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Miranda Reconsidered: Supreme Court Review of *Miranda* Rights in United States v. Patane Missouri v. Seibert, and Fellers v. United States

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name redacted
Legislative Attorney
American Law Division

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Summary

The United States Supreme Court created the now well-known *Miranda* warnings to preserve the right against self-incrimination provided by the Fifth Amendment of the Constitution and the right to counsel provided by the Sixth Amendment. These warnings provide that prior to questioning, individuals suspected of a crime must be informed of their right to remain silent, that anything they say may be used against them in court, that they have the right to an attorney, and if they cannot afford one, that a lawyer will be appointed to represent them. *Miranda v. Arizona*, 384 U.S. 425 (1966). Aside from serving to inform people of their rights, the *Miranda* decision is meant to guide the police and deter improper conduct.

This term the United States Supreme Court decided two cases that challenged *Miranda*: *United States v. Patane,* and *Missouri v. Seibert*. In *Patane,* the United States Court of Appeals for the Tenth Circuit held that a firearm should be suppressed on grounds that it was inadmissible as the 'fruit' of a statement obtained without *Miranda* warnings. *United States v. Patane,* 304 F. 3d 1013, 1014 (10th Cir. 2002). On June 28, 2004, the Supreme Court issued its opinion reversing the circuit court's decision and remanding the case. The Court held that a failure to give *Miranda* warnings does not require the exclusion of physical evidence derived from a suspect's unwarned but voluntary statements. The Court reasoned that since *Miranda* warnings were designed to protect a criminal defendant's rights under the Fifth Amendment and the Fifth Amendment forbids compelling a defendant to *testify* against himself at trial, the introduction of physical evidence obtained as a result of voluntary statements given without *Miranda* warnings does not violate the Fifth Amendment. *United States v. Patane,* 542 U.S. __, 72 U.S.L.W. 4643 (June 28, 2004) (No. 02-1183).

In *Seibert,* the Missouri Supreme Court held that *Mirandized* confessions following a prior intentional violation of *Miranda* are inadmissible in court. On June 28, 2004, the Supreme Court issued an opinion affirming the lower court's decision. In so doing the Court held that when police officers deliberately withhold *Miranda* warnings, consequent statements are inadmissible even if *Miranda* warnings are later administered, because the statements cannot be considered voluntary. *Missouri v. Seibert,* 542 U.S. __, 72 U.S.L.W. 4634 (June 28, 2004)(No. 02-1371). However, the Court left the door open for the possible admission of these statements when the withholding of the *Miranda* warnings is unintentional.

A third case, *United States v. Fellers*, originally raised a *Miranda* issue, but it was disposed by the Court on Sixth Amendment right to counsel grounds.

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Background

Custodial interrogations are inherently intimidating and their tactics are geared towards undermining the right against self-incrimination.[1] The Supreme Court, recognizing this, set some concrete constitutional guidelines for law enforcement agencies to follow when conducting custodial interrogations in *Miranda v. Arizona*, 384 U.S. 436, 445 (1966). These guidelines are commonly known as *Miranda* rights.

Miranda rights grow out of the Fifth Amendment right to remain silent,[2] and the Sixth Amendment right to an attorney.[3] *Miranda* requires the police to advise suspects that they have a right to remain silent; that anything the suspects say can be used against them in a court of law; that they have a right to the presence of an attorney; and that, if they cannot afford an attorney, one will be appointed for them prior to any questioning if they so desire. The purpose of this rule is to make sure that, if accused persons answer questions in an interrogation, this waiver of their right to remain silent or to have an attorney present is one that is made freely, with

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[1] *Miranda*, 384 U.S. 436, 445 (1966).

[2] The Fifth Amendment affords individuals the right against self-incrimination. It states that "no person . . . [s]hall be compelled in any criminal case to be a witness against himself."

[3]The Sixth Amendment guarantees the right to legal counsel during all stages of the criminal process. The Sixth Amendment also affords a criminal defendant the right to be informed of the nature of the charges against him or her and the facts underlying those charges; the right to compel witnesses to appear and testify; the right to confront witnesses; and the right to a speedy and public trial by an unbiased jury. U.S. CONST. amend. VI.

knowledge of the existence of the right.[4] This report discusses the Supreme Court decisions addressing the latest *Miranda* challenges: *United States v. Patane* and *Missouri v. Seibert*. The report also addresses *United States v. Fellers*, which originally raised a *Miranda* issue, but was decided on other grounds.

United States v. Patane

Background. Patane was arrested for violating a domestic violence restraining order. The arresting officer, who had been informed that Patane was a convicted felon and possessed a pistol, began reading him his *Miranda* rights but stopped when he was told by Patane that he knew what his rights were.[5] The arresting officer then proceeded to question Patane about his possession of a firearm. Patane told the officer the location of the gun and was charged with being a felon in possession of a firearm.[6] Patane filed a successful motion to suppress the firearm in district court.[7] On appeal, the Court of Appeals for the Tenth Circuit held that the firearm should be suppressed on grounds that it was inadmissible as the 'fruit' of a statement obtained without proper *Miranda* warnings.[8]

The Tenth Circuit relied on *Dickerson v. United States*,[9] a Supreme Court case declaring that *Miranda* articulated a constitutional rule that Congress may not supersede legislatively. Moreover, since the Supreme Court had already decided in *Wong Sun* v. *United States*,[10] that fruits of unconstitutional conduct require suppression, the gun in *Patane*, the Tenth Circuit reasoned, must be suppressed.

In holding that the gun had to be suppressed, the Tenth Circuit distinguished the instant case from *Michigan v. Tucker*,[11] and *Elstad*,[12] where the Supreme Court had declined to apply the *Wong Sun* "fruits of the poisonous tree doctrine"[13] to suppress evidence obtained from *Miranda* violations, but had not referred to *Miranda*

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[4] *Id*. at 445.

[5] *United States v. Patane*,124 S.Ct. 2620, 2625 (2004).

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] 530 U.S. 428 (2000).

[10] 371 U.S. 471 (1963). In *Wong Sun* the Court found that the Fourth Amendment exclusionary rule barred evidence obtained as a direct or indirect result of an unlawful search from being admitted at trial. The Court noted that the exclusionary rule applies to physical as well as verbal evidence.

[11] 417 U.S. 433 (1974).

[12] 470 U.S. 298 (1985).

[13] "Fruit of the poisonous tree" is the doctrine that evidence discovered due to information found through illegal search or other unconstitutional means, such as a forced confession, may not be introduced by a prosecutor. The theory is that the 'tree', or the initial illegal evidence, is poisoned and thus taints what grows from it.

as a constitutional right.[14] The court reasoned that *Tucker* and *Elstad* were based on the view that *Miranda* announced a prophylactic rule, a position that is incompatible with *Dickerson*'s announcement of a constitutional rule.[15] The court found that the failure to give *Miranda* warnings equated to a violation of the Constitution and the "fruit of the poisonous tree" doctrine applied.[16] The government petitioned the United States Supreme Court and the Court granted certiorari.[17] On June 28, 2004, the Court reversed the circuit court's decision and remanded the case.[18]

Holding. The issue in *Patane* was whether the weapon that the police were able to locate as a result of Patane's non-*Mirandized* statements was admissible in court. Justice Thomas announced the judgment of the Court and delivered an opinion for the Court in which Chief Justice Rehnquist and Justice Scalia joined. Justice Kennedy, joined by Justice O'Connor, filed an opinion concurring in judgement. Justice Souter, joined by Justices Stevens and Ginsberg, and Justice Breyer dissented.

In the plurality opinion, Justice Thomas noted that the purpose of the Fifth Amendment, Self-Incrimination Clause, is to protect an individual from being compelled to *testify* against himself and that the *Miranda* warnings are designed to protect this right. Therefore, a failure to give *Miranda* warnings should only require the exclusion of resulting statements and not any physical evidence that may have been obtained as a result of the statements.[19]

Justice Thomas reasoned that the *Miranda* rule "is a prophylactic employed to protect against violations of the Self-Incrimination Clause." However, the Self-Incrimination Clause is not violated by the admission into evidence of physical evidence obtained as a result of a voluntary statement.[20] Furthermore, the *Miranda* rule, along with a number of other prophylactic rules designed to protect the core privilege against self-incrimination,[21] sweeps beyond the actual protections of the

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[14]*United States v. Patane*, 304 F.3d 1013, 1020-1022 (10th Cir. 2002).

[15]*Patane*, 124 S.Ct. at 2625-26.

[16]*Id*. The court also distinguished *Elstad* in that it involved statements made prior to *Miranda* warnings that were repeated after the reading of the warnings. The court reasoned that *Elstad* did not exclude the post-*Miranda* statement in *Patane* because it was willingly offered by the defendant who already knew his rights and made the statements out of his own volition. The Supreme Court did not find that distinction relevant. *Id*. at n.2.

[17]*Patane*, 123 S.Ct. 1788.

[18]*United States v. Patane*, 542 U.S. __ , 124 S.Ct. 2620 (2004).

[19]*Patane*, 124 S.Ct. at 2626.

[20]*Id*.

[21]*Id*. at 2627, citing, *United States v. Balsys*, 524 U.S. 666, 671-672 (1998); *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984) (holding that the Government may compel grand jury testimony from witnesses invoking the Fifth Amendment if the witness is given immunity); *United States v. Hubbell*, 530 U.S. 27, 37 (2000) (holding that potential suspects may assert the privilege against self-incrimination in proceedings outside of the trial where their

(continued...)

clause.[22] Therefore, only a real necessity for the protection of the actual right against compelled self-incrimination can justify any further extension of the *Miranda* rights.[23] Consequently, the plurality decided against expanding the *Miranda* rule to include physical evidence.

Furthermore, the plurality disagreed with the circuit court's reasoning that the gun had to be suppressed since the *Miranda* rule is a constitutional right and the fruits of unconstitutional conduct are inadmissible.[24] Instead, the plurality stated that the determination that the self-incrimination clause does not extend to physical evidence is consistent with the Court's prior characterization of *Miranda* as a constitutional rule.[25] The lead opinion clarified that a mere failure to give *Miranda* warnings does not violate an individual's constitutional rights or the *Miranda* rule itself since the right against self-incrimination is a "fundamental trial right."[26] This, the plurality stated, is consistent with both the pre-*Dickerson* and post-*Dickerson* line of cases. Therefore, the plurality reasoned, the *Miranda* rule is not a code for police conduct and the police do not violate the Constitution by a failure, negligent or deliberate, to warn.[27] Potential violations of the rule could only occur when unwarned statements are actually introduced in court.[28] Any *Miranda* violation can be sufficiently remedied by the exclusion of the unwarned statements.[29] Thus, unlike the Fourth Amendment or an actual violation of the Self-Incrimination Clause there is nothing to deter, i.e. police conduct, with respect to failures to warn.[30] Consequently, there is no reason to apply the "fruit of the poisonous tree" doctrine.[31]

Justice Kennedy, joined by Justice O'Connor, concurred with Justice Thomas only as to the judgment. Kennedy agreed with the plurality's reasoning that admitting physical evidence does not run the risk of violating the Self-Incrimination Clause. Kennedy departs from the plurality's reasoning on two grounds: (1) that it was unnecessary to decide whether the detective's failure to give the full *Miranda* warning constituted a violation of the *Miranda* rule, and (2) that it was unnecessary to decide whether there is something to deter, i.e. police conduct, with respect to a failure to give *Miranda* warnings.

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[21](...continued)
answers may be used to incriminate them in a subsequent criminal case).

[22]*Id*.

[23]*Id*. at 2628.

[24]*Id*. See *Patane*, supra, 304 F. 3d 1013.

[25]*Id*.

[26]*Id*. at 2628-29, citing *Winthrowv. Williams*, 507 U.S. 680, 691 (1993)(quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990)).

[27]*Id*. at 2629.

[28]*Id*.

[29]*Id*., citing *Chavez*, 538 U.S. 760, 790 (2003).

[30]*Id*. at 2629.

[31]*Id*.

Considering that *Patane* does not have a majority opinion, it may still be difficult to ascertain how the Court will apply the *Miranda* rule in other Fifth Amendment contexts. However, in looking for a common nucleus between the plurality opinion and Justice Kennedy's opinion, one holding may be controlling in future cases: admission of non-testimonial physical evidence does not run the risk of violating the Self-Incrimination Clause. Neither opinion embraced or repudiated the holding in *Dickerson* that *Miranda* is a constitutional right. They did clarify though that a failure to give *Miranda* warnings does not by itself violate an individual's constitutional rights.

Missouri v. Seibert

Background. The facts in *Seibert* are similar to those in *Patane*. One morning Seibert found one of her sons who was severely handicapped dead in her trailer. He had died while sleeping. Seibert did not report the death to the authorities because she was afraid of being accused of neglect.[32] As a cover up, another of her sons and a friend decided to set the trailer on fire. It was decided that another friend who lived with them should be in the trailer so it would not seem like the son had been left alone.[33]

The arson did not go as planned and the friend left in the trailer died.[34] The police, who suspected Seibert was involved in the death of the friend, decided to put pressure on Seibert and approached her while she was at her son's bedside in the hospital. The officers intentionally did not give her *Miranda* warnings.[35] Seibert, after initially denying any involvement in the fire, admitted knowledge of the fire and that the friend was intended to die in the fire. The police took a short break and then gave *Miranda* warnings. Seibert again stated that she had knowledge of the fire and that she intended the friend to die in the fire.[36]

At trial the lower court suppressed the pre-*Miranda* statements but admitted the post-*Miranda* statements.[37] The Missouri Court of Appeals affirmed the lower court's determination that the second confession was admissible. It based its decision on *Elstad*, *supra*.[38] On appeal, the Missouri Supreme Court reversed the appellate court's finding that the second confession was admissible. It found that there was an intentional *Miranda* violation.[39] According to the Missouri Supreme Court, once there is an intentional *Miranda* violation, the court must examine the

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[32] *Missouri v. Seibert*, 542 U.S. __, 124 S.Ct. 2601, 2605 (2004).

[33] *Id*. at 2605-06.

[34] *Id*. at 2606.

[35] *Id*

[36] *Id*.

[37] *Id*.

[38] *Id*. at 2606-07.

[39] *Id*. at 2607.

record to determine whether the ensuing confession is voluntary.[40] Finding the second confession involuntary the court reversed the conviction.[41] The Missouri Supreme Court distinguished *Elstad* in that the confession in that case was not part of a premeditated tactic.[42] The Missouri Supreme Court was divided 4-3 and the dissenters argued that the case was not distinguishable from *Elstad* in that there was no evidence that the police officer used any deliberately coercive tactics in eliciting Seibert's confession and, therefore, no evidence to support the majority's presumption that the officer was trying to weaken Seibert's ability to exercise her constitutional rights knowingly and voluntarily.

Missouri petitioned the United States Supreme Court and the Court granted certiorari.[43] On June 28, 2004, the Court issued an opinion affirming the lower court's decision.[44]

Holding. The issue in *Seibert* was whether the *Miranda* rule that requires the giving of warnings at the beginning of an interrogation should be abrogated in favor of making the warning optional. Justice Souter, joined by Justices Stevens, Ginsberg, and Breyer, delivered an opinion and announced the judgment for the Court. Justice Kennedy filed an opinion concurring in judgment. Justice Breyer filed a concurring opinion. Justice O'Connor, joined by Justices Rehnquist, Scalia, and Thomas, filed a dissenting opinion.

The plurality criticized what appears to be a law enforcement tactic of questioning suspects where the officers conduct a two-stage interrogation. This tactic consists of interrogating suspects without giving them *Miranda* warnings and at any point afterwards, usually after a confession, give the *Miranda* warnings and ask the suspect to repeat what they just said. This would allow officers to repeat any subsequent incriminating statements in court.[45] The plurality found that the objective of this tactic is to "render *Miranda* warning ineffective;"[46] and that it would be "absurd to think that mere recitation of the litany [of the *Miranda* warnings] suffices to satisfy *Miranda* in every conceivable circumstance."[47]

However, the plurality left the door open for some statements resulting from a question first and warn later scenario admissible at court. The plurality distinguished this case from their prior holding in *Elstad*, supra, where the plurality held admissible

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[40]*Id.*

[41]*Id.*

[42]*Id.*

[43]*Seibert*, 123 S.Ct. 209 (2004).

[44]*Missouri v. Seibert*, 542 U.S. __ (2004).

[45]*Seibert*, 124 S.Ct. at 2608-09, citing, Police Law Institute, Illinois Police Manual 83 (Jan 2001-Dec 2003), available at [http://www.illinoispolice/law/training/lessons] /ILPLMIR.pdf.

[46]*Id.* at 2610.

[47]*Id.*

statements obtained after an initial un-*Mirandized* admission.[48] In *Elstad* the defendant, after engaging in a conversation with the arresting police, made an incriminating statement prior to the administration of *Miranda* warnings. The police then administered the *Miranda* warnings, and he made additional incriminating statements. The issue in that case was whether the defendant's statement post-*Miranda* warnings must be suppressed as the fruit of the prior *Miranda* violation.[49] The Court held that suppression of the statements was not necessary because they had been made voluntarily after the administration of the *Miranda* warnings.[50]

In distinguishing *Elstad* the plurality in *Seibert* noted that the failure to give the initial *Miranda* warnings in that case was a good-faith mistake and not intentional. Therefore, the plurality concluded that when interrogators question first and warn later, the test is whether it would be reasonable to find that, under the circumstances, the warnings effectively advised the suspect that he or she had a real choice about giving a statement at that time.[51] The plurality effectively left the door open for some statements resulting from a question first and warn later scenario to be used in evidence. To be admissible the prosecution would need to show that the police were not trying to circumvent *Miranda* when they were questioning the suspect.[52] To facilitate said determination, the plurality set out a series of relevant facts to consider: (1) the completeness and detail of the questions and answers in the first round of interrogation; (2) the overlapping content of the two statements; (3) the timing and setting of the first and second statements; (4) the continuity of police personnel; and (5) the degree to which the interrogator's questions treated the second round as continuous.[53]

Justice Breyer wrote that a simple rule should apply to the two-stage interrogation technique: "fruits" of initial unwarned questioning should be excluded unless the failure to warn was in good faith.[54] Breyer clarified that the plurality's approach will function in practice as a test to determine if the *Miranda* warnings given were effective.

Justice Kennedy concurring in the judgment agreed with the plurality opinion that statements obtained through a question-first-warn-later technique are inadmissible since this interrogation technique is designed to circumvent *Miranda*.[55] However, Kennedy viewed the plurality's test as too broad.[56] He disagreed that the test should be applied in every instance of a question-first-warn-later scenario.

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[48]*Elstad*, 470 U.S. at 311-313.

[49]*Id*.

[50]*Id*.

[51]*Seibert*, 124 S.Ct. at 2610.

[52]*Id*. at 2612-13.

[53]*Id*.

[54]*Id*. at 2613.

[55]*Id*. at 2614.

[56]*Id*. at 2616.

Kennedy would apply the test more narrowly only when the two-step interrogation was intentional.[57]

Considering that there was no true majority in *Seibert*, we must look for the common point between the lead opinion and the two concurring opinions to try to ascertain how the Court is most likely to approach future similar cases. The common ground between all three opinions is that in cases where there is an intentional use of a question-first-warn-later interrogation technique a test will be used to determine the effectiveness of the *Miranda* warnings and, therefore, the admissibility of the statement. This test will look for certain specific circumstances occurring between the unwarned and the warned questioning: a lapse in time, a change in location or interrogation officer, and a shift in the focus of the questioning. No bright-line rule making inadmissible all statements resulting from a question-first warn-later scenario was issued by the Court. Instead, the determination of admissibility will most likely be made on a case-by-case basis based on the facts of each case.

Fellers v. United States

A third case[58] considered by the Court this term initially thought to impact *Miranda* is *Fellers v. United States*.[59] However, the Court disposed of it on Sixth Amendment right to counsel grounds rather than the Fifth Amendment. A brief summary of that case is included below.

Background. Following his indictment, two police officers arrived at Feller's house with a warrant for his arrest. They told him they wanted to discuss his involvement with drugs and his association with certain people. They did not read him his *Miranda* rights. Fellers in turn admitted that he associated with the people in question and that he had used methamphetamine.[60] The officers took Fellers to jail, where, they informed him of his *Miranda* rights. Fellers signed a written waiver and then repeated the statements made at his home.[61]

The magistrate judge suppressed both statements but the district court later ruled that only the first statement should be suppressed The Court of Appeals for the Eight Circuit agreed with the district court, finding that the statement made at the jail was a voluntary statement knowingly made after waiving his *Miranda* rights.[62] The court based its decision on the Supreme Court's holding in *Oregon v. Elstad*,

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[57] *Id*.

[58] A fourth case, *Yarborough v. Alvarado*, 124 S.Ct. 2140 (2004), also included a *Miranda* issue. However, that case came to the Court as a writ of habeas corpus which looks at the propriety of the state court's application of the law rather than answering or clarifying a question of law.

[59] 124 S.Ct. 1019 (2004).

[60] *United States v. Fellers*, 285 F. 3d 721, 723 (8th Cir. 2002).

[61] *Id*.

[62] *Id.*

470 U.S. 298 (1985)[63], that even if the first statement was a result of a *Miranda* violation a subsequent Mirandized statement is admissible.[64] Fellers petitioned the Supreme Court and the Court granted *certiorari*.[65] Two issues were presented: (1) whether the initial statement was inadmissible under the Sixth Amendment because the statement was made without *Miranda* warnings[66]; and (2) whether, under the Fifth Amendment the statements made after administration of the Miranda warnings should be suppressed as fruits of the initial un-Mirandized statement. On January 26, 2004, the Court issued its opinion reversing the court of appeals' judgment and remanding the case for further proceeding consistent with the Court's decision.[67]

Holding. In reversing the lower court's decision, the Court noted that the Sixth Amendment right to counsel is triggered at or right after the time judicial proceedings are initiated against an accused.[68] The Court had also previously held that an accused is denied his Sixth Amendment protections "when there [is] used against him at his trial evidence of his own incriminating words, which federal agents . . . deliberately elicited from him after he had been indicted and in the absence of counsel."[69] This is known as the deliberate-elicitation standard. Under this standard statements deliberately elicited from an accused who is already being represented by counsel without first obtaining a valid waiver of that counsel's presence during the interrogation are inadmissible during the prosecution's case-in-chief.[70] Excluding these statements serves to protect the integrity and fairness of the criminal trial.[71] For post-indictment statements to be admissible the government must show that the accused voluntarily, knowingly, and intelligently relinquished his Sixth Amendment right to counsel.[72]

In this case, the Court held that the officers had deliberately elicited information from Fellers. The Court focused on several facts including that the officers had come to Fellers' house and informed him that their purpose of coming was to discuss his involvement with the distribution of drugs; and the discussion had taken place outside the presence of counsel after Fellers had been indicted. Applying the

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[63]A discussion of the facts in *Elstad* is included under the section discussing *United States v. Patane*.

[64]*Id*. at 724.

[65]*Fellers*, 123 S.Ct. 1480.

[66]As stated previously, *Miranda* rights grow out of both the Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel. In this instance the Supreme Court, in granting *certiorari*, chose to focus on the Sixth Amendment aspect of *Miranda*.

[67]*Fellers*, 124 S.Ct. 1019.

[68]*Id*., citing *Brewer v. Williams*, 430 U.S. 682, 689 (1972).

[69]*Id.*,quoting *Massiah v. United States*, 377 U.S. 201, 206 (1964).

[70]*Massiah v. United States*, 377 U.S. 201 (1964); *see also*, *Michigan v. Harvey*, 494 U.S. 344 (1990)*; Maine v. Moulton*, 474 U.S. 159 (1985); *United States v. Henry*, 447 U.S. 264 (1980).

[71]*Nix v. Williams*, 467 U.S. 431, 446 (1984).

[72]*Harvey*, 494 U.S. at 348-349.

deliberate-elicitation standard, the Court held that Feller's Sixth Amendment rights had been violated by admitting the first statement.

The Court distinguished this case from the Fifth Amendment custodial interrogation line of cases where the right only attaches upon actual interrogation.[73] The Court had previously held that the Sixth Amendment right to counsel exists even when there is no interrogation and the Fifth Amendment does not apply.[74] In this case, the Court held that the lower court improperly conducted a "fruits of the poisonous tree"[75] analysis under the Fifth Amendment instead of the Sixth Amendment because it had erroneously held that Fellers' Sixth Amendment rights had not been violated. The Court, however, did not decide the issue of whether the incriminating statements are admissible after a knowing and voluntary waiver of the right to counsel notwithstanding an earlier questioning in violation of the Sixth Amendment right to counsel. Therefore, the Court remanded the case back to the lower court to address the admissibility of Feller's second statement after holding that those statements were the fruit of previous questioning conducted in violation of the Sixth-Amendment deliberate-elicitation standard.[76]

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[73]The Court did not address the Fifth Amendment aspect of the case as it decided it based on the Sixth Amendment.

[74]*Michigan v. Jackson*, 475 U.S. 625, 632, n.5 (1986).

[75]The "fruit of the poisonous tree" doctrine is explained in the discussion under *United States v. Patane*.

[76]Under *Oregon v. Elstad*, 470 U.S. 298 (1985), the voluntariness of a statement found to be the fruit of an un-*Mirandized* statement is evaluated independently.