If you have issues viewing or accessing this file contact us at NCJRS.gov.

FBI Law Enforcement Bulletin

AUGUST 1976

35921 - 35925

35925

THE "*HARRIS* TO *HASS* TO *HALE*" COMBINATION

By
INSP. CHARLES A. DONELAN
Federal Bureau of Investigation
Washington, D.C.

Introduction

The surnames in the title are those of the defendants in *Harris* v. *New York*,[1] *Oregon* v. *Hass*,[2] and *United States* v. *Hale*[3]—three cases which have more in common than the initial letter in the cognomens of the accused parties.[4] Each case involves police custodial interrogation; each concerns impeachment of the defendant by prior inconsistent statement or act of silence made during that period; and each reached the highest court in the land for determination. Before reviewing these decisions, a note on a few pertinent rules of law and related cases may be of background interest.

Background

The privilege against self-incrimination is protected by the fifth amendment's historic command that "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ." This privilege is a fundamental right, and, therefore, applicable to the States.[5]

The defendant in a criminal case, presumed to be innocent, is competent to testify as a witness in his own behalf.[6] By virtue of the privilege against self-incrimination, however, he need not do so unless he chooses. No adverse inference can be drawn from his failure to testify and no comment thereon can be made by trial judge or prosecutor.[7] When the defendant does testify, he waives the privilege as to the crime for which he is on trial. He is a witness as much as he is a defendant. His testimony, therefore, is evaluated in the same way as that of any other witness, and he is subject to cross-examination. Since he may or may not be credible as a witness, the prosecution has an overriding interest in determining his truthfulness. Inasmuch as he has voluntarily chosen to testify, it is not unfair to require him to submit to those tests ordinarily applied to witnesses. Any other rule would practically give the defendant witness immunity to offer false testimony.

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

The rule on the extent of cross-examination in most jurisdictions prohibits inquiry beyond the subject matter of the direct testimony of the witness and, consequently, limits the cross-examination to which he must respond. This rule, however, does not prohibit questions intended to impeach his credibility as a witness, and he may be discredited on a number of grounds. The most frequently employed method of impeaching a wit-

ness is by proof that he made a statement before trial, or engaged in an act, which is inconsistent with or contradictory of his present testimony at trial. "The theory of attack is not based on the assumption that the present testimony is false and the former statement true but rather on the notion that talking one way on the stand and another way previously is blowing hot and cold and raises a doubt as to the truthfulness of both statements." [8] The making of the prior inconsistent statement may be drawn out in cross-examination of the witness himself, or it may be proved by another witness if he denies making it or has failed to remember it.

In *Raffel* v. *United States*, a witness for the prosecution attributed certain statements to the defendant but the latter, relying on his privilege against self-incrimination, declined to testify in his own behalf.[9] The jury failed to reach a verdict, and a second trial was held. At the second trial, the witness testified once again to the same statements he had attributed to the defendant at the first trial. In an effort to refute this testimony, the defendant took the stand and denied he had made these statements. On cross-examination, he admitted he had remained silent in the face of the same testimony when it was adduced at his first trial. He was convicted. The Supreme Court ruled that under the circumstances the defendant's silence at his first trial was inconsistent with his testimony at the second trial and, therefore, it was not error to require him to disclose he had not testified as a witness at his first trial.

In *Grunewald* v. *United States*, a defendant in a conspiracy case refused to answer several questions before the grand jury concerning his acquaintance with other persons involved.[10] He declined on the ground that the answers would tend to incriminate him but repeatedly insisted he was innocent and was pleading his privilege on the advice of counsel. He was indicted with the others. At the trial, he took the stand and, in a way consistent with innocence, answered the same questions he had refused to answer before the grand jury. On cross-examination, the prosecutor brought out the fact that he had pleaded his privilege before the grand jury as to these very questions. Relying on *Raffel*, the trial judge instructed the jury that the defendant's plea of the privilege before the grand jury could be taken as reflecting on his credibility, but no inference could be drawn as to his guilt or innocence. He was convicted.

"The rule on the extent of cross-examination in most jurisdictions prohibits inquiry beyond the subject matter of the direct testimony of the witness and, consequently, limits the cross-examination to which he must respond."

The Supreme Court reversed the conviction and ordered a new trial, holding that the cross-examination was not permissible. The Court declared that the prior statements of a criminal defendant can be used to impeach his credibility, but only if the judge is satisfied that the prior statements are in fact inconsistent. Here, however, the defendant's plea of the privilege before the grand jury was not inconsistent with his trial testimony. If he had admitted before the grand jury that he knew the other defendants, his admission would have constituted a link between him and the conspiracy even though he was innocent, and his friendship with them was above reproach. Therefore, his statement before the grand jury that his answers to the questions asked would tend to incriminate him was not inconsistent with his subsequent trial testimony that his acquaintance with them was free of criminal elements. The Court characterized the issue in *Grunewald* as an "evidentiary matter" with "grave constitutional overtones," but it based its holding on its supervisory power over the administration of Federal criminal justice, a power it drew upon in the famous confession case of *McNabb* v. *United States*.[11]

Unreasonable searches and seizures by law enforcement officers are prohibited by the fourth amendment. In a series of historic cases, the Supreme Court ruled that evidence obtained by officers in violation of this amendment is inadmissible to prove the guilt of the aggrieved defendant in both Federal and State courts.[12] The principal purpose of this constitutional exclusionary rule is to protect the amendment's right of privacy by removing the law enforcement incentive to violate it in gathering evidence for the prosecution. It bars the use of tainted evidence in proving facts directly in issue.[13]

In *Walder* v. *United States*, the defendant was indicted in 1950 for possessing a heroin capsule.[14] He moved to suppress this evidence on the ground that the capsule had been seized by officers in an unconstitutional search of his house. His motion was granted and the case dismissed. In 1952, however, Walder was again indicted for engaging in other narcotics dealings. At the trial, he took the stand and on direct examination denied these later narcotics transactions. He asserted flatly, in a "sweeping claim," that he had never purchased, sold, or possessed narcotics in his life. On cross-examination, the prosecutor questioned him about the heroin capsule unlawfully seized in 1950 in his presence. Walder denied that any narcotics were taken. The prosecution then called to the stand one of the officers who had conducted the earlier, unlawful search and he testified to the seizure of the heroin capsule. The trial judge admitted this evidence but carefully charged the jury it was to be used solely to im-

peach Walder as a witness and not to determine whether he committed the 1952 crimes then charged against him. He was convicted. On *certiorari*, the Supreme Court affirmed, holding that the evidence obtained in the unlawful search and seizure in 1950 was admissible for the purpose of impeaching the testimony given by Walder on his direct examination.

The Supreme Court declared that although the prosecution could not make affirmative use of the evidence it had unlawfully obtained, the defendant could not, on the other hand, turn the illegal method by which the prosecution obtained the evidence to his own advantage and provide himself with a shield against contradiction of his untruths. The Court emphasized that a defendant must be free to deny all the elements of the case against him without thus giving leave to the prosecution to introduce by way of rebuttal illegally seized evidence which is not available for its case in chief. "Beyond that, however, there is hardly justification," the Court said, "for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility." [15]

The *Harris* Case

Under the landmark *Miranda* decision, the constitutional privilege against self-incrimination comes into play during pretrial police custodial interrogation.[16] The Supreme Court declared that interrogation at that time contains pressures which undermine the suspect's will to resist and compel him to speak where he would not otherwise do so freely. As a safeguard of the privilege, the Court turned to the right to counsel.

The Court ruled, as a constitutional prerequisite to the admissibility of any statement obtained from the suspect, that he be warned he has the right to remain silent, that anything he says can be used against him, that he has a right to an attorney, and that if he cannot afford one but so desires, an attorney will be appointed for him prior to any questioning. The suspect may knowingly and intelligently waive these rights and agree to answer questions or make a statement. These warnings are a guarantee against coerced self-incrimination, and the exclusion of a statement made in their absence is aimed at deterring law enforcement officers from the taking of an incriminating statement without first informing the suspect of his rights.[17]

In *Harris*, the defendant was arrested in New York for selling heroin to an undercover police officer on two occasions.[18] After being taken into custody he was questioned by the officers but, in violation of *Miranda*, he was not warned of his right to appointed counsel before the questions were put to him. He gave the officers a statement in writing whose substance was that on both these occasions he had acted as a middleman for the undercover officer and had purchased narcotics for him. There was no claim that the statement was coerced or involuntary.

At trial, the undercover police officer testified to the details of the two narcotics sales. The prosecution did not seek to use the defendant's statement in its case in chief because it was concededly inadmissible under *Miranda* to prove the defendant's guilt of the crimes charged. The defendant took the stand in his own defense. He denied making the first sale. He admitted making the second but claimed that the bags he sold the officer contained only baking powder, and the sale was part of a scheme to defraud him. On cross-examination, he was questioned by the prosecutor concerning the written statement made after his arrest which had partially contradicted his direct testimony. The prosecutor read from the statement the questions the officers had put to him and the answers he gave. The defendant testified he could not remember virtually any of the questions or the answers recited by the prosecutor. The trial judge instructed the jury that the statement attributed to the defendant by the prosecution could be considered only in passing on his credibility and not as evidence of his guilt. He was convicted.

The Supreme Court, relying on *Walder*, held that Harris' credibility was appropriately impeached by the use of his earlier conflicting statement. It declared that it does not follow from *Miranda* that evidence inadmissible against an accused in the prosecution's case in chief is barred for all purposes, provided the trustworthiness of the evidence satisfies legal standards. The Court noted that Walder was impeached as to "collateral matters" included in his direct examination, whereas Harris was impeached as to matters bearing more directly on the crimes for which he was on trial. In *Harris*, the illegally obtained evidence was seized during the investigation of the crime then charged against the defendant; while in *Walder*, the officer contradicted the defendant as to the heroin capsule seized in the independent 1950 offense. The latter circumstance strengthened the chance that the jury would in fact follow the trial judge's instruction to consider the evidence as going to credibility only and not as proof of guilt.

The Court declared, however, that Harris' trial testimony contrasted sharply with what he had told the officers shortly after his arrest. This impeachment process provided valuable aid to the jury in assessing his credibility, and its benefits should not be lost because of the speculative possibility that impermissible police conduct will thereby be encouraged. The Court stated, "Assuming that the exclusionary rule has a deterrent effect

on proscribed police conduct, sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief."

" '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.' "

It concluded by saying: "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." [19]

The *Hass* Case

In this case, bicycles were stolen from two residences in Oregon; one from the garage of the Lehman family, and one from that of the Jackson family.[20] The Jacksons were unaware of the theft of their bike, but Mr. Lehman and his son saw the thief riding their bike out the driveway. The Lehmans gave chase in their jeep and overtook a truck driven by the defendant Hass. The son pointed out a passenger in the truck with Hass, one Lee, as the person who had stolen the bike, and Lee returned it. That day Hass was located by a police officer through a license number trace and placed under arrest.

The officer gave Hass the *Miranda* warnings and then questioned him about the Lehman theft. Hass admitted he had taken two bicycles but said he was not sure, at first, which one the officer was talking about. He said he had returned one of the bikes, and the other was at the place where he left it. The officer then requested Hass to accompany him on a further investigation to clear up the matter. Hass agreed but on the way in the patrol car he had misgivings. He told the officer he "was in a lot of trouble" and would like to telephone his attorney. The officer replied that he could make the call "as soon as we got to the office." During the subsequent investigation, Hass brought the officer to the place where the second bicycle was concealed in the brush. He was indicted for the burglary of the Lehman residence and placed on trial.

At an in-camera hearing, in the course of the trial, the arresting officer testified to the above details concerning the arrest of Hass and its aftermath. The trial judge ruled at the conclusion of the hearing that any statements made to the officer by Hass after he said he wanted to telephone his attorney, and the identification of the bicycle's location, were not admissible because of the failure to comply with the *Miranda* rule.

In the prosecution's case in chief, the Lehmans testified to the theft of the bike, the identification of Hass as the driver of the truck from which the bike was recovered and the identification of Lee as the person who had taken it. The arresting officer testified that Hass had admitted to him that he had taken two bicycles because he needed money, that he had given one bike back, and that the other had been recovered.

Hass subsequently took the stand in his own defense. He testified that on the day of the burglaries he and two friends, Lee and Walker, had been "just riding around" in his truck. His two friends left the truck but while he was driving slowly down the street Lee suddenly reappeared, tossed a bicycle into the vehicle, and ducked down on the floor. Hass said he did not know that Lee had stolen the bike at first and that it was his intention to get rid of it. He came across Walker after they had been overtaken by the Lehmans. Walker had another bike with him and put it into the truck. Thereafter, Hass said, they drove off and he had thrown the bike away. He testified he later told the police he had stolen two bicycles. He also stated that he had no idea what Lee and Walker were going to do, that he did not see any of the bikes being taken, and that he did not know "where those residences were located."

After Hass' testimony, the prosecutor recalled the arresting officer on rebuttal. The officer testified that Hass had pointed out to him the two residences from which the bicycles had been stolen. On cross-examination, the officer stated that, prior to his pointing out the houses, Hass had told him that he knew where the bicycles came from but he did not know the exact street address. The officer stated that Lee was along at that time and had some difficulty in identifying the residences until Hass actually pointed them out and then he recognized them. The trial judge, at the request of the defense, instructed the jury that the portion of the officer's testimony describing the statement made to him by Hass could not be used as proof of guilt but that they might consider it only as it bore on his credibility as a witness. Hass then took the stand once again. He stated that the officer's testimony that he had taken him out to the residences and that he had pointed out the houses was "wrong." The jury returned a verdict of guilty.

Two State appellate courts reversed Hass' conviction. They held that the information obtained by the arresting officer when he continued his investigation after Hass indicated he wanted to talk to a lawyer could not be used to impeach his trial testimony. The high State court reasoned that there is an element of deterrence to police officers where the *Miranda* warnings are yet to be given. This is so because they will not take the chance of losing incriminating evidence for their case in chief by not giving adequate warnings. On the other hand, there is no deterrence where they have already given proper *Miranda* warnings because in such a situation they have nothing to lose and perhaps can gain something for impeachment purposes by continuing the interrogation after the warnings. The Supreme Court of the United States held, on *certiorari*, that the State appellate courts were in error when they ruled that the officer's testimony on rebuttal was inadmissible on constitutional grounds for the purpose of impeaching the credibility of Hass as a witness.

Although it was faced in *Hass* with a variation of the fact situation encountered in *Harris*, the Supreme Court found there was no valid distinction so far as the principles of *Harris* were concerned. In this regard, the Court recalled it does not follow from *Miranda* that evidence inadmissible in the prosecution's case in chief is barred for all purposes provided it is trustworthy and, here Hass' statement was not involuntary or coerced. The Court noted that Hass took the stand after he knew the arresting officer's opposing testimony had been ruled inadmissible for the prosecution's case in chief and stated that the impeaching material in his statement would provide valuable aid to the jury in assessing his credibility as a witness. The Court declared that the effect of the inadmissibility of Hass' inconsistent statement would pervert the constitutional right into a right to falsify free from the embarrassment of impeachment evidence from the defendant's own mouth.

As to the deterrence question, the Court again emphasized that sufficient deterrence exists when the evidence in question is made unavailable to the prosecution in its case in chief. It stated that the deterrence of the exclusionary rule lies in the necessity of giving the *Miranda* warnings. Even though incomplete and thus defective in a given case, this does not mean the warnings have not served as a deterrent to the officer who is not then aware of their defect; and to the officer who is aware of the defect the full deterrence remains. When proper *Miranda* warnings have been given, and the officer continues his interrogation after the suspect asks for an attorney, one might concede that the officer may be said to have little to lose and perhaps something to gain by way of possibly uncovering impeachment material, but this speculative possibility is even greater where the warnings are defective and the defect is not known to the officer. In any event, the Court said, the balance was struck in *Harris*, and it was not disposed to change it now. It concluded by noting that if an officer's conduct amounts to abuse in a given case, that case, like those involving coercion or duress, can be taken care of when it arises measured by the traditional standards for evaluating voluntariness and trustworthiness.

The *Hale* Case

In this case, the defendant was apprehended by police officers in the District of Columbia in the wake of an identification by a robbery victim, one Arrington, that he was in a group of men who had taken $96 from him.[21] Hale was arrested in flight from the police and taken to the police station where he was informed of his *Miranda* rights. On a search of his person, he was found to be in possession of $158. Thereupon, a police officer asked him "Where did you get the money?" Hale made no response to this question.

At the trial, Arrington testified that he had stopped to chat with Hale, whom he knew by sight in the neighborhood but not by name, while he was on his way to a store and that Hale had followed him into the shop. When he left the store, he was robbed by a group of men. He immediately reported the crime to the police, stating his assailants had taken $96 from him. He said that while he was waiting for the officers to escort him through the neighborhood in search of the robbers he noticed two men and shouted that one of them was in the group which attacked him. When the officers ran toward the two men, they fled. Upon their capture, he identified Hale to the officers as one of the robbers. The arresting officer testified that at the time of Hale's arrest he had $158 in his possession.

Hale took the stand in his own defense. On direct examination, he testified he had met Arrington on the day of the robbery but after he left him he was approached by three men who asked him if Arrington had any money. He told them he "didn't know." He then said he went to the narcotics treatment center in the city where he remained during the time of the alleged robbery. He left the center with a friend who subsequently purchased narcotics. He said he fled on the approach of the police officers shortly after this purchase because he feared another drug conviction, explaining that his prior conviction had resulted from his arrest in the company of a friend who was carrying narcotics. He testified that his estranged wife had received her welfare check that day and had given him about $150 to buy money orders for her, as he had done in the past. His wife corroborated this particular testimony.

On Hale's cross-examination, the prosecutor in an effort to impeach his explanation as to the possession of the money caused him to admit that he had not offered this exculpatory information to the officers at the time of his arrest. When the prosecutor asked him if he had indicated to the police in any way where the money came from, he replied "No, I didn't." When he was asked further "Why not?" he replied "I didn't feel it was necessary at the time." Immediately following this exchange, the trial judge interrupted the prosecutor and informed the jury that Hale was not required to indicate where the money

came from and cautioned the jurors that the questioning by the prosecutor was improper. He instructed them to disregard it, but he refused to declare a mistrial.

Hale was convicted of the robbery and appealed. He argued that the trial judge committed reversible error in failing to grant his motion for a mistrial after the prosecutor elicited his admission on cross-examination that he had not explained to the police the presence of the money on his person. The court of appeals reversed Hale's conviction holding that the prosecutor's inquiry into his prior silence at the police station impermissibly prejudiced his defense and, also, infringed his constitutional right under *Miranda* to remain silent.

The Supreme Court held, on *certiorari*, that it was prejudicial error under the circumstances of this case for the trial judge to permit the cross-examination of Hale concerning his pretrial silence during police interrogation as its probative value was outweighed by the prejudicial impact of admitting it into evidence. It ruled that Hale was entitled to a new trial. The Court declared, however, that it had no occasion to reach the broader *Miranda* constitutional question which had supplied the alternative basis for the decision of the court of appeals.

> **"The Supreme Court noted that prior inconsistent statements may be used to impeach the credibility of a witness under the basic rule of evidence, but the trial judge as a preliminary matter must be persuaded that the statements are indeed inconsistent."**

The Supreme Court noted that prior inconsistent statements may be used to impeach the credibility of a witness under the basic rule of evidence, but the trial judge as a preliminary matter must be persuaded that the statements are indeed inconsistent. If the prosecution fails to establish a threshold inconsistency between silence at the police station and later exculpatory testimony at trial, proof of silence lacks any significant probative value and must be excluded. The Court explained that silence in most instances is so ambiguous that it is of little probative force. Silence does gain more probative weight where it persists in the face of accusation as it is assumed that the accused would be more likely than not to dispute an untrue accusation. Failure to contest an assertion, however, is considered evidence of acquiescence only if it would have been natural under the circumstances to object to the assertion.

The Court stated that the prosecution had relied heavily on the *Raffel* case and argued that since Hale chose to testify in his own behalf at his trial, it was permissible to impeach his credibility by proving he had chosen to remain silent at the time of his arrest. The Court said, however, that it could not agree with this argument because the assumption of inconsistency underlying *Raffel* was absent here. Hale's situation was very different from Raffel's. This is so because a person under arrest is under no duty to speak and, as in this case, has ordinarily been advised by the authorities only moments earlier that he has a right to remain silent and that anything he does say can and will be used against him in court. At the time of arrest and during custodial interrogation, innocent and guilty alike—perhaps particularly the innocent—may find the situation so intimidating that they may choose to stand mute. The inherent pressures of incustody interrogation compound the difficulty of identifying the reason for silence. Hale's failure, during custodial interrogation, to offer an explanation of the money found on him can as easily be taken to indicate reliance on the right to remain silent as to support an inference that the explanatory testimony was a later fabrication. Thus, there is simply nothing to indicate which interpretation is more probably correct.

The Court found that *Hale* more closely paralleled *Grunewald* than it did *Raffel* and, indeed, appeared to be even a stronger case for exclusion of the evidence of the defendant's silence. The Court concluded that Hale's silence was not so clearly inconsistent with his later exculpatory trial testimony as to warrant its admission into evidence as a prior inconsistent "statement." Its conclusion was based on considerations which had fortified its holding in *Grunewald* and on the following facts relevant to determining whether a person's pretrial silence is inconsistent with his later exculpatory testimony at trial: Just prior to the questioning Hale had been given the *Miranda* warnings; he repeatedly asserted his innocence during the proceedings; he was questioned in secretive surroundings with no one but the police present; he was a potential defendant at the time since he had been the subject of eyewitness identification and was under arrest for suspicion of the robbery, making it "natural for him to fear that he was being asked questions for the very purpose of providing evidence against himself"; [22] and he had no reason to think that any explanation he might make to the police would hasten his release.

As in *Grunewald*, where the Court characterized the issue as an "evidentiary matter" with "grave constitutional overtones," the Court's holding in *Hale* was made in the exercise of its supervisory authority over the lower Federal courts.

Conclusion

In both *Harris* and *Hass*, the pretrial statements of the defendants were inadmissible at trial to prove their guilt of the crimes charged because of the *Miranda* rule breach. In *Harris*, the *Miranda* warnings were constitutionally defective in that they were incomplete. In *Hass*, the warnings, fully given, were followed by an unconstitutional failure to discontinue the questioning of the defendant after he sought the aid of counsel. Despite these law enforcement errors, the statements were held to be admissible for the limited purpose of impeaching the credibility of the defendants as witnesses since they were inconsistent with their direct testimony at trial. In *Hale*, the *Miranda* warnings were properly given. The officer's question to the defendant in their wake, aimed at eliciting an explanation of a relevant item of real evidence lawfully found on his person, was answered not by a verbal statement but by silence. His silence was held to be inadmissible to impeach his credibility. This conclusion was reached not on constitutional *Miranda* grounds but because under the circumstances his silence was deemed to be insufficiently inconsistent with his trial testimony to warrant its use as a prior inconsistent "statement."

The fact that a defendant's pretrial inconsistent statement, voluntarily made but inadmissible under *Miranda* to prove his guilt, is admissible to discredit his credibility as a witness is cold comfort insofar as the investigative responsibility of the law enforcement officer is concerned.

There is a passage in *Miranda* which seemed to preclude the impeachment use of pretrial inconsistent statements obtained by officers without full compliance with its rules.[23] The Court had observed that statements intended by defendants to be exculpatory are often used to impeach their testimony at trial and thus prove their guilt by implication. The Court said that since these statements are incriminating in any meaningful sense of the word, they required the full *Miranda* warnings and waiver. The *Harris* case, of course, resolved the doubt raised by this dictum, but it did not change in any way the duty of an officer to collect evidence in a manner that is proper, thorough, and in keeping with the letter and spirit of the law.

In a criminal investigation, the officer is charged, in the interest of the public safety, with the duty of discovering the truth in the case. He is, therefore, bent on finding relevant, significant evidence that will determine the identity of the person responsible for the crime, evidence that will be admissible in the prosecution's case in chief to prove beyond a reasonable doubt that he committed it. The collection of evidence of guilt is his main quest and not impeachment material as such which can only be used in the event, often unlikely, that the accused will opt to take the stand in his own defense.

> **". . . the officer must know the rules of law which govern and control his actions and must apply them correctly no matter how great and many may be the pressures that lay upon him throughout the investigative phase of a criminal case."**

Accordingly, in the course of incustody interrogation, following the full *Miranda* warnings and waiver, the officer's aim is to secure from the suspect a confession, made freely and voluntarily, that will constitute direct proof of guilt. The reason is plain. The probative weight of a confession, made in a scrupulously lawful way, is heavy. As the greatest writer on Anglo-American evidence law has said: [24] "[A]ssuming the making of a confession to be a completely proved fact—its authenticity beyond question and conceded—then it is certainly true that we have before us the highest sort of evidence." It is hard to imagine that a truly professional officer would willfully violate *Miranda* and eschew the opportunity to obtain wholly convincing evidence of guilt in the form of an admissible confession in order to secure impeachment evidence that might help make out the prosecution's case by being smuggled in on cross-examination.[25]

These cases highlight the care that must be taken by the officer in giving the *Miranda* warnings in a correct manner initially and, thereafter, in honoring the protective purposes behind them. They teach the lesson once again that the officer must know the rules of law which govern and control his actions and must apply them correctly no matter how great and many may be the pressures that lay upon him throughout the investigative phase of a criminal case.

FOOTNOTES

[1] 401 U.S. 222 (1971).
[2] 43 L. Ed. 2d 570 (1975).
[3] 45 L. Ed. 2d 99 (1975).
[4] There is no relation whatsoever between this combination of "*Harris* to *Hass* to *Hale*" and the immortal baseball double-play combination of "Tinker to Evers to Chance."
[5] *Malloy* v. *Hogan*, 378 U.S. 1 (1964).
[6] *See* Wright, Federal Practice and Procedure: Criminal, 405, 407, 416; McCormick, Evidence, 2d Ed. (1972), 22, 30, 31; 81 Am. Jur. 2d, Witnesses, 467, 468, 471, 476, 478, 480, 481, 482, 483, 484, 495, 523, 525; 4 Jones, Evidence, 26.2 (1972); 3A Wigmore 889, 890 (Chadbourn Rev. 1970).
[7] *Griffin* v. *California*, 380 U.S. 609 (1965).
[8] McCormick, *supra*, 34.
[9] 271 U.S. 494 (1926).
[10] 353 U.S. 391 (1957).
[11] 318 U.S. 332 (1943).
[12] *See Weeks* v. *United States*, 232 U.S. 383 (1914); *Wolf* v. *Colorado*, 338 U.S. 25 (1949); *Mapp* v. *Ohio*, 367 U.S. 643 (1961).
[13] McCormick, *supra*, 178.
[14] 347 U.S. 62 (1954).
[15] *Id.* at 65.
[16] *Miranda* v. *Arizona*, 384 U.S. 436 (1966).
[17] *Brown* v. *Illinois*, 45 L. Ed. 2d 416, 425 (1975).
[18] *Harris* v. *New York*, 401 U.S. 222 (1971); *See* McCormick, *supra*, 163, 178.
[19] *Id.* at 226.
[20] *Oregon* v. *Hass*, 43 L. Ed. 2d 570 (1975). *See also State* v. *Haas*, Or. App., 510 P. 2d 852 (1973), and *State* v. *Haas*, Or., 517 P. 2d 671 (1973).
[21] *United States* v. *Hale*, 45 L. Ed. 2d 99 (1975).
[22] *Grunewald* v. *United States*, *supra*, at 423.
[23] *Miranda* v. *Arizona*, *supra*, at 476–477; *See* Wright, *supra*, 408; *People* v. *Kulis*, 221 N.E. 2d 541, 542 (1966).
[24] 3 Wigmore 866 (3d Ed. 1940).
[25] *See Walder* v. *United States*, *supra*, at 66. FBI

END