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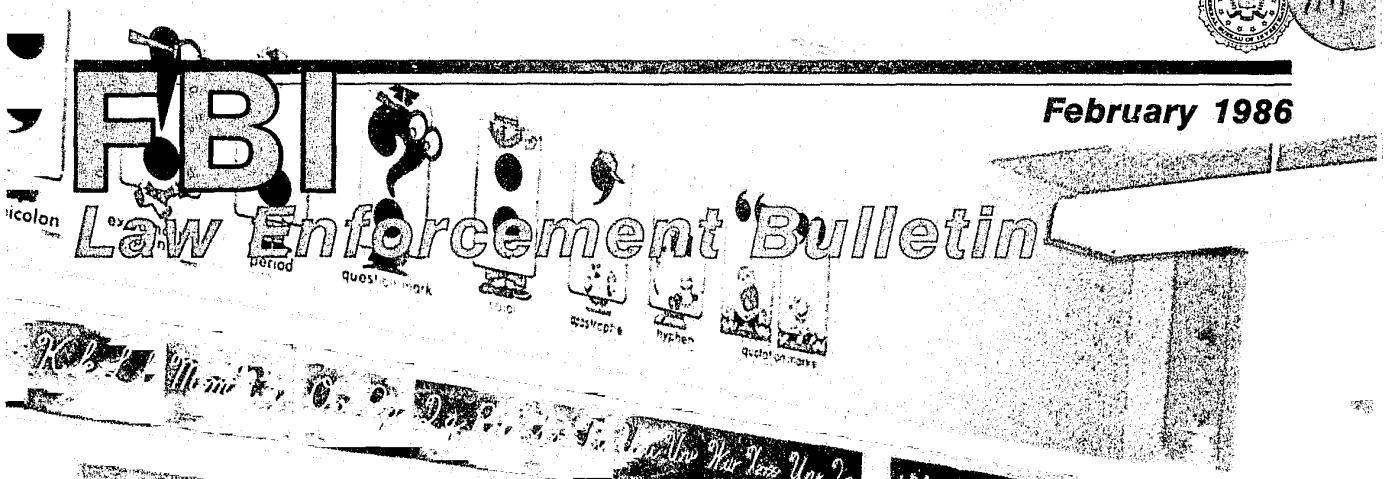
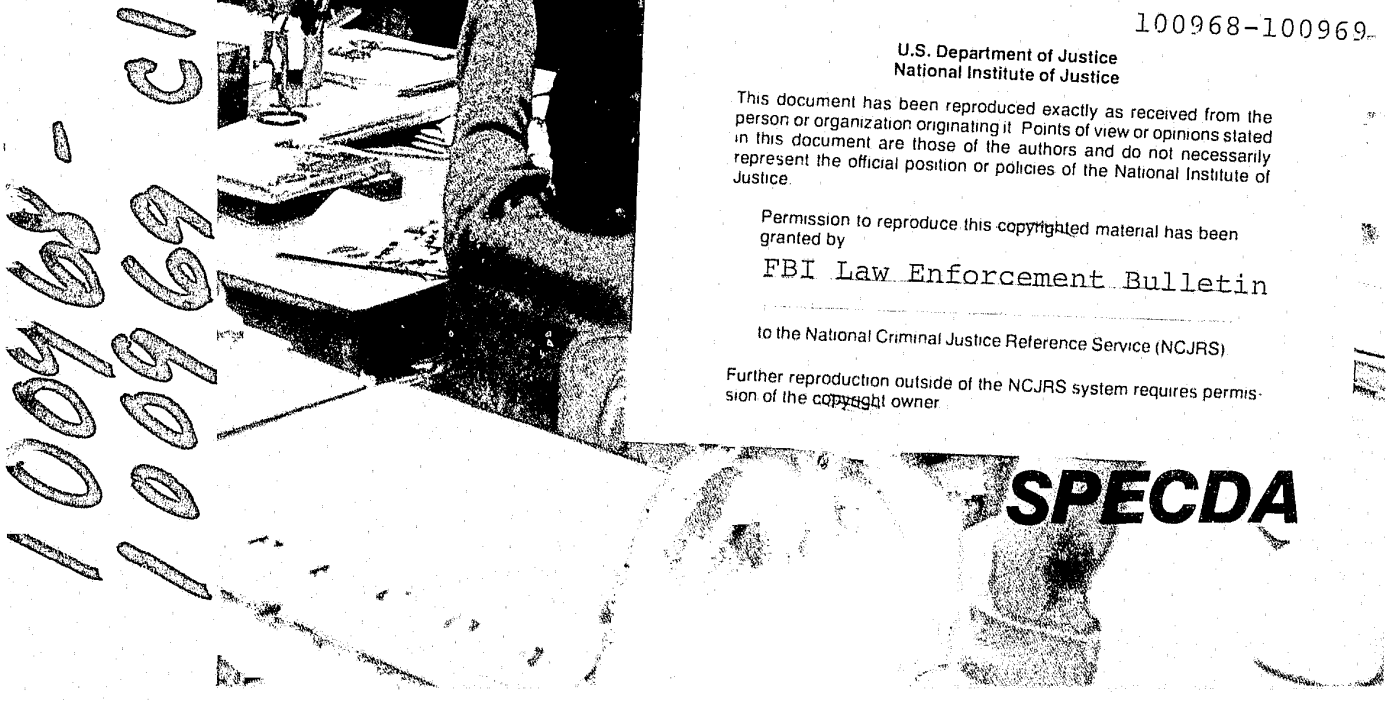
FBI Law Enforcement Bulletin





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Interrogation
Post Miranda *Refinements* *(Part I)*

By
JEFFREY HIGGINBOTHAM
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The Supreme Court's 1966 landmark decision in *Miranda* v. *Arizona*[1] dramatically changed the manner in which most interrogations of suspects are conducted and may have even contributed to a broader change in law enforcement by forcing an increased respect for a suspect's constitutional protections.[2] In *Miranda* v. *Arizona*, the Supreme Court created a set of safeguards designed to protect a suspect's fifth amendment privilege against self-incrimination.[3] The now familiar warnings that an accused has the right to remain silent, that anything said can be used against an accused in court, that the accused has the right to the presence of an attorney, and that if the accused cannot afford an attorney one will be appointed for him prior to any questioning if the accused so desires[4] are prerequisites in any custodial interrogation. In fact, *Miranda* warnings are so well-entrenched in law enforcement practice and in the eyes of the courts that one court has remarked that "[it] is nigh onto superfluous to remind that *Miranda* forbids interrogation unless prefaced by a list of cautions."[5]

Yet, it is important to remember that the protections outlined in the *Miranda* decision apply only to custodial interrogations.[6] If custody and interrogation do not both exist simultaneously, no warnings need legally be given to a person who is the subject of police questioning. The *Miranda* decision defined the term "custodial interrogation" as follows:

> "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 a significant way."[7]

Many cases since *Miranda,* both in the Supreme Court and in the lower courts, have further refined the meaning of custodial interrogation and established a framework for its use. It is the purpose of this article to examine a number of those cases in an attempt to provide some measure of guidance concerning the second prong of the *Miranda* trigger—interrogation.[8]

Interrogation Constrained

There are two circumstances in which it is crucial to understand the legal implications of interrogating an accused. The first is the more obvious and the one raised by the facts of *Miranda* itself. Ernesto Miranda was arrested at his home on March 13, 1963, and taken to the Phoenix, AZ, police station where he was identified by the complaining witness at a lineup. Thereafter, he was taken to an interrogation room in the detective bureau and questioned by two police officers.

Special Agent Higginbotham

Two hours later, Miranda had provided a voluntary written confession. Though Miranda was never told by the officers that he could consult with an attorney before and during questioning if he desired, neither did he request to do so.[9] Nonetheless, the Supreme Court ruled Miranda's confession inadmissible and ordered his conviction overturned because Miranda, while in custody, had been interrogated before he was fully warned of his fifth amendment protections and waived those rights. In doing so, the Supreme Court established the rule that interrogation of a person in custody cannot begin until the fifth amendment warnings have been given and a valid waiver of those rights obtained.[10]

The second circumstance in which it is important to understand the legal ramifications of interrogation was alluded to in *Miranda:*

> "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."[11]

Thus, the Court established a second rule that interrogation was not permitted once an individual had invoked his right to silence or right to counsel.

In prohibiting interrogation after an invocation of rights, the Supreme Court in *Miranda,* however, did not address whether interrogation could resume, and if so, at what point. Those issues were resolved, however, in two subsequent cases. In 1975, the Supreme Court decided the case of *Michigan* v. *Mosley.*[12] There, Richard Mosley was arrested in the early afternoon of April 8, 1971, in connection with two recent robberies. Following his arrest, Mosley was taken to a Detroit Police Department stationhouse and advised of his *Miranda* rights. When Mosley said he did not want to answer any questions about the robberies, all interrogation was properly ceased, and Mosley was lodged in jail. At approximately 6:00 p.m. that same evening, a second detective sought to talk with Mosley, not about the robberies, but about a murder in which Mosley was a suspect. Mosley, prior to any questioning regarding the murder, was advised of his *Miranda* rights by the detective, waived those rights, and agreed to answer the detective's questions. During the course of an interrogation, which lasted only about 15 minutes, Mosley gave a statement implicating himself in the murder. At no time during the second interrogation did Mosley request to remain silent or indicate that he desired to consult with an attorney.

In the appeal of his first-degree murder conviction, Mosley argued that his initial invocation of his right to remain silent absolutely forbid any subsequent interrogation by police. The Supreme Court rejected the argument, refusing to establish a "*per se* proscription" on a subsequent interrogation.[13] However, the Court did establish the rules to be followed before a subsequent interrogation, after an initial invocation of the right to remain silent.[14] The Court refined the rule prohibiting interrogation after an invocation of the right to silence holding that when an accused invokes his right to remain silent, all interrogation must cease and may not begin again until the passage of a significant period of time and until fresh warnings have been given and a valid waiver obtained.

"... when an accused invokes his right to remain silent, all interrogation must cease and may not begin again until the passage of a significant period of time and until fresh warnings have been given and a valid waiver obtained."

A case of similar import was decided by the Supreme Court in 1981. In *Edwards* v. *Arizona,*[15] the defendant was arrested pursuant to a warrant charging him with robbery, burglary, and first-degree murder. During an interrogation, following a legally sufficient warning and waiver of *Miranda* rights. Edwards gave only an exculpatory statement, presenting an alibi. He then sought to "make a deal."[16] After being told by the interrogating officer that he did not have the authority to make a deal, Edwards was provided with the prosecutor's telephone number and allowed to place a call. He made the call, but hung up after a few moments and said, "I want an attorney before making a deal."[17] At that point, all attempts to interrogate Edwards stopped, and Edwards was housed in the county jail.

The next morning two different officers had Edwards brought from his cell to an interrogation room. After they advised him of his *Miranda* rights, Edwards stated he was willing to talk but desired first to listen to the taped statement of an alleged accomplice who had earlier implicated Edwards in the crime. After listening for several minutes, Edwards provided a statement implicating himself in the crime. Following his conviction at trial, during which his confession was received in evidence, Edwards appealed. He claimed that his request to consult with a lawyer during his initial interrogation made inadmissible the confession which he had voluntarily provided during his second interrogation.

The issue before the Supreme Court in *Edwards* v. *Arizona* was similar to that in *Michigan* v. *Mosley.* Both concerned a subsequent interrogation following an invocation of rights. However, the Court did not follow the same rules they had established in *Mosley.* Rather, the Court ruled that an invocation of the right to counsel necessitates more restrictive rules than for invocation of the right to remain silent. The Court stated:

> "We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police."[18]

In *Edwards,* the Court imposed a "rigid rule that an accused's request for an attorney is *per se* an invocation of his Fifth Amendment rights, requiring that all interrogation cease."[19] It prohibits the resumption of interrogation until such time as either counsel has been made available to the defendant or the defendant himself has sought to talk with investigators.[20]

Commencing with *Miranda,* and following in *Mosley* and *Edwards,* the Supreme Court has made clear that custodial interrogation is prohibited in essentially two instances. First, custodial interrogation of an accused may not begin before *Miranda* rights are given and a valid waiver obtained; and second, after a person has invoked his right to remain silent or to consult with an attorney, interrogation must cease and may be resumed only under certain conditions. What then is interrogation?

Interrogation Defined

Though the *Miranda* rule was announced in 1966, it was not until 1980 in *Rhode Island* v. *Innis* that the Supreme Court agreed to "address for the first time the meaning of 'interrogation' under *Miranda* v. *Arizona.*"[21]

On January 12, 1975, a Providence, RI, taxi driver was reported missing after being dispatched to pick up a customer. His body was discovered 4 days later in a shallow grave. He had died from a shotgun blast to the back of the head. On January 17, 1975, shortly after midnight, the Providence Police Department received a telephone call from another taxicab driver who reported that he had just been robbed by a man wielding a sawed-off shotgun. The taxi driver came to the police station to provide the police a statement. While there, he noticed a picture of his assailant on a bulletin board and notified the officers. An officer prepared a photo spread, and when the taxi driver again identified his assailant, police began a search of the area in which the driver said he left the assailant after the robbery.

At approximately 4:30 a.m., a patrolman cruising the area spotted Innis standing in the street, and upon recognizing him as the wanted robber, arrested him and immediately advised him of his *Miranda* rights. The arresting officer did not attempt to interrogate or converse with Innis except to respond to Innis' request for a cigarette. Several minutes later, a Providence police sergeant arrived at the scene and also advised Innis of his *Miranda* rights. Shortly thereafter, a

"... procedural safeguards of Miranda are not only mandated by direct custodial questioning but are also required to protect against various police practices which are tantamount to interrogation."

police captain who had also responded to the arrest scene approached and he, too, gave Innis his *Miranda* warnings. At that point, Innis said he understood his rights and wanted to speak with a lawyer.

Three officers were then directed to take Innis from the site of the arrest to the central police station. They were instructed not to question, intimidate, or coerce Innis in any way, and then departed. After driving less than a mile from the scene of the arrest, one officer began a conversation with another and commented that Innis had been arrested near a school for handicapped children and that one of those children might come across the sawed-off shotgun, which had not been located, and accidentally injure or kill themselves. Innis, who overheard that conversation, interrupted and told the officers he would lead them to the weapon.

The police car carrying Innis returned to the scene of the arrest where the captain advised Innis of his *Miranda* rights for a fourth time. Innis replied that he understood those rights but "wanted to get the gun out of the way because of the kids in the area in the school."[22] He then led the police to a nearby field where he pointed out the shotgun under some rocks by the side of the road. Innis was subsequently indicted and convicted of kidnaping, robbery, and murder. He unsuccessfully appealed his conviction through the State courts, and the Supreme Court agreed to hear the case to decide whether the dialogue between the officers transporting Innis to the police station constituted interrogation, and if so, whether it was impermissible after Innis had requested to talk with a lawyer.

In answering the question, the Court focused on the breadth and meaning of the passage from the *Miranda* decision which states, "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."[23] The Court rejected a narrow reading of that passage, however, declining to find that "questioning" applies only "to those police practices that involve express questioning of a defendant while in custody."[24]

The Court explained that the procedural safeguards of *Miranda* are not only mandated by direct custodial questioning but are also required to protect against various police practices which are tantamount to interrogation. Though they do not take the form of direct questioning, those practices are equally or perhaps more effective in compelling an accused to talk or subjugating him to the will of the interrogator, "thereby undermin[ing] the privilege against compulsory self-incrimination."[25] Pointing to several police interrogation techniques discussed in *Miranda,* the Court in *Rhode Island* v. *Innis* said:

> "It is clear that these techniques of persuasion [staged lineups, reverse lineups, positing guilt, minimizing the moral seriousness of crime, and casting blame on the victim or society], no less than express questioning, were thought, in a custodial setting, to amount to interrogation."[26]

Accordingly, the *Innis* Court ruled:

> " ... the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or action on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."[27]

This encompassing definition of interrogation might appear to cover nearly all police techniques and practices which precede an incriminating statement from a defendant. However, it is not so broad that it imposes a "but-for" test requiring the suppression of confessions merely because the police did or said something prior to the confession. *Innis* itself rejects such a broad reading. Clearly, but for the officers' conversation in the patrol car, Innis would not have made his statement nor led the officers to the gun. Yet in *Innis,* the Supreme Court found that the officers' conversation was "nothing more than a dialogue between the two officers to which no response from [Innis] was invited ... [T]he entire conversation appear[ed] to have consisted of no more than a few offhand remarks" and was neither a lengthy harangue nor a particularly evocative statement,[28] and did not, therefore, constitute interrogation.

Only a "practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elict an incriminating response."[29]

Many cases in the lower courts since Innis have focused on whether particular police words or conduct meet the test of direct questioning or its functional equivalent. An analysis of those cases reveals that they can be divided into four categories: 1) On-the-scene questioning, 2) questioning normally attendant to arrest and custody, 3) spoken words which are not express questioning but prompt in inculpatory statement from a defendant, and 4) nonverbal interrogation, i.e., police action which precedes an incriminating response. This article will now explore those areas and provide guidance to police interrogators as to when their actions might be considered interrogation or its functional equivalent, impermissible either before *Miranda* warnings are given and a waiver obtained or after there has been a invocation of rights but the requirements of *Mosley*[30] and *Edwards*[31] have not been met to permit a subsequent interrogation.

The remainder of this part of the article will discuss on-the-scene questioning and questioning normally attendant to arrest and custody. The concluding part will discuss the remaining categories, as well as the Supreme Court's recently announced public safety exception to the *Miranda* rule.

On-the-Scene Questioning

Perhaps out of a recognition of police practicalities, the Supreme Court in *Miranda* v. *Arizona* stated that police officers who respond to a reported crime or incident and ask questions to determine basic facts about what has happened are not engaging in custodial interrogation. The Court held:

> "General on-the scene questioning as to the facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding."[32]

Other courts have applied that rule to a variety of factual situations. For example, in *United States* v. *Scalf,* [33] a prison inmate, Scalf, attacked and stabbed another inmate, then fled back into his cell. A prison guard approached Scalf's cell and asked him what had happened and where the weapon was. The prisoner responded by admitting that he had stabbed his fellow inmate and claiming that he had thrown the knives out a window. At a subsequent criminal trial, Scalf objected to the admission of those statements into evidence. He argued that he had been subjected to custodial interrogation without benefit of warnings or a waiver of his *Miranda* rights. The trial court overruled his objection, and the appellate court sustained the use of Scalf's statements against him. The court concluded that the questions had merely been an on-the-scene inquiry to ascertain the facts, identify the injured, and locate the weapons. The questions were general, regarding the facts of the crime in the course of the investigatory, fact-finding process, not ones which would reasonably elicit an incriminating response. They were not interrogation for purposes of *Miranda.*

Similarly, in *Rock* v. *Zimmerman,* [34] the court permitted use of the defendant's incriminating statements obtained shortly before his arrest near the crime scene. In this case, the defendant set fire to his own house and shot and killed a neighbor. When fire officials responded to extinguish the blaze at the defendant's house, he began shooting at them and killed the fire chief. The defendant fled the police, and when located nearby, still had his weapon. As police approached and attempted to persuade him to release his gun, the defendant said, "How many people did I kill, how many people are dead?"[35] In ruling that the defendant's incriminating statements were admissible, the court found *Miranda* inapplicable, since it "does not reach a situation such as the present one, where the statements were unsolicited, spontaneous and freely made prior to any attempted questioning."[36]

In contrast, a Federal trial court refused to admit an incriminating statement obtained at an arrest scene. In *United States* v. *Corbin,*[37] the defendant was arrested during a drug raid, and at her feet, was a .22-caliber revolver. The arresting agent asked her about the gun. The defendant replied that the gun was hers and had come from her purse. In suppressing that admission by the defendant, the court reasoned that the agent's question constituted custodial interrogation, since it was not a general inquiry regarding the crime but rather was one which sought a guilty response and should have been preceded by *Miranda* warnings and a waiver.

General on-the-scene inquiries are made many times each day by law enforcement officers throughout the Nation. So long as they are reasonably related to the facts surrounding a crime and are asked to provide the officer with basic and necessary information concerning the crime, but not one's guilt, they need not be preceded by *Miranda* warnings.

Questions Normally Attendant to Arrest and Custody

When the Supreme Court in *Rhode Island* v. *Innis* [38] provided the definition of interrogation, it recognized

"... routine booking questions which cause an arrestee to offer incriminating responses may be termed impermissible interrogation if asked with the intent to produce such an incriminating statement."

that certain types of administrative questions are a necessary part of police work, the answers to which are also necessary simply because a person has been arrested or incarcerated. The Supreme Court described such questions as "those normally attendant to arrest and custody."[39] The cases which have interpreted that phrase fall into three categories.

The first category is basic to law enforcement. As a matter of good police practices, certain general questions concerning an arrestee's personal history and background are asked whenever a person is arrested or incarcerated. The practice of "taking basic personal information (name, age, place of birth) [is] merely ... a ministeral duty incident to arrest and custody"[40] and does not constitute interrogation within the meaning of *Miranda's* custodial interrogation rule.

Even when this practice results in the acquisition of incriminating information, suppression is not mandated, since a guilty response was neither invited nor expected.[41] If an accused makes damaging statements in response to routine biographical questions, he is a victum of his own blunder. As one court stated, "To the extent that [an arrested person] gave incriminating responses, his answer merely exceeded the scope of the questions."[42]

A note of caution is in order, however. Even routine booking questions which cause an arrestee to offer incriminating responses may be termed impermissible interrogation if asked with the intent to produce such an incriminating statement. An example of this is *United States* v. *Webb.*[43] In *Webb,* a man had been arrested by military police and the FBI for murder. When advised of his *Miranda* rights, the defendant requested to speak with a lawyer. All questioning ceased, and the defendant was taken to the local jail to be lodged pending an appearance in court. At the jail, before relinquishing custody of the defendant, the FBI prepared paperwork necessary for the local jail to accept custody of the Federal prisoner. The paperwork, which clearly indicated that the defendant had been arrested for murder, was then given to the jailer. As the jailer began completion of his own paperwork, which included listing the charges for which the arrest was made, he turned to the defendant and asked him in what kind of trouble he was involved. In response, the defendant admitted to the murder.

In finding that the jailer's question was not "normally attendant to custody," the fifth circuit court of appeals was persuaded that the jailer already knew the charge underlying the defendant's arrest and in fact had the FBI's paperwork listing the crime in his possession at the time he asked the question. The court found that the jailer's question was interrogation, since the jailer knew or reasonably should have known that it would prompt an incriminating response.

The *Webb* case illustrates the limits of the "normally attendant to arrest and custody" line of cases. General background data and personal history are necessary to allow police to identify accurately or to apprehend the arrested person should he escape or fail to appear in court as scheduled. But should the questions extend beyond those purposes, they too become "interrogation" which may be proscribed by *Miranda, Mosley,* or *Edwards.*

Decisions in a second category of cases which find police questioning "normally attendant to arrest and custody" seem to hinge on the nature of the offense for which the person is arrested. One such case is *South Dakota* v. *Neville.*[44] Neville was stopped by police for a routine traffic violation—running a stop sign. However, when he got out of his car, he stumbled and staggered. Based on their observations of Neville, the police concluded he was driving while intoxicated and placed him under arrest. The police then informed him that he had a choice of submitting to a blood alcohol content (BAC) test or face automatic revocation of his driver's license. When told of the choice, Neville responded, "I'm too drunk, I won't pass the test."[45] Neville's response was viewed as a refusal to submit to a BAC test, and his license was revoked. Neville contested the revocation, claiming that the inquiry about whether he would submit to a BAC test was interrogation which should have been preceded by *Miranda* warnings. The Supreme Court disagreed, instead finding there was no interrogation for purposes of *Miranda.* The Court stated:

> " ... police words or actions 'normally attendant to arrest and custody' do not constitute interrogation. The police inquiry here is highly regulated by state law, and is presented in virtually the same words to all suspects. It is similar to fingerprinting or photography."[46]

A similar result was reached in *Edwards* v. *Bray,*[47] but for a different reason. There, the defendant was stopped based on the suspicion that he was driving under the influence of

alcohol. The officer asked a series of questions—whether the driver was injured or taking medication (to explain his erratic driving) and how much education the driver had (to determine what type of field sobriety test to administer). Finally, the officer asked the driver to recite the alphabet. When the driver failed to complete the test successfully, he was arrested. He appealed his conviction, claiming he was interrogated without benefit of *Miranda* warnings. The court refused to accept that argument and held that no interrogation took place, since the questions were not asked to elicit a testimonial response. The questions asked were intended only to evidence the driver's physical characteristics of intoxication, which are not protected under the fifth amendment at all.

A final case which illustrates "normally attendant to arrest" questions based on the type of crime is *United States* v. *Bennett*.[48] There, police responded to a call that the defendant had threatened persons at a bar with a rifle and had fired shots into a house. When the police located the defendant he was using a pay telephone at a convenience store. While police waited for the defendant to finish his phone call so that he could be questioned, the chief of police arrived on the scene and approached the defendant. In doing so he observed a rifle inside the defendant's car and announced, "There is a gun in the car."[49] The defendant, having hung up the telephone, admitted possessing the gun and was subsequently charged and convicted of being a felon unlawfully in possession of a firearm. His conviction was sustained on appeal over his objection that the police chief's statement was the equivalent of interrogation which took place before a *Miranda* warning was given and a waiver obtained. The appellate court said:

> "... we believe it clear that those words and actions, which are necessary and appropriate to inform fellow officers of a potential threat to their own safety and that of others during the course of an arrest or custody, are 'normally attendant.'"[50]

The *Neville*, *Bray*, and *Bennett* cases are representative of cases in which the offense for which an arrest is made controls whether the question asked is "normally attendant to arrest and custody." Clearly, in cases involving intoxicated drivers, standard questions relating to the testing for intoxication meet the test of "normally attendant." Similarly, in cases where weapons are involved in the offense, a warning concerning a safety threat posed by those weapons to arresting officers or others falls within the same classification.

The last category of cases in which questions fall under the "normally attendant to arrest and custody" banner are those where the police do no more than respond to the defendants' own questions. For example, in *United States* v. *Crisco*, [51] the defendant, upon his arrest, claimed he did not understand why he was being arrested because he had not done anything wrong. In response, one of the arresting officers, who had dealt with the defendant in an undercover role, said, "Hey, you met with me for the purpose of seeing $60,000.00 that I was going to use to buy a kilo of cocaine."[52] The defendant replied, "Well, I admit that."[53] In holding the officer's comment was not the equivalent of interrogation, the court ruled the officer was only providing the defendant information concerning the charge for which he was being arrested so that he could exercise his judgment as to what course of action to take. The court said:

> " ... when an officer informs a defendant of circumstances which contribute to an intelligent exercise of his judgment, this information may be considered normally attendant to arrest and custody."[54]

The *Crisco* case also focused on that portion of the *Rhode Island* v. *Innis*,[55] which stated that interrogation must be judged primarily by the defendant's perceptions of the police conduct and concluded that where a defendant himself shows that he does not believe he should be arrested, it strongly suggests that he does not perceive himself to be the subject of interrogation.

Similarly, in *Kirkpatrick* v. *Blackburn*,[56] the defendant asked an officer what his co-defendant had been saying to police and was told that the co-defendant had been implicating the defendant. The officer also told the defendant he would be well-advised to protect himself. The defendant then implicated himself in the crime by making damaging admissions. The court found the officer's response was neither direct questioning nor its functional equivalent, since [s]uch a comment is no more likely to invoke a response on the part of a defendant than the conversation between the police officers in *Rhode Island* v. *Innis*."[57] In fact, in the eyes of this par-

***"... where it is the defendant himself who asks questions of the officer prior to making an inculpatory response, comments or answers to the defendant's questions are not interrogation for purposes of* Miranda."**

ticular court, "[t]he standard for what is likely to elicit an involuntary response is rigorous."[58]

In sum, where it is the defendant himself who asks questions of the officer prior to making an inculpatory response, comments or answers to the defendant's questions are not interrogation for purposes of *Miranda*. "*Miranda* does not bar police from answering a suspect's question about a crime alleged, even after he has requested counsel."[59]

FBI

Footnotes

[1]384 U.S. 436 (1966).

[2]*Miranda* has often been cited as the catalyst toward a more professional law enforcement community. *See, e.g., United States* v. *Segura*, 104 S. Ct. 3380, 3404 (1984) (J. Stevens, dissenting).

[3]U.S. Constitution, Amend. V provides in part: "No person shall be ... compelled in any criminal case to be a witness against himself."

[4]384 U.S. 436, 479 (1966).

[5]*Henry* v. *Dees*, 658 F.2d 406, 410 (5th Cir. 1981).

[6]384 U.S. 436, 444 (1966).

[7]*Id.*

[8]The courts have been equally active in refining the meaning of custody for purposes of *Miranda*. For a comprehensive discussion of those cases, *see*, Charles E. Riley, III, "Finetuning *Miranda* Policies," *FBI Law Enforcement Bulletin*, vol. 54, No. 1, January 1985, pp. 23–31.

[9]384 U.S. 436, 491–92 (1966).

[10]The standard announced by the Supreme Court in *Miranda* v. *Arizona* requires the government to prove an accused made a knowing, intelligent, and voluntary waiver of his privilege against self-incrimination and his right to retained or appointed counsel. 384 U.S. 436, 475–6 (1966).

[11]384 U.S. 436, 444–45 (1966).

[12]423 U.S. 96 (1975).

[13]*Id.* at 102–03.

[14]In sum, *Mosley* held that a subsequent interrogation was permissible if the initial invocation had been "scrupulously honored," a significant period of time had elapsed between the interrogations, and prior to the subsequent interrogation, fresh *Miranda* rights are given and a waiver obtained. 423 U.S. at 106. For a more complete discussion of the issue of subsequent interrogations following an invocation of rights, *see*, Charles E. Riley, III, "Interrogation Following Assertion of Rights," *FBI Law Enforcement Bulletin*, vol. 53, Nos. 5 & 6, May–June 1984, pp. 24–31, pp. 26–31.

[15]451 U.S. 477 (1981).

[16]*Id.* at 479.

[17]*Id.*

[18]451 U.S. at 484–5.

[19]*Id.* at 485, quoting *Fare* v. *Michael C.*, 442 U.S. 707, 719 (1979).

[20]For a discussion of conduct which constitutes an initiation of an interrogation by a defendant, *see*, Charles E. Riley III, "Interrogation Following Assertion of Rights," *FBI Law Enforcement Bulletin*, vol. 53, Nos. 5 & 6, May–June 1984, pp. 24–31, pp 26–31.

[21]*Rhode Island* v. *Innis*, 446 U.S. 291, 297 (1980).

[22]*Id.* at 295.

[23]*Supra* note 7, quoted in *Rhode Island* v. *Innis*, 446 U.S. at 298. (Emphasis from *Innis*).

[24]446 U.S. at 298.

[25]446 U.S. at 299.

[26]*Id.*

[27]446 U.S. at 300–01.

[28]446 U.S. at 302–03.

[29]446 U.S. at 301–02.

[30]*Supra* note 12.

[31]*Supra* note 15.

[32]384 U.S. 436, 477–78 (1966).

[33]725 F.2d 1272 (10th Cir. 1984).

[34]543 F.Supp. 179 (M.D. Penn. 1982).

[35]*Id.* at 190.

[36]*Id.* at 192.

[37]494 F.Supp. 244 (M.D. N. Carolina 1980).

[38]*Supra* note 21.

[39]446 U.S. at 301.

[40]*United States* v. *Morrow*, 731 F.2d 233, 237 (4th Cir.), *cert. denied*, 104 S.Ct. 2689 (1984).

[41]*United States* v. *Glen-Archila*, 677 F.2d 809 (11th Cir.), *cert. denied*, 459 U.S. 874 (1982); *United States* v. *Abell*, 586 F. Supp. 1414 (D. Maine 1984). *But see*, *United States* v. *Hinckley*, 525 F. Supp. 1342 (D.C. D.C. 1981), *aff'd* 672 F.2d 115 (D.C. Cir. 1982).

[42]*Robinson* v. *Percy*, 738 F.2d 214, 219 (7th Cir. 1984).

[43]755 F.2d 382 (5th Cir. 1985).

[44]103 S.Ct 916 (1983).

[45]*Id.* at 918.

[46]103 S.Ct. 923, n. 15.

[47]688 F.2d 91 (10th Cir. 1982).

[48]626 F.2d 1309 (5th Cir. 1980), *cert. denied*, 449 U S. 1092 (1981).

[49]*Id.*at 1310.

[50]626 F.2d at 1313.

[51]725 F.2d 1228 (9th Cir.), *cert. denied*, 104 S. Ct. 2360 (1984).

[52]*Id.* at 1230.

[53]*Id.*

[54]725 F.2d at 1232.

[55]*Supra* note 21.

[56]597 F.Supp. 1562 (E.D. Louisiana 1984), *rev'd on other grounds*, 777 F.2d 272 (5th Cir. 1985).

[57]*Id.* at 1577.

[58]*Id.*

[59]*United States* v. *Guido*,704 F.2d 675 (2d Cir. 1983).

Pen Knife

The pen knife, which resembles a pen when closed, opens to disclose a stainless steel knife blade. Law enforcement personnel should be alert for this device, which is being sold on the open market at least in the Tampa Bay area of Florida.

(Submitted by the Sheriff, Pasco County, FL)