THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STEVEN O'NEIL et al.

In 1982, Film Recovery occupied premises at 1855 and 1875 Greenleaf Avenue in Elk Grove Village. Film Recovery was there engaged in the business of extracting, for resale, silver from used X-ray and photographic film. Metallic Marketing operated out of the same premises on Greenleaf Avenue and owned 50% of the stock of Film Recovery. The recovery process was performed at Film Recovery's plant located at the 1855 address and involved "chipping" the film product and soaking the granulated pieces in large, open, bubbling vats containing a solution of water and sodium cyanide. The cyanide solution caused silver contained in the film to be released. A continuous flow system pumped the silver-laden solution into polyurethane tanks which contained electrically charged stainless steel plates to which the separated silver adhered. The plates were removed from the tanks to another room where the accumulated silver was scraped off. The remaining solution was pumped out of the tanks and the granulated film, devoid of silver, shoveled out.

On the morning of February 10, 1983, shortly after he disconnected a pump on one of the tanks and began to stir the contents of the tank with a rake, Stefan Golab became dizzy and faint. He left the production area to go rest in the lunchroom area of the plant. Plant workers present on that day testified Golab's body had trembled and he had foamed at the mouth. Golab eventually lost consciousness and was taken outside of the plant. Paramedics summoned to the plant were unable to revive him. Golab was pronounced dead upon arrival at Alexian Brothers Hospital.

The Cook County medical examiner performed an autopsy on Golab the following day. Although the medical examiner initially indicated Golab could have died from cardiac arrest, he reserved final determination of death pending examination of results of toxicological laboratory tests on Golab's blood and other body specimens. After receiving the toxicological report, the medical examiner determined Golab died from acute cyanide poisoning through the inhalation of cyanide fumes in the plant air.

Defendants were subsequently indicted by a Cook County grand jury. The grand jury charged defendants O'Neil, Kirschbaum, Rodriguez, Pett, and Mackay with murder, stating that, as individuals and as officers and high managerial agents of Film Recovery, they had, on February 10, 1983, knowingly created a strong probability of Golab's death. Generally, the indictment stated the individual defendants failed to disclose to Golab that he was working with substances containing cyanide and failed to advise him about, train him to anticipate, and provide adequate equipment to protect him from attendant dangers involved. The grand jury charged Film Recovery and Metallic Marketing with involuntary manslaughter stating that, through the reckless acts of their officers, directors, agents, and others, all acting within the scope of their employment, the corporate entities had, on February 10, 1983, unintentionally killed Golab.[2] Finally, the grand jury charged both individual and corporate defendants with reckless conduct as to 20 other Film Recovery employees based on the same conduct alleged in the murder indictment, but expanding the time of that conduct to "on or about March 1982 through March 1983."

Proceedings commenced in the trial court in January 1985 and continued through June of that year. In the course of the 24-day trial, evidence from 59 witnesses was presented, either directly or through stipulation of the parties. That testimony is contained in over 2,300 pages of trial transcript. The parties also presented numerous exhibits including photographs, corporate documents and correspondence, as well as physical evidence.

Those who testified as to working conditions in the plant established the following: workers were not told that they were working with cyanide or that the compound put into the vats could be harmful when inhaled; although ceiling fans existed above the vats, ventilation in the plant was poor; workers were not informed they were working with cyanide and were given no safety instruction; workers were given no goggles to protect their eyes; workers were given no protective clothing and, as a result, workers' clothing would become wet with the solution used in the vats; there were small puddles of that solution as well as film chips on the plant floor around the vats; the solution burned exposed skin; a strong and foul odor permeated the plant; the condition of air in the plant made breathing difficult and painful; and, finally, workers experienced dizziness, nausea, headaches, and bouts of vomiting.

Following a joint bench trial, individual defendants O'Neil, Kirschbaum, and Rodriguez were convicted of murder in the death of Golab. Corporate defendant Film Recovery was convicted of involuntary manslaughter in the same death. O'Neil, Kirschbaum, Rodriguez, and Film Recovery were also convicted of 14 counts of reckless conduct involving 14

other Film Recovery employees. The trial judge found that "the mind and mental state of a corporation is the mind and mental state of the directors, officers and high managerial personnel because they act on behalf of the corporation for both the benefit of the corporation and for themselves." Further, "if the corporation's officers, directors and high managerial personnel act within the scope of their corporate responsibilities and employment for their benefit and for the benefit of the profits of the corporation, the corporation must be held liable for what occurred in the work place."

Individual defendants O'Neil, Kirschbaum, and Rodriguez each received sentences of 25 years' imprisonment for murder and 14 concurrent 364-day imprisonment terms for reckless conduct. O'Neil and Kirschbaum were also each fined $10,000 with respect to the murder convictions and $14,000 with respect to the convictions for reckless conduct. Corporate defendant Film Recovery was fined $10,000 with respect to the convictions for involuntary manslaughter and $14,000 with respect to the convictions for reckless conduct.

Defendants filed timely notices of appeal, the matters were consolidated for review, and arguments were had before this court in July 1987.

Issue: Whether the trial court erred in finding a corporation and its directors guilty of the charges of murder, manslaughter and reckless conduct which arose from the same act?

Defendants raise two contentions with respect to the consistency of the judgments rendered at trial. Each contention rests, ultimately, on the observation that the offense of murder requires a mental state different from that required for the offenses of involuntary manslaughter and reckless conduct.

In their first contention, defendants argue that the judgments for murder and reckless conduct against individual defendants O'Neil, Kirschbaum, and Rodriguez are inconsistent because, while the offense of murder requires a knowing and intentional act, reckless conduct does not. Defendants argue both convictions, however, arose from the same acts of the individual defendants. Defendants reason O'Neil, Kirschbaum, and Rodriguez could not be responsible for intentional and unintentional conduct at the same time and, therefore, the judgments for murder and reckless conduct against them are inconsistent.

Defendants rely on the same logic to support the contention that the murder convictions against individual defendants O'Neil, Kirschbaum, and Rodriguez are inconsistent with the convictions for involuntary manslaughter against the corporate defendants. To arrive at that conclusion, however, defendants first note that the corporate defendants could be culpable only through the acts and omissions of the individual defendants. Defendants observe that the mind and mental state of a corporation are the collective mind and mental state of its board of directors or high managerial agents. Further noting that involuntary manslaughter is based on unintended and reckless conduct, defendants reason the convictions against the corporate entities for that offense are inconsistent with the individual defendants' convictions for murder because both offenses were based on the same conduct: the acts of the individual defendants.

Defendants urge that their convictions must be reversed and the cause remanded for retrial because the judgments rendered were inconsistent. Defendants also contend that the evidence presented at trial was insufficient to support the convictions.

We find it helpful to set out the pertinent statutory language of the offenses for which the defendants were convicted.

The Illinois Criminal Code of 1961 defines "murder" as: A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death: He knows that such acts create a strong probability of death or great bodily harm to that individual.

“Involuntary manslaughter” is defined as: A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly.

“ Reckless conduct” is defined as: A person who causes bodily harm to or endangers the bodily safety of an individual by any means, commits reckless conduct if he performs recklessly the acts which cause the harm or endanger safety, whether they otherwise are lawful or unlawful.

The murder indictment states that on February 10, 1983, defendants O'Neil, Kirschbaum, Rodriguez, Pett, and Mackay, acting as individuals and as officers and high managerial agents of Film Recovery, committed murder in that they knowingly created a strong probability of Stefan Golab's death. Specifically, the grand jury charged those individuals had failed to disclose and make known to [Golab] that he was working with cyanide and substances containing cyanide and failed to instruct him as to matters involving safety procedures and proper handling of said chemicals[.] Further, those individuals failed to provide Golab with appropriate and necessary safety and first-aid equipment and sundry health-monitoring systems for his protection while working with and handling cyanide and substances containing cyanide. The murder indictment also states O'Neil, Kirschbaum, Rodriguez, Pett, and Mackay failed to properly provide for the storage, detoxification and disposition of cyanide and substances containing cyanide and failed to advise Golab of the dangerous nature of his work, and the conditions under which he engaged in it.

The involuntary manslaughter indictment against Film Recovery states that, on February 10, 1983, they unintentionally killed Stefan Golab by authorizing, requesting, commanding and performing certain acts of commission and acts of omission by its [sic] officers, board of directors and high managerial agents, to wit: Steven J. O'Neil, Michael T. Mackay, Gerald Pett, Charles Kirschbaum, Daniel Rodriguez, and others, who acting within the scope of their employment performed the said acts recklessly in such manner as was likely to cause death and great bodily harm to some individual and caused the death of Stefan Golab. The indictment did not otherwise specify the nature of the acts. The indictments against all defendants for reckless conduct contain identical charges made in the murder indictment against the individual defendants as summarized above, save for stating that the conduct occurred on or about March 1982 through March 1983.

With regard to the consistency of the judgments for murder and reckless conduct against defendants O'Neil, Kirschbaum, and Rodriguez, acting solely in their individual capacities, we note the corresponding indictments differ only in one respect. The murder indictment is limited to the individual defendants' conduct on February 10, 1983, while the reckless conduct indictments concern conduct over a period of time from March 1982 through March 1983, which would include the date of Golab's death. In all other respects, the same conduct is used as the foundation for the indictments for both offenses against the individual defendants. Although the indictments for both offenses are therefore based on identical acts of the individual defendants, it is conceivable the apparent inconsistency in the convictions for those offenses, due to the mutual exclusiveness of the mental states required to sustain each, might be reconciled by evidence in the record. After carefully reviewing the record, however, we do not conclude that, as to the individual defendants, evidence existed to establish, separately, defendants' mental states to support separate offenses of murder and reckless conduct.

Thus, we cannot conclude the record supports a determination that the individual defendants possessed different mental states on February 10, 1983, as distinguished from the period of March 1982 to March 1983, such as might support separate offenses of murder and reckless conduct. Because the offenses of murder and reckless conduct require mutually exclusive mental states, and because we conclude the same evidence of the individual defendants' conduct is used to support both offenses and does not establish, separately, each of the requisite mental states, we conclude that the convictions are legally inconsistent. With regard to consistency of the judgment for murder against individual defendants O'Neil, Kirschbaum, and Rodriguez and that against the corporate entities for involuntary manslaughter, we observe that the corresponding indictments are both based on Golab's death on February 10, 1983. However, unlike the murder indictment, the indictment for involuntary manslaughter does not specify the acts of commission and omission upon which that charge was based. The material difference between the indictments, however, concerns reference to unnamed others in the involuntary manslaughter indictment as acting on behalf of the corporations in causing Golab's

death in addition to naming the same individuals named in the murder indictment. To the extent the involuntary manslaughter indictment contemplates the conduct of others, as well as the individual defendants convicted of murder, as providing a basis for corporate criminal responsibility, it is possible the judgments against the corporate defendants for involuntary manslaughter could be consistent with the judgments for murder against the individual defendants.

In Illinois, a corporation is criminally responsible for offenses authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent acting within the scope of his employment. A high managerial agent is defined as an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity. Thus, a corporation is criminally responsible whenever any of its high managerial agents possesses the requisite mental state and is responsible for a criminal offense while acting within the scope of his employment. To the extent the record discloses that a high managerial agent of Film Recovery other than individual defendants O'Neil, Kirschbaum, and Rodriguez, might provide foundation for the charge of involuntary manslaughter, that judgment would not be inconsistent with judgment for murder against the individual defendants.

Therefore, we find no basis in the record upon which to conclude that the conduct of a high managerial agent, apart from that of the individual defendants found guilty of murder, could provide the basis for establishing criminal responsibility against the corporate defendants for Golab's death. And, because the same conduct is used to support offenses which have mutually exclusive mental states, we conclude the judgments rendered for both offenses are legally inconsistent. Therefore, we now reverse those convictions as to both the individual and corporate defendants and remand the matter for retrial.

COMMONWEALTH v. ANGELO TODESCA CORPORATION

In December, 2000, Brian Gauthier, an experienced truck driver, was employed by the defendant, Angelo Todesca Corporation, a trucking and paving company. At the time, Gauthier was driving a ten-wheel tri-axle dump truck, designated AT-56, for the defendant; he had driven this particular vehicle for approximately one year. The defendant had a written policy, published in its safety manual, requiring all trucks to be equipped with back-up alarms, which sound automatically whenever the vehicle is put in reverse gear, at all times. The purpose of this alarm, affixed to the back of the truck near the driver's side taillight, is to warn people behind the truck, particularly those in its blind spot, that the vehicle is in reverse.

When Gauthier was first assigned to AT-56, the truck had a functioning back-up alarm, but around November, 2000, he realized that the back-up alarm was missing. The defendant's mechanic determined that the vehicle's electrical system was working properly: it simply needed a new alarm installed. The mechanics did not have a back-up alarm in stock at the time. Although Gauthier continued to operate the truck without the back-up alarm, he noted its absence each day in a required safety report. All of the other trucks Gauthier had operated for the defendant had back-up alarms, and at least one other of the defendant's drivers never had operated a truck without an alarm.

In late 2000, the defendant was hired to provide asphalt for a roadway widening and improvement project on Route 28, a State highway, in Centerville. On December 1, 2000, the defendant's drivers were repaving a mile-long section of Route 28 near the entrance to a shopping mall. Although different sections of the four-lane highway were closed as the paving work progressed, the mall was open for business, and at least one lane always remained open to traffic. To ensure that vehicles could enter and leave the mall safely, the victim, a sixty-one year old police officer, was stationed near the driveway leading into the mall parking lot, directing traffic through the work site. The victim had worked such details before and requested this assignment at the site. He wore a full-length bright orange raincoat and a hat with ear flaps, but he had no difficulty hearing or communicating with the work crew.

On December 1, Gauthier was assigned to haul asphalt from a plant in Rochester to the work site in Centerville, and he made three trips from the plant to Centerville that day. His truck weighed more than 79,000 pounds when carrying a full load of asphalt. When Gauthier delivered his first load, he beeped his “city horn” as he backed up to the paver, to warn people nearby that the truck was moving. He did not use his horn while backing up with the second load of asphalt because no one was near his truck at that time.

When he arrived at the work site with his third load of asphalt, Gauthier conversed briefly with several other drivers and the victim to discuss the order in which the drivers should deliver their asphalt. They decided that Gauthier should back up first, and he told the victim that he was next in line for the paver. Another driver then asked the victim to “watch our back[s]” as the trucks backed through the intersection. No one informed the victim that Gauthier's truck did not have a functioning back-up alarm. When Gauthier returned to his truck, he turned off the radios, rolled down his window, checked his mirrors, put the truck in its lowest reverse gear, and began to back up. A number of witnesses estimated his speed at no more than a few miles per hour. Before Gauthier started to back up, he noticed that the victim was walking toward the paver, with his back to the truck. At one point while Gauthier was backing up, he had to stop to allow a car leaving the mall to pass. When he resumed moving, another driver realized that the victim was in Gauthier's blind spot and repeatedly blasted his truck's air horn, but neither the victim nor Gauthier reacted. Other drivers also saw that the victim was in Gauthier's blind spot, and tried to get Gauthier to stop by shouting and waving their arms, but to no avail: Gauthier's truck struck the victim, pinning his legs beneath its rear wheels. As soon as Gauthier saw the victim trapped under his rear axle, he pulled the truck forward. The victim was conscious and alert when he was taken to a hospital, but he died as a result of his injuries later that day.

Gauthier was charged with manslaughter, motor vehicle homicide, and failure to use due care in backing up. Before the defendant's trial, the manslaughter charge against Gauthier was dismissed, and the remaining charges were continued without a finding for three years. Gauthier's driving privileges were restricted, and he paid a fine.

The jury convicted the corporation of motor vehicle homicide, but found it not guilty of involuntary manslaughter. At sentencing, the defendant was fined $2,500. The Appeals Court, however, reversed the conviction, finding insufficient

evidence of Gauthier's negligence because while he backed up he “took all reasonable precautions” to ensure the victim's safety. The Appeals Court also concluded that there was insufficient evidence that the absence of a functioning back-up alarm caused the collision: the victim knew the truck was going to back up and “did not need to be warned by a beeping sound.” The Appeals Court found it “speculative” to suggest that a back-up alarm could have prevented the collision because the victim did not react to the much louder air horns sounded by other drivers.

Issue: Whether a corporate entity can be held criminally liable for the acts of its employees and, as a matter of law, can it be found guilty of vehicular homicide?

Yes. A corporate entity may be held criminally liable for motor vehicle homicide.

As a threshold matter, the parties agree that corporate criminal liability is based on the following elements:

“To prove that a corporation is guilty of a criminal offense, the Commonwealth must prove the following three elements beyond a reasonable doubt: (1) that an individual committed a criminal offense; (2) that at the time of committing the offense, the individual ‘was engaged in some particular corporate business or project’; and (3) that the individual had been vested by the corporation with the authority to act for it, and on its behalf, in carrying out that particular corporate business or project when the offense occurred.”

Although the parties do not challenge these standards of corporate criminal liability on appeal, there is significant disagreement about the application of these principles to this case. The defendant appears to concede that Gauthier was engaged in corporate business when he struck the victim, and that he was authorized by the defendant to conduct such business. Thus, the essence of the defendant's arguments deals with the first element of corporate criminal liability: namely, the requirement that an employee committed a criminal offense. The defendant maintains that a corporation never can be criminally liable for motor vehicle homicide as a matter of law because the language of a criminal statute must be construed strictly, and a “corporation” cannot “operate” a vehicle. The Commonwealth, however, argues that corporate liability is necessarily vicarious, and that a corporation can be held accountable for criminal acts committed by its agents, including negligent operation of a motor vehicle causing the death of another, if the elements of corporate criminal liability discussed above are satisfied.

We agree with the Commonwealth. Because a corporation is not a living person, it can act only through its agents. By the defendant's reasoning, a corporation never could be liable for any crime. A “corporation” can no more serve alcohol to minors, or bribe government officials, or falsify data on loan applications, than operate a vehicle negligently: only human agents, acting for the corporation, are capable of these actions. Nevertheless, we consistently have held that a corporation may be criminally liable for such acts when performed by corporate employees, acting within the scope of their employment and on behalf of the corporation.

The defendant further contends that it cannot be found vicariously liable for the victim's death because corporate criminal liability requires criminal conduct by the agent, which is lacking in this case. Operating a truck without a back-up alarm, the defendant notes, is not a criminal act: no State or Federal statute requires that a vehicle be equipped with such a device. Although the defendant is correct that criminal conduct of an agent is necessary before criminal liability may be imputed to the corporation, it mischaracterizes the agent's conduct in this case. Gauthier's criminal act, and the conduct imputed to the defendant, was not simply backing up without an alarm, as the defendant contends; rather, the criminal conduct was Gauthier's negligent operation of the defendant's truck, resulting in the victim's death.

The Appeals Court held that the Commonwealth presented insufficient evidence of causation, reasoning that there was “no evidence that a back-up alarm would have changed the result, and thus no evidence of a causal nexus.” The defendant claims that the Appeals Court properly determined that the victim would not have heard a back-up alarm on Gauthier's truck because he did not respond to air horns sounded by other drivers or the back-up alarm of the truck behind Gauthier. The Commonwealth, however, argues that air horns could not substitute for the distinctive sound of a back-up alarm, and that a reasonable jury could have determined that the victim would have reacted differently had the defendant's truck been equipped with such an alarm.

Here, a reasonable jury could have found that the truck's collision with the victim, and the victim's ensuing death, was a foreseeable result of Gauthier's operating the defendant's truck in reverse without the customary back-up alarm, and without informing the victim that the alarm was missing. We do not agree with the Appeals Court's conclusion that the fact that the victim did not move out of the truck's path means that he did not hear the back-up alarm on the other truck, and therefore would not have heard a back-up alarm on Gauthier's truck: the jury may have concluded that the victim did hear the back-up alarm on the other truck, but that he reasonably believed that vehicle to be a safe distance away. The jury also could have inferred, based on testimony concerning the location of a back-up alarm on the vehicle, that an alarm on Gauthier's truck would have sounded practically in the victim's ear, alerting him to the truck's movement in time to get out of its way. In addition, the jury could have inferred, based on testimony as well as on their life experiences and common sense, that the back-up alarm makes a distinctive beeping sound, intended to warn people behind the vehicle that it is operating in reverse, and that the victim did not realize Gauthier's truck was backing up because he did not hear that sound. Despite their volume, air horns sounded by nearby drivers would not substitute for the unique sound of a back-up alarm on Gauthier's truck. In fact, Gauthier heard the air horns of the other trucks but did not know why they were sounding. Thus, there was sufficient evidence from which the jury could have found that Gauthier's negligence caused the accident resulting in the victim's death.

For the foregoing reasons, we conclude that the evidence was sufficient to support the conviction.

Judgment [of the jury] affirmed.

Miranda v. Arizona

Note from the Prof: Arizona's case against Ernest Miranda was originally a state criminal action. However, the SCOTUS granted Miranda an appeal because of the questions relating to the criminal protections enshrined in the 5th and 6th Amendments to the US Constitution. In granting the appeal, the SCOTUS decided *Miranda* with three other cases (*Westover v. United States*, *Vignera v. New York*, and *California v. Stewart*) in which similar constitutional questions arose. In preparing this care for you, I have combined the facts from Miranda's appeal to the Arizona Supreme Court with an abbreviated holding from the landmark SCOTUS decision. Thus, if it feels less fluid than previous cases I have edited for you, the aforementioned is the reason why. Enjoy!

Appellant was convicted of the crime of kidnapping, Count I; and Rape, Count II; and sentenced to serve from twenty to thirty years on each count, to run concurrently. From the judgment and sentence of the court he appeals. Appellant, hereinafter called defendant, was in another information charged with the crime of robbery. After arraignment in the instant case, on motion of the county attorney, the trial on the robbery case was consolidated with the instant case, but thereafter one day prior to the trial of this case separate trials were granted. Defendant was tried and convicted on the robbery charge.

The facts, as they relate to the defense as charged under Counts I and II in the instant case are as follows: On March 3, 1963, the complaining witness a girl eighteen years of age had been working in the concession stand at the Paramount Theatre in downtown Phoenix, and had taken the bus to 7th Street and Marlette. After getting off the bus, she had started to walk toward her home. She observed a car, which afterwards proved to be defendant's, which had been parked behind the ballet school on Marlette. The car pulled out of the lot, and came so close to her that she had to jump back to prevent being hit. It then parked across from some apartments in the same block. Defendant then left his car, walked toward her, and grabbed her. He told her not to scream, that he would not hurt her. He held her hands behind her back, put a hand over her mouth, and pulled her toward the car. He put her in the back seat, tied her hands and feet, and put a sharp thing to her neck and said to her "Feel this." She stated it all happened so suddenly that she did not have time to do anything. Defendant was unknown to the complaining witness. She had not seen him before, and he was not related to her in any way.

He then drove the car for about twenty minutes, during which time complaining witness was lying in the back seat crying. When defendant stopped the car, he came to the back seat, and untied her hands and feet. He told her to pull off her clothes. She said "no," whereupon he started to remove them. She tried to push away from him, but he proceeded to remove her clothing. And, then, after one unsuccessful attempt, made a successful sexual penetration, while she pushed with her hands and was screaming. She testified: "I was pushing against him with my hands. I kept screaming, I was trying to get away but he was a lot stronger than I was, and I couldn't do anything."

He then drove her to 12th Street and Rose Lane, during which time she dressed. She ran home, and told her family, who called the police. Her sister testified that the complaining witness came home that morning crying and looking as if she had been in a fight. On March 13, 1963, defendant was apprehended by the police. The officers who picked him up both testified that he was put into the "line-up" and was identified by complaining witness. Thereafter he confessed that he had forced complaining witness into his car, drove away with her, and raped her. After these statements he signed a statement, partly typed and partly in his own handwriting, which was substantially to the same effect as the testimony of the officers. Defendant offered no evidence in his defense at the trial of his case.

Defendant contends that admission into evidence of his written confession was error for the reason that he did not have an attorney at the time the statement was made and signed. The police officers Young and Cooley testified to oral statements made to *26 them before the signing of the written confession. Their testimony was substantially the same. They first saw defendant at his home at 2525 West Maricopa on March 13, 1963, when they went there for the purpose of investigating a rape. They took defendant to the police station and placed him in a "line-up" with "four other Mexican males, all approximately the same age and height, build," and brought in the complaining witness who identified him as the one who had perpetrated the acts against her. Then they immediately interrogated him. They advised him of his rights. They testified that he made the statement of his own free will; and that there were no threats, or use of force

and coercion, or promises of immunity; that they had informed him of his legal rights and that any statement he made might be used against him.

The oral statement by defendant, as related to police officers, is set forth in the testimony of Detective Carroll Cooley (NOTE: “A” is Detective Cooley’s response on the stand during the trial to “Q” (questions) asked by the prosecuting attorney):

"A He saw this girl walking on the street, he said, so he decided he would pull up ahead of her and stop. He stopped and got out of his car and opened the back door of his automobile. He said when the girl approached him he told her, he said, `Don't make any noise, and get into the car,' and he said she got into the car, he said, in the back seat. "After getting into the car, he said he took a small rope he had inside the car and he tied her hands and her ankles, then he got into the front seat behind the driver's wheel and he drove to a location several miles from there in the northeast direction to the area of a desert. "
Q Did he tell you what street this took place on?
“A He didn't know the street. I asked him the street, and he didn't know the name of the street, he didn't know exactly where he was located when he stopped. It was just in the desert area, couple of miles from where he picked the girl up. "He said then when he got there he noticed that the girl was untied, and he got into the back seat and he asked her if she would, or he told her to take her clothes off and she said, `No, would you please take me home?' "He said then he took her clothes off for her. After he had undressed her, she began to cry, and started begging him to not do this. She said she had never had any relations with a man before. "He said he went ahead and performed the act of intercourse, and in so doing was only able to get about a half inch of his penis in and at which time he said he did reach a climax, but he didn't believe that he had reached a climax inside of her. "He said after the act of intercourse, he then told her to get dressed and asked her where she lived and she told him in the area, she told him 10th or 12th Street. He couldn't remember where, so he said he drove her back to the area where he picked her up and dropped her off in that general area. "When he started to let her out, why she told him, `Well, this is not where I live.' "He said, `This is as far as I am taking you,' and then he asked her if she would pray for him. She got out of the car and he left and he said then he went home. "
Q Was that the essence of the conversation you had with him at that time?
"A That was the essence of the conversation. "
Q Officer, was this conversation reduced, or was the defendant's conversation with you reduced to writing?
"A Yes, Sir it was. "
Q Who wrote it down, Officer? "
A He wrote his own statement down. "
Q He wrote it down?
"A Yes, Sir. "
Q Were you present, Officer, when he wrote this?
"A Yes, Sir, I was."

This oral statement was corroborated by the testimony of Officer Young. At the conclusion of Officer Cooley's testimony the written statement of defendant was offered in evidence.

"I, Ernest A. Miranda, do hereby swear that I make this statement voluntarily and of my own free will, with no threats, coercion, or promises of immunity, and with full knowledge of my legal rights, understanding any statement I make may be used against me. "I, Ernest A. Miranda, am 23 years of age and have completed the 8th grade in school. "Seen a girl walking up street stopped a little ahead of her got out of car walked towards her grabbed her by the arm and asked to get in the car. Got in car without force tied hands & ankles. Drove away for a few miles. Stopped asked to take clothes off. Did not, asked me to take her back home. I started to take clothes off her without any force, and with cooperation. Asked her to lay down and she did. Could not get penis into vagina got about 1/2 (half) inch in. Told her to get clothes back on. Drove her home. I couldn't say I was sorry for what I had done. But asked her to say a prayer for me. "I have read and understand the foregoing statement and hereby swear to its truthfulness. "/s/ Ernest A. Miranda "WITNESS: /s/ Carroll Cooley /s/ Wilfred M. Young, #182"

Officer Cooley was then cross-examined by the defense attorney:

Q Officer Cooley, in the taking of this statement, what did you say to the defendant to get him to make this statement?
"A I asked the defendant if he would tell us, write the same story that he had just told me, and he said that he would. "
Q Did you warn him of his rights?
"A Yes, Sir, at the heading of the statement is a paragraph typed out, and I read this paragraph to him outloud. "
Q Did you read that to him outloud?
"A Yes, Sir. "
Q But did you ever, before or during your conversation or before taking this statement, did you ever advise the defendant he was entitled to the services of an attorney?
"A When I read… "
Q Before he made any statement?
"A When I read the statement right there. "
Q I don't see in the statement that it says where he is entitled to the advise of an attorney before he made it.
"A No, Sir. "
Q It is not in that statement?
"A It doesn't say anything about an attorney. Would you like for me to read it? "
Q No, it will be an exhibit if it is admitted and the jury can read it, but you didn't tell him he could have an attorney?"
"A No, Sir. "

It will be noted that the only objection made to the testimony was in regard to the narrative form of the answers. The record shows the trial court did not err in the exercise of its discretion in the admission of this evidence.

The only objection made to the introduction of the signed statement was: "We are objecting because the Supreme Court of the United States says the man is entitled to an attorney at the time of his arrest."

No objection was made on the ground that the statement was not shown to be voluntary, and no request was made for a determination of the voluntariness of the confession outside of the presence of the jury.

Issue: Whether a criminal defendant's testimony is admissible where the suspect in custodial custody was not informed of his right to have an attorney present when making an admission of guilt to the police?

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features -- incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact that, in this country, they have largely taken place incommunicado.

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In *Miranda v. Arizona,* the police arrested the defendant and took him to a special interrogation room, where they secured a confession. In *Vignera v. New York,* the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In *Westover v. United States,* the defendant was handed over to the Federal Bureau of Investigation by local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in *California v. Stewart,* the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in *Miranda,* where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in *Stewart,* in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles -- that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment . . . commanding that no person "shall be compelled in any criminal case to be a witness against himself."

In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise.

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it -- the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning, and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

The Fifth Amendment privilege is so fundamental to our system of constitutional rule, and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given.

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system -- that he is not in the presence of persons acting solely in his interest.

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end. Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

Accordingly, we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance.

In order fully to apprise a person interrogated of the extent of his rights under this system, then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that, if he is indigent, a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent -- the person most often subjected to interrogation -- the knowledge that he too has a right to have counsel present. As with the warnings of the right to remain silent and of the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it.

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.

To summarize, we hold that, when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

As to *Miranda v. Arizona,* we reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings, the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights.