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***Duckworth v. Eagan*: A Little-Noticed *Miranda* Case That May Cause Much Mischief**

By Yale Kamisar*

Professor Yale Kamisar, the country's foremost scholar of Miranda and police interrogation, presents an analysis and critique of the Supreme Court's latest interpretation of Miranda. In Duckworth, a 5-4 Court upheld the "if and when" language systematically used by the Hammond, Indiana, Police Department: "We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court."

The real issue was whether the police effectively conveyed the substance of a vital part of Miranda: the right to have a lawyer appointed prior to any questioning. Professor Kamisar argues that the language upheld is unnecessarily confusing and misleading and that the best explanation for the Hammond police's continued use of this language is that it lessens the likelihood of an assertion of rights.

Duckworth v. Eagan,¹ the only significant *Miranda* decision the United States Supreme Court handed down during its 1988-1989 term, has gone largely unnoticed. It is not hard to understand why.

The opinion was announced the same day the Court decided two death penalty cases the press considered much more newsworthy.² Moreover, *Duckworth* was decided only five days after the Court overturned Gregory Johnson's flag-burning conviction³—and at a time when most of the country was still in white heat over that event. Finally, Chief Justice Rehnquist, who wrote the opinion of the Court in *Duckworth*, gave the im-

* Henry K. Ransom Professor of Law at the University of Michigan Law School; author, *Police Interrogation and Confessions: Essays in Law and Policy* (1980). An earlier and shorter version of this commentary appeared without footnotes in *Legal Times*, July 24, 1989 at p. 25.

¹ 109 S. Ct. 2875 (1989). Chief Justice Rehnquist spoke for a 5-4 majority (Marshall, joined by Brennan, Blackmun and Stevens, JJ., dissenting).

² See *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989). (Eighth Amendment does not categorically forbid execution of the mentally retarded); *Stanford v. Kentucky*, 109 S. Ct. 2969 (1989) (state may execute 16- and 17-year-old offenders).

³ *Texas v. Johnson*, 109 S. Ct. 2533 (1989).

pression that the case was relatively unimportant and the result reached quite predictable.

Most journalists completely overlooked *Duckworth*. The few who gave it some coverage treated the case much as its author seemed to regard it—both as an insignificant case reaffirming the view that “the ‘rigidity’ of *Miranda* warnings [does not] extend to the precise formulation of the warnings given a criminal defendant,”⁴ and as a case upholding the warnings, although they were not “in the exact form” described in the *Miranda* opinion, because “in their totality” they satisfied *Miranda*.⁵

Duckworth is, in fact, a much more significant and troublesome case than its neglect by the press suggests and a majority of the Court would have us believe. The issue presented was not whether a “talismanic incantation” of the *Miranda* warnings is required.⁶ Of course it is not.⁷ Rather, it was whether the *substance* of an important feature of the *Miranda* warnings—

⁴ 109 S. Ct. at 2879, (quoting *California v. Prysock*, 453 U.S. 355, 359 (1981) (per curiam), discussed in note 12 *infra*).

⁵ 109 S. Ct. 2879, 2881.

⁶ The *Duckworth* majority recalled that the Court pointed out in *California v. Prysock* (discussed in note 12 *infra*) that “no talismanic incantation [of the *Miranda* warnings is] required to satisfy its strictures.” *Id.* at 2879.

⁷ Although it is sometimes said that every schoolboy knows the *Miranda* warnings by now, it is perhaps more accurate to say that, although many schoolboys are familiar with the first part of the *Miranda* warnings (just as they are familiar with the first stanza of the “Star Spangled Banner”), a good number of schoolboys and adults do not have a firm grasp of all four elements or subwarnings. They are:

1. You have the right to remain silent;
2. Anything you say can and will be used [or simply “can be used” or “may be used”] against you;
3. You have the right to talk to a lawyer and to have him present with you while you are being questioned [or “you have the right to talk to a lawyer before you are questioned” or “you have a right to talk to a lawyer before we ask you any questions, and to have him with you during the questioning”]; and
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you so desire [or “if you cannot afford a lawyer, one will be provided for you prior to any interrogation” or “if you cannot afford a lawyer, and you want one, we will see that you have one provided to you free of charge [without charge] before we ask you any questions”].

As the bracketed variations indicate, the warnings need not be given in the exact form described in the *Miranda* opinion. Indeed, the warnings are not described exactly the same way throughout the opinion. But while there is *some* room for variation in the warnings, as long as the *substance* of each warning is given effectively, the range of variation permitted is (or at least used to be) rather narrow.

the right to have a lawyer appointed prior to any questioning—was ever effectively conveyed to the defendant. A reading of the majority opinion leaves one with the conviction that the Court dealt *Miranda* a heavy blow.

Did the Warnings Satisfy *Miranda*?

When respondent Eagan agreed to go to Hammond, Indiana, police headquarters for questioning about his possible involvement in a murder, a station-house officer read a waiver form that departed from the standard *Miranda* warnings. The form provided, *inter alia*:

You have a right to talk to a lawyer for advice before we ask you any questions, and have him with you during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.* If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you've talked to a lawyer.⁸

In 1972, the Court of Appeals for the Seventh Circuit had disapproved a virtually identical *Miranda* warning, finding it "misleading," "confusing," and "contradictory."⁹ When, in 1987, the *Duckworth* case came before it on federal habeas corpus, the court of appeals saw no reason to stray from its earlier analysis: "The 'internal inconsistencies' inherent in this type of warning are no less ambiguous and misleading than they were fifteen years ago."¹⁰

When the *Duckworth* case reached the Supreme Court, however, a 5–4 majority, per Chief Justice Rehnquist, gave the challenged warning a more sympathetic reading. After dissecting the language quoted above, the majority concluded that the warnings "touched all of the bases required by *Miranda*."¹¹

On the contrary, the warnings missed one base—and by a substantial margin.¹² According to *Miranda*, "if police propose

⁸ *Id.* at 2877 (emphasis added by the Supreme Court).

⁹ *United States ex rel. Williams v. Twomey*, 467 F.2d 1248, 1250.

¹⁰ *Duckworth v. Eagan*, 843 F.2d 1554, 1557 (1987).

¹¹ 109 S. Ct. at 2880.

¹² Although the *Duckworth* majority would have one believe that the result in that

to interrogate a person they must make known to him that he is entitled to a lawyer and that *if he cannot afford one, a lawyer will be provided for him prior to any interrogation.*"¹³ But the police told Eagan, in effect, that if he could not afford a lawyer, one would *not* be—indeed, *could not* be—provided for him prior to or during any questioning.

To be sure, Eagan was told at the very outset that he had a right to talk to a lawyer before the police asked him any questions. But taking into account what he was told in the next breath, Eagan might plausibly have concluded that, since indigent persons like him had *no way* of getting a lawyer at this stage, there was no point in asking for one. (Wasn't that what the police wanted him to think?)

Eagan was also told, at the end of the reading of the waiver form, that he had "the right to stop answering questions at any time" until he talked to a lawyer. But that piece of advice was

case follows easily from the decision in *Prysock*, the warnings upheld in that earlier case presented a much closer question. Respondent *Prysock* was informed that he had "the right to talk to a lawyer before you are questioned, have him present with you while you are being questioned, and all during the questioning." He was then told: "[You] have the right to have a lawyer appointed to represent you at no cost to yourself."

It may not have been as clear to *Prysock* as it should have been that he had a right to appointed counsel before and during questioning. Arguably, however, he could have reasonably concluded that the very explicit and emphatic general advice about his right to a lawyer "before" and "while" and "all during the questioning" applied and was meant to apply to his right to have a lawyer appointed to represent him if he could not afford one.

In *Duckworth*, however, the suspect was not left to wonder whether the general advice about the presence of counsel applied to his right to appointed counsel. There was no ambiguity about when a lawyer would first be available for him. He was told explicitly and emphatically that a lawyer would *not* be available in the station house, that one would *not* be appointed for him until he went to court, and that there was "*no way*" he could get a lawyer until then. See text at note 8 *supra*.

Moreover, the police in the *Prysock* case arguably got into difficulty because, in addition to informing the suspect of his standard *Miranda* rights, they were trying to inform him, a minor, of his *special rights*, i.e., the right to have his parents present during the questioning (which they were). The logical time to advise a suspect of his right to be provided a lawyer free of charge before he is questioned is right after he has been given his general advice about counsel. But this is also a natural or logical time to tell a minor that he has the right to have *his parents*, as well as a lawyer, present. This is what occurred in *Prysock*. At the very point one would have expected the police to inform defendant of his right to *appointed* counsel prior to and during questioning, they informed him, instead, of his special right as a minor to have his parents present before and during any questioning. Thus, it may be said, the police broke the normal flow of the *Miranda* warnings for good cause.

¹³ *Miranda v. Arizona*, 384 U.S. 436, 474 (1966) (emphasis added). To the same effect, see *id.* at 473, 479.

colored by the information preceding it that implied there was *no way* Eagan would be able to talk to a lawyer during his stay in the police station; he would not get the opportunity to talk to a lawyer until he went to court.

Under the circumstances, Eagan might easily have concluded that he would look silly asking the police to stop questioning him until he talked to a lawyer. The police would have wondered whether he had been listening to them. What was the point of asking the police for a lawyer now, when the police had just finished telling him there was no way he could get one at this time? After all, as the *Duckworth* dissenters pointed out, Eagan was never told, nor given any reason to believe, that if he wanted a lawyer appointed for him the questioning would be *delayed* until one was made available.¹⁴

Of course, if Eagan were a smart, sophisticated fellow, he might have dissected the Hammond police warning the way Chief Justice Rehnquist did and figured out that he could stop the questioning—indeed, prevent it from ever getting underway—simply by *asking* for a lawyer, even though there was no way he could actually get one at the time. But the *Miranda* warnings weren't designed for smart, sophisticated people. (Such people probably don't need the *Miranda* warnings.) The warnings—at least the ones described in the *Miranda* opinion—were constructed for not-so-smart, not very sophisticated people. Such people need to be, and are supposed to be, “clearly inform[ed]” of their right to appointed counsel.¹⁵ “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.”¹⁶ Eagan was given no such explanation.

The *Miranda* warnings are designed to “dispel the compulsion inherent in custodial surroundings.”¹⁷ How is that goal advanced by informing a suspect that “we have no way of giving you a lawyer” before (or during) custodial interrogation? The *Miranda* warnings are supposed to assure an indigent that he, no less than a wealthy person, “has a right to have counsel

¹⁴ See 109 S. Ct. at 2887 (Marshall, J., dissenting).

¹⁵ 384 U.S. at 471.

¹⁶ *Id.* at 458 (emphasis added).

¹⁷ *Id.* at 458. To the same effect, see *id.* at 465, 468.

present.”¹⁸ How is an indigent given that assurance by being told that if he cannot afford a lawyer there is no way to implement his right to have counsel present?

“Anticipating” a Suspect’s Questions

Chief Justice Rehnquist would say that this analysis is unfair to the police. He saw nothing sinister about the “if and when you go to court” sentence. That information, he said, “simply anticipates” a question a suspect might ask: *When* will I actually get a lawyer? After all, the information the police supplied “accurately described the procedure for the appointment of counsel in Indiana.”¹⁹

The difficulty with this sanguine view of the matter is that there are *a great many* questions a suspect *might* ask the police: Do you have any witnesses to the crime? Did my friend confess? Will I get a heavier sentence if I’m convicted later because I refused to “cooperate” with you?

If it is the truth, may the police inform a suspect *while* they are giving him the *Miranda* warnings that two eyewitnesses have identified him as the bank robber? If it is the truth, may they tell a suspect between the second and third warning that his accomplice has “cracked” and implicated him? If it is an “accurate description” of the practice in that jurisdiction—and it may well be—may the police tell a suspect between the first and second warning that if he refuses to talk to them and is subsequently convicted he will get a heavier sentence? In each case, couldn’t the police say that the additional information they provided “simply anticipated” a question the suspect *might have asked*?

One sympathizes with a police officer who has to make a split-second decision: Am I justified in shooting at (or what appears to be) that fleeing robber in order to prevent his escape?²⁰ Do I have sufficient grounds to arrest (or even to “stop”)

¹⁸ “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. . . . [O]nly by effective and express explanation to the indigent of this right can there be any assurance that he was truly in a position to exercise it.” *Id.* at 473.

¹⁹ 109 S. Ct. at 2880.

²⁰ See, e.g., *Graham v. Connor*, 109 S. Ct. 1865, 1872 (1989) (claims under 42 U.S.C. § 1983 that police officer used excessive force should be analyzed under

that suspicious fellow lurking in an alley a block away from where a woman is screaming?

But it is hard to have any sympathy for a police officer who tries to play fast and loose with the *Miranda* warnings, or a police department, such as Hammond's, that continues to use variations on the *Miranda* warnings a decade after these very formulations have been discredited by the federal court of appeals for the circuit.

An officer does not have to give the *Miranda* warnings until the situation is under control and the suspect is in custody. Nor does he ever have to give them unless he plans to interrogate the suspect. If an officer does not carry a *Miranda* card or know the *Miranda* warnings after all these years, what *does* he know? And if an officer is willing to give the warnings, a relatively simple procedure, the way they were described in *Miranda*, what other less rigid rules is he prepared to fudge?

Are *Miranda* Warnings Ever "Inaccessible"?

Chief Justice Rehnquist does not think it's nearly that simple. An officer "in the field," he notes, "may not always have access to printed warnings" or may "inadvertently depart from routine practice, particularly if a suspect requests an elaboration of the warnings."²¹

What bearing do these observations have on a case such as *Duckworth* where the officer was not "in the field," but at police headquarters? What relevance do these observations have when, as in *Duckworth*, the suspect did not ask for any elaboration of the warnings and *an entire police department* (which composed and continued to use the challenged warnings), not an individual officer, departed from the standard warnings?

Moreover, and more fundamentally, what does it mean to say that the printed *Miranda* warnings may be "inaccessible"? One can understand how a magistrate may be inaccessible—but the *Miranda* warnings? How much effort does it take to

Fourth Amendment's "objective reasonableness" standard rather than under the more generalized standard of substantive due process): "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

²¹ *Id.* at 2879–2880.

memorize the warnings or, if one's memory is weak, to carry a *Miranda* card? What does a *Miranda* card weigh? How much room does it take? The Chief Justice writes as if each of the four warnings is inscribed on a separate heavy stone tablet and a given police department only has one set.

A Fragile System

A quarter of a century ago, on the eve of *Miranda*, Professor Edward Barrett asked: "Is it the duty of the police to persuade the suspect to talk or to persuade him not to talk? They cannot be expected to do both."²²

Is there any doubt about what police officers think their superiors expect them to do? Who has ever heard of a police commissioner congratulating the officer in charge of a murder case for giving the *Miranda* warnings so carefully and so emphatically that the suspect asserted his rights and never said a word about the case?

That is why a system, such as the one we have, that allows the police to obtain waivers of a person's constitutional rights without the presence of any disinterested observer, or any other objective record of the proceedings, is an inherently fragile one. Despite its shortcomings, such a system may work tolerably well—but only if the police adhere strictly to the standard *Miranda* warnings.

If police departments or individual officers are allowed to "improvise," if they are permitted to "anticipate questions" a suspect might ask, the system will collapse. For the police will only "improvise" in one direction. And they will only anticipate questions the answers to which further *their* interests, *not* the suspect's.

This must be said not because the police are more dishonest than the rest of us. Rather, they are no less human than the rest of us—no less inclined to further their own interests if given the leeway to do so.

Should the Police Have Anticipated Other Questions?

One need go no further than the *Duckworth* case to illustrate the point. The police anticipated a question the answer to which

²² Brief of Edward L. Barrett, Jr., as amicus curiae, at 9, *People v. Dorado*. 62 Cal. 2d 338, 398 P.2d 361, 42 Cal. Rptr. 169 (1965) (on rehearing).

could only have made it *less likely* that Eagan would assert his right to appointed counsel. But the police could have reasonably anticipated *another* question: "If, as you just told me, you cannot give me a lawyer now, what happens if I ask for one now?"

The truthful answer to that question would have been: "If you ask for a lawyer now, then we would be very restricted as to how we could proceed. We could have to cease questioning on the spot. And we could not resume questioning at a later time, even if we gave you a fresh set of *Miranda* warnings. We could not talk to you any more about this case unless and until you changed your mind about wanting a lawyer and you yourself initiated further communication with us."²³

Why didn't the Hammond police anticipate that other question? Because the answer to it would have made it *more likely* that Eagan would have asserted his right to appointed counsel.²⁴

Other examples come readily to mind. A suspect may wonder whether, if he neither writes nor signs anything, his conversation or small talk with the police can be used against him. He may very well think that it cannot be. Will his interrogators anticipate his confusion and uncertainty in this regard and clarify the matter? Will they inform him, as the Uniform Rules of Criminal Procedure recommend, that anything the suspect tells them "*orally or in writing, will be used against him*"?²⁵ Why would they? That would only "help" the suspect.

A person taken into police custody may wonder whether his *silence* can be used against him. He may be asking himself most urgently: "How can I avoid looking guilty unless I agree to talk

²³ See generally *Edwards v. Arizona*, 451 U.S. 477 (1981).

²⁴ As between the two questions that might have been anticipated, the one about what consequences flow from the assertion of the right to counsel is more important. Under the *Miranda* system, *when* a suspect gets a lawyer doesn't matter nearly as much as *whether he asks for one*. Once he does, additional safeguards are triggered—regardless of how long it takes for a lawyer to actually become available. See *Edwards v. Arizona*, 451 U.S. 477 (1981).

The police know or ought to know that asking for a lawyer significantly reduces their maneuverability. Once a request for counsel is made the police must not only back off immediately, but they cannot try again at a later interrogation session—unless the suspect initiates further communication with them. The last thing the police want a suspect to do, therefore, is to ask for a lawyer. It follows that the police are not eager to explain a suspect's right to appointed counsel unequivocally, plainly, and emphatically. If the courts do not require them to do so, why bother?

²⁵ *Unif. R. Crim. P.* 212 (b) (emphasis added).

to the police?"²⁶ Will his interrogators anticipate that question and inform him that if he goes to trial the prosecution will not be able to comment on the fact that he asserted his rights and remained silent when given the *Miranda* warnings?²⁷ Why would they? That, too, would only help the suspect.

A suspect may be wondering whether his spouse or parents retained a lawyer on his behalf and whether that lawyer is trying to see him. The police need not give a suspect that information if he does not ask for it,²⁸ but they *could* anticipate such questions—especially if they know a lawyer *is* trying to see the suspect. Will they do so? Why? Providing such information would *encourage* a suspect to assert his right to counsel. What police interrogator worth his salt would do that?

Suppose, as they are about to arrest a suspect and take him to the station house, the police overhear the suspect asking a friend or relative to get him a lawyer. Suppose further that no lawyer comes to the station house or calls the police on the suspect's behalf. Can the police tell the suspect *that*? Why not? Wouldn't such information anticipate a question the suspect *might* ask and wouldn't it be an "accurate description" of what had transpired?

Are the police, and should the police be, free to anticipate questions they would like to answer and free *not* to anticipate those they would rather not answer? The *Duckworth* case need not be read that broadly, but it is certainly a giant step in that direction—a step the Court should have blocked.

²⁶ The *Miranda* opinion points out, 384 U.S. at 468, that many suspects will assume that "silence in the face of accusation is itself damning and will bode ill when presented to a jury." The opinion then informs trial judges and prosecutors that a suspect's "[standing] mute or claiming his privilege in the fact of accusation" may not be used against him at trial. *Id.* at 468 n.37. But nowhere does the *Miranda* opinion require that a law enforcement officer *advise a suspect* to this effect. See generally Elsen & Rosett, "Protections for the Suspect Under *Miranda v. Arizona*," 67 Colum. L. Rev. 645, 654-655 (1967).

²⁷ Statements obtained from a suspect in violation of *Miranda* may be used to impeach him if he takes the stand in his own defense. *Harris v. New York*, 401 U.S. 222 (1971); *Oregon v. Hass*, 420 U.S. 714 (1975). Moreover, if a suspect has *not* been advised of his rights, his post-arrest *silence* may also be used for impeachment purposes. *Fletcher v. Weir*, 455 U.S. 603 (1982) (per curiam). But if he has been given the *Miranda* warnings, a suspect's silence may be used neither in the prosecution's case-in-chief nor for impeachment purposes.

²⁸ *Moran v. Burbine*, 475 U.S. 412 (1986). However, if a suspect specifically asks the police whether a lawyer is trying to reach him and the police know that one is, this author believes the police must so inform the suspect.

Continued Use of the Challenged Warnings

How seriously should one take the State of Indiana's contention that despite the "if and when you go to court" language, the Hammond police warnings "in their totality" are "a fully effective equivalent" of the standard warnings?²⁹

If this were really so, why didn't Indiana law enforcement officials avoid litigation by discarding this type of warning and reverting to the standard form? Why didn't they accept the conclusion of the Seventh Circuit in 1972 that the "if and when you go to court" language fatally taints the warning? Why did they persist in fighting the issue all these years?

These questions were not easy for the state to answer. Indeed, at one point in the oral arguments before the Supreme Court, Indiana's lawyer conceded that the continued use of the "if and when you go to court" language "makes no sense."³⁰

One must conclude that the continued use of this offending language *does* make sense—and it *only* makes sense—if it gives the police certain advantages not provided by the standard warnings. It is *the state's argument*—its insistence that the challenged formulation is essentially no different than the warnings described in *Miranda*—that makes no sense.

The best explanation for the failure of the Hammond police to abandon their version of the warnings in favor of the more common variety is the belief, and a well-founded one, that their formulation tends to confuse unsophisticated indigent suspects and tends to induce them to forgo the right to counsel at the critical moment. The Hammond police continued to use warnings disapproved by the federal court of appeals for their circuit, and the state's attorneys continued to defend their use, because these warnings give law enforcement officials an advantage the *Miranda* Court never would have allowed—and because they hoped (perhaps expected) that a "new" Court, one not enamored of *Miranda*, would let them get away with it.

Last term their hopes were fulfilled. What now?

²⁹ Of course the *Duckworth* majority bought this argument. The phrase "a fully effective equivalent," quoted in *Duckworth*, comes from *Miranda*, 384 U.S. at 476: "The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant."

³⁰ See 45 Crim. L. Rep. 4009, 4010 (April 12, 1989).

What Message Has the Court Sent the Police?

If a police officer wanted to minimize the impact of the *Miranda* warnings, *Duckworth* would exhilarate and inspire him. He would read the case as putting each of the four warnings up for grabs.

Many new versions of the *Miranda* warnings are likely to emerge (and some once-disapproved formulations are likely to resurface). To take but one example, the standard form of the second warning is that "anything you say can and will [or may] be used against you." In the years immediately following *Miranda*, however, the Philadelphia police tried to blunt the second warning as much as possible by advising suspects that anything they said could be used "for or against" them.³¹ The state supreme court didn't let them get away with that. It invalidated the formulation because it was "likely to undercut the effect of the [*Miranda*] warning by offering an inducement to speak."³²

Now that *Duckworth* is on the books, that once-discredited version of the second warning (along with sundry variations of other warnings) is likely to appear again. Will the new Court uphold the old Philadelphia warning? It is no longer clear that it will not. After all, isn't the formulation literally true? Statements that suspects make to the police are not often used *for* them, but they *may* be—and *sometimes* they are.

As has been argued here, the Hammond police sent Eagan the wrong message (or at least an unnecessarily confused and misleading one). What is far more important, however, is that, in upholding those "pretzel-like warnings,"³³ the Supreme Court sent law enforcement officers and front-line courts the wrong message: Don't fret too much about the wording of the warnings in the *Miranda* opinion. Don't worry. Be happy. You have a good deal more room to play with the warnings than most of you ever imagined.

³¹ (Emphasis added.) See the discussion in *Commonwealth v. Singleton*, 439 Pa. 185, 266 A.2d 753 (1970).

³² 266 A.2d at 756.

³³ Dissenting Justice Marshall so described the warnings given respondent Eagan (quoting *Commonwealth v. Johnson*, 484 Pa. 349, 356, 339 A.2d 111, 115 (1979) (so characterizing a similar warning)).