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IN 1966 THE SUPREME COURT of the United States took an in-depth look at the *custodial interrogation,* and raised an eyebrow at the then-current practices and investigative techniques of law enforcement officials. In the case of *Miranda v. Arizona,* the court looked to the interrogation which is done behind closed doors and conducted so as to sever the accused from any outside support, thus placing him in a position of insecurity and inability to stand on his rights.[1]

Mr. Chief Justice Warren, in speaking for the court, declared that the then current-practices of incommunicado interrogations were at odds with one of our most cherished national principles.[2] The principle that an individual may not be compelled to incriminate himself was given added substance when the court went on to rule 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 principle against self-incrimination is jeopardized, [and] . . . Procedural safeguards must be employed to protect the privilege . . .[3]

The court then laid down minimum requirements for pre-interrogation warnings,[4] saying that such warnings were an absolute necessity at the time of interrogation in order to overcome its inherent pressures and to insure that individuals were made aware of their right to freely exercise their constitutional privilege against self-incrimination at that very moment in time.[5]

The court, in *Miranda,* was quick to point out, however, that the decision in that case did not suppose to vitiate the confession as a tool of law enforcement officers in ferretting out criminals. Likewise, volunteered statements of any kind were specifically exempted from the exclusionary rule that was applied to *Miranda*-type admissions only.[6]

Much of the progeny of *Miranda* addressed itself to just such types of admissions. Oftentimes, the courts dissected the seemingly unitized *custodial interrogation* requirement of *Miranda* by turning their decisions of its inapplicability upon the absence of either the "custody" or the "interrogation" aspect.

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[1] Miranda v. Arizona, 384 U. S. 436, 456 (1966).

[2] *Id.* at 457-8.

[3] *Id.* at 469.

[4] *Id.* at 479.

[5] *Id.* at 469.

[6] *Id.* at 478.

Custodial Atmosphere Required

In *United States v. McLeod*,[7] the 8th Circuit Court of Appeals refused Appellant's claim that his conviction under the Internal Revenue Code was error because I.R.S. agents failed to give him the *Miranda* warnings in a telephone conversation. The court held that *Miranda* was inapplicable to "non-custodial interrogations".[8] Thus, while there may be an interrogation, there is no right to *Miranda* warnings unless coupled with *custody* of the accused, the purpose of *Miranda* being to alleviate the pressures attendant to being cut off from the outside world.

In a more narrow situation, a highway patrol officer asked a driver for his license and registration, and after receiving unsatisfactory reasons as to a failure to produce either, went on to question the driver as to his destination and purpose. The court held *Miranda* to be inapplicable since in that situation no "in custody interrogation" takes place.[9]

In four more recent cases, one in Texas,[10] one in North Carolina,[11] one in the 2nd Circuit Court of Appeals,[12] and another in the 8th Circuit Court of Appeals,[13] (which refused to grant a writ of habeas corpus from a South Dakota conviction[14]), the same custodial element was found lacking.

While the application of *Miranda* requires that there be custody of the accused, it need not be uniquely "stationhouse" custody. In *State v. Graves*,[15] the defendant was convicted of having obtained welfare funds by false pretenses through her failure to disclose a change in living conditions which, if disclosed, would have resulted in her receiving reduced benefits. After a welfare investigator discovered the changed condition, he contacted the defendant and arranged an interview. At that interview, where 6 male investigators interrogated the woman, one investigator testified that he gave partial *Miranda* warnings. Strangely enough, the right to remain silent was left out. In holding *Miranda* applicable and recognizing the error of the trial court in admitting defendant's damaging statements, the court said, "It is important, also to note that the circumstances surrounding the investigation contained clear elements of psychological duress."[16]

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[7] 436 F. 2d 947 (8th Cir. 1971).

[8] *Id.* at 950.

[9] U. S. v. Smith, 441 F. 2d 539, 540 (9th Cir. 1971).

[10] Utz v. State, 465 S. W. 2d 159 (Tex. Crim. App. 1971).

[11] State v. Fletcher, —— N. C. ——, 181 S. E. 2d 405, 409-10 (1971).

[12] U. S. v. Viviano, 437 F. 2d 295, 301 (2nd Cir. 1971).

[13] Utsler v. Erickson, 440 F. 2d 140 (8th Cir. 1971).

[14] Utsler v. South Dakota, 285 Minn. 250, 171 N. W. 2d 739 (1969).

[15] 114 N. J. Super. 222, 275 A.2d 760 (App. Div. 1971).

[16] *Id.* at 275, A.2d at 762.

Thus, notwithstanding the interrogation was not at police headquarters, since the dangers inherent in the *Miranda*-type interrogation were present, the accused was entitled to the full warnings that would be required at the stationhouse.

Just as all interrogations might not be made under custodial conditions, all custodial admissions are not necessarily in response to an interrogation.

Interrogation Required

Where an officer asked no questions of the suspect but made a remark, ("You just killed a woman"), which was merely a statement of the reason for arrest, the defendant's ensuing statement was held admissable at trial.[17] In such cases, said the court, the police need not interrupt a suspect's spontaneous statement in order to warn him of his constitutional rights. Thus, any statement made in the absence of any questioning is not rendered inadmissible for failure to give *Miranda* warnings.

Simply stated, *Miranda* has no bearing upon the rights of a person unless he is subject to interrogation while in custody.[18]

This interrogation aspect is better illustrated by a decision of the 9th Circuit Court of Appeals.[19] In that case the defendant was under arrest, in custody, and in a police cruiser when he made a damaging utterance. The defendant was being transferred from a precinct station to the central precinct station when he volunteered a confession to the police totally free from any questioning on their part. The court found no error in allowing that confession into evidence.[20]

A number of other jurisdictions have also ruled in accord in similar situations. In these cases, various terms have been used to describe the unprotected statements, such as conversation,[21] spontaneous declaration,[22] volunteered out of interrogation,[23] and, simply, volunteered.[24]

The constitutional demands and limitations upon law enforcement officials are reasonably well defined. The constitutional rights of the accused are, it is supposed, being properly safeguarded after arrest. The law enforcement scene, however, is not quite that simplex today, and the danger of self incrimination still lingers in certain situations, which are continually increasing in number.

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[17] People v. Jenkins, —— Ill. App. 2d—, 268 N. E. 2d 198, 20 (1971).
[18] Tompkins v. U. S., 272 A.2d 100, 102 (D.C. Ct. App. 1970).
[19] Klamert v. Cupp, 437 F. 2d 1153 (9th Cir. 1970).
[20] *Id.* at 1154 n. 1 holding that an on the scene investigation is not subject to Miranda.
[21] State v. Sanchez, 94 Idaho 125, 483 P. 2d 173, 175-6 (1971).
[22] Lewis v. People, —— Colo. ——, 483 P. 2d 949, 951-2 (1971).
[23] State v. Chabonian, 50 Wis. 2d 574, 185 N. W. 2d 289, 291, n. 3 (1971).
[24] People v. Griner, 30 Mich. App. 687, 186 N. W. 2d 800, 802 (1971).
Cook v. State, 248 S. 2d 158, 159 (Ala. Crim. App. 1971).
State v. Ginnings, 466 S. W. 2d 675 (Mo. 1971).
State v. Phippen, —— Kan. ——, 485 P. 2d 336, 340 (1971).

Miranda Not Applicable to Other Than Police Custodial Interrogations

While of course we still have police protection provided by our federal, state, county and municipal governments, a new breed of law enforcer is creeping into the role as public protector. The uniformed employees of the street association[25] as well as the private security force of the larger retail and discount outlets are taking an increasingly heavy role in present day law enforcement.

As was set out above, while the police power of the sovereignty demands that it be executed to protect the populace, there are constitutional limitations upon the methods by which police can lawfully ferret out an accused and develop a case against him.

With the advent of the private patrolman, the courts have undertaken the task of determining what application if any, *Miranda* has to custodial interrogations made by a private citizen after he has arrested another.

It should be kept in mind that although there is weighty authority establishing the inapplicability of *Miranda* to any other than police employed by a sovereign authority, such case law is divisible into two distinct private arrest-interrogation situations. They are: the purely private citizen and the private citizen employed as a security guard.

Private Citizen

In *State v. Masters*, a woman was convicted of shoplifting 54c worth of toilet deodorizers from the Hinky Dinky Market.[26] A store clerk had seen the defendant (who had otherwise paid for approximately $11 in purchases) place two toilet deodorizers in her purse. After stopping the woman at the store exit, he asked her if she had anything she hadn't paid for. The woman responded by taking the "loot" out of her purse. The Iowa Supreme Court held nothing in *Miranda* was applicable and refused defendant's contention that the deodorizers were improperly admitted into evidence.[27]

Elsewhere, a shoplifting defendant objected to the admission of incriminating statements made by him to a store sales clerk. The court refused his assertions of error and held that no interpretation could be justified that would apply "Miranda to a point where its rules would include the interrogation process of an accused by an apprehending shopkeeper not regularly engaged in law enforcement work."[28]

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[25] N. Y. Times, July 8, 1971, at 33, col. 1; *See also* Cleveland Yellow Pages, 1971-72 at 371-73 for listing of 59 detective agencies in Cleveland area alone and at 548-9, a listing of 38 guard and patrol services.

[26] 261 Iowa 366, 154 N. W. 2d 133 (1967).

[27] State v. Masters, 261 Iowa 366, 154 N. W. 2d 133, 136 (1967).

[28] State v. Valpredo, 75 Wash. 2d 368, 450 P. 2d 979, 981 (1969).

Another defendant, convicted of rape in the Criminal Court of Baltimore, Maryland, asserted to no avail that his statements to two pharmacists who rushed out of their drug store to apprehend him were inadmissable for failure of them to give him *Miranda* warnings.[29] The court also noted that there was an absence of "a custodial interrogation. . . ."[30]

In a case more directly in point, a fire insurance agent intimidated two claimants into making damaging admissions leading to their conviction on arson charges. The trial judge raised an interesting point, saying that the agent's appearance before the grand jury was enough to bring the case within *Miranda*, but went on to hold the statements inadmissible because the agent allegedly posed as a fire marshal. The court of appeals (Illinois) held *Miranda* was applicable to *law enforcement officers only*,[31] and reversed.

Additionally, *Miranda* has been found inapplicable to questioning by a school principal[32] and to an arrest made by the victim of a defendant convicted of assault with a weapon.[33]

The inapplicability of the United States Constitution to private individuals having no customary function as law enforcers is perhaps the proper rationale. The persuasiveness of this "non-governmental" affected arrest argument begins to corrode when applied to private citizens regularly working as security guards, albeit for private employers, but *quasi public* by their very nature.

Private Security Guards

In addition to the five jurisdictions above cited, (notes 27-33), in at least nine more jurisdictions courts have held *Miranda* inapplicable to private persons, even when the private persons to whom the admissions were made were private security guards regularly employed for that distinct function and purpose.[34]

U. S. v. Antonelli involved a case where the defendant made an inculpatory statement to a guard employed by a private detective agency to guard a pier. The statement made to the suspecting guard,

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[29] Hubbard v. Maryland, 2 Md. App. 364, 234 A.2d 775 (1967), *cert. denied*, 393 U. S. 889 (1968).

[30] *Id.* at 364, 234 A.2d at 779.

[31] People v. Vleck, 114 Ill. App. 2d, 74, 252, N. E. 2d 377, 380 (1969).

[32] People v. Shipp, 96 Ill. App. 2d 364, 239 N. E. 2d 296 (1968).

[33] State v. Kemp, 251 La. 592, 205 S. 2d. 411 (1967).

[34] 2nd Cir.—U. S. v. Antonelli, 434 F. 2d 335, 337 (2nd Cir. 1970).
9th Cir.—U. S. v. Birnstihl, 441 F. 2d 368, 370 (9th Cir. 1970).
Ariz.—State v. Hess, 9 Ariz. App. 29, 449 P. 2d 20, 46 (1969).
Cal.—People v. Wright, 249 Cal. App. 2d 692, 57 Cal. Rptr. 781 (1967).
Mich.—People v. Morgan, 24 Mich. App. 660, 180 N. W. 2d 842 (1970).
N. M.—State v. Archuleta, 482 P. 2d 242 (N. M. Ct. App. 1970).
N. Y.—People v. Frank, 52 Misc. 2d 266, 275 N. Y. S. 2d 570 (1966); People v. Williams, 53 Misc. 2d 1086, 281 N. Y. S. 2d 251 (City Ct. Syracuse 1967).
Nev.—Schaumberg v. State, 83 Nev. 372, 432 P. 2d 500 (1967).
Ohio—State v. Bolan, 27 Ohio St. 2d 15 (1971).

who had the defendant open his trunk and found stolen goods, was admitted over timely objection. The court there held that *Miranda* applied only to police or "other law enforcement officers" and not to any other than governmental agencies.[35]

In another instance, two investigators, specially hired for the purpose, administered a polygraph test to a store employee. After noting irregularities in the test results, one of the investigators interrogated the woman employee for 3 hours without extending any *Miranda* type warnings to her. The court interpreted *Miranda* as restricted solely to a "police" interrogation and denied defendant's pleas.[36]

Other jurisdictions have seized upon this private aspect, reasoning that a private investigator is not an officer of the law,[37] and also refused to accept the suggestion by one defendant that since the confession obtained by the private investigator led to his eventual conviction, that the investigator was acting as "agent" of the prosecutor.[38]

In *People v. Wright,* a security guard employed by a county general hospital, which was both owned and operated by a governmental agency, was held not to be such a person as is subject to the requirements of *Miranda*.[39] The court said it was no matter that an employee's duties may be restricted to protection of property, nor that he may be employed by the state. "What does matter", said the court, "is whether he is employed by an agency of government . . . whose primary mission is to enforce the law."[40]

It is difficult to fathom the courts' infatuation with the literal terms used in *Miranda*. Clearly, all the cases consolidated for trial in *Miranda* dealt exclusively with the police of some governmental unit. This is reason enough for the court's usage of the term "authorities"[41] since the operative facts of *Miranda* required no broader terminology under the circumstances. This is certainly not to say that the spirit of *Miranda* does not extend its literal terms further where circumstances warrant it.

A person's rights are no less abused, a person no less injured and victimized, when he is convicted of an offense by use of evidence that is obtained by a private person, which if obtained in the same way by a police officer would be inadmissible. The fact remains that where a person is convicted of a crime, on the basis of evidence obtained after arrest, without first being warned of the rights he holds as a "person"[42] much less a citizen to remain silent after his arrest, that conviction is repugnant to the manifest purpose of the Bill of Rights.

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[35] U. S. v. Antonelli, 434 F. 2d 335, 337 (2nd Cir. 1970).
[36] State v. Hess, 9 Ariz. App. 29, 449 P. 2d 46, 49 (1969).
[37] People v. Morgan, 24 Mich. App. 660, 180 N. W. 2d 842, 843 (1970).
[38] State v. Archuleta, 482 P. 2d 242, 248 (N. M. Ct. App. 1970).
[39] People v. Wright, 249 Cal. App. 2d 692, 57 Cal. Rptr. 781 (1967).
[40] *Id.* at 692, 57 Cal. Rptr. at 792.
[41] Miranda v. Arizona, 384 U. S. 436, 472 (1966).
[42] U. S. Const. amend. XIV, § 1 applies to "any person" as distinguished from any citizen.

Where the arrest is made by a private citizen the abuse is not so evident. Where, however, the arrest is consummated by a private citizen regularly engaged in private law enforcement the situation takes on new flavor.

The Private Patrolman—
A Case for Application of Miranda
State Authority

At least thirty United States jurisdictions have special statutory provisions empowering a private citizen to make a lawful arrest. There are six distinct types of statutes, each prescribing varying degrees of latitude or situations in which a private person may arrest another.

In eighteen jurisdictions, the statutory provision is substantially as follows:[43]

A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony although not in his presence.
3. Where a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

In Arizona, North Carolina and Texas, a private person may arrest for a misdemeanor only if it constitutes a breach of the peace or for a felony actually committed upon probable cause that the person arrested has committed the offense.[44] There are, in addition, four

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[43] Alaska—Alaska Stat. § 12.25.030 (1962).
Ala.—Code of Ala. tit. 15, § 158 (1958).
Cal.—Cal. Penal Code Ann. tit. 3 § 837 (West 1970).
Ga.—Ga. Code Ann. § 27-211 (1935).
Hawaii—Hawaii Rev. Stat. tit. 37 § 708-3,-4 (1968).
Idaho—Idaho Code Ann. § 19-604 (1948).
Iowa—Iowa Code Ann. § 755.5 (1969).
Mich.—Mich. Comp. Laws Ann. § 764.16 (1967).
Minn.—Minn. Stat. Ann. § 629.37 (1969).
Miss.—Miss. Code Ann. § 2470 (1942).
Mont.—Rev. Code of Mont. Ann. tit. 95 ch. 6 § 11 (1947).
Nev.—Nev. Rev. Stat. ch. 171 § 126 (1968).
N. Y.—N. Y. Code of Crim. Proc. § 183 (West 1970).
N. D.—N. D. Cent. Code ch. 29-06 § 20 (1970).
Okla.—Okla. Stat. Ann. tit. 22 § 202 (1969).
S. D.—S. D. Compiled Laws Ann. ch. 23-22 § 14 (1967).
Tenn.—Tenn. Code Ann. § 40-816 (1955).
Utah—Utah Code Ann. § 77-13-4 (1953).

[44] Ariz.—Ariz. Rev. Stat. Ann. § 1304 (1956).
N. C.—N. C. Gen. Stat. ch. 15 § 39-40 (1965).
Tex.—Code of Crim. Pr. of Tex. Stat. Ann. art. 1401 (1966).

more types of state statutes empowering private persons to make arrests under more narrow circumstances.[45]

The power of a private person to arrest at common law extended to the felony and breach of peace categories, but, "unless modified by statute, it would seem, where the arrest is for a misdemeanor, that the offense must amount to a breach of the peace to justify a person in arresting without a warrant."[46] It therefore appears that at least twenty-three American jurisdictions have abrogated the common law by extending the private persons' power to arrest to petit larceny and other misdemeanors against property.

Many states have, in effect, extended the *long arm of the law* into the discount store, department store, warehouse and even to the city streets[47] by the only means economically and practically feasible — the private cop. In addition to the above statutes at least a dozen states have statutes relieving the mercantile establishment from the worry of liability for incidents growing out of the law enforcement function of their private security guards.[48]

In *State v. Bolan*, the court said that the purport of *Miranda* "does not include private citizens not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement."[49] The requirements of due process are mandates upon state

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[45] (1) *In cases of felony only:*
Ark.—Ark. Stat. Ann. ch. 4 § 43-402,-404 (1964).
Ky.—Ky. Rev. Stat. Ann. § 431.005 (1970).
La.—La. Code Crim. Pro. tit. 5, art. 214 (1966).
S. C.—Code S. C. § 17-251-52 (1962).
(2) *For criminal offense committed in presence only:*
Colo.—Colo. Rev. Stat. ch. 39 art. 2-20 (1963).
Ind.—Ind. Ann. Stat. § 9-1024 (1956).
(3) *For any offense other than an ordinance violation:*
Ill.—Ill. Ann. Stat. ch. 38 § 107-3 (Smith-Hurd 1966).
(4) *For petit larceny or felony:*
Neb.—Rev. Stat. of Neb. ch. 29 art. 4 § 29.402 (1968).
Wyo.—Wyo. Stat. Ann. ch. 8 § 7-156 (1967).

[46] 6 C. J. S. *Arrest* § 8, p. 605-7; *see also* PERKINS, CRIMINAL LAW 870, 874 (1957).

[47] N. Y. Times, July 8, 1971, at 33, col. 1.

[48] Kan.—Kan. Stat. Ann. § 21-535 (B) (1969).
La.—La. Code Crim. Pro. art. 5, § 215 (1966).
Md.—Md. Ann. Code art 27, § 551 (A) (C) (1957).
Mass.—Ann. Laws of Mass. ch. 231 § 94B (1971).
Mich.—Mich. Comp. Laws Ann. § 600.2917 (1967).
Minn.—Minn. Stat. Ann. § 622.27 (West 1969).
Neb.—Neb. Rev. Stat. § 29.402.03 (1968).
N. D.—N. D. Cent. Code ch. 29-06 § 27 (1970).
Ohio—Ohio Rev. Code Ann. § 2935.041 (Anderson 1970).
Va.—Code of Va. § 18.1-27 (1960)
W. Va.—W. Va. Code Ann. art. 61 § 3A-4 (1966).
Wyo.—Wyo. Stat. Ann. ch. 7 § 6-146.2 (1967).

[49] 27 Ohio St. 2d 15, 18 (1971). Private security guards detained a juvenile for shoplifting a pair of gloves from the department store and testimony of the guards as to his admissions to them during the interrogations were admitted and such admissions affirmed by the Supreme Court of Ohio.

action, not merely state action through its police force. When the state invites, no less seduces, the use of private police to enforce its criminal laws, such enforcement is surely state related and may be tainted by the private policeman much the same way the government payrolled policeman might so taint it. It should make no difference that the police may not have invited the action since the state has taken that step directly.

A California court has held that their state statute[50] does not turn a citizen into a law enforcement officer and refused to apply *Miranda* to an arrest made by a private person.[51] There is no benefit of *ratio decidendi* reported in that opinion.

The spirit of *Miranda* would seem to be that when an arrest and interrogation is consummated by a "private policeman", with the same onerous character possessed by official lawmen, the wall between government and private action begins to crumble. The private lawman whose efforts accrue to the state, and who is empowered by special statute to make arrests, is, although employed by the private sector, performing an integral public law enforcement function. This function should take on the responsibilities of all other public action and must not take precedence over fundamental rights.

State Action

The spirit of *Miranda v. Arizona* is the prevention of the injustice of self incriminated convictions. The warnings are given to reduce "the inherently compulsive aspects . . . found to exist in the process of custodial interrogations."[52]

This same "potentiality for compulsion found in custodial interrogations initiated by police officers . . . ," cannot be denied to exist likewise, in an interrogation by private security police. The empty sinking feeling that must accompany a 13-year-old boy (as in *State v. Bolan*[54]) into a department store's security office, flanked by an armed and uniformed guard, equals (if not surpasses) the very compulsion at the heart of *Miranda*. When a court of law, any court of law, degrades its chambers by allowing a confession obtained in this manner to find its way into evidence, it condones, ratifies and approves the very act itself. Without judicial fiat, interrogations made in derogation of an accused's right to remain silent, would be useless. To admit a confession into evidence under these conditions, without Miranda warnings having been given first, is to breathe *life and purpose into such practices* by using their fruits as a means toward conviction.[54a]

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[50] Cal. Penal Code Ann. tit. 3 § 837 (West 1970).

[51] People v. Cheatham, 263 Cal. App. 2d 458, 69 Cal. Rptr. 679, 682 (1968).

[52] U. S. v. Viviano, 437 F. 2d 295, 300 (2nd Cir. 1971).

[53] Schaumberg v. State, 83 Nev. 372, 432 P. 2d 500, 501 (1967).

[54] State v. Bolan, 27 Ohio St. 2d 15 (1971).

[54a] Shelley v. Kraemer, 334 U. S. 1 (1948) the genesis of the state action doctrine establishing that the Fourteenth Amendment refers to exertions of state power in all forms.

Mr. Justice Brandeis, in his brilliant *dissenting* opinion in *Olmstead v. U. S.*[55] stated that:

> Decency, security, and liberty alike demand that government officials shall be subject to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for the law; *it invites every man to become a law unto himself; it invites anarchy* . . .[56] [Emphasis supplied].

The *Miranda* court noted also that the framers of the Constitution were aware of the subtle encroachments on individual liberty and knew that "illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure."[57]

Judge Joseph F. Falco, sitting on the City Court of Syracuse in *People v. Williams,*[58] ruled *Miranda* inapplicable to other than police custodial interrogations. Judge Falco said, however, that:

> This court is bound by the decisions laid down by the higher courts but entertains some doubt as to what the result might be in a proper case of this kind in light of the recent decisions of this area by the Supreme Court of the United States.[59]

Conclusion

When a private policeman makes an arrest, he is making that arrest for the violation of a state statute or municipal ordinance and delivering up the accused to government law enforcement officials, knowing the whole while that this is his major purpose and function. He is in effect the "alter ego" of the city police department. He is a "de facto" member of the public police force and cannot be permitted to trespass upon people's inherent rights because a Department Store and not the local government pays his salary. The courts should not ratify unlawful conduct to the detriment of any accused. Our courts must not grant free rein to private security forces no matter how neatly uniformed and well organized. The vigilante is an anachronism, or should be. While private police protect valuable private property, the courts should not allow them to do so at the expense of private rights.

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[55] 277 U. S. 438, 485 (1928) which was cited approvingly in Miranda v. Arizona, 384 U. S. 436, 479-80 (1966).

[56] Olmstead was later overruled by Katz v. U. S., 389 U. S. 347 (1967).

[57] 384 U. S. 436, 459 (1966) citing Boyd v. U. S., 116 U. S. 616, 635 (1886).

[58] People v. Williams, 53 Misc. 2d 1086, 281 N. Y. S. 2d 251 (City Ct. Syracuse 1967).

[59] *Id,* at 1086, 281 N. Y. S. 2d at 255.

As Chief Justice Warren noted in *Miranda*, and as the court's rulings on this issue to date have failed to emphasize—

> . . . our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formula. Rights declared in words might be lost in reality.[60]

[60] 384 U. S. 436, 443 (1966).