THE MIRANDA AND ESCOBEDO DECISIONS AND THEIR EFFECT ON WILDLIFE LAW ENFORCEMENT

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While watching the television report of the 1968 Democratic convention on the 27th of August, I suddenly discovered that I had wasted some of the time of at least one person from each of the member states and quite a bit of my own. It was on that date that this report became superfluous. Vice-President Humphrey, while speaking to the California delegates, made the following statement: "The recent court decisions have not impaired law enforcement in any way. They have simply given law enforcement officers a better understanding of Constitutional law." May I make the observation that this is learning the hard way?

A few hours later while reading the evening newspaper, I read a few figures from the Uniform Crime Report compiled by the Federal Bureau of Investigation. There was a 16% increase in serious crimes in 1967 as compared to 1966. Whether there is any correlation between the liberalized thinking of the courts and the crime increase I am in no position to say, but it is an interesting coincidence. So far as I know, there is no statistical record of misdemeanors but it is logical to believe that they would increase or decrease in the same proportion as felonies.

I would like to relate a story that I heard a few weeks ago. It has to do with generosity. (Story)

Perhaps if we know all of the facts we can afford to be more generous with the judges involved in the Escobeda and Miranda decisions.

If you don't mind, I would like to digress from the subject a moment. There were two things that aroused my particular curiosity about these decisions.

First of all, I teach law enforcement to our trainees and other personnel in our department. After explaining the rulings of the Supreme Court, there is nearly always a blank expression on their faces. It appears that few people, other than those who administer our laws, are familiar with, or aware of, the significance of the Supreme Court findings. I get the impression that many of the students say to themselves after a discussion of these cases, "Oh, Hell, what's the use to attempt an interrogation."

The other reason is a little more involved. About three years ago the St. Louis Bar Association appointed several attorneys who were interested in outdoor recreation to a conservation committee. This group decided they should learn as much as possible about wildlife law enforcement so that they could provide guidance for lawyers who had cases in this field. After conversations with the local conservation agent, they invited Mr. Bailey, Chief of Protection, to attend a meeting with them.

During the course of this meeting, Mr. Bailey invited any member of the committee, or for that matter any attorney, to become acquainted with any agent in the state and to accompany him as he went about his job of representing the department in all phases of its work, particularly law enforcement. Several of the lawyers did ride with our agents once or twice and one of them, Mr. George Pruneau, rode with and observed the work of the agents in and around St. Louis for about a year. At the end of that time he wrote a feature article for the Missouri Bar Association entitled, "The Anatomy of A Conservation Agent".

Mr. Pruneau was highly complimentary of the work of the agents, but one sentence in his article prompted me to wonder just how good our enforcement record really is. This quote is from the article by Mr. Pruneau. "The agent is required to exercies a tremendous amount of discretion in the field and will typically be very much aware of the odds favoring successful prosecution. However, since most of his cases conclude with a plea of guilty, the typical agent will not always follow the pattern that one might expect an experienced felony investigator to follow in preparing his case. But even so, unless the nature of the case would place it in a category that would be unpopular with the average juror, or unless the rule is poorly

drafted and there are some such rules, the odds are very good that the school districts of the county will be the beneficiary of the agents' labors." Perhaps I should explain that the monies derived from all fines in Missouri go into the school fund.

As a result of Mr. Bailey's meeting with the conservation committee, Mr. George Arras, wrote a companion article to the one mentioned above. It appeared in the St. Louis Bar Journal under the title, "The Theory of Enforcement in Wildlife Conservation." Mr. Bailey is to be commended for the ideas he presented to that meeting in St. Louis.

Now our record on all cases, including those pertaining to fire laws, usually is better than ninety-eight per cent convictions, but I wondered what our percentage would be in those cases where a plea of not guilty was entered. A careful search of our case completion reports for 1966 revealed that we had obtained convictions in two out of three contested cases or a success ratio of 66-2/3%. When it is considered that many municipal police forces in Missouri fail to obtain convictions in 50% of their cases, regardless of the plea, we feel this is very satisfactory.

While studying the case reports, I found ten cases that were dismissed because of the trial court's interpretation of the recent Supreme Court rulings. I wondered what was happening in other states and agreed to make a report at this meeting provided I could obtain enough information to make it worthwhile.

It is not my intention here today to discuss or interpret these decisions. There have been many excellent papers written and published by authorities and I am sure that each of you have studied them and probably are better informed on the subject than I. What I would like to do, is to trace the pattern in regard to the use of confessions during the past years.

I don't think we need to go farther back than the reign of the Plantagenets in England to begin our search. At that time any confession or statement, regardless of how it was obtained, might be used and I suppose this had been true for many years. A confession was always useful to the kings when they decided to dispose of some individual who was popular with the people. I won't elaborate on the methods used to obtain confessions but they must have been rather drastic to force a person to confess when he knew the extreme penalty for conviction. The penalty for treason in England at that time was to be hanged, drawn and quartered. The latter penalty involved hanging the person until he was unconscious. He was then revived, an incision was made in his abdomen and his intestines were drawn forth in front of his eyes. When he finally died from hemorrhage or shock his body was quartered and displayed at various points around the city. A few years later beheading was used as a more compassionate method of execution.

One of my favorite characters is the old English lord who had been convicted of treason through the efforts of one of his bitter enemies. At his execution this enemy stood by and taunted the worthy old fellow as the executioner proceeded with the drawing, by saying, "Well, how would you like a glass of wine right now?" The old fellow replied, "I'm sorry My Lord, I haven't the stomach for it." This story, probably not true, is related in "A History of the Plantagenets".

As people became more humane and more interested in individual rights, the courts adopted a very simple test for admission of confessions into evidence. Was the confession obtained by any method that might have caused the subject to make any statement other than the truth? Of course, there might be any number of incentives that would induce the subject to make a false statement, but the trial court could use discretion in applying the rule. It was assumed that the confession was obtained lawfully and the burden of proof was on the defendant to prove otherwise.

The right to the presence of counsel during interrogation has been claimed many times by attorneys in the past in cases in our courts, but until June 22nd, 1964 a case had never been reversed on these grounds. The handwriting was on the wall however on June 30th, 1958 when the Supreme Court ruled in the cases of Crooker and Cincenia. The court ruled in each of these cases that confessions obtained when the defendant did not have an attorney present during interrogation were properly admitted as evidence but the court was divided 5 - 4. A change in the thinking of one judge or a change in the personnel of the court could change this view point. It was

changed on June 22nd, 1964 in the Escobeda case. It was reinforced and clarified in the Miranda decision and that is about where we are now.

The important difference between Escobeda and Miranda is that both Escobeda and his attorney requested the presence of the lawyer during interrogation. Miranda made no such request, but the case was returned because his rights to an attorney and other Constitutional privileges had not been explained to him.

It is agreed by the authorities that the Miranda decision makes it mandatory that an officer explain certain things to the subject who is in custody before he may proceed with an interrogation. They are:

1. That he has the right to remain silent.
2. That anything he does say, can and will be used in evidence against him in court.
3. That he has the right to consult a lawyer and to have the lawyer present with him during interrogation.
4. That if he cannot afford to pay for his own lawyer, one will be appointed to represent him.

After explaining these rights, the subject must voluntarily, knowingly and intelligently waive these rights before any statement or confession he may make will be admissible as evidence against him. He may withdraw the waiver at any stage of the interrogation.

It is evident in the decision that the prosecution will have the heavy burden of proving that the suspect was properly advised of his rights and that his waiver was indeed voluntarily, knowingly and intelligently made. The question may well arise in some future case: Can any confession to a crime be considered an intelligent act on the part of the subject?

After sending a letter to the Chief of Enforcement of each of the member states and the Fish and Wildlife Service, I have received fourteen replies with the following information:

1. It is apparent that each state and the Fish and Wildlife Service have given considerable thought to the effect of these rulings and have made an effort to provide information and training for their officers to offset the handicaps placed upon them by the requirements of the Miranda decision.

2. I was surprised to learn that by far the largest number of those replying (11) felt that there was no significant effect on wildlife law enforcement in their respective states.

3. In two states, the courts are not applying these findings to misdemeanors.

4. The Federal courts are insisting on rigid application of the finding in all cases. In some districts, failure to inform the defendant of his rights is used by the U. S. Attorney as an automatic bar to prosecution. To quote from the reply of Mr. Fred Williams, Regional Supervisor, Management and Enforcement, "We do not have statistical data as to the numerical loss of cases in the several states because of the Miranda particulars. Loss has been evidenced in most and staggering in others. (Louisiana)"

5. Mr. Raymond Eye, of West Virginia, feels that, "Probably the greatest handicap encountered by our officers is experienced during the course of forest fire responsibility investigations." I feel that this is particularly true in Missouri where most convictions in fire cases come as the result of investigation and interrogation.

6. Most states are using some type of waiver form or warning card. Some have supplied their officers with forms for recording written waivers.

The court's language seems to be clear in the Miranda case. The point that has led to the most discussion by the authorities, and it was commented on in several of the letters, is — What constitutes custody? Because of the language used, some writers seem to think that the subject must be the center of the investigation, must be in custody and at the police station. However, it is the opinion of the majority that when the investigation starts to focus (that is the word used by the court) on the subject, and he is in custody, that he must be informed of his Constitutional rights and waive them before an interrogation can take place. Whether or not he is in a police station would seem to be academic. I can't picture the court permitting

questioning without compliance when the suspect is in custody regardless of where he may be. It would be possible to set up a mobile interrogation room, if that would relieve the enforcement officers of the responsibility of obtaining a waiver before commencing the questioning.

I will conclude with a brief statement of what I believe has been the effect of the Miranda decision on wildlife and forestry law enforcement in Missouri.

We lost ten cases in 1966 because of the decision. About half that many were dismissed in 1967, but I do not believe this is a proper yardstick for measuring the outcome. It is my opinion that we have failed to take into account the probable effect on the officers that attempt to enforce our laws. It may be that some will take a defeatist attitude and fail to undertake interrogations with the positive attitude that is necessary to win the confidence of the subject being questioned. It may well be that less experienced or weaker officers may use these decisions to justify lack of effort in investigations. I do not believe that the number of casues lost in court in Missouri will be significant, but I am of the opinion there has been a reduction in the number of convictions obtained through investigation and interrogation. In other words, the Miranda ruling may be adversely influencing the persistent investigative efforts that ordinarily are a predominate characteristic of efficient enforcement officers.

One of our fine magistrates in Missouri made the following statement when we were discussing the Miranda case. "I have no intention of applying this decision to misdemeanors. I am going to continue as I have in the past. If they want to appeal, let them appeal." This, however, is not the thinking of the majority of our judges.

We must adopt a positive attitude in our thinking when we are speaking of the adverse decisions. Investigators of the armed forces have for many years been required to advise a suspect of his Constitutional rights before interrogation. So far as I know, they have been reasonably successful in their enforcement efforts. If these seeming handicaps cause us to be more careful in our interrogations, then perhaps the lesson in Constitutional law was timely and beneficial.

The fact remains that seldom can you convict a man on his own testimony. There is no substitute for material evidence.

WHAT DOES THE ENFORCEMENT OFFICER DO UP TO AND BEYOND THE CALL OF DUTY

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A few short years ago I came to Baltimore for the same reason we are assembled today – to receive the award for the "outstanding agent" for the year.

No one felt more highly honored than I did at the time. As years passed I found that I had gone to the top and I am now Chief of the Enforcement Division. As Chief from Louisiana I stand very proud with the man who has been selected this year as "outstanding". More especially to stand with my good fried and fellow officer – Harold Schexnayder.

My talk will be based around our activities in Louisiana, but I am sure they will parallel yours. Our agents enforce all the laws pertaining to wildlife and fisheries. They are expected to know about the activities of the other Divisions in order to tell the general public the wildlife story of Louisiana.

We send our agents to special schools when possible to learn of the problems other Law Enforcement agents are faced with. We conduct in-service training programs to bring our people abreast with any and all changes. We have in the past year had all our agents Pass the National Rifle Assoc. Hunter Safety Program and are qualified instructors. They are conducting at this time hunter safety programs with youth groups such as Boy Scouts, 4-H, F.F.A., etc. They also go into the schools with programs of various types.