Court Rulings Impose Limits on Crime Probes

The long-range effect on American society of recent Supreme court decisions concerning confessions by persons suspected of crimes, is debatable, but its hindrance to police effectiveness, at least temporarily, is not.

Admitted criminals are free today because courts have ruled their confessions were made without adequate consideration of the right not to incriminate themselves.

Many others who committed crimes are free because the decisions have required police to tell the suspected person of his right to remain silent and to have a lawyer at the questioning session.

Many utilize this right, say nothing, and thus eliminate the only positive link the police could find between the suspected person and the crime—the man's own words.

This precipitates a philosophical problem—the relative importance in American society of the rights of the individual and the rights of the community to protection from crime.

To police, it is not an academic problem: It is very real.

One of the primary avenues of investigation, interrogation of the suspected person, has been partly roadblocked by the decisions in the Escobedo and Miranda cases.

Danny Escobedo was arrested in Illinois on the suspicion of murdering his brother-in-law. While being interrogated by police, Escobedo asked to see his attorney. Officers denied his request.

His attorney came to the stationhouse while questioning was in progress and asked to see his client. This request also was refused. Shortly after these developments, Escobedo confessed to the crime and at a state trial, was found guilty.

In June, 1964, the Supreme court reversed the conviction ruling that police refusal to grant Escobedo the assistance of counsel was a violation of the sixth amendment to the Constitution.

Almost two years later to the day, the Supreme court reversed the kidnaping conviction of Ernesto Miranda in Arizona.

In ordering a new trial, the majority opinion said Miranda's constitutional rights had been violated and laid down this set of guidelines:

"The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendants unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.

"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used against him, and that he has a right to the presence of an attorney, either retained or appointed."

The Miranda decision did not outlaw confessions, per se, as evidence. But it took steps to make sure the suspected person fully understands his right to stand mute. The court required that the suspected person knows his right to have an attorney present at any questioning, whether or not he can afford one.

It is a very rare attorney who will advise a guilty client to talk to a police interrogator.

Letters to the Editor

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A Jury Looks at Crime

SIR: Can it be that 23 people sitting on a grand jury cannot come to some reasonable accurate conclusions regarding crimes and their handling in our city? We are not lawyers, prosecutors or judges, and we grant our ignorance in many of the subtleties of law, but we are people from many walks in life with many experiences to help us in arriving at some sound conclusions. We should be able to at least observe the obvious.

It may be that some people have forgotten, but we would like to again remind them, that there are people who commit crimes. At some time in the past they were referred to as criminals and society was protected from them. Perhaps too harshly in many cases.

But we feel that the pendulum has swung too far. After two months of duty we find ourselves amazed and shocked at the exaggerated considerations given to those who roam our streets indulging themselves in acts of the most outrageous nature. Pity the mother who is silly enough to think that the child molester will not be back in a few days after being caught redhanded. Pity the teller or shopkeeper who thinks he won't see the robber again before the week is over. If the criminal does not return, it will not be because of our police, prosecutors, legislators or judges. It will be because the criminal only chooses to commit his crime elsewhere.

Police and prosecutors have made serious mistakes in the past and will make them in the future, but by and large we have been impressed by the high caliber of these officials. But how can they work with the limitations being imposed upon them?

As an example, the Bail and Bond Act in force at this time allows any prime suspect to be free in hours except where he has committed a capital crime or it appears he will "skip" bail. We have our legislators to thank for that and any number of unsound laws.

If you happen to decide to murder someone in the near future, feel free to confess to one of a hundred people. Unless you are informed of your rights in the most precise terminology, the odds are that the judiciary branch will see to your freedom.

We are aware that there are a fantastic variety of reasons for a criminal act as well as good and bad police, judges, prosecutors, defense attorneys, rights groups and hard-headed conservatives, but we must protest the injustices being laid upon the law-abiding majority of our society. When can we look forward to a balancing of the scales?

22 Members, July Federal Grand Jury No. 1.

THE PROBLEM--UNEQUAL JUSTICE UNDER LAW

"EQUAL JUSTICE UNDER LAW"--THE INSCRIPTION CARVED IN BOLD LETTERS OVER THE IMPOSING ENTRANCE TO THE SUPREME COURT BUILDING SUGGESTS THAT THE NATION'S HIGHEST TRIBUNAL IS DEDICATED TO THE CONCEPT OF EQUAL JUSTICE UNDER LAW. THE FACT IS THAT THE COURT, IN MAJOR RULINGS IN CRIMINAL CASES IN RECENT YEARS, HAS BEEN DISPENSING A BRAND OF JUSTICE THAT IS DEPLORABLY UNEQUAL.

ASSUMING THAT LAW-ABIDING PEOPLE HAVE RIGHTS, AND I THINK THEY HAVE OR SHOULD HAVE, THESE RIGHTS HAVE BEEN RECKLESSLY DISREGARDED BY A MAJORITY OF THE COURT. THE PRESIDENT HAS OFTEN SPOKEN OF THE RIGHTS OF THE PEOPLE TO BE SECURE IN THEIR HOMES, ON THE STREETS AND IN THEIR PLACES OF BUSINESS. EACH DAYS BRINGS MORE EVIDENCE, HOWEVER, THAT THIS IS RHETORIC AND NOTHING MORE. FOR THE PEOPLE ARE NOT SECURE ANYWHERE. AND THIS INSECURITY IS DUE IN CONSIDERABLE PART TO THE EXTREME LENGTHS TO WHICH A FIVE-MAN MAJORITY OF THE COURT HAS GONE IN ENLARGING AND PROTECTING THE RIGHTS OF CRIMINALS. READING SUCH OPINIONS AS THOSE IN THE ESCOBEDO AND MIRANDA CASES, ONE MIGHT THINK THAT THE COURT MAJORITY HAS NEVER HEARD OF THE RIGHTS OF THE PUBLIC--AND COULDN'T CARE LESS. CERTAINLY IT DOES NOT SUBSCRIBE TO THE VIEW EXPRESSED BY JUSTICE WHITE IN HIS DISSENT IN THE MIRANDA CASE THAT "THE MOST BASIC FUNCTION OF GOVERNMENT IS TO PROVIDE FOR THE SECURITY OF THE INDIVIDUAL AND HIS PROPERTY."

THIS PROCESS OF SHIELDING THE CRIMINAL AT THE EXPENSE OF THE PUBLIC SAFETY GREW OUT OF A LAUDABLE PURPOSE TO ERECT SAFEGUARDS AGAINST CRIMINAL CONVICTIONS BASED ON COERCED OR INVOLUNTARY CONFESSIONS. THERE WAS AMPLE REASON FOR THIS SOME 25 OR 30 YEARS AGO. FOR THE THIRD DEGREE, EVEN IN THOSE RELATIVELY RECENT DAYS, HAD NOT DISAPPEARED FROM THE LAW-ENFORCEMENT SCENE. AND A COERCED CONFESSION IS BOTH OFFENSIVE TO ONE'S SENSE OF JUSTICE AND UNRELIABLE AS AN ITEM OF EVIDENCE.

THE TROUBLE IS THAT THE COURT HAS NOT KNOWN WHERE TO STOP, HAS LOST ALL SENSE OF KEEPING THE SCALES IN BALANCE. THE NOTION THAT THE PURPOSE OF THE SYSTEM OF CRIMINAL JUSTICE IS TO CONVICT THE GUILTY AND ABSOLVE THE INNOCENT IS OUT THE WINDOW. THE COMMENDABLE EFFORT TO ERECT GREATER SAFEGUARDS AGAINST INVOLUNTARY CONFESSIONS HAS BEEN CARRIED TO SUCH LENGTHS THAT ENTIRELY VOLUNTARY CONFESSIONS ARE NOW IN JEOPARDY. IN FACT, JUSTICE WHITE HAS SAID THAT THE COURT MAJORITY SEEMS TO BE MOVING IN THE DIRECTION OF BARRING ALL CONFESSIONS. HE COULD VERY WELL BE RIGHT.

THE HEARINGS WHICH SENATOR JOHN McCLELLAN HAS BEEN HOLDING IN THE JUDICIARY SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES, HAVE MOVED ALONG TWO MAIN LINES. ONE EFFORT HAS BEEN TO FIND A WAY TO REVERSE OR AT LEAST TO MINIMIZE THE PERNICIOUS EFFECT ON LAW-ENFORCEMENT OF THE COURT'S 5 TO 4 RULINGS WITH RESPECT TO CONFESSIONS. THE OTHER HAS BEEN TO WORK OUT LEGISLATION TO STRENTHEN THE HAND OF THOSE WHOSE DUTY IT IS TO ENFORCE THE LAWS.

THIS SECOND UNDERTAKING, LARGELY CONCERNED WITH LEGISLATION TO PERMIT THE USE OF WIRETAP EVIDENCE AND ELECTRONIC BUGS, PRESENTS FEW PROBLEMS. CONGRESS WILL GET NO HELP IN THIS FROM THE PRESIDENT OR THE DEPARTMENT OF JUSTICE. STILL, AT LEAST AS OF THIS TIME, THERE SEEMS TO BE NO CONSTITUTIONAL BARRIER TO SUCH LEGISLATION.

THE SUBCOMMITTEE RECEIVED A VERY STRONG STATEMENT ON THESE MATTERS FROM CHIEF JUDGE J. EDWARD LUMBARD OF THE SECOND CIRCUIT COURT OF APPEALS. JUDGE LUMBARD WAS ESPECIALLY CONCERNED WITH THE PROBLEM OF ORGANIZED CRIME. IT IS, HE SAID, ALMOST IMPOSSIBLE TO CURB IT UNDER EXISTING RESTRICTIONS ON ENFORCEMENT AGENCIES.

OPPONENTS OF WIRETAPPING SOMETIMES MISREPRESENT THE "DIRTY BUSINESS" COMMENT BY JUSTICE HOLMES IN SUPPORT OF THEIR STAND. IN A REFERENCE TO THIS, JUDGE LUMBARD SAID: "THERE IS NO DIRTIER BUSINESS TODAY THAN THE BUSINESS OF

ORGANIZED CRIME; IT RULES BY VIOLENCE AND TERROR; IT VICTIMIZES THE PUBLIC AND CORRUPTS PUBLIC OFFICIALS. EVERY POSSIBLE RESOURCE OF GOVERNMENT SHOULD BE USED TO EXPOSE AND DESTROY IT."

HE MEANT THAT THE THOUGHT CONGRESS SHOULD MOVE WITHOUT DELAY TO SANCTION THE USE OF WIRETAPS AND ELECTRONIC DEVICES, UNDER SUITABLE CONTROLS, AND I HEARTILY AGREE.

THE QUESTION OF WHAT TO DO ABOUT THE UNREASONABLE AND UNNEEDED OBSTACLES WHICH THE COURT HAS ERECTED AGAINST THE USE OF VOLUNTARY CONFESSIONS IS A TOUGHER QUESTION. FOR THE FIVE-MAN MAJORITY WRAPPED ITS ESCOBEDO AND MIRANDA RULINGS IN CONSTITUTIONAL INTERPRETATIONS. AND THIS, THOUGH THE INTERPRETATIONS WERE GROSS DISTORTIONS OF WHAT THE CONSTITUTION SAYS, MAKES IT DIFFICULT FOR CONGRESS TO REMEDY THE RULINGS.

SENATOR SAM ERVIN, HIMSELF A FORMER JUDGE, WOULD TAKE TWO APPROACHES. FIRST, HE WOULD AMEND THE CONSTITUTION TO OVERCOME THE EFFECT OF THE COURT'S RULINGS ON CONFESSIONS. SECOND, WITH THE SUPPORT OF 19 OTHER SENATORS, HE HAS INTRODUCED A BILL WHICH WOULD STRIP THE SUPREME COURT AND OTHER FEDERAL APPELLATE COURTS OF JURISDICTION TO MAKE SUCH RULINGS AS THOSE IN ESCOBEDO AND MIRANDA.

WHAT HE IS TRYING TO DO, AND IT IS A WORTHY OBJECTIVE, IS TO GET BACK TO THE DECADES-OLD STATE OF THE LAW IN WHICH THE TEST OF A CONFESSION WAS WHETHER OR NOT IT HAS BEEN VOLUNTARY MADE. IF VOLUNTARY, IT WOULD BE ADMISSABLE. AND THE SUPREME COURT WOULD NOT BE PERMITTED TO THROW OUT A VOLUNTARY CONFESSION BY READING SOMETHING INTO THE CONSTITUTION THAT WAS NEVER BEFORE THOUGHT TO BE THERE.

THE CONSTITUTIONAL AMENDMENT ROUTE IS LONG AND DIFFICULT. AND WHILE CONGRESS, UNDER ARTICLE III OF THE CONSTITUTION, APPARENTLY HAS AUTHORITY TO REGULATE THE APPELLATE JURISDICTION OF THE SUPREME COURT, THIS WOULD BE A DRASTIC REMEDY. ONE MUST HOPE THAT SOME OTHER WAY CAN BE FOUND--EVEN ASSUMING THAT

CONGRESS WOULD ACCEPT THE ERVIN PROPOSAL.

A SOMEWHAT DIFFERENT APPROACH IS BEING URGED BY SENATOR McCLELLAN. HE, TOO, WOULD RE-ESTABLISH THE ADMISSIBILITY OF VOLUNTARY CONFESSIONS. BUT HE WOULD DO THIS BY HAVING CONGRESS SPELL OUT THE MEANING OF VOLUNTARINESS AND SET UP STANDARDS BY WHICH A TRIAL JUDGE AND JURY WOULD MAKE THE JUDGMENT ON THIS QUESTION. SHOULD THIS BE TRIED, THE SUPREME COURT MIGHT SAY THAT THE NEW LAW IS UNCONSTITUTIONAL UNDER ITS OWN RULINGS. BUT THE SENATOR HOPES THAT AT LEAST ONE MEMBER OF THE MAJORITY, UPON FURTHER REFLECTION, MIGHT CHANGE HIS MIND.

VARIOUS OTHER RECOMMENDATIONS HAVE BEEN LAID BEFORE THE McCLELLAN SUBCOMMITTEE, INCLUDING A STRONG STATEMENT FROM SENATOR ALAN BIBLE URGING RECTIFICATION OF THE NOTORIOUS MALLORY RULE. AND WE HOPE THAT CONGRESS, WHICH FOR YEARS HAS BEEN MARCHING UP AND DOWN THE CRIME-REMEDY HILL, WILL AT LAST BE MOVED TO TAKE EFFECTIVE ACTION.

STILL, EVEN THOUGH NOTHING FINALLY EMERGES IN THIS SESSION, TIME WILL NOT HAVE BEEN WASTED. FOR THESE HEARINGS AND THE STRONG STATEMENTS BY MOST OF THE WITNESSES ARE A REFLECTION OF THE MOOD, NOT OF A FEW MEN ON CAPITOL HILL, BUT OF THE OVERWHELMING MAJORITY OF THE AMERICAN PEOPLE. A PRESIDENT OR A SUPREME COURT JUSTICE MAY BE PERSONALLY REMOTE FROM CONTACT WITH CRIME. BUT THE PEOPLE ARE NOT; THEY LIVE IN ITS SHADOW EVERY DAY AND EVERY NIGHT. AND THEY ARE SICK AND TIRED OF UNEQUAL JUSTICE. THE VOLUME OF CRIME IS GOING TO CONTINUE ITS UPWARD CLIMB, AND SOONER OR LATER THE PEOPLE WILL MAKE THEMSELVES HEARD.

A FINAL WORD: SOME PEOPLE THINK IT IS ALMOST SUBVERSIVE TO CRITICIZE THE SUPREME COURT, AND THAT ANY CRITICISM MUST SPRING FROM IGNORANCE OR MALICE. LET THEM READ THE DISSENTING OPINIONS OF JUSTICES HARLAN, CLARK, STEWART AND WHITE. NO MORE SEVERE CONDEMNATIONS OF THE MAJORITY RULINGS CAN BE FOUND THAN THOSE WHICH APPEAR IN THESE DISSENTS. AND IF THE FIVE MEMBERS IN THE

MAJORITY WILL NOT HEED EVEN THE PROTESTS OF THEIR OWN BRETHREN, THEY WILL HAVE NO ONE BUT THEMSELVES TO BLAME AS THE SUPREME COURT AND, STILL WORSE, THE LAW ITSELF, FALLS INTO DISREPUTE.