tied to a tree and whipped. Finally, he was released. A few days later, the deputy sheriff and another man returned to Ellington's house and arrested him. On the way to the jail, they used a road that took them through a part of Alabama, and, while in Alabama, the deputy stopped the car and the men severely beat Ellington, saying that the beating would continue until Ellington confessed. Finally, Ellington agreed to confess.

The other two defendants, Ed Brown and Henry Shields, were also arrested
and taken to the same jail as Ellington. There, they were forced to undress and were whipped with a leather strap with buckles on it. They were told the beating would continue until they confessed to Stewart's murder. The men confessed and changed the details of their confessions several times until their torturers were satisfied. The men were then told that the beatings would begin again if they changed their confessions in any detail.

The trial record shows that the marks made by the rope on Ellington's neck were clearly visible. The deputy sheriff testified to and admitted the beatings, as did two of the others who had participated. Not a single witness denied the beatings had taken place. The judge told the jury that if they felt that the confessions might not be true or that they had resulted from force, the confessions should not be considered as evidence of guilt. The verdict was "guilty."

Decision of the Supreme Court

Mr. Chief Justice HUGHES delivered the unanimous opinion of the Court.

The due process clause requires that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice that are at the base of all civil and political institutions. It would be difficult to conceive of methods more revolting to the sense of justice than those taken to obtain the confessions of these three men, and the use of confessions thus obtained as the basis for conviction and sentence was a clear denial of due process.

Coercing supposed criminals into confessing and using their confessions
against them in trials has been the curse of all countries. It was the chief iniquity of the Star Chamber and the Inquisition and other similar institutions. The Constitution recognized the evils that lay behind these practices and prohibited them in this country. The duty of maintaining constitutional rights of a person on trial for his life rises above the rules of procedure, and, wherever the court knows that such violations exist, it will refuse to go along with such violations.

In this case, the trial court knew that the confessions had been forced from the defendants. The trial court knew that there was no other evidence to support the conviction. But it announced the defendants guilty. The conviction and the sentence were invalid since they denied due process of law.
BETTS v. BRADY
316 U.S. 455 (1942)

Facts
Betts, an uneducated farm worker, was indicted for robbery. He had been picked from a line-up by the robbery victim, who was unable to identify any of the men as the robber until each man put on a dark coat, dark glasses and a handkerchief—the disguise used by the robber. Betts claimed he was innocent, but was too poor to hire a lawyer. He asked the judge to appoint an attorney for him, but this request was denied. At his trial, Betts acted as his own lawyer and did his best to defend himself. He was convicted and sentenced to eight years in prison.

Decision of the Supreme Court
Mr. Justice ROBERTS delivered the 6 to 3 opinion of the Court.

The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guaranties found in the Sixth Amendment. Due process formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may in other circumstances, and in the lights of other considerations, fall short of such denial.

In this case there was no question of the commission of a robbery. The State's case consisted of evidence identifying the petitioner as the
perpetrator. The defense was an alibi. Betts called and examined witnesses to prove that he was at another place at the time the crime was committed. The simple issue was the truth of the testimony for the State and that for the defendant. As Judge Bond says, the accused was not helpless, but was a man forty-three years old, of ordinary intelligence and ability to take care of his own interests on the trial of that narrow issue. He had once before been in a criminal court, pleaded guilty to larceny and served a sentence and was not wholly unfamiliar with criminal procedure. It is quite clear if the situation had been otherwise and it had appeared that Betts was, for any reason, at a serious disadvantage by reason of the lack of counsel, a refusal to appoint would have resulted in the reversal of a judgment of conviction.

As we have said, the Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel.

The judgment is affirmed.

Mr. Justice BLACK, dissenting, with whom Mr. Justice DOUGLAS and Mr. Justice MURPHY concur.

To hold that the petitioner had a constitutional right to counsel in this case does not require us to say that "no trial for any offense, or in
any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel." This case can be determined by resolution of a narrower question: whether in view of the nature of the offense and the circumstances of his trial and conviction, this man was denied the procedural protection which is his right under the federal constitution. I think he was.

Betts was a farm hand, out of a job and on relief. The court below found that he had "at least an ordinary amount of intelligence." It is clear from his examination of witnesses that he was a man of little education.

If this case had come to us from a federal court, it is clear we should have to reverse it, because the Sixth Amendment makes the right to counsel in criminal cases inviolable by the federal government. I believe that the Fourteenth Amendment made the Sixth applicable to the states. But this view, although often urged in dissents, has never been accepted by a majority of this Court and is not accepted today. I believe, however, that under the prevailing view of due process as reflected in the opinion just announced, a view that gives this Court such vast supervisory powers that I am not prepared to accept it without grave doubts, the judgment below should be reversed.

The right to counsel in a criminal proceeding is "fundamental." Powell v. Alabama. A practice cannot be reconciled with "common and fundamental ideas of fairness and right" which subjects innocent men to increased dangers of conviction merely because of their poverty. Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented.
APPENDIX

CROOKER v. CALIFORNIA
357 U.S. 433 (1958)

Facts

On the morning of July 5, 1955, a girl's body was discovered. The girl's boyfriend, Crooker, was arrested and charged with the killing. Crooker was 31 years old and had attended one year of law school, during which time he had studied criminal law. At the time he was arrested, Crooker was asked about scratches on his neck and hands. He said the ones on his neck were from shaving and the ones on his hands were caused by a traffic accident. He would not say where the traffic accident had occurred.

Crooker was then taken to the police station where he was photographed and asked to take a lie detector test. He refused and said he wanted to call his lawyer. Crooker was not allowed to use a telephone and was immediately taken for questioning. This interrogation lasted one hour, from 8:30 to 9:30 p.m., and was conducted by four police officers. The questions revolved around Crooker's refusal to take the lie detector test and, during this time, Crooker again asked for a lawyer, naming an attorney whom he thought might represent him. Crooker was told that after the "investigation" was over he could call an attorney. At 9:30 p.m., Crooker was transferred to another police station where five police officers questioned him for an hour. He was then "booked" and given a physical by a police physician. The third and last interrogation session, from 11:30 p.m. to 3:00 a.m., on July 6, was conducted by the same five men and, during
this questioning period, Crooker confessed, wrote and signed a detailed confession. He was then taken to the victim's house to reenact the murder. He was finally returned to his jail cell at 5:30 a.m.

That afternoon, Crooker was taken to the District Attorney's office to orally repeat the written confession. Crooker refused to do this and asked to talk to his attorney. The District Attorney placed a telephone call for Crooker and listened on an extension phone to the conversation between Crooker and his lawyer. A tape recording of this conversation was made without Crooker's knowledge. After this phone call, Crooker was returned to jail and later that evening was allowed to see his attorney. From then on Crooker was represented by his own lawyer.

From the time of his arrest until he confessed, Crooker was well treated. He was given food and was permitted to smoke. Before his transfer to the second police station, Crooker had been told by a police officer that he did not "have to say anything," and, in fact, Crooker refused to answer many questions. Crooker was convicted of murder and sentenced to death.

Decision of the Supreme Court

Mr. Justice CLARK delivered the 5 to 4 opinion of the Court.

Petitioner Crooker's claim of coercion depends almost entirely on the denial of his request to contact counsel. This Court has not previously had occasion to determine the validity of a confession obtained after such a denial. We have held that confessions made by indigent (poor) defendants prior to the appointment of counsel by the state are not involuntary.
It seems more likely that coercion might result in a case where a defendant had specifically asked for counsel than in a case where the state did not appoint counsel upon request. However, because of Crooker's age, intelligence, and education, such a situation would be negated in this case. While in law school, he had studied criminal law; when asked to take a lie detector test, he informed the operator that the result of such a test would not be admissible at the trial without his agreement. The police told petitioner well before his confession that he did not have to answer questions. Moreover, the way he refused to answer indicates full awareness of the right to be silent. On this record, we are unable to say that petitioner's confession was anything other than voluntary.

We turn now to the contention that even if the confession is voluntary, its use violates due process because it was so obtained after petitioner was denied his request to contact his attorney. Petitioner argues first that he has been denied a due process right to representation and advice from his attorney, and, secondly, that the use of any confession obtained from him during the time of such denial would itself be unconstitutional under the due process clause even though freely made. He contends that every state denial of a request to contact counsel violates the constitutional right to counsel without regard to the circumstances of the case. The doctrine suggested by petitioner would affect enforcement of criminal law, for it would effectively deny police questioning—fair as well as unfair—until the accused was provided an opportunity to call his attorney. Due process demands no such rule.
Mr. Justice DOUGLAS dissenting, with whom the Chief Justice, Mr. Justice BLACK and Mr. Justice BRENNAN agree.

When petitioner was first arrested, and before any real interrogation took place, he asked that his attorney be present. "I had no objection to talking with them about whatever they had to talk about, but I wanted counsel with me. I wanted an attorney with me before I would talk with them."

That was petitioner's testimony; and it is verified by the testimony of Sergeant Gotch of the police.

This demand for an attorney was made over and again prior to the time a confession was extracted from the accused. Its denial was in my view a denial of that due process of law guaranteed the citizen by the Fourteenth Amendment.

The Court finds no prejudice from the denial of the right to consult counsel; and it bases that finding on the age, intelligence, and education of petitioner. But this Court has stated that "the right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

The Court agrees that the right to counsel extends to pretrial proceedings as well as to the trial itself. The need is as great then as at any time. The right to have counsel at the pretrial stage is often necessary to give meaning and protection to the right to be heard at the trial itself. It may also be necessary as a restraint on the coercive power of the police.

If any time, from the time of his arrest to final determination
of his guilt or innocence, an accused really needs the help of an attorney, it is in the pretrial period. Indeed, the pretrial period is so full of hazards for the accused that, if unaided by competent legal advice, he may lose any legitimate defense he may have long before he is arraigned and put on trial.

Or, as stated by a Committee headed by Professor Zechariah Chafee, "A person accused of crime needs a lawyer right after his arrest probably more than at any other time."

The Court speaks of the education of this petitioner and his ability to take care of himself. However, the Court itself has said: "Even the intelligent and educated layman has small and sometimes no skill in the science of law. He requires the guiding hand of counsel at every step in the proceedings against him." This opinion spoke of the trial itself. But what is true of the trial is true of the preparation for trial and of the period beginning with the arrest of the accused. No matter how well educated, and how well trained in the law the accused may be, he is in need of legal advice once he is arrested for an offense that may take his life. The innocent as well as the guilty may be caught in a web of circumstantial evidence that is difficult to break. A man may be guilty of indiscretions but not of the crime. He may be implicated by ambiguous circumstances difficult to explain away. He desperately needs a lawyer to help him if he's innocent. He has the right to receive the benefit of the advice of his own counsel at the trial. That same right should extend to the pretrial stage.

The demands of our civilization expressed in the due process clause require that the accused who wants counsel should have one at any time after the moment of arrest.
CICENIA v. LaGAY
357 U.S. 504 (1958)

Facts

On the evening of March 17, 1947, Charles Kittuah, the owner of a small dry goods store in Newark, New Jersey, was shot and killed during a robbery. The crime remained unsolved until December 17, 1949, when the Newark police obtained information implicating the petitioner and two others, Armando Corvino and John DeMasi. Petitioner lived with his parents at Orange, New Jersey. Apparently acting at the request of the Newark police, the Orange police sought to locate petitioner at his home. When told that he was out, the police left word that he was to report at the Orange police headquarters the following day. Petitioner sought the advice of Frank A. Palmieri, a lawyer, who advised him to report as requested. Petitioner did so, accompanied by his father and brother. Upon arrival at the Orange police station at 9 a.m. on December 18, petitioner was separated from the others and taken by detectives to the Newark police headquarters. At approximately 2 p.m. the same day, petitioner's father, brother and Mr. Palmieri, the lawyer, arrived at the Newark station. Mr. Palmieri immediately asked to see petitioner, but this request was refused by the police. He repeated this request at intervals throughout the afternoon and well into the evening, but without success. During this period, petitioner, who was being questioned intermittently by the police, asked to see his lawyer. These requests were also denied. Lawyer and client were not permitted to confer until 9:30 p.m. by which time petitioner
had made and signed a written confession to the murder of Kittuah.

Decision of the Supreme Court

The United States Supreme Court affirmed the judgment below. HARLAN, J., speaking for five members of the Court, held that the rule stated in Crooker v. California, that the Fourteenth Amendment is not violated by a state's failure to honor a request during a police interrogation to consult with a lawyer, is equally applicable whether or not the lawyer has been previously retained. It was held, further, that petitioners were not deprived of due process because the state required him to plead to the indictment for murder without the opportunity to inspect his confession, where this was consonant with the New Jersey rule that the trial judge has discretion whether or not to allow inspection before trial.

In its holding, the Court stated: The contention that petitioners had a constitutional right to confer with counsel is disposed of by Crooker v. California. There we held that California's failure to honor Crooker's request during a period of police interrogation to consult with a lawyer, as yet unretained, did not violate the Fourteenth Amendment. Because the present case, in which petitioner was denied an opportunity to confer with the lawyer whom he had already retained, sharply points up the constitutional issue involved, some additional observations are in order.

The difficulties inherent in the problem require no extensive elaboration. On the other hand, it is indisputable that the right to counsel in criminal cases has a high place in our scheme of procedural safeguards.
On the other hand, it can hardly be denied that adoption of petitioner's position would constrict state police activities in a manner that in many instances might impair their ability to solve difficult cases. A satisfactory formula for reconciling these competing concerns is not to be found in any broad pronouncement that one must yield to the other in all instances. Instead, as we point out in *Crooker v. California*, this Court in judging whether state prosecutions meet the requirements of due process, has sought to achieve a proper accommodation by considering a defendant's lack of counsel one pertinent element in determining from all the circumstances whether a conviction was attended by fundamental unfairness.

In contrast, petitioner would have us hold that any state denial of a defendant's request to confer with counsel during police questioning violates due process, irrespective of the particular circumstances involved. Such a holding, in its ultimate reach, would mean that state police could not interrogate a suspect before giving him an opportunity to secure counsel. Even in federal prosecutions, this Court has refrained from laying down any such inflexible rule.

DOUGLAS, J., joined by WARREN, Ch. J., and BLACK, J., dissented, taking the view that the majority ruling was out of line with the constitutional requirement of fair criminal proceedings against a citizen, and that the judgment below should be reversed for reasons stated in the dissent of DOUGLAS, J., in the *Crooker* case.
PEOPLE v. BROMMEL
7 Cal. Rptr. 787 (1958)

Facts

The defendant was charged with murder. He was tried before a jury, convicted of murder in the second degree, and sentenced to prison for the term prescribed by law. He appealed from the judgment of conviction and from the order denying his motion for a new trial.

Debra Jean Brommel, aged twenty-three months at death, was the alleged victim. She was born January 17, 1956, and died December 28, 1957. Defendant and his wife, Joyce Murphy Brommel, were the father and mother of Debra. For about fifteen months prior to the marriage, Debra had been cared for exclusively by the Murphy family (Mrs. Brommel's mother, father, brothers and sisters), but principally by Mrs. Brommel's mother, Ramona Murphy. Shortly after their marriage, Brommel and his wife assumed physical custody of Debra, although she continued to visit and be cared for at intervals by one or more of the Murphys. She died as a result of massive subdural hemorrhage brought on by some severe blow or blows which fractured her skull. Immediately prior to the discovery of this injury, she was in the immediate and exclusive physical care of the defendant. No one except the defendant saw any blow or other application of force to the child's head that could have produced such an injury.

Decision of the California Supreme Court

Mr. Justice SHEPARD delivered the opinion of the court.
The defendant contends that he was denied the right to consult with counsel during interrogation and that this made the confession inadmissible under the due process clause of the United States Constitution. First, it should be noted that the evidence in this respect was in conflict. Defendant was given an opportunity to use the telephone before he was booked and he was told he could have an attorney at any time he asked for one. Defendant never at any time contended that he was physically mistreated. The record does not show any such continuous interrogation as has been noted in those cases in which statements were rejected for that reason. The burden of showing unfairness and a miscarriage of justice by the denial of defendant's right to counsel in some stage in a proceeding against him rests upon the defendant. Furthermore, the right to counsel during interrogation is not absolute, it is simply one element for consideration in determining whether or not the defendant's statements were voluntary or involuntary. Cicenia v. LaGay, Spamo v. People of the State of New York.

Under the facts of the case, there is no denial of due process so as to make defendant's statements involuntary as a matter of law.
APPENDIX

SPANO v. NEW YORK
360 U.S. 315 (1959)

Facts

While drinking in a bar on January 22, 1957, Vincent Spano, 25 years old and a junior high school graduate, got into a fight with the murder victim when he attempted to steal some of Spano's money that was lying on the bar. Spano was beaten and left the bar. He went to his apartment and got his gun. He then went to a candy store often visited by the victim. The victim was there along with three of his friends and the waiter. Spano fired five shots and two hit the victim, killing him. The waiter was the only eye witness because the three friends did not see who had fired the shots. Spano ran and hid.

On February 1, 1957, Spano was indicted for first-degree murder, and a warrant for his arrest was issued. In February 4, at 7:10 p.m., Spano, accompanied by his attorney, turned himself into the police. Spano's lawyer had told him not to answer any questions. He was immediately taken to the assistant district attorney's office and was questioned by six policemen. The questioning was intense and relentless, but Spano continually refused to answer any of the questions. During the questioning, Spano asked to speak with his attorney, but this request was denied. The police later testified that the name of Spano's attorney could not be found in the telephone book. At 12:15 a.m., on February 5, after five hours of interrogation, it was obvious that Spano was not going to answer any questions, and he was taken to another police station. They arrived at that
police station at 12:30 a.m., and the questioning began again at 12:40 a.m. Spano still refused to answer and again asked to see his attorney.

At this point, the police decided to use Gaspar Bruno, an old friend of Spano's and a cadet at the police academy, to persuade Spano to answer. On February 3, Spano had told Bruno that he beat and killed the victim and that he did not know what he was doing when he shot him. Bruno had told this to his superiors and had been brought into the case around 10:30 p.m. the night before. Bruno was instructed to tell Spano that, because Spano had told him about the shooting, he had gotten into trouble and his job was threatened. Bruno was told to seek sympathy from Spano, in hopes it might encourage Spano to talk. Spano, however, would still not answer and again asked to see his attorney. Bruno tried twice again and failed both times. Finally, during the fourth session, Spano gave in to Bruno's lies and agreed to make a statement. Accordingly, at 3:25 a.m., the assistant district attorney, a stenographer, and several policemen took Spano's confession in question and answer form while the assistant D.A. asked the questions. The confession was completed at 4:05 a.m.

At the trial, the confession was introduced into evidence over the objection of Spano's attorney. The jury was told to consider the confession only if they thought it was voluntary. The verdict was "guilty" and Spano was sentenced to death.

Decision of the Supreme Court

Mr Chief Justice WARREN delivered the 5 to 4 decision of the Court.

This is another in the long line of cases presenting the question
whether a confession was properly admitted into evidence under the Fourteenth Amendment. As in all such cases, we are forced to resolve a conflict between two fundamental interests of society--its interest in prompt and efficient law enforcement, and its interest in preventing the rights of its individual members from being abridged by unconstitutional methods of law enforcement.

The hatred of society of the use of involuntary confessions is not only due to their untrustworthiness. It is also because of the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves. Accordingly, the actions of police in obtaining confessions have come under close examination in a long series of cases. Those cases suggest that in recent years law enforcement officials have become increasingly aware of the burden which they share, along with our courts, in protecting fundamental rights of our citizenry, including that portion of our citizenry suspected of crime. The facts of no case recently in this Court have quite approached the brutal beatings in Brown v. State of Mississippi. But as law enforcement officers become more responsible, and the methods used to extract confessions more sophisticated, our duty to enforce federal constitutional protections does not cease. It only becomes more difficult because of the more delicate judgments to be made. Our judgment here is that, on all the facts, this conviction cannot stand.

Petitioner was a foreign-born young man of 25 with no past history of law violation or of subjection to official interrogation, at least insofar
as the record shows. He had progressed only one-half year into high school and the record indicates that he had a history of emotional instability. He did not make a narrative statement, but was subject to the leading questions of a skillful prosecutor in a question and answer confession. He was subjected to questioning not by a few men, but by many. The effect of such massive official interrogation must have been felt. Petitioner was questioned for virtually eight straight hours before he confessed, with his only rest being a transfer to an arena presumably considered more appropriate by the police for the task at hand. Nor was the questioning conducted during normal business hours, but began in early evening, continued into the night, and until the following morning. In such circumstances slowly mounting fatigue does, and is calculated to, play its part. The questioners persisted in the face of his repeated refusals to answer on the advice of his attorney, and they ignored his reasonable requests to contact the local attorney whom he had already retained and who had personally delivered him into the custody of these officers in obedience to the bench warrant.

The use of Bruno, characterized in this Court by counsel for the State as a "childhood friend" of petitioner's, is another factor which deserves mention in the totality of the situation. Bruno's was the one face visible to petitioner in which he could put some trust. There was a bond of friendship between them going back a decade into adolescence. It was with this material that the officers felt that they could overcome petitioner's will. They instructed Bruno falsely to state that petitioner's telephone call had gotten him into trouble, that his job was in jeopardy, and that
loss of his job would be disastrous to his three children, his wife and his unborn child. And Bruno played this part of a worried father, in not one, but four different acts, the final one lasting an hour.

We conclude that petitioner's will was overborne by official pressure, fatigue and sympathy falsely aroused. A grand jury had already found sufficient cause to require petitioner to face trial on a charge of first-degree murder, and the police had an eyewitness to the shooting. The police were not therefore merely trying to solve a crime, or even to absolve a suspect. Rather, they were concerned primarily with securing a statement from defendant on which they could convict him. The intent of the officers to obtain a confession from petitioner is therefore obvious. When such an intent is shown, this Court has held that the confession obtained must be examined with the most careful scrutiny, and has reversed a conviction on facts less obvious than these. Accordingly, we hold that petitioner's conviction cannot stand under the Fourteenth Amendment.

Mr. Justice DOUGLAS, with whom Mr. Justice BLACK and Mr. Justice BRENNAN join, concurring.

While I join the opinion of the Court, I add what for me is an even more important ground of decision.

We have often divided on whether state authorities may question a suspect for hours on end when he has no lawyer present and when he has demanded that he have the benefit of legal advice. See Crooker v. California. But here we deal not with a suspect but with a man who has been formally charged with a crime. The question is whether after the indictment and
before the trial the Government can interrogate the accused "in secret"
when he asked for his lawyer and when his request was denied.

Depriving a person, formally charged with a crime, of counsel during
the period prior to trial may be more damaging than denial of counsel
during the trial itself.

Mr. Justice STEWART, with whom Mr. Justice DOUGLAS and Mr. Justice
BRENNAN join, concurring.

While I concur in the opinion of the Court, it is my view that the
absence of counsel when this confession was obtained was alone enough to
make it inadmissible under the Fourteenth Amendment.

Let it be emphasized at the outset that this is not a case where the
police were questioning a suspect in the course of investigating an un-
solved crime. When the petitioner surrendered to the New York authorities,
he was under indictment for first degree murder.

Under our system of justice, an indictment is supposed to be followed
by an arraignment and a trial. At every stage in those proceedings, the
accused has an absolute right to a lawyer's help if the case is one in
which a death sentence may be imposed. Indeed, the right to the assis-
tance of counsel whom the accused has himself retained is absolute, whatever
the offense for which he is on trial.

What followed the petitioner's surrender in this case was not ar-
raignment in a court of law, but an all-night inquisition in a prosecu-
tor's office, a police station, and an automobile. Throughout the night
the petitioner repeatedly asked to be allowed to send for his lawyer, and
his requests were repeatedly denied. He finally was induced to make a confession. That confession was used to secure a verdict sending him to the electric chair.

Our Constitution guarantees the assistance of counsel to a man on trial for his life in an orderly courtroom, presided over by a judge, open to the public, and protected by all the procedural safeguards of the law. Surely, a Constitution, that promises that much, can vouchsafe no less to the same man under midnight inquisition in the squad room of a police station.
GOLDEN GATE LAW REVIEW

GIDEON v. WAINRIGHT
372 U.S. 335 (1963)

Facts

Gideon was charged in a Florida state court with "breaking and entering" a poolroom with intent to commit a misdemeanor. This offense is a felony in Florida. Because Gideon had no money, he asked the court to appoint a lawyer for him. His request was denied because under Florida law "the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense." Gideon conducted his own defense. He made an opening statement, cross-examined witnesses, presented his own witnesses and made a short concluding argument. The jury verdict was "guilty" and Gideon received a five-year prison sentence.

Decision of the Supreme Court

Mr. Justice BLACK delivered the opinion of the Court.

Since 1942, when Betts v. Brady was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts.

We accept the assumption, that a provision of the Bill of Rights, which is "fundamental and essential to a fair trial," is made obligatory upon the States by the Fourteenth Amendment. We think, however, it is wrong to conclude that the Sixth Amendment's guaranty of counsel is not one of these fundamental rights.
This Court has unequivocally declared that "the right to the aid of counsel is of this fundamental character." Powell v. Alabama. While the Court at the close of its Powell opinion did, by its language, as this Court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable.

Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants, who have the money, hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.
Mr. Justice CLARK, concurring.

I must conclude here that the Constitution makes no distinction between capital and noncapital cases. The Fourteenth Amendment requires due process of law for the deprivations of "life" just as for deprivations of "liberty," and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. How can the Fourteenth Amendment tolerate a procedure which it condemns in capital cases on the ground that deprivations of life may be less onerous than deprivations of liberty—a value judgment not universally accepted—or that only the latter deprivations are irrevocable? I can find no acceptable rationalization for such a result, and I therefore concur in the judgment of the Court.

Mr. Justice HARLAN, concurring.

In 1932, in Powell v. Alabama, a capital case, this Court declared that under the particular facts there presented—"the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility and above all that they stood in deadly peril of their lives"—the state court had a duty to assign counsel for the trial as a necessary requisite of due process of law. It is evident that these limiting facts were not added to the opinion as an afterthought; they were repeatedly emphasized and were clearly regarded as important to the result.

Thus, this Court, did no more than to admit of the possible existence of special circumstances in noncapital as well as capital trials, while at the same time to insist that such circumstances be shown in order to
establish a denial of due process. In noncapital cases, the "special circumstances" rule has continued to exist in form while its substance has been substantially and steadily eroded. There were cases in which the Court found special circumstances to be lacking, but usually by a sharply divided vote. However, no such decision has been cited to us, and I have found none after 1950. At the same time, there have been not a few cases in which special circumstances were found in little or nothing more than the "complexity" of the legal questions presented, although those questions were often of only routine difficulty. The Court has come to recognize, in other words, that the mere existence of a serious criminal charge constituted in itself special circumstances requiring the service of counsel at trial.

This evolution, however, appears not to have been fully recognized by many state courts, in this instance charged with the front-line responsibility for the enforcement of constitutional rights. To continue a rule that is honored by this Court only with lip service is not a healthy thing and in the long run will do disservice to the federal system.

The special circumstances rule has been formally abandoned in capital cases, and the time has now come when it should be similarly abandoned in noncapital cases, at least as to offenses that, as the one involved here, carry the possibility of a substantial prison sentence.

On these premises I join in the judgement of the Court.
Facts

On the night of January 19, 1960, Daniel Escobedo's brother-in-law was arrested without a warrant and was taken in for questioning. Escobedo made no statement to the police and was released at 5:00 p.m. that evening.

On January 30, Benedict DiGerlando, who had also been arrested on suspicion of the murder and was then in police custody, told the police that Escobedo had fired the fatal shots. Later that day, Escobedo and his sister, the widow of the murdered man, were arrested and taken to the police station. While en route, one of the arresting officers told Escobedo, who was handcuffed behind his back, that DiGerlando had named him as the murderer. Escobedo later testified, without contradiction, that the police had said they had the case "pretty well" settled and so he might as well confess. Escobedo had replied, "I am sorry but I would like to have advice from my lawyer."

Soon after Escobedo arrived at the police station, his attorney arrived. The lawyer asked permission to see his client and was told he could not. He was told by a policeman that they had not finished questioning Escobedo. Meanwhile, Escobedo repeatedly asked to see his lawyer and was told each time that the lawyer did not want to see him. The testimony of police officers at the trial confirmed this. While being questioned, Escobedo was forced to remain standing and was kept handcuffed. After some time, a police officer, who knew Escobedo and his family and who spoke Spanish,
was brought in to talk to Escobedo. The policeman told Escobedo in Spanish that if he "pinned" the killing on DiGerlando, Escobedo and his sister would be set free and would be held only as witnesses. After further questioning, Escobedo admitted he had some knowledge of the shooting, and, through carefully planned questioning, he eventually admitted his participation in the killing.

At the trial the Spanish-speaking police officer denied that he had offered Escobedo any deal, and, on the basis of the evidence he had given police during the questioning, Escobedo was convicted.

Decision of the Supreme Court

Mr. Justice GOLDBERG delivered the 5 to 4 opinion of the Court.

The interrogation here was conducted before petitioner was formally indicted. But in the context of this case, that fact should make no difference. When petitioner requested, and was denied, an opportunity to consult with his lawyer, the investigation had ceased to be a general investigation of an unsolved crime. Petitioner had become the accused, and the purpose of the interrogation was to get him to confess his guilt despite his constitutional right not to do so. At the time of his arrest and throughout the course of the interrogation, the police told petitioner that they had convincing evidence that he had fired the fatal shots. Without informing him of his absolute right to remain silent in the face of this accusation, the police urged him to make a statement.

This Court has held that every person accused of a crime is entitled to a lawyer at a trial. The rule sought by the State here, however, would
make the trial no more than an appeal from the interrogation; and the
right to use counsel at the formal trial would be a very hollow thing if,
for all practical purposes, the conviction is already assured by pretrial
examination. One can imagine a prosecutor saying: "Let them have the
most illustrious counsel, now. They can't escape the noose. There is
nothing that counsel can do for them at trial."

It is argued that if the right to counsel is afforded prior to in-
dictment, the number of confessions obtained by the police will diminish
significantly, because most confessions are obtained during the period
between arrest and indictment, and "any lawyer worth his salt will tell
the suspect in no uncertain terms to make no statement to police under
any circumstances." This argument, of course, cuts two ways. The fact
that many confessions are obtained during this period points up its criti-
cal nature as a "stage when legal aid and advice" are surely needed.
The right to counsel would be hollow if it began at a period when few
confessions were obtained. Our Constitution, unlike some others, strikes
the balance in favor of the right of the accused to be advised by his
lawyer of his privilege against self-incrimination.

We have learned the lesson of history, ancient and modern, that a
system of criminal law enforcement that comes to depend on the confession
will, in the long run, be less reliable and more subject to abuses than
a system which depends on evidence independently secured through skillful
investigation. This Court also has recognized that history shows that
confessions have often been obtained to save law enforcement officials
the trouble and effort of obtaining valid and independent evidence.

We have also learned the lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' giving up their constitutional rights because they did not know about them. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will limit the effectiveness of a system of law enforcement, then there is something very wrong with that system.

We hold therefore, that where, as here, the investigation is no longer a general 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 leads itself to 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 his constitutional rights, and that no statement elicited by the police during an interrogation may be used against him at a criminal trial.

Nothing we have said today affects the powers of the police to investigate an unsolved crime by gathering information from witnesses and by other proper investigative efforts. We hold only that when the process shifts from investigatory to accusatory--when its focus is on the accused and its purpose is to get a confession, the accused must be permitted to consult with his lawyer.
Mr. Justice HARLAN, dissenting.

I think the rule announced today is most ill-conceived and that it seriously and unjustifiably limits perfectly legitimate methods of criminal law enforcement.

Mr. Justice STEWART, dissenting.

The confession that the Court today holds inadmissible was a voluntary one. It was given during the course of a perfectly legitimate police investigation of an unsolved murder. The Court says that what happened during this investigation affected the trial. I had always supposed that the whole purpose of a police investigation of a murder was to affect the trial of the murderer, and that it would be only an incompetent, unsuccessful, or corrupt investigation which would not do so. The Court further says that the Illinois police officers did not advise the petitioner of his constitutional rights before he confessed to the murder. This Court has never held that the Constitution requires the police to give any advice under circumstances such as these.

Mr. Justice WHITE, with whom Mr. Justice CLARK and Mr. Justice STEWART join, dissenting.

The Court has held that as of the date of the indictment the prosecution may not secure admissions from the accused. The Court now moves that date back to the time when the prosecution begins to focus on the accused. Although the opinion says it is limited to the facts of this case, it would be naive to think that the new constitutional right announced will depend upon whether the accused has requested his own counsel,
or has asked to consult with counsel in the course of interrogation. At the very least, the Court holds that once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel. The decision is thus another major step in the direction of the goal that the Court seemingly has in mind—to bar from evidence all admissions obtained from an individual suspected of crime, whether involuntary or not.

By abandoning the voluntary-involuntary test for admissibility of confessions, the Court seems to think that it is uncivilized law enforcement to use an accused's own admissions against him at his trial. It attempts to find a home for this new and nebulous rule of due process by attaching it to the right to counsel. The right to counsel now not only entitled the accused to counsel's advice and aid in preparing for trial but stands as a barrier to any interrogation once the accused has become a suspect. From that very moment, he apparently has a right to counsel, a rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side. Under this new approach, one might just as well argue that a potential defendant is constitutionally entitled to a lawyer before, not after, he commits a crime, since it is then that crucial incriminating evidence is put within the reach of the government by the would-be accused. Until now there simply has been no right guaranteed by the Constitution to be free from the use at trial of a voluntary admission made prior to indictment. This new judge's rule,
which is to be applied in both federal and state courts, is perhaps thought
to be a necessary safeguard against the possibility of compelled confessions.
To this extent, it reflects a deep-seated distrust of law enforcement off-
cers everywhere, unsupported by relevant data or current material based
on our own experience. Obviously, law enforcement officers can make mis-
takes and exceed their authority, as today's decision shows that even judges
can do, but I have somewhat more faith than the Court evidently has in
the ability and desire of prosecutors and of the power of the appellate
courts to discern and correct such violations of the law.

The failure to inform an accused that he need not answer and that
his answers may be used against him is relevant to whether the statements
are compelled. Cases in this Court have never placed a premium on ignorance
of constitutional rights. If an accused is told he must answer and did
not know better, it would be very doubtful that the resulting admissions
could be used against him. When the accused has not been informed of his
rights at all, the Court looks very closely at the surrounding circumstances.
I would continue to do so. But, in this case Danny Escobedo knew full
well that he need not answer and knew full well that his lawyer had advised
him not to answer.

I do not suggest for a moment that law enforcement will be destroyed
by the rule announced today. The need for peace and order is too important
for that. But it will be crippled and its task made a great deal more
difficult for unsound, unstated reasons, which can find no home in any of
the provisions of the Constitution.
APPENDIX

PEOPLE v. DORADO
62 Cal.2d 338 (1965)

Facts

Dorado, a 26-year-old prisoner at San Quentin Prison, was serving time for selling marijuana. On December 12, 1961, prison officials found the body of an inmate, Nevarez, in the lower yard of the prison. The body had severe chest wounds made by a small knife. Nearby, in a restroom trash can, the prison officers discovered a blood-stained blue denim jacket with the identification number cut out, the name Dorado on the pocket and one button missing. The button was found at the scene of the murder. In another trash can, the officers found a blood-stained knife with the handle taped.

The prison guards searched Dorado's cell. They found a roll of tape similar to that used to tape the knife and a pair of bloodstained trousers. Dorado was taken to the office of the captain of the prison guards and was shown the jacket. Dorado said nothing but, upon being told that Nevarez was dead, he wept. Dorado was then taken to the prison hospital laboratory so that some brown flecks on his hands, which appeared to be dried blood, could be removed and tested. That afternoon, Dorado was interrogated for two hours, during which time he admitted to the killing. The next day, he gave a written statement and showed prison officials the route he had taken to commit the murder. Dorado was never apprised of his constitutional rights and at his trial he was convicted of Nevarez's murder.
Decision of the California Supreme Court

Mr. Justice TOBRINER delivered the opinion of the California Supreme Court.

Although we accept the finding of the trial court that the confessions of the defendant were not obtained by coercion, we have concluded that they should not have been admitted into evidence under recent rulings of the United States Supreme Court. In a long series of cases, the Court has been troubled by confessions obtained without protection of counsel. Since we must faithfully discharge our duty to apply the Constitution of the United States as interpreted by the Supreme Court of the United States, we must follow these recent decisions.

The question presented here centers upon whether the failure of the accused to retain or request counsel justifies the application of a rule of law different from that established in Escobedo. Escobedo will not permit such a distinction.

Escobedo holds that the defendant's right to counsel matured at the accusatory stage--"the 'stage when legal aid and advice' were most critical" to defendant. A request for that right should not determine whether it is granted. The United States Supreme Court and many other courts have recognized that, in the situation in which a defendant is entitled to counsel, the request itself can be no more than a formality; indeed, any such requirement would discriminate in favor of those who know about their rights. If, however, the officers inform the accused of his right to counsel, he may waive it, and in such an event his confession may be introduced into evidence. Escobedo also holds that the accused has the right
to remain silent and that he must likewise waive that right if his self-incriminatory statements are to be admitted against him.

_Escobedo_ holds that a defendant must be afforded his right to counsel as soon as "...the process shifts from investigatory to accusatory--when its focus is on the accused and its purpose is to get a confession...."

The power of the state to extract from the individual the incriminating statement that may be important to his defense can take effect before the indictment. The interrogation may become the most important stage in the establishment of the prosecution's case. "There is a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice." In holding that the defendant should have "the guiding hand of counsel" at the accusatory stage, _Escobedo_ states, "This was the 'stage when legal aid and advice' were most critical to petitioner. It was a stage surely as critical as was the arraignment and the preliminary hearing. What happened at this interrogation could certainly 'affect the whole trial,' since rights 'may be lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes'."

The United States Supreme Court and other courts have recognized that in a situation in which a suspect has the constitutional right to counsel, it cannot be lost because he did not request or retain counsel.

Finally, we must recognize that the need to request counsel would discriminate against the defendant who does not know his rights. The defendant who does not ask for counsel is the very defendant who most needs counsel
We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request and by such failure demonstrates his helplessness.

We conclude, then, that defendant's confession could not properly be introduced into evidence because (1) the investigation was no longer a general inquiry into an unsolved crime but had begun to focus on a particular suspect, (2) the suspect was in custody, (3) the authorities had carried out a process of interrogations that led to incriminating statements, and (4) the authorities had not effectively informed the defendant of his right to counsel or of his absolute right to remain silent, and no evidence established that he had waived these rights.
APPENDIX

CALIFORNIA v. STEWART
62 Cal. 2d 571 (1965)

Facts

The Los Angeles police were investigating a series of purse-snatch robberies, in which one of the victims had been killed. During the investigation, the police were told that a man named Roy Stewart had attempted to pass forged checks that had been taken in one of the robberies. On January 31, 1963, the police went to Stewart's house and arrested him, his wife and three other persons visiting Stewart. One of the policemen asked if he could search the house and Stewart replied, "Go ahead." They found various items taken from the robbery victims. The five suspects were taken to a police station and interrogated. During the next five days, Stewart was questioned on nine different occasions. During the first interrogation, Stewart was confronted by accusing witnesses. During the other sessions, Stewart was alone with his interrogators. Finally Stewart admitted he had robbed the dead victim but stated he had not intended to harm her. Since there was no evidence to connect the other four suspects with the crimes, they were released.

Stewart had not been informed of his constitutional rights at any time, and, largely because of his confession, he was convicted of murder.

Decision of the California Supreme Court

Mr. Justice TORBRINER delivered the opinion of the California Supreme Court.

Following the decision of the United States Supreme Court in Escobedo v. Illinois, we held in People v. Dorado "that the defendant's confession
could not properly be introduced into evidence because (1) the investiga-
tion was no longer a general inquiry into an unsolved crime but had begun
to focus on a particular suspect, (2) the suspect was in custody, (3) the
authorities had carried out a process of interrogations that lent itself
to eliciting incriminating statements, (4) the authorities had not effec-
tively informed defendant of his right to counsel or of his absolute right
to remain silent, and no evidence establishes that he had waived these
rights."

The United States Supreme Court in Escobedo fixed the point at which
a suspect is entitled to counsel as that at which "the process shifts from
investigatory to accusatory—when its focus is on the accused and its pur-
pose is to elicit a confession...." The Court also characterized the time
when a person needs the "guiding hand of counsel" as that when the "investi-
gation had ceased to be a general investigation of 'an unsolved crime';
at that time the defendant "had become the accused, and the purpose of the
interrogation was to 'get him' to confess his guilt despite his constitu-
tional right not to do so."

In this case, these conditions had been fulfilled. The defendant was
not only under arrest at the time he confessed but had been in custody for
five days and had been interrogated daily. In his summation, the prosecutor
referred to the interrogation of the defendant on January 31 concerning the
robbery of the dead woman as an "accusatory circumstance." A police
officer testified that, on February 5, he entered the interrogation room
and said to the defendant, "Roy, you killed that old woman...." Such
extensive interrogations during the period that the defendant was in jail
could serve no other purpose than to get incriminating statements. Thus, prior to his confession, the defendant was entitled to counsel under the Escobedo case, for the "accusatory" stage had been reached.

The Supreme Court has held that "the record must show, or there must be a statement and evidence, which show that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver." It follows that in order to establish a waiver of the right to the assistance of counsel the record must indicate that the defendant was advised of his right to counsel and to remain silent or that he knew of these rights and intelligently and knowingly waived them.
Miranda v. Arizona was decided by the United States Supreme Court along with three companion cases. The opinions cover 109 pages in the official Supreme Court reports.

This decision caused intense controversy. Law enforcement officers argue that the courts have paralyzed their efforts to obtain evidence from suspects, often the ones who know the most about the crime. Therefore many crimes go unsolved. They argue that the courts, in protecting the rights of the accused, are ignoring the rights of the public to be safeguarded from criminals.

Those who defend the Court's decision say that what the decision demands is little more than extension of F.B.I. practices to all law enforcement agencies. These defenders argue further that if only those who know their rights are allowed to use them, the guaranties of the Bill of Rights become meaningless and the fact that some criminals go free is a small price to pay for the protection of constitutional rights.

Decision of the Supreme Court

Mr. Chief Justice WARREN delivered the 5 to 4 opinion for the Court.

The cases* before us deal with the admissibility of statements obtained from an individual during police interrogation and the necessity for

* Miranda v. Arizona was one of the four cases relating to the same constitutional issues argued at the same time. Thus, all four cases were part of the same decision.
procedures that assure that the individual is given his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.

We dealt with certain phases of this problem recently in *Escobedo v. Illinois*. There, as in this case, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or his right to consult with his lawyer.

We start here, as we did in *Escobedo*, with the idea that our holding is not new, but is an application of principles long recognized and applied. We have undertaken a thorough re-examination of the *Escobedo* decision and the principles it announced, and we affirm it. That case made clear basic rights 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 that were put in danger in that case. These precious rights were fixed in our Constitution only after centuries of persecution and struggle.

Our holding is this: The prosecution may not use statements obtained from custodial interrogation of the defendant unless it shows the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are developed to inform accused persons of their right of silence and to
assure a continuous opportunity to exercise it, the following measures are required. Before any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either his own or appointed. The defendant may waive these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further questions until he has consulted with an attorney and thereafter consents to be questioned.

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action. In each, 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 led to oral admissions, and in three of them, signed statements as well, which were admitted at their trials. They all thus share important features—secret interrogation of individuals in a police-dominated atmosphere,
resulting in self-incriminating statements without full warnings of constitutional rights.

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 in secret.

Today the modern practice of in-custody interrogations is psychologically rather than physically oriented. This Court has recognized that "force can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts that document procedures employed with success in the past, and which recommend various other effective tactics. These texts are used by law enforcement agencies themselves as guides. It should be noted that these texts present the most enlightened and effective means presently used to obtain statements through custodial interrogation.

The officers are told by the manuals that the "principal psychological factor contributing to a successful interrogation is privacy--being alone with the person under interrogation."

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance to maintain only an interest in confirming
certain details. The guilt of the subject is to be regarded as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act rather than to ask the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an attraction to women. The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story confirms what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge-killing, for example, the interrogator may say:

Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him and that's why you carried a gun--for your own protection. You knew him for what he was, no good. Then when you met him he probably started using foul language and he gave some indication that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe?

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely or who asks for an attorney or relatives. The examiner grants him the right to remain silent. "This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, granting this right to remain silent impresses the subject with the apparent fairness of his interrogator." After this
psychological conditioning, however, the officer is told to point out the
incriminating significance of the suspect's refusal to talk:

    Joe, you have a right to remain silent. That's your privilege and I'm the last person in the world who'll try to
    take it away from you. If that's the way you want to leave this, O.K. But let me ask you this. Suppose you were in
    my shoes and I were in yours and you called me in to ask me about this and I told you, 'I don't want to answer any of
    your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly
    what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over.

Few will persist in their initial refusals to talk, it is said, if this monologue is employed correctly.

An argument made over and over is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. The aim of our discussion shows that the Constitution states the rights of the individual when in conflict with the power of government when it provides in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.

In announcing these principles, we are not unmindful of the burdens that law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way stop police from carrying out their traditional investigatory functions.
Although confessions may play an important role in some convictions, the cases before us present examples of the overstatement of the "need" for confessions. In each case, authorities conducted interrogations ranging up to five days in length despite the presence, through standard investigating practices, of considerable evidence against each defendant.

It is also urged that a right to detention for interrogation should be allowed because it will often benefit the person questioned. When police investigation determines that there is no reason to believe that the person has committed the crime, it is said, he will be released without need for further formal procedures. The person who has committed no offense, however, will be better able to clear himself after warnings, with counsel present than without. It can be assumed that in such circumstances a lawyer would advise his client to talk freely to police in order to clear himself.

Over the years, the Federal Bureau of Investigation had an outstanding 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 practices of the FBI can readily be copied by state and local enforcement agencies. The argument that the FBI deals with different crime than are dealt with by state authorities does not offset the significance of the FBI experience.
Because of the nature of the problem and because of its continuing significance in numerous cases, we have to this point discussed the relationship of the Fifth Amendment privilege to police interrogation without specific concentration on the facts of the case before us. We turn now to these facts to consider the application to these cases of the constitutional principles discussed above. In each instance, we have concluded that statements were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.

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, that written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and attacking a young woman. He was sentenced to 20 to 30 years' imprisonment on each count. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights
were not violated in obtaining the confession and affirmed the conviction. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

We reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be forced to incriminate himself effectively protected in any other manner. Without these warnings the statements were inadmissible. The mere fact that he signed a statement that contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights.

Mr. Justice CLARK, dissenting in three of the cases including Miranda v. Arizona.

It is with regret that I find it necessary to write in these cases. However, I am unable to join the majority because its opinion goes too far on too little, while my dissenting brethren do not go quite far enough. Nor can I agree with the Court's characterization of the present practices of police and investigatory agencies as to custodial interrogation. The materials referred to as "police manuals" are not shown by the record here to be the official manuals of any police department, much less in universal use in crime detection. Moreover, the examples of police brutality mentioned by the Court are rare exceptions to the thousands of cases that
appear every year in the law reports.

The rule prior to today, as Mr. Justice Goldberg, the author of the Court's opinion in Escobedo has stated it, depended upon "all of the circumstances resulting in an involuntary...admission of guilt."

I would continue to follow that rule. Under that rule I would consider in each case whether the police officer, prior to custodial interrogation, added the warning that the suspect might have counsel present at the interrogation and, further, that a court would appoint one at his request if he were too poor to employ counsel. In the absence of warnings, the burden would be on the State to prove that counsel was knowingly and intelligently waived or that all of the circumstances of the interrogation, including the failure to give the necessary warnings, the confession was clearly voluntary.

Mr. Justice HARLAN, with whom Mr. Justice STEWART and Mr. Justice WHITE join, dissenting.

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the Court's justification seem to me readily apparent now once all sides of the problem are considered.

At the outset, it is well to note exactly what is required by the Court's new constitutional code of rules for confessions. The requirement foremost upon which later admissibility of a confession depends, is that a fourfold warning be given to a person in custody before he is
questioned: namely, that he has a right to remain silent, that anything
he says may be used against him, that he has a right to have present an
attorney during the questioning, and that if indigent he has a right to
a lawyer without charge. To forego these rights, some affirmative state-
ment of rejection is seemingly required, and threats, tricks, or cajolings
to obtain this waiver are forbidden. If before or during questioning the
suspect seeks to invoke his right to remain silent, interrogation must
be foregone or cease; a request for counsel brings about the same result
until a lawyer is procured. Finally, there are minor directives, for
example, the burden of proof of waiver is on the State, admissions and
statements are treated just like confessions, withdrawal of a waiver is
always permitted, and so forth.

The new rules are not designed to guard against police brutality or
other unmistakably banned forms of force. Those who use third-degree
tactics and deny them in court are equally able and destined to lie as
skillfully about warnings and waivers. Rather, the thrust of the new
rules is to do away with all pressures, to reinforce the nervous or ign-
norant suspect, and ultimately to discourage any confession at all.

Escobedo requires that any confession admitted as evidence be given by
one distinctly aware of his right not to speak and protected from "the
compelling atmosphere" of interrogation. From these foundations, the
Court finally develops the safeguards of warning, counsel, and so forth.
I do not believe these premises are sustained by precedents under the
Fifth Amendment.
The more important basis is that pressure on the suspect must be eliminated though it be only the subtle influence of the atmosphere and surroundings. The Fifth Amendment, however, has never been thought to forbid all pressure to incriminate one's self in the situations covered by it.

The Court is also wrong in thinking that knowledge of one's rights is necessary under the Fifth Amendment to the loss of its protections. A number of lower federal court cases have held that grand jury witnesses need not always be warned of their privilege. No Fifth Amendment precedent is given for the Court's view.

The only attempt in this Court to carry the right to counsel into the station house occurred in Escobedo, the Court repeating several times that the stage was no less "critical" than trial itself. This is not persuasive when we consider that a grand jury inquiry, the filing of an appeal, and certainly the purchase of narcotics by an undercover agent from a prospective defendant may all be equally "critical," yet provision of counsel and advice on that score have never been thought guaranteed by the Constitution in such cases. The sound reason why this right is so freely extended for a criminal trial is the serious injustice risked by confronting an untrained defendant with a range of technical points of law, evidence, and tactics familiar to the prosecutor but not to himself.

The Court's new rules aim to offset minor pressures and disadvantages in any kind of police interrogation.

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law
enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court's new code would greatly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor barriers. To require also an express waiver by the suspect and an end to questioning whenever he wishes must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. Evidence on the role of confessions is notoriously incomplete, and little is added by the Court's reference to the FBI experience and the resources believed wasted in interrogation. We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

All four of the cases involved here present express claims that confessions were inadmissible, not because of coercion in the traditional sense, but solely because of lack of counsel or lack of warnings concerning counsel and silence. For the reasons stated in this opinion, I would reject the new requirements inaugurated by the Court.
HARRIS v. NEW YORK
401 U.S. 222 (1971)

Facts

The State of New York charged Vivien Harris in a two count indictment with selling heroin on two different occasions to an undercover police officer. At the jury trial following his arrest, the undercover police officer was the State's chief witness and testified about the two sales. A second police officer verified other details of the sales, and a third officer testified about the chemical analysis of the heroin.

At the trial, Harris took the stand in his own defense. He admitted making one sale to the officer of a plastic bag, but claimed it contained baking powder and was part of a scheme to defraud the purchaser.

On cross-examination, Harris was asked whether he had made specific statements to the police immediately following his arrest on January 7. Those earlier statements contradicted in part the petitioner's direct testimony at trial. In response to this cross-examination, Harris testified that he could not remember nor answer any of the prosecutor's questions or answers about earlier statements. At the request of Harris' counsel, the document from which the prosecutor had read questions and answers during the impeaching process was placed in the court's record for use on appeal. The document was not shown to the jury.

At the trial, the judge instructed the jury that the statements attributed to the petitioner by the prosecution could be used only in considering Harris' credibility and not as evidence of his guilt. The jury found Harris
guilty of selling heroin.

Conceding that the earlier alleged statements of Harris were inadmissible under *Miranda* because Harris had never been given his *Miranda* warnings, the prosecution did not try to use them to establish guilt, but only for impeaching Harris' credibility as a witness. Harris made no claim that the statements were coerced or involuntary.

Decision of the Supreme Court

Chief Justice BURGER delivered the 5 to 4 opinion of the Court.

*Miranda* does not bar the use of uncounseled statements for every purpose. *Miranda* barred the prosecution from making its case with statements that an accused made while in custody, prior to receiving his warnings or effectively waiving counsel. It does not follow from *Miranda* that evidence inadmissible against an accused in the prosecution's case is barred for all purposes, provided of course that the trustworthiness of the evidence satisfies legal standards.

An earlier Supreme Court case declared in its holding that it is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradictions of his untruths. Such an extension would be a perversion of the Constitution.

There is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability
to challenge his credibility.

Every criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury. Having voluntarily taken the stand, Harris was under an obligation to speak truthfully and accurately, and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process.

The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances. We hold, therefore, that Harris' credibility was appropriately impeached by use of his earlier conflicting statements.

Mr. Justice BLACK dissented without opinion.

Mr. Justice BRENNAN, dissenting, with whom Mr. Justice DOUGLAS and Mr. Justice MARSHALL concur.

In that opinion they stated that it was monstrous that courts should aid lawbreaking police officers, and that the Court's decision in the instant case went far toward undoing much of the progress made in conforming the police methods to the Constitution. In part Mr. Justice BRENNAN stated: Even though the Miranda case was aimed at deterring police practices in disregard of the Constitution, I fear that today's holding will seriously undermine the achievement of that objective. The Court today tells the police that they may freely interrogate an accused incommunicado and without counsel and know that
although any statement they obtain in violation of *Miranda* cannot be used on the state's direct case, it may be introduced if the defendant has the boldness to testify in his own defense. This goes far toward undoing much of the progress made in conforming police methods to the Constitution.

I dissent.