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June 17, 1966

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GUIDELINES ON CONFESSIONS AND ADMISSIONS

On June 13, 1966, the Supreme Court of the United States decided in Miranda v. Arizona and three related cases that a confession or admission, either orally or in writing, resulting from custodial interrogation of an accused who is unaccompanied by counsel is inadmissible in federal and state courts unless prior to interrogation the accused was effectively warned of his constitutional rights and he knowingly, understandingly and expressly waived those rights. The following guidelines are designed to provide for the admissibility at trial of future confessions and admissions under the requirements of the Supreme Court decisions.

WHEN WARNINGS MUST BE GIVEN: Warnings on constitutional rights must be given prior to questioning to every accused who is

- (1) in custody; and
- (2) unaccompanied by a lawyer.

An accused is in "custody" if he has been arrested or "deprived of his freedom of action in any significant way."

If the accused cannot obtain a lawyer and he indicates that he wants one before speaking to police, this is equivalent to a decision to remain silent and all interrogation and questioning must cease until a lawyer is present and has had an opportunity to consult with the accused.

WHEN WARNINGS NEED NOT BE GIVEN: Warnings and advice need not be given to a person not arrested or in custody who "volunteers" a confession or admission. Examples of "volunteered statements" are (1) a person who enters a police station and states that he wishes to confess a crime or (2) a person who calls the police to offer a confession or any other statement he desires to make. No warning needs to be given where the accused is accompanied by counsel during interrogation.

DURING QUESTIONING: If the accused indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation or questioning must cease. If the accused states that he wants a lawyer, the interrogation must cease until a lawyer is present.

RIGHT TO CONFER AND HAVE ATTORNEY PRESENT: Once a lawyer is present, the accused must have an opportunity to confer with the lawyer and to have him present during any subsequent questioning.

NO NEED FOR LAWYER AT EACH POLICE STATION: The decision does not mean that each police station must have a station house lawyer present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person they must make known to him that he is entitled to a lawyer and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If police conclude that they will not provide counsel for the accused, they may properly do so, as long as they do not question the accused in the absence of a lawyer.

EFFECTIVE WAIVER: A confession or admission will be admissible at trial if the accused waived his rights to remain silent and have a retained or appointed lawyer. However, in the case of any confession made out of the presence of a lawyer, a heavy burden will be on the Commonwealth to demonstrate that the accused knowingly and intelligently "waived" his rights.

It will not be enough to show that after being warned and questioned about his rights, the accused remained silent and said nothing. The confession or admission will only be admitted into evidence if

- (1) The accused expressly says that he is willing to make a statement;
- (2) The accused expressly says that he does not want a lawyer; and
- (3) The confession or admission closely follows such expressions by the accused.

PROCEDURES: Because of the heavy burden of proof placed upon the Commonwealth by the Court's decision, it is important that the pre-confession warning and questioning procedure be carried out and recorded as precisely as possible. When practicable in all serious cases, the warning procedure should be taken down verbatim by a stenographer. Regardless of the availability of a stenographer, it is highly desirable that the interrogator should incorporate the warnings and subsequent questions and answers verbatim in his report.

FORM FOR WARNINGS:

We have a duty to explain to you and to warn you that you have the following legal rights:

1. You have a right to remain silent and do not have to say anything at all.
2. Anything you say can and will be used against you in court.
3. You have a right to talk to a lawyer of your own choice before we ask you any questions and also to have a lawyer here with you while we ask questions.
4. If you cannot afford to hire a lawyer, and you want one, we will see that you have a lawyer provided to you before we ask you any questions.
5. If you are willing to give us a statement, you have a right to stop any time you wish.

FORM FOR PRELIMINARY QUESTIONS:

1. Do you understand that you have a right to keep quiet, and do not have to say anything at all?
2. Do you understand that anything you say can and will be used against you in court?
3. Do you want to remain silent?
4. Do you understand that you have a right to talk with a lawyer before we ask you any questions?
5. Do you understand that if you cannot afford to hire a lawyer, and you want one, we will not ask you any questions until a lawyer is appointed for you?
6. Do you want either to talk with a lawyer at this time or to have a lawyer with you while we ask you questions?
7. Are you willing to answer questions of your own free will, without force or fear, and without any threats or promises having been made to you?