Another Broadside on *Miranda*:

The 2003–2004 U.S. Supreme Court Term and the Fifth Amendment Privilege against Self-Incrimination

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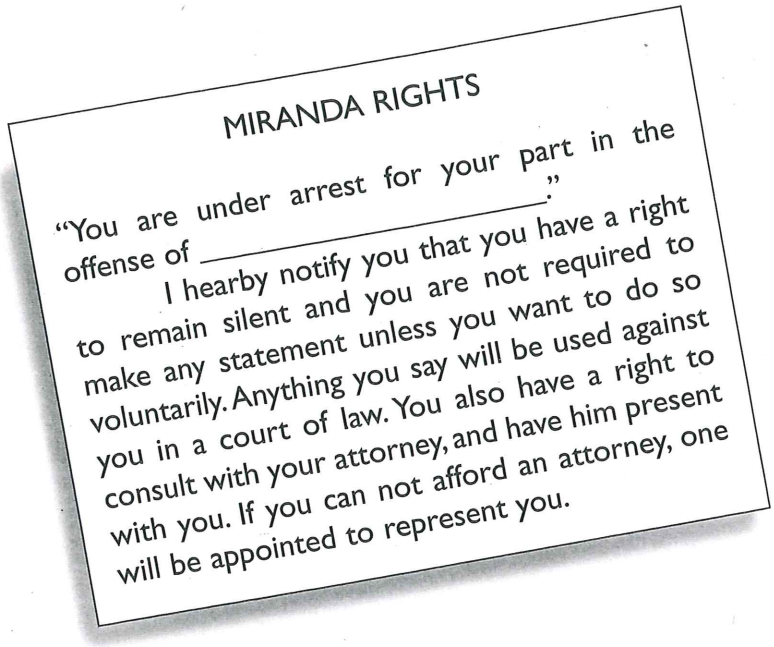

Almost since the day it was handed down, the nation's "most famous criminal procedure decision"[1] has been under attack by the very body that made famous the words "you have the right to remain silent." For more than thirty years, the Supreme Court weakened the force and implications of its landmark decision, *Miranda v. Arizona*,[2] through a series of blows to the reach—if not relevance—of the case.[3] Four terms ago, the Court was finally poised to land a knockout punch to the famous case as it considered argument in *Dickerson v. United States*.[4] In a surprising turn of events, the Court not only upheld *Miranda*, but also deemed it to be "a constitutional decision,"[5] rather than a mere "prophylactic" measure designed to protect Fifth Amendment rights.[6] The 2003–2004 Supreme Court term, however, demonstrated that the Court had no intention of expanding the scope of this "constitutional decision." In three cases addressing the scope of *Miranda*,[7] the Court reversed its course in *Dickerson* and reverted to its old ways by further limiting *Miranda*'s reach, while disapproving of only the most egregious violations of *Miranda*'s original intent.

This article will provide a brief overview of *Miranda* as it emerged nearly forty years ago and of the subsequent cases which significantly limited its reach. It will then examine its status through the lens of *Dickerson* and the most recent Supreme Court decisions. Finally, the article suggests some lessons from these most recent cases and proposes strategies for both prosecutors and defense counsel who are faced with confession issues.

In order to place the three cases from the past term into context, a quick overview of *Miranda* and its progeny is provided.

Miranda v. Arizona

The landmark 1966 Supreme Court decision of *Miranda v. Arizona*[8] established new procedural requirements for all law enforcement officials. The Court expressed great concern over protecting "precious" Fifth Amendment rights and promulgated a series of safeguards designed to permit the accused a "full opportunity to exercise the privilege against self-incrimination."[9] The Court mandated that, as a prerequisite to custodial interrogation, the police advise all suspects of the following: the right to remain silent, the explanation that anything said can and will be used against the individual in court, the right to consult an attorney and have an attorney present and the right to have an attorney appointed if the accused cannot afford one.[10] Law enforcement officers were to refrain from interviewing suspects until they were advised of these rights and either waived them or received counsel.[11] If at any time prior to or during the interrogation the suspect indicated that he wished to remain silent, questioning was to cease.[12] Likewise, if the suspect asked for a lawyer, the interrogation was to cease until a lawyer was present.[13] The required warnings and the necessary waivers became "prerequisites to the

admissibility of any statement made by the defendant."[14]

In the years since, the Court has been compelled to deal with the myriad issues that *Miranda* created but did not address. For example: When is a suspect in "custody"?[15] When does police questioning actually involve "interrogation"?[16] And are there any exceptions to *Miranda*?[17] For the most part, the Court's answers to these and other questions have significantly confined the *Miranda* decision. The Court has limited the instances when a suspect is considered to be in "custody"[18] and when a suspect is considered to be "under interrogation."[19] The Court also has allowed statements obtained in violation of *Miranda* to be used for impeachment purposes.[20] It has imposed increasingly stringent standards on the invocation of a suspect's rights[21] and has created a "public safety" exception to *Miranda*.[22] Finally, if a suspect invokes his right to remain silent, the police may still approach him later for questioning under certain circumstances.[23]

The steady march toward the erosion of *Miranda* has not been without detours, however.[24] In *Edwards v. Arizona*,[25] for example, the Court held that once a suspect is advised of his rights and invokes his right to counsel, then the interrogation must cease until counsel has been provided. In *Arizona v. Roberson*,[26] the Court extended the *Edwards* bar to further interrogation about all crimes for which the suspect may be investigated. But the impact of *Edwards* and *Roberson* has been minimized because the Court has made it relatively easy to show that the suspect "initiated" the interview with the police after having first invoked his *Miranda* rights.[27]

Dickerson v. United States

In 1968, two years after *Miranda* was decided, the U. S. Congress passed 18 U.S.C. § 3501, a law intended to overrule the Supreme Court decision.[28] According to this legislation, the admissibility of a confession in federal prosecutions was to be determined by whether the statement was made voluntarily.[29] Congress based this legislation on the Court's statement in *Miranda* that the Congress and the state legislatures were "free to develop their own safeguards for the privilege, so long as they are fully as effective as those described" in the opinion.[30] *Miranda* held that other procedures could accomplish the same purpose, and § 3501 made the *Miranda* warnings just one of several factors for the courts to consider in determining whether a confession was voluntary.[31] In other words, even if the suspect was not advised of his rights, his confession could still be admissible if, based on criteria established by § 3501, the trial court determined that the confession was voluntary.[32] This legislation, however, was generally not utilized by the federal authorities.[33]

The 2000 case of *Dickerson v. United States*,[34] which originated in the Fourth Circuit, finally presented the Supreme Court with the opportunity to determine the validity of the 1968 legislation. Petitioner Charles Dickerson, charged with several serious crimes, was granted a motion to suppress his confession on the grounds that he had not received a *Miranda* warning.[35] The Fourth Circuit reversed the suppression, holding that the statement was voluntary pursuant to a § 3501 analysis.[36] The Fourth Circuit went on to conclude that *Miranda* was not a constitutional holding and that Congress could, therefore, determine admissibility of a confession through legislation.[37]

The Supreme Court was presented with the perfect opportunity to finally abrogate the rule that had been eroding for thirty-four years. Given the trend of limiting the force and effect of *Miranda*, an affirmation of the Fourth Circuit's decision seemed almost a foregone conclusion. But the Court ruled that *Miranda* was a "constitutional decision" and could not be overruled by an act of Congress,[38] and the Court declined to take the opportunity to overrule *Miranda* itself.[39] In its analysis, the Supreme Court traced the history of *Miranda* and went to great lengths to establish error by the Fourth Circuit.[40] At the end of the day, *Miranda* survived, even if as only a shell of its former incarnation. Although the congressional legislation only applied to federal prosecutions, if the Supreme Court had allowed the legislation to stand, then the states would have been free to enact their own *Miranda*-busting legislation.

2003–2004 U. S. Supreme Court Cases on *Miranda*

Although *Dickerson* emphasized the importance to the Supreme Court of procedural safeguards afforded by *Miranda*, the 2003–2004 session made clear that the Court had no intention of expanding (or, some would argue, *restoring*) a suspect's constitutional rights during the course of interrogation. In *United States v. Patane*,[41] the Court held that the fruits of an unwarned voluntary confession were not fruits of the poisonous tree, and therefore were not worthy of exclusion. *Yarborough v. Alvarado*[42] addressed the issues of age and experience of a defendant as they relate to custody status. And in *Missouri v. Seibert*,[43] the Court demonstrated its willingness to reign in police practices when they play too fast and loose with the *Miranda* requirements.[44]

United States v. Patane

Patane is probably the most significant of the three *Miranda*-related decisions handed down by the Court this past term. The police arrested Samuel Patane at his home for violating a restraining order.[45] As one officer attempted to advise him of his rights, Patane interrupted and stated that he knew his rights.[46] The officer then asked Patane about a pistol suspected to be in his possession.[47] After some discussion, Patane told the officer where to find the gun.[48] Patane was then indicted for possession of a firearm by a convicted felon and sought to suppress the firearm as fruit of an unwarned statement.[49]

The steady march toward the erosion of Miranda has not been without detours, however.

In this case, the Court was asked whether physical evidence recovered as a result of

voluntary custodial statements, obtained in violation of *Miranda*, should be suppressed. In the 1974 case of *Michigan v. Tucker*[50] and the 1985 case of *Oregon v. Elstad*,[51] the Court declined to apply the fruit of the poisonous tree doctrine to *Miranda* violations, relying on the proposition that *Miranda* was a "prophylactic" rule. The issue gained significance again in 2000 when the *Dickerson* decision decreed Miranda to be a "constitutional decision."[52] The sense of the legal community was that with the elevation of *Miranda* from a "prophylactic" rule to "constitutional" one, the fruit of the poisonous tree doctrine should now apply to *Miranda* violations, and physical evidence recovered pursuant to an unwarned custodial confession should be suppressed.

The *Patane* Court declined to apply the fruit of the poisonous tree doctrine and held that the failure to give a suspect *Miranda* warnings does not require suppression of the physical fruits of the suspect's unwarned but voluntary statements.[53] The Court minimized the impact of *Dickerson* and repeatedly referred to *Miranda* as a "prophylactic" rule.[54] The Court also took note of the "continuing validity" of *Tucker* and *Elstad*, cases that had declined to apply the fruit of the poisonous tree doctrine to *Miranda* violations.[55] The Court also relied on the proposition that the Fifth Amendment does not apply to nontestimonial evidence.[56]

Yarborough v. Alvarado

Alvarado[57] presented the issue of whether the age and inexperience of a suspect should be factors in determining whether the suspect is in "custody" for the purposes of *Miranda*. Michael Alvarado, a seventeen-year-old juvenile at the time of his arrest, was brought to the police station by his parents for questioning regarding a murder.[58] Out of the presence of his parents, he was interviewed for two hours by police without being advised of *Miranda* rights and was then released.[59] During the course of the interview, however, he made several incriminating statements.[60] Alvarado was charged with murder and attempted robbery and sought to suppress the statements that he made during the interview.[61]

The issue raised by this case was whether the defendant was in custody during the interview, thereby creating the requirement of a *Miranda* warning. If the Court determined that the defendant was not in custody, then police were not required to advise him of his *Miranda* rights. The Court reaffirmed the principle that the *Miranda* custody test is an objective one,[62] and then went on to rule that the person's age and inexperience with law enforcement were not factors in determining the custody question.[63] But the Court ruled that the two factors might be considered in determining whether the suspect made a voluntary waiver of his rights.[64]

Missouri v. Seibert

The police questioned Patrice Seibert for murder without first advising her of her rights.[65] After she confessed, the police then advised her of her rights and obtained a second confession.[66] This "question first" strategy of withholding *Miranda* warnings until after interrogating and eliciting a confession from a suspect was an established police practice.[67] This method allowed the police to obtain the confession they sought without first reading the suspect her rights, but then using at trial a second immediate confession obtained after a *Miranda* warning was given.[68]

Seibert addressed the legality of this tactic. The State of Missouri argued that the legitimacy of this method derived from the Supreme Court decision of *Elstad*. (In that case, the police had obtained a brief, unwarned statement at the suspect's house and then had obtained a statement in compliance with *Miranda* at the sheriff's office.[69]) But the Court distinguished *Elstad* from *Seibert* on the grounds that a clear and distinct break existed between interviews in the former case, and that *Miranda* warnings were ineffective in preparing a suspect for successive interrogations like the one featured in *Seibert*.[70] The Court also pointed out that the police tactic in question was clearly designed to "undermine" *Miranda's* dictates and was not acceptable.[71]

The Impact of the 2003–2004 U.S. Supreme Court Cases on *Miranda*

A closer analysis of *Patane, Seibert and Alvarado* reveals at least four major effects that these cases will have on the original *Miranda* doctrine.

1. *The Miranda warning is not a constitutional guarantee, and, therefore, failure to warn a prisoner does not violate his constitutional rights.*

   Ironically, although *Miranda* was a constitutional decision, according to *Patane*, the *Miranda* warning is not a constitutional guarantee. The constitutional violation is not the failure to warn; it is the admission of an unwarned confession into evidence. Violation of a defendant's constitutional rights does not occur unless and until a person's unwarned statement is admitted into evidence at trial.

2. *The rules set forth in Miranda were not originally limited in their application, but Patane suggests that they are optional so long as admission of a confession is not sought.*

   The *Miranda* court made clear that warnings were not optional, regardless of the information sought by the police. In most direct and unambiguous terms, the Court declared "that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today."[72] The opinion does not limit instances where precustodial interrogation warnings are required; a warning is required in all cases, whether or not a direct verbal confession is sought. The Court implied that the warnings must be given in *all* custodial interrogations. The exclusion of unwarned confessions is a cure for the *failure* to warn, but does not relieve the police of the *duty* to warn. By holding that the *Miranda* warning is not a constitutional guarantee, *Patane* reverses the requirement that a warning be given in all instances.

3. *The Court gives the police freer reign for their interrogation methods.*

   Despite the Court's criticism of police tactics in *Seibert*, the 2003–2004 decisions taken as a whole will allow for greater flexibility in police questioning tactics. Holding that there are no constitutional rights at issue regarding *Miranda* warnings, the *Patane* Court stated that there is no unconstitutional

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police conduct to deter.[73] The police may now use or withhold *Miranda* warnings at their discretion in order to best suit their method of interrogation, so long as they can show that the statements are voluntary and are not sought for use at trial. *Seibert* made clear that the warning must be given to utilize a confession at trial; however, *Patane* limited the scope of that decision to verbal confessions. The Court will now only concern itself with situations where a verbal or written confession taken in a custodial setting is admitted into evidence. The rule of warning has been abrogated in all other instances.

4. *Special needs defendants do not receive special protection from the Constitution.*

   In construing narrowly the objective test to determine custodial status, the *Alvarado* Court discounted age and inexperience with law enforcement as factors in determining custody status. One may only assume now that the *Alvarado* holding would extend to individuals in other similar, though not identical, situations. Accordingly, it is doubtful that special consideration would extend to people with mental disabilities, language barriers or cultural differences, even though those factors could very well lead members of those groups to reasonably believe that they are in custody, even if the "reasonable person" would not.

Practical Lessons from the 2003–2004 U. S. Supreme Court Term

Defense Lessons

Any defense approach to a *Miranda* issue should bear in mind the two Fifth Amendment goals regarding the interrogation of suspects: deterring improper police conduct and assuring trustworthy evidence. These goals were reiterated in *Seibert* and can be helpful in articulating arguments in support of a motion to suppress. Some issues that counsel should explore include the following:

1. *Was there sufficient cause to have the suspect in custody in the first place?*

   Often this preliminary issue is overshadowed by more complex questions. Advising a suspect of *Miranda* rights does not cure the issue of whether there was justification to seize the person in the first place. Counsel should explore the information available to the police when the suspect was taken into custody.

2. *Was the statement or confession that led to the discovery of additional evidence "voluntary"?*

   The issue of voluntariness takes on significance because of *Patane*'s holding that the fruit of the poisonous tree doctrine would still exclude evidence derived from an involuntary statement (as opposed to a simply unwarned statement). If the client's statement leads to other evidence, the issue of voluntariness should be explored. (Needless to say, the voluntariness question should always be examined, whether or not there is a fruit of the poisonous tree issue.)

3. *Was the suspect questioned prior to receiving a* Miranda *warning?*

   This would include any "small talk" that elicited statements from the suspect. Detectives will often engage in such "small talks" with suspects to establish a rapport; these talks are an integral part of the interrogation and counsel should cite *Seibert* in arguing that the suspect should have been advised of his rights before the first words were uttered. *Miranda* came into being because of the inherent coercive nature of the interrogation process.[74] The "small talk" is part of that process.

4. *When a juvenile is involved, keep in mind that, despite Alvarado, age is still a factor in the* Miranda *analysis, especially when it comes to determining whether the waiver of* Miranda *rights was voluntary.*

   A client's youth and/or inexperience should always be explored in a confession case. If not relevant to the custody issue, these factors are always relevant to the involuntariness issue. Even with the *Alvarado* case, counsel should not be deterred from arguing the youth and inexperience of the defendant on the issue of custody. In state court cases, the Supreme Court's standards only establish the *minimum* rights which are to be afforded to a suspect. A state may always create or protect more rights than the floor provided by the Supreme Court.

Prosecution Lessons

1. Miranda *is your friend.*

   As many prosecutors quickly realized, *Miranda* is their friend. It is hard for a suspect to claim coercion or involuntariness when he has been directly advised that he does not have to talk. But *Miranda* issues can still pose traps that can be fatal to a major crimes case. Having officers advise suspects of rights will not deter many confessions[75] and at the same time will eliminate a major issue of litigation: whether the suspect was in custody.

2. *Determine what was said, and to whom.*

   In light of *Seibert*, the prosecutor needs to interview all officers who spoke with the defendant before he was advised of his rights. This should be done with an eye towards arguing that any pre-Miranda statements fall under the *Elstad* exception or, in the alternative, did not

involve "interrogation" or its functional equivalent.

3. *The* Miranda *requirements should be followed and no policy should be in effect that attempts to contradict* Miranda*'s intent.*

From a law enforcement standpoint, any attempt to evade *Miranda*'s mandates, as was done in *Seibert*, is simply not good strategy. Any miniscule benefit that is derived from a blatant maneuver around *Miranda* is outweighed by the significant risk of having a confession in a case suppressed. If there is a true emergency in which *Miranda* cannot be applied, then the "public safety" exception to the *Miranda* under *Quarles*[76] should address the situation.

Conclusion

The three cases from this term continue the pattern of transforming *Miranda* into a doctrine that would be barely recognizable to the Court that issued it. At almost every opportunity, the Court has relaxed the dictates of *Miranda*. Analysis of the Court's 2003–2004 decisions reveals abandonment of some spiritual intent—if not the constitutional principles—expressed in the landmark 1966 decision. Gone seems to be the concern for adequate safeguards to protect "precious rights,"[77] which has been replaced with ambivalence towards procedure and police conduct.

Of course, this trend is not necessarily bad. *Miranda*, in its original form, can be viewed as unduly hampering law enforcement without sufficiently protecting constitutional rights. Under this view, the subsequent limitation of *Miranda* has struck the right balance between law enforcement needs and citizens' rights against unreasonable governmental intrusion. Others may argue that the Court got it right with *Miranda*, and the subsequent decisions have been a series of regressions from the original intent. Wherever the right balance may be, undoubtedly that balance will constantly shift as defense attorneys and prosecutors continue to litigate the issue of admissibility of confessions.

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Endnotes:

1 WELSH S. WHITE, *MIRANDA*'S WANING PROTECTIONS: POLICE INTERROGATION PRACTICES AFTER *DICKERSON* 1 (2003).

2 384 U.S. 436 (1966).

3 *See, e.g.*, *Harris v. New York*, 401 U.S. 222 (1971) (defendant statements preceded by defective warnings can be used to impeach defendant's testimony); *Oregon v. Hass*, 420 U.S. 714 (1975) (even if defendant asserts his rights upon being advised of *Miranda*, prosecution can still use statements for impeachment purposes); *Michigan v. Mosley*, 423 U.S. 96 (1975) (police may approach defendant at a later date if he has invoked right to silence); *New York v. Quarles*, 467 U.S. 649 (1984) (public safety exception to *Miranda*).

4 530 U.S. 428 (2000).

5 *Id.* at 432.

6 *Connecticut v. Barrett*, 479 U.S. 523, 528 (1987).

7 *United States v. Patane*, 124 S. Ct. 2620 (2004); *Missouri v. Seibert*, 124 S. Ct. 2601 (2004); *Yarborough v. Alvarado*. 124 S. Ct. 2140 (2004).

8 384 U.S. 436.

9 *Id.* at 442, 467.

10 *Id.* at 472-73.

11 *Id.* at 474-75.

12 *Id.* at 474.

13 *Id.*

14 *Id.* at 476.

15 *California v. Bebeler*, 463 U.S. 1121 (1983) (per curiam) (*Miranda* is applicable when suspect's freedom is curtailed to a "degree associated with formal arrest"); *Berkemer v. McCarty*, 468 U.S. 420 (1984) (a traffic stop is not tantamount to being in custody).

16 *Rhode Island v. Innis*, 446 U.S. 291 (1980) ("*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent"); *Illinois v. Perkins*, 496 U.S. 292 (1990) ("*Miranda* warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement").

17 *Quarles*, 467 U.S. 649 ("overriding considerations of public safety justify [an] officer's failure to provide *Miranda* warnings").

18 *Bebeler*, 463 U.S. 1121 (*Miranda* is applicable when suspect's freedom is curtailed to a "degree associated with formal arrest").

19 *Perkins*, 496 U.S. 292 ("*Miranda* warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement").

20 *Harris*, 401 U.S. 222 (defendant statements preceded by defective warnings can be used to impeach defendant's testimony); *Hass*, 420 U.S. 714 (even if defendant asserts his rights upon being advised of *Miranda*, prosecution can still use statements for impeachment purposes).

21 *Davis v. United States*, 512 U.S. 452 (1994). The Supreme Court of Virginia has arguably imposed an even more stringent standard on invocation of right to counsel. *See, e.g.*, *Midkiff v. Commonwealth*, 250 Va. 262, 266-67, 462 S.E.2d 112, 115 (1995) ("I'll be honest with you, I'm scared to say anything without talking to a lawyer" not a clear assertion of right to counsel).

22 *Quarles*, 467 U.S. 649 ("overriding considerations of public safety justify [an] officer's failure to provide *Miranda* warnings").

23 *Mosley*, 423 U.S. 96.

24 *See* WHITE, *supra* note 1, at 61, for further discussion of this issue.

25 451 U.S. 477 (1981). Note the distinction between invoking the right to counsel—which

would bar police approaching suspect—and invoking right to remain silent—which, pursuant to *Mosley*, 423 U.S. 96, would leave room for police to approach the suspect later.

26 486 U.S. 675 (1988).

27 *Oregon v. Bradshaw*, 462 U.S. 1039 (1983) ("Well, what is going to happen to me now?" was deemed to have "initiated" a conversation with the police).

28 *Dickerson*, 530 U.S. at 432.

29 § 3501.

30 384 U.S. at 490. The *Miranda* decision further encouraged "Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws." *Id.* at 467. The Court further noted that the new safeguards must be observed "unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it." *Id.*

31 § 3501.

32 *Id.*

33 WHITE, *supra* note 1, at 57-58 (describing §3501 as being "rarely used"). The FBI was advising suspects of their "*Miranda*" rights long before *Miranda* was decided. *Miranda*, 384 U.S. at 483.

34 530 U.S. 428.

35 *Id.* at 432.

36 *Id.*

37 *Id.*

38 *Id.* at 437-38.

39 *Id.* at 443.

40 *Id.* at 438-41. Although the Court disagreed with the Fourth Circuit's conclusion, it "conced[ed] that there is language in some of [the Supreme Court's] opinions that supports the view taken by" the Fourth Circuit. *Id.* at 438.

41 124 S. Ct. 2620.

42 124 S. Ct. 2140.

43 124 S. Ct. 2601.

44 The Court in this term decided a fourth case, *Fellers v. United States*, 124 S. Ct. 1019 (2004), which touched upon *Miranda*. That case involved the police interrogation of a suspect after he had been indicted. Relying on the 6th Amendment and the accompanying precedent, including *Massiah v. United States*, 377 U.S. 201 (1964), the Court reversed the conviction because the suspect had not properly waived his rights. Because *Miranda* deals only with the 5th Amendment and not 6th Amendment, *Fellers* is not discussed in this article. Moreover, *Fellers*' impact is "limited . . . because the vast majority of police interrogations take place *prior* to indictment." WHITE, *supra* note 1, at 52 (description of *Massiah*'s impact) (emphasis added).

45 124 S. Ct. at 2625.

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 417 U.S. 433.

51 470 U.S. 298.

52 530 U.S. at 438.

53 124 S. Ct. at 2626.

54 *Id.* at 2627-28.

55 *Id.* at 2628.

56 *Id.* at 2630.

57 124 S. Ct. 2140.

58 *Id.* at 2145.

59 *Id.* at 2146.

60 *Id.* 2145-46.

61 *Id.* at 2146.

62 *Id.* at 2148.

63 *Id.* at 2151.

64 *Id.*

65 124 S. Ct. at 2606.

66 *Id.*

67 *Id.* at 2608.

68 *Id.* at 2608-09.

69 470 U.S. 298.

70 124 S. Ct. at 2611-12.

71 Id. at 2612.

72 384 U.S. at 471.

73 124 S. Ct. at 2626.

74 384 U.S. at 456.

75 Although this proposition has been questioned in recent years by Prof. Paul Cassell, who led the charge against *Miranda* in *Dickerson*, WHITE, *supra* note 1, at 5, the majority of studies point to *Miranda*'s relatively minimal impact on inhibiting confessions. *Id.* at 76. Even a study done by Prof. Cassell has been cited as supporting the proposition that Miranda does not have a significant impact on whether a suspect confesses. *Id.* The authors' experience bears this out. *Accord* Telephone Interview with Sgt. Shawn Hoffman, supervisor of the Homicide Squad, Virginia Beach Police Department (July 27, 2004).

76 467 U.S. 649.

77 384 U.S. 442.