Missouri v. Seibert
(June 28, 2004) __ US __

ISSUE

If officers question an arrested suspect without seeking a waiver, is a second statement admissible if it was made in compliance with *Miranda*?

FACTS

Patrice Seibert's 12-year old son Jonathan died in his sleep in the family's mobile home. Because Jonathan had bedsores on his body and suffered from cerebral palsy, Seibert worried that she might be charged with neglecting him if she reported his death to the authorities. So she and her two teenage sons came up with a solution: destroy the evidence (the bedsores) by setting fire to the trailer and incinerating Jonathan's body.

As they pondered the plan, however, they detected one problem. If Jonathan was the only person in the trailer when the fire broke out, the authorities might think Siebert had neglected Jonathan by leaving him unattended.

The Sieberts put their heads together and came up with a solution. A mentally ill teenager named Donald Rector happened to be living with them. If they set fire to the trailer when Donald was asleep, then both bodies would be incinerated and Seibert could claim that she thoughtfully left Jonathan in Donald's care when tragedy struck. The plan was implemented and it worked: Jonathan's body was incinerated and Donald was killed.

Nevertheless, police suspected foul play and, five days later, an investigator arrested Seibert for murder. She was taken to the police station and questioned—but she was not advised of her *Miranda* rights, at least at first. Instead, the investigator questioned her in violation of *Miranda* until she confessed. He then obtained a waiver from Siebert and essentially asked her to repeat her confession, which she did.

At Seibert's trial, the first confession was suppressed but the second confession was admitted. She was convicted of second-degree murder.

DISCUSSION

The investigator who questioned Seibert was utilizing a technique that has been taught in some *Miranda* courses. Known as "Question first, *Mirandize* later," the procedure is a variation of the illegal "Outside *Miranda*" tactic where officers were taught to ignore a suspect's *Miranda* invocation in hopes of obtaining useful information or information that could be used to impeach the suspect at trial.[1]

In "Question first," officers attempt to obtain an incriminating statement from the suspect before seeking a waiver. They then *Mirandize* him and, if he waives, ask him the same questions as before. If things work out, he will make a post-*Miranda* statement that is virtually identical to the illegal pre-*Miranda* statement. As the plurality summed it up in *Siebert*, "The object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed."

[1] NOTE: The Supreme Court noted that like the "Question first, *Mirandize* later" tactic, the "Outside *Miranda*" tactic was being taught by some *Miranda* instructors in California, citing, among others: California Commission on Peace Officer Standards and Training, Video Training Programs for California Law Enforcement, Miranda: Post-Invocation Questioning (broadcast July 11, 1996) ("We have been encouraging you to continue to question a suspect after they've invoked their *Miranda* rights"].

As noted, this tactic was actually being taught to officers in some *Miranda* courses and publications. For example, the Court in *Seibert* quoted from a manual prepared by the Police Law Institute of Illinois:

> [O]fficers may conduct a two-stage interrogation. At any point during the pre-*Miranda* interrogation, usually after arrestees have confessed, officers may then read the *Miranda* warnings and ask for a waiver. If the arrestees waive their *Miranda* rights, officers will be able to repeat any subsequent incriminating statements later in court.[2]

The "Question first" tactic was based on what its advocates saw as a loophole in the law. In *Oregon* v. *Elstad*[3] the U.S. Supreme Court ruled that if officers obtain a statement from a suspect without obtaining a waiver, and if they obtain a second statement from the suspect in full compliance with *Miranda*, the second statement will not be suppressed as the result of the *Miranda* violation. But, as we learned—or should have learned—from the "Outside *Miranda*" fiasco, the courts will not tolerate intentional violations of the law by law enforcement officers.

Thus, although the *Siebert* Court could not agree on an opinion, the majority ruled that *Elstad* does not apply when the officers' failure to comply with *Miranda* was, in the words of the plurality, "a police strategy adapted to undermine the *Miranda* warnings."

It was, of course, apparent that the officer who questioned Siebert was engaging in such a strategy. As the plurality observed, "The unwarned interrogation was . . . systematic, exhaustive, and managed with psychological skill. When the police were finished there was little, if anything, of incriminating potential left unsaid."[4]

Consequently, the Court ruled that Siebert's confession was inadmissible.

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[2] Police Law Institute, Illinois Police Law Manual 83 (Jan. 2001-Dec. 2003).

[3] (1985) 470 US 298.

[4] ALSO SEE Justice Kennedy's concurring opinion: "['Question first'] undermines the *Miranda* warning and obscures its meaning. The plurality opinion is correct to conclude that statements obtained through the use of this technique are inadmissible." PROSECUTORS NOTE: It is possible that the second statement may be admissible. But the Court could not agree on a test for determining its admissibility. See conc. opn. of Kennedy, J.