IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner,

No. 584. *vs.*

ROY ALLEN STEWART, Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

ERNEST ARTHUR MIRANDA, Petitioner,

No. 759. *vs.*

THE STATE OF ARIZONA, Respondent.

On Writ of Certiorari to the Supreme Court of the State of Arizona.

MICHAEL VIGNERA, Petitioner,

No. 760. *vs.*

PEOPLE OF THE STATE OF NEW YORK, Respondent.

On Writ of Certiorari to the Court of Appeals of the State of New York.

SYLVESTER JOHNSON and STANLEY CASSIDY, Petitioners,

No. 762. *vs.*

STATE OF NEW JERSEY, Respondent.

On Writ of Certiorari to the Supreme Court of the State of New Jersey.

BRIEF OF NATIONAL DISTRICT ATTORNEYS ASSOCIATION, AMICUS CURIAE.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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QUESTIONS PRESENTED.

1. Does the decision in *Escobedo* v. *Illinois* extend beyond its facts to require, before interrogation, admonishment of the accused of his right to remain silent

and of his right of counsel, with failure to so proceed excluding from evidence any statement obtained thereby?

2. Does the rule announced in *Escobedo* v. *Illinois* have retrospective application?

INTEREST OF AMICUS.

The National District Attorneys Association is an organization of state prosecuting attorneys whose members in their official capacity represent approximately two-thirds of the population of the United States. It is upon these state prosecuting attorneys that the responsibility of presenting the overwhelming majority of criminal cases rests. The express purpose of the Association as amicus curiae is to delineate the grave concern (and the causes therefor) of prosecuting attorneys and law enforcement officers, if not that of all the people, with the adverse affect the Court's decision in these matters could have on the preservation of our free society—its safekeeping for all the people.

It is not for amicus to further discuss, dissect and distinguish, if possible or necessary, the law. Certainly the case law, the legal theories and the peculiar facts in the four matters presented here are thoroughly, indeed proficiently, covered by the parties.

The rules and regulations which have the force of statute are founded not only upon precedent but upon facts—and at times, necessarily, upon hypothesis. Therefore, it is believed that this Association can best serve the Court through the factual information, gathered by members of this Association, on the actual use of confessions. This data is offered for the Court's consideration in arriving at its decision on the questions before it.

In addition to the statistical data, it would seem that amicus can assist the Court by outlining the existing and

foreseeable difficulties as regards clarification, definition and retroactivity in application. Accordingly, with the consent of parties, this brief is respectfully submitted by the Association as evidence of its concern in and for the course of criminal justice, the future state of which will be determined in the matters now before the Court.

SUMMARY OF ARGUMENT.

Re: Interpretation of Escobedo v. Illinois.

Those entrusted by the people with the enforcement and administration of our criminal laws complain, as overburdened persons do, when short cuts are eliminated from their repertoire of expedients for effectively and adequately fulfilling the great burden and responsibility placed upon them. However, they recognize and accept reasonable rules which can be followed, though with some difficulty, and which have benefits far outweighing their inexpediency: *Mapp* v. *Ohio,* 367 U. S. 643 (1961), may well be an excellent illustration. Unlike *Mapp* which conclusively condemned a practice known to be unconstitutional, an extended *Escobedo* v. *Illinois,* 378 U. S. 478 (1964), introduces a heretofore unknown standard of constitutionality.

Few would disagree with most of the Supreme Court decisions affecting law enforcement, finding the reversals (including *Escobedo*) correctly decided upon their facts. The difficulties of effective performance, experienced by those engaged in the enforcement and administration of our criminal laws (including and even emphasizing the judiciary), originate in the fact that the rules are promulgated upon the exceptional case and thereafter are subject to so many different interpretations. Why a case is allowed to advance to the appellate stage or why there is not a confession of error where there is an obvious violation of funda-

mental rights is influenced by local problems. And yet, the entire nation may be penalized for the sins of a few—albeit the case is atypical not only for the nation but for that locality.

The states have been described as fifty different countries. Officers vary from state to state, city to city, department to department. Police officers should not be subjected to symbolism—personifying evil in our midst. There are the good and the bad, the qualified and the unqualified, in the same manner as legislators, judges, firemen or medical doctors. We are a nation of specialists. Police officers, who will be directly affected by any extension of *Escobedo,* are specialists.. Prosecuting attorneys, trial judges and basically all appellate judges—although not specialists in the methodology of crime investigation—have worked closely with the problems and have expressed, almost unanimously, the opinion that *Escobedo* should not be afforded the extreme construction. Those courts which have ruled otherwise have done so because they believed the admonishment to be an inevitable Supreme Court command. Thus, their concern was with avoiding a backlog of cases from the date of *Escobedo* to its actual clarification. *People* v. *Dorado,* 62 Cal. 338, 398 P. 2d 361 (1965).

Those rules and regulations, which find themselves workable not because they are followed but because the populace in the first instance and the trial judges thereafter, both through misunderstanding and understanding, allow the standard to go unenforced, are not a preferred observance. One of the outstanding criminal law authorities in England, if not in the world, expressed this idea of operable-by-default rules in explaining the reason why certain restrictive measures can exist in his country without hindering police investigations: "The law works as well as it does chiefly because the moral authority of the police

enables them to get on without powers." Williams, *Demanding Name and Address,* 66 L. Q. Rev. 465, 476 (1950).

To be effective an admonishment must be more than a ritual. And the benefits received from a properly administered warning would not accrue to the innocent nor to the Culombes, Fikeses, Haleys, Paynes or Recks of our society. The beneficiaries are the professional and the recidivist. Without bestowing or acquiring a benefit, the American people cannot afford to abandon the confession as a form of evidence.

The objective of the admonishment cannot be to place a burden which becomes so onerous that it invokes devised extenuation. To resort to circumvention, although not intentionally illegal, nonetheless may markedly devaluate respect for law and order. A rule which can be rationalized by those who execute it does not offer the solution. The experience of the English in the use of the Judges' Rules is illustrative:

> The Rules undoubtedly require the observance of a very high standard, and it may be a higher standard than the average policeman was in the first instant naturally inclined to adopt. It is difficult to say what extent the spirit of the Rules is infringed because, as I have said *it is the general habit of the police never to admit to the slightest departure from correctness.* DEVLIN, THE CRIMINAL PROSECUTION IN ENGLAND 47 (1960). (Emphasis added.)

A rule for a rule's sake is not the answer.

In balancing the equities, it is obvious that eventually a point of diminishing returns is reached. The drawbacks which may result from an extension of *Escobedo* beyond its facts should be studied. To establish an absolute "enforcement-type exclusionary rule" can well lead to punishment of the populace rather than the police. Before *Mapp* v. *Ohio,* 367 U. S. 643 (1961), there was a warning to re-

assess given by the Court in *Wolf* v. *Colorado,* 338 U. S. 25 (1949). No one can now doubt that the Supreme Court can and will do as it states. However, crime waits for no man or court. But man can implement and adjust, given notice and a reasonable time to do so. Therefore, would it not be reasonable and proper for the Court to formulate a workable standard, without attaching thereto a dogmatic rule of exclusion? Cannot the state and federal authorities be given an opportunity to establish working rules, to increase the quantity and to improve the quality of their personnel and to otherwise effect the desired result? Certainly such good faith is being registered by governmental and private groups now engaged in these pursuits.

Under the guidance of an opinion by this Court, an advisory rule would afford an opportunity to accelerate research and to effect changes without the disastrous results of impediment and confusion. One step may well destroy that which we know, the other build that which we need. We respectfully request the Court to take the latter course: the advisory rule. We do not presume to suggest to the Court a drafted rule. The Judges' Rules of England were established as an advisory standard by the judges themselves but at the request of the police for their guidance. We would ask the same approach be taken. The members of this Association and prosecuting attorneys and law enforcement officers everywhere in this country stand ready to assist this Court in any manner which will further the objective of the proper enforcement of the criminal laws for the benefit of all the people.

Re: Retrospective Application.

The effect of retroactive application of *Escobedo* would involve all of the problems which such a determination would have had in *Mapp,* but for *Linkletter* v. *Walker,* 381 U. S. 618 (1965) and *Angelet* v. *Fay,* 381 U. S. 654 (1965). The arguments presented by this amicus in *Linkletter* and *Angelet* are relevant and even more pertinent here. The reasoning of *Tehan* v. *Shott,* 34 U. S. L. WEEK 4095 (January 19, 1966), should be extended to *Escobedo* as well.

ARGUMENT.

CONFESSIONS (STATEMENTS) ARE VITAL IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE UNITED STATES. THE EFFECT OF ADMONISHMENT OF RIGHT TO REMAIN SILENT AND, IN PARTICULAR, THE RIGHT TO COUNSEL AT THE INTERROGATION STAGE WILL MATERIALLY AFFECT THE ENFORCEMENT OF OUR CRIMINAL LAWS. TO GIVE RETROSPECTIVE APPLICATION TO THE NEW CONSTITUTIONAL STANDARD PROCLAIMED IN ESCOBEDO v. ILLINOIS WILL DIMINISH AND DETER EFFECTIVE LAW ENFORCEMENT. THE NEED IS FOR AN ADVISORY STANDARD, NOT AN EXCLUSIONARY RULE.

The issues before the Court stem from *Escobedo* v. *Illinois,* 378 U. S. 478 (1964), and the requisite clarification of the five principles laid down by the Court in that decision: (1) if the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect; (2) if the suspect has been taken into police custody; (3) if the suspect is interrogated in a manner that lends itself to eliciting incriminating statements; (4) if the suspect has requested and been denied an opportunity to consult with his attorney and (5) if the police have not effectively warned him of his absolute constitutional right to remain silent, then any statement given by the accused is of no evidentiary value.

Two constructions of *Escobedo* have evolved, so-called the strict interpretation and the liberal interpretation. The strict interpretation is: *Escobedo* should be limited to its facts. If the request of the accused to consult with his attorney is refused, any confession elicited is inadmissible as being in violation of his right to have present the guiding hand of counsel—which right he did not intelligently waive.

This is the construction given by the majority of state and federal courts. The liberal interpretation is: no probative evidence may be obtained until and unless the accused has been duly admonished of his absolute right to stand silent to any and all inquiry, and furthermore, of his right to consult with an attorney. This is the construction assumed by a minority of the state and lower federal courts. Because of population and the consequent number of criminal cases, the most prominent advocate of this view is California. *People* v. *Dorado,* 62 Cal. 2d 338, 398 P. 2d 361 (1965). The two other state courts that have given this same interpretation are Rhode Island [*State* v. *Dufour,* 206 A. 2d 82 (R. I. 1965)] and Oregon [*State* v. *Neely,* 239 Ore. 487, 398 P. 2d 482 (1965)]. By having joined with this minority of state appellate courts, the Third Circuit Court of Appeals appears alone among the courts of appeal of the ten circuits. *Russo* v. *New Jersey,* 351 F. 2d 429 (3d Cir. 1965). Pennsylvania has revised its original construction in light of *Russo*. *Commonwealth* v. *Negri,* 213 A. 2d 670 (Pa. 1965).

I. ANY RULE DERIVED FROM ESCOBEDO v. ILLINOIS SHOULD BE LIMITED TO THE FACTS OF THAT CASE.

A. Escobedo Declares a New Constitutional Standard, Differing From Previous Court Decisions Restricting Police Investigation.

Whatever the purported rule is, it is new. Prior to *Escobedo,* the denial of counsel at any stage preceding arraignment was, at the very most, a factor in the "totality of circumstances" on the issue of voluntariness. Thus, differing from *Mapp* v. *Ohio,* 367 U. S. 643 (1961), and other cases which concerned fundamental rights, the denial of counsel, even upon request, was not a violation of any known constitutional precept. *Crooker* v. *California,* 357 U. S. 433 (1958). And so, when we speak of admonishing

the suspect, the accused or the witness of the right to stand silent and of the right of counsel at all investigatory stages, we embark on an uncharted constitutional course which leaves no opportunity for deviation. Either it is or it is not. It is clear that here there is no stated law, no comfort of precedent. *Escobedo* restrictions will affect the FBI and other federal officers as much as they will state officers. This is not a case where the federal officers have been following a procedure for years through the authority of the Court's supervisory powers, so that it is now time that state officers caught up. Admonishment of the right of counsel has never been required in the United States or England; the admonishment of right to remain silent has served only the military [Uniform Code of Military Justice, 10 U. S. C. § 831], the State of Texas [TEX. CODE CRIM. P. art. 727] and in England [Judges' Rules, [1964] 1 All E. R. 237].

An analysis of the various leading cases, chronologically from 1936 with their effect upon law enforcement, the courts and the prosecuting attorney of the states warrants consideration here:

Voluntariness. (Beginning with *Brown* v. *Mississippi,* 297 U. S. 278 (1936), to date without enumerating each case.) Although reasoning may differ on individual cases, few will question the rule on voluntariness as applied to the "totality of circumstances" concept in relation to voluntariness. It is to be noted that it always has been understood that "voluntariness" does not mean necessarily "volunteered." *Watts* v. *Indiana,* 338 U. S. 410 (1948). State authorities in general would agree (with one or two exceptions) with the Supreme Court that on the facts, the cases should have been reversed. None of these cases typifies state cases, and, of course, all involve a rather sensational crime, generally murder [25 murders, 1 manslaughter, 1 narcotics case, 4 cases of rape and 2 robberies:

Robinson, *Massiah, Escobedo and Rationales for the Exclusion of Confessions,* 56 J. Crim. L., C. & P. S. 412, 425 (1965)].

Arrest, Search and Seizure. Since the full effect of *Wolf* v. *Colorado,* 338 U. S. 25 (1949), did not come to rest upon the states until *Mapp* v. *Ohio,* 367 U. S. 643 (1961), it is only the results of the latter case that are pertinent here. While police officers, as overburdened public servants, may like the facility of short cuts to investigation, the view that illegal methods, especially flagrant or purposeful violations of the Constitution, should be countenanced by the courts, cannot be defended. The concern, of course, lies with what is "reasonable grounds" and what is "probable cause." There may well be individual cases which would allow opinions to differ, but few would differ with those cases brought to the attention of the Supreme Court. More debate may center upon some of the interpretations of other appellate courts, state and federal. In *United States* v. *Ventresca,* 380 U. S. 102 (1965) and *Linkletter* v. *Walker,* 381 U. S. 618 (1965), the Court provides reasonableness for law enforcement, thus enabling them to perform with diligence. Naturally there is concern when a police officer, who is stated not to be held to the judgment of a "legal technician," is reproved for failing to exercise the judgment which only could be expected from a legal technician. This is true in cases before all courts, in particular the appellate courts with bare majorities. It may be discouraging, but law enforcement officers will continue to do their best, appreciating that generally the courts understand their predicament so that the exception is the rule.

Right to counsel at trial and appeal; transcripts. Griffin v. *Illinois,* 351 U. S. 12 (1956), *Hamilton* v. *Alabama,* 368 U. S. 52 (1961), *Gideon* v. *Wainwright,* 372 U. S. 335 (1963), *Douglas* v. *California,* 372 U. S. 353 (1963), *White* v. *Maryland,* 373 U. S. 59 (1963), and others involving right

to counsel at trial and appeal and to transcripts for appeal were not devastating; they directly concerned only a few states and the judicial process, as distinguished from the investigation-prosecution of crimes. Prosecuting attorneys and courts in the large majority of states were surprised at *Gideon,* not knowing beyond the confines of their own borders the practice in other states, and the *Hamilton* and *White* procedures also were foreign to them. For obvious reasons, defendants' demanding to try their cases without an attorney because of dispute with counsel is abhorred by courts and state counsel alike. Law enforcement officers were not affected directly by these decisions.

Other matters. Malloy v. *Hogan,* 378 U. S. 1 (1964): Again the impact was minimal. *Jackson* v. *Denno,* 378 U. S. 368 (1964): Although this decision affected several of our more heavily populated states, yet considering the country as a whole, it produced little change. Again, the direct impact was upon the state courts, not the prosecuting attorneys or law enforcement officers. *Griffin* v. *California,* 380 U. S. 609 (1965): Most prosecuting attorneys and courts were not even aware that this could be done. This procedure was prohibited by constitution, statute or court rule in at least 44 of the 50 states.

Differing from the foregoing, the determination of an absolute principle so unique as *Escobedo,* in any expanded interpretation, will forever frustrate the good law enforcement officer who tries to obey the rulings of this Court, only to find reasonable investigation methods subject to varying confusing findings on each of the principles associated with the *Dorado* interpretation of *Escobedo,* e.g., focus, investigatory stage, admonishment, custody, interrogation, statement-confession, etc.

B. The Effects of a Required Admonishment Will Inhibit the Interrogation of Criminal Suspects Without Benefit to the Innocent.

Will warning an individual of his right to remain silent and of his right to counsel preclude the needed confession? Frankly, no one knows and an empirical study is not possible. But, if the admonishment is without this effect, then, either it is being administered improperly or there is simply no reason for such a rule existing.

By assuming the posture of one accused (acknowledging the obvious limitations of this premise), namely his concern with discovery of the misdeed (if not other misdeeds) and his natural instinct for preserving freedom and life, it is possible to derive a valid answer. Consider his realization, having these innate anxieties, that the police know he is involved. Subjectively we know that misdeeds are not readily admitted. Some of the effects of a required admonishment include:

1.

Problems in the use of acceptable interrogation techniques already exist and to overcome the admonishment adds to that burden.

2.

Every confession will be tainted with the issue of waiver of counsel.

3.

The question then becomes: is waiver possible. If, in reply to an admonishment, the accused asks, "Should I get a lawyer? Why do I need a lawyer? What will a lawyer do for me? etc." Having reached this impasse, must the interrogator simply advise the accused to retain counsel and thereafter stop his attempt to learn the truth, or, is it

permissible for him now to proceed to convince the accused that he does not need an attorney? Can an accused ever effectively waive his right to counsel once he has mentioned, in response to a warning, that maybe he should have one? Thus, another issue to plague the courts is created.

4.

Admittedly, in the pretrial investigatory period which includes time for interrogation, the defendant is at a disadvantage. But in our system of justice this imbalance is adjusted by the rights of the defendant at trial: (a) that he need not be witness against himself; (b) that he is entitled to a unanimous verdict of his peers; (c) that he cannot be again brought to answer, once acquitted; (d) that he must be found guilty beyond a reasonable doubt. Furthermore, there is no right in the state to appeal and there is no discovery procedure to obtain from the defendant himself the names of witnesses, etc. No one would suggest that these trial protections be altered, but if the pretrial investigation, which must involve interrogation of suspects and witnesses (both of whom could or could not be culprits in the crime), is eliminated, then our system of justice must fail but for a concomitant revision in our form of trial. If the foundation of our system of justice is rocked, something must give way; the consequences may not be what this Court, any lawyer, or any citizen would want.

5.

The "fear" of admonishment is that it will benefit only the recidivist and the professional. The first offender and the Culombes, Fikeses, Haleys, Paynes or Recks will not be the beneficiaries. The innocent will take offense to the caution.

6.

Many of the restrictions upon law enforcement, albeit for the good of the individual, must of necessity greatly burden these men who are charged with the protection of the public. That the police officer is the subject of distrust is evidenced by (a) the detailed information required in affidavits to obtain warrants, (b) the required corroboration of informer information, and (c) the trend to accept the suspect's word over that of the police officer. And so, by establishing unworkable requirements do we not further undermine and demoralize the police officer, forcing him to "stretch the truth"? Consider the experience in England with the Judges' Rules:

> The Rules undoubtedly required the observance of a very high standard, and it may be a higher standard than the average policeman was in the first instant naturally inclined to adopt. It is difficult to say what extent the spirit of the Rules is infringed because, as I have said, *it is the general habit of the police never to admit to the slightest departure from correctness.* DEVLIN, THE CRIMINAL PROSECUTION IN ENGLAND 47 (1960). (Emphasis added.)

7.

Exculpatory statements also will not be easy to obtain, thereby inviting defendants to change their minds and perjure themselves on the stand.

8.

Will impossibility of performance force, not only the police to uncover loopholes but the prosecutor and the trial courts as well to pursue this path—objective looking to one side? Trial judges, both state and federal, as well as most appellate courts, in their sympathy with the law enforcement officers' plight, are inclined to encourage law enforcement officers to "avoid" the stringent requirements

of the rules. Is this not apparent in the California District Courts of Appeal application of their *Dorado* rule to those cases not yet considered final? [*E.g.*, RE NO INTERROGATION, *People* v. *Clapper*, 233 A. C. A. 18. 43 Cal. Rptr. 105 (1965), *People* v. *Fork*, 233 A. C. A. 860, 43 Cal. Rptr. 804 (1965); RE HARMLESS ERROR, EXCULPATORY STATEMENTS OR ADMISSIONS, *People* v. *Williams*, 235 A. C. A. 474, 45 Cal. Rptr. 427 (1965) (admitted theft but denied robbery), *People* v. *Cooper*, 234 A. C. A. 699, 44 Cal. Rptr. 483 (1965) (admitted he was chewing marijuana cigarette); RE NO "FOCUS," *People* v. *Jones*, 232 A. C. A. 471, 42 Cal. Rptr. 714 (1965); RE NO "CUSTODY," *People* v. *Garrett*, 235 A. C. A. 155, 44 Cal. Rptr. 897 (1965); RE TYPE OF ADMONISHMENT, *People* v. *Chaney*, 233 A. C. A. 75, 43 Cal. Rptr. 280 (1965).]

C. Confessions Have an Essential Role and They Satisfy a Useful Purpose in the Administration of Justice.

The fact that confessions are used extensively, as shown by the Appendix, may not necessarily demonstrate justification for their presence. Rationalization of all reason is possible. Despite this logic, an outline of a few of the reasons, without great detail as to "why" or "reason" for the "why," may be of assistance to the Court:

1.

Basically, crimes are covert by nature, and, zealous assertions to the contrary, many crimes are impossible to solve without a confession.

2.

Confessions are the prime source of other evidence. Even if it is possible to solve crimes in the "scientific police laboratory" (a misconception often perpetuated by the police themselves), the evidence that is analyzed often must

come from admissions: the existence of the gun and the location thereof, the location of an automobile (e.g., in an assault), etc. The doctrine of the fruit of the poisonous tree will make an inadmissible confession of even greater consequence.

3.

Critics claim the urgent need is for more and better police officers. Reality dictates that although there be the need, there never will be sufficient police officers to prevent incipient crime and to investigate the millions of crimes committed in the United States. The selection of crimes to be investigated merely will be reduced. Assuming the existence of the required unlimited financing, nevertheless there are not enough FBI-caliber men, with college, law school or other advanced training, available or attainable for the cop's beat. Even on that dark hypothesis, which has some remedy by way of actual training, a "college degree per se does not a good police officer make."

4.

There is a direct corollary between pleas of guilty and confessions. The Appendix data so indicates where such data is available. (The City of Baltimore is an exception which has had the experience wherein custom has put aside the jury trial.) This is even more obvious when a distinction is made of the term "confessions" by eliminating therefrom the "exculpatory statement." It has been said that if all defendants pleaded not guilty and demanded trial by jury, justice in the United States would come to an abrupt halt. Can there be any doubt that an increased call upon court and prosecution personnel and facilities, already overtaxed, would adversely affect the administration of justice in the United States? Although all of us advocate justice, whatever the pecuniary cost, idealism

must give way to the reality of an overburdening demand that cannot be (or will not be) absorbed by the economy.

If cases are to be disposed of, heavy reliance will be given to bargaining. Is it the purpose of our system of law to encourage perjury upon the part of the defendant? Is it to allow the natural desire of self-preservation to be expressed by refusal to plead guilty because the confession is determined inadmissible and thus guilt cannot be proved beyond a reasonable doubt? Does such an inducement discourage rehabilitation? Is the purpose of our administration of criminal laws to limit convictions of the guilty?

5.

Typically, Borchard and the Frank studies are cited as authority for the proposition that innocent persons are convicted. BORCHARD, CONVICTING THE INNOCENT (1932); FRANK & FRANK, NOT GUILTY (1957). To say that innocent persons are not convicted is to defy reality.

While every innocent person convicted is a haunting reminder, unfortunately human beings are involved so that no matter what the rule such tragedies will occur. However, the dates of those cases, the number thereof and the infrequent correlation between confession and the wrongful conviction must be taken into consideration. In 29 of the 65 cases reported by Borchard, the innocent person was convicted by eyewitness testimony, all the others being laid to causes other than confessions except in two "notable" instances. In virtually all of the very few cases involving any form of statement, it is unlikely that a *Dorado*-type warning would have been of assistance because of the mental deficiency of the defendant. There may well be in the converse more innocent persons convicted because of lack of a confession.

6.

Juries are reluctant to convict one who has admitted no wrongdoing. A direct correlation between trial and conviction is evident from the Appendix material, not to mention the fact that a plea of not guilty, lacking an admissible confession, often is subject to being dismissed at the discretion of the prosecuting attorney as difficult or impossible to convict.

D. The Judges' Rules and the Dorado Interpretation of Escobedo Cannot Be Equated.

The Judges' Rules of England are cited as a persuasion that the United States should adopt a *Dorado* interpretation of *Escobedo*. The argument is faulty for the following reasons:

1.

Since the time of the formulation of the Judges' Rules in 1912 and continuing up to the present, English police have been able to enforce the laws because their image was such that few would question their authority, whether they had it or not. The English citizen would not think to refuse (or at least in the past would not) the request of the police to come down to the station for investigation purposes. If the officer arrested someone and did not have the authority, no question would be raised. Glanville Williams, the most eminent authority on criminal law in England, has stated: "The law works as well as it does chiefly because the moral authority of the police enables them to get on without powers." Williams, *Demanding Name and Address,* 66 L. Q. Rev. 465, 476 (1950). To some extent this is true in the United States. But then why the rule? So that it can be broken or bent?

2.

Referring to that fact that the fundamental condition of the admissibility of a statement is that it be voluntary, the following statement is made in the introduction to the Rules: "Within that principle the Judges' Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules *may* render answers and statements liable to be excluded from evidence in subsequent criminal proceedings." [1964] 1 All. E. R. 237 n. 2). (Emphasis added.)

3.

The admonishment is of the right to remain silent *not* of the right to an attorney: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence" Judges' Rules, Rule 3(a) [1964] 1 All. E. R. 237, 238. In the United States two jurisdictions have followed admonishment practice as to silence, none as to right to an attorney. Uniform Code of Military Justice, 10 U. S. C. § 831; TEX. CODE CRIM. P. art. 727. Cases of exclusion of a confession on the ground of failure to inform the defendant of his right to counsel are unknown in England. Cross, *Confessions and Cognate Matters: An English View,* 66 Colum. L. Rev. 79, 88 (1966).

4.

While in 1964 the U. S. population was only 4 times that of England and Wales combined, we had approximately 30 times as many murders and nonnegligent manslaughters, 40 times as many forcible rapes, and 35 times as many robberies. See Appendix p. 45a. It should be remembered that this is not a comparison with statistics of prior years,

as has been the attack advanced by the critics, but is upon the statistics of two different countries for the same year.

5.

There is no need for rules of admonishment. The rules on voluntariness as prescribed by the United States Supreme Court are far more restrictive in application than the Judges' Rules and they do provide adequate protection for the innocent. See *Haynes* v. *Washington,* 373 U. S. 503 (1963).

II. AS A NEW STANDARD REVERSING PRIOR DECISIONS OF THIS COURT, ESCOBEDO v. ILLINOIS SHOULD NOT BE ACCORDED RETROSPECTIVE APPLICATION.

The *Escobedo* principle is a new rule, not only as an exclusionary concept but as a constitutional right. *Crooker* v. *California,* 357 U. S. 433 (1958); *Cicenia* v. *Lagay,* 357 U. S. 504 (1958). The same arguments presented by this amicus in *Linkletter* v. *Walker,* 381 U. S. 618 (1965) and *Angelet* v. *Fay,* 381 U. S. 654 (1965), including the supplementary material furnished to the Court therein, apply equally, if not more forcefully to the present situation. Likewise, the decision of *Tehan* v. *Shott,* 34 U. S. L. WEEK 4095 (January 19, 1966), should be applied.

There has been no holding of retroactivity by any of the federal or state appellate courts: to the contrary, the courts that have construed *Escobedo* liberally have held such a rule not to have retrospective application. *E.g., In re Lopez,* 62 Cal. 2d 368, 398 P. 2d 380 (1965).

Obviously the most dangerous of criminals are among those still incarcerated. Lack of other evidence at this late date, if it ever existed, would require the release of many of them. Both *Crooker* and *Cicenia* would be entitled to new trials or release, reversing standings of this Court.

Although the membership of this Court changes, there remains the need for relative stability of established principles. To foster second-guessing will be detrimental to an orderly society and to the administration of justice.

In the matters now before the Court, arguments have raged and will continue this pursuit until this Court finally resolves them. To further this debate be restatement thereof herein will serve no purpose. The difficulties which the California courts are experiencing with the cases which are not as yet "final" (that is, after conviction but in the process of appeal or subject to appeal, the time therefor not having expired) seem reason enough to consider the national effect upon the administration of justice, such as would make the California situation a mere skirmish. To cite all of the cases would be of no value, but to illustrate this point a *few* of the 1965 reversals of murder convictions (where the punishment was death or life imprisonment) on a *Dorado* interpretation of *Escobedo* are: CALIFORNIA SUPREME COURT: *People* v. *Bostick,* 62 Cal. 2d 820, 402 P. 2d 529 (1965) (4 defendants); *People* v. *Davis,* 62 Cal. 2d 791, 402 P. 2d 142 (1965); *People* v. *Roberts,* 63 A. C. 79, 403 P. 2d 411 (1965); *People* v. *Lilliock,* 62 Cal. 2d 618, 401 P. 2d 4 (1965) (2 defendants); DISTRICT COURTS OF APPEAL: *People* v. *Benavidez,* 233 A. C. A. 346, 43 Cal. Rptr. 577 (1965); *People* v. *Reid,* 233 A. C. A. 184, 43 Cal. Rptr. 379 (1965). There are many others, including Dorado himself and the defendant, Stewart, now before the Court. Of course, these cases are a mere sampling of the overall effect of *Dorado,* much less what the effect would be were it given retroactive application.

The Appendix of this brief demonstrates, far more than any recitation of theories, the possible effect of a decision to make any *Escobedo* rule retroactive. Of course, if the suggestion for an advisory rule is adopted, no problem lies on this point.

As new rules of conduct are formulated by the Court upon new found constitutional principles, the requiring of retrospective application thereof will frustrate the administration of justice beyond comprehension. While courts may be required to exercise hindsight, police officers only can be expected to follow prospective rules.

III. TO GUIDE LAW ENFORCEMENT OFFICERS, AN ADVISORY STANDARD, AS DISTINGUISHED FROM AN EXCLUSIONARY RULE, SHOULD BE DEVISED.

The exclusionary rule is ineffective at best. It may well be harmful. Whether changes can occur, or will occur in a degree that change is possible, devolves around human nature more so than legal principles, except insofar as the latter is an integral part of the former. This is a fact that even the critics of law enforcement appreciate:

> A practical difficulty in enforcing the constitutional rights of prisoners is the small efficacy of sanctions against official misconduct. In practice, the exclusionary rule alone is available, and it has no direct disciplinary force. The rule is applied only at trial, or perhaps only on appeal, months after the case has been "solved" and after the credit for getting the confession has been duly shared by all concerned. Then disappointed officials can ascribe the blame to the state or federal courts. Only after such rare public disclosures as those in the *Whitmore* case will any discredit fall on the officers.
>
> The only effective way to establish a constitutional regime in the administration of criminal justice is for the administrative superiors of police and prosecutors to insist on it. Sutherland, *Crime and Confession,* 79 Harv. L. Rev. 21, 40 (1965).

And Professor Sutherland may well have stated that appellate judges are not inclined to reverse many cases for this reason as well. To add an even more unpopular com-

pulsory rule of exclusion will not serve the interests of the people, law-abiding and nonlaw-abiding alike, of whom police officers, prosecuting attorneys, state and federal judges and Justices of this Court are servants.

Has not the time arrived for all of these public servants to join with other members of the executive and legislative branches of government in working together toward improving justice? Can this not be accomplished by an advisory rule which provides for reasonable, workable requirements but which does not exclude from court, on the bases of technicalities, the evidence obtained by a police officer attempting in good faith to follow such a rule? There should be no cause for "stretching of the law" (if not of the imagination) by the police officer or the trial or appellate judge, in order to uphold a conviction which should be so upheld but for an unintentional violation of such rule by a police officer seeking to perform his duty. The Advance Sheets readily disclose the means used by the California District Courts of Appeal to evade the stringent *Dorado* rule. What course the police and the trial judges of that state may be pursuing is not known.

Would not the advised use of an exclusionary rule—if limited to the flagrant abuse, the obvious violation or the grossly negligent failure to abide with such a regulation—bring, more forcefully, any improper conduct to the attention of those who are in a position to discipline the recalcitrant? Thus, it would be possible to inaugurate a workable system of redress.

State and federal governments are engaged, at last, in asserting positive action toward the objective of effective and just administration of the criminal law. The needs are obvious, although in all instances the method to accomplish the specific need is not. Surely improvement of the judiciary, the prosecutorial office and the various law enforcement bodies can be made and will be made because of

the present awareness. The various federal programs are to be seen in the presidential message of March 8, 1965, the immediate products being the Law Enforcement Assistance Act and the National Crime Commission. Local governments and private associations, from state to city, are involved in the overall plan. The American Bar Association is now engaged in studies which plan uniformity of trial practices as a means to more efficient justice (Criminal Justice Project headed by Chief Judge J. Edward Lumbard, United States Court of Appeals for the Second Circuit). The International Association of Chiefs of Police, this amicus and other national groups who represent administrators of the criminal laws seek to make changes for the better. There is a revolution in sight. Through the leadership of this Court, much of this promotion has come to fruition.

Fifty states, which are much like fifty countries, with their history of politics, the cultural differences of their ethnic groups and the myriad of other factors which have made them distinct, cannot be welded into a uniform mass overnight. With a national credo, uniformity in administration should be sought insofar as it can be sought. Of course, with human beings in charge perfection can only be a goal. This is not a pessimistic outlook, but rather it is optimistic that such a goal should be set at all.

But, to place, before all else, the opinion that the change must occur immediately by way of a dogmatic exclusionary rule may well frustrate the hoped-for objectives. The exigencies are time and study. The standard of justice in this country is not such that we cannot afford to stay changes, if the foreseeable results are more productive. An advisory rule, in the manner of *Wolf* v. *Colorado,* 338 U. S. 25 (1949) (which, because the times were different, did not precipitate the action warranted), will certainly be heeded now. It will give time to implement and still lead the way.

As we have throughout our entire legal history, we can look to England for the wisdom of experience. There, the formation of the Judges' Rules came at the request of police officers for guidance. While, as has been previously noted, the police of that country do not always adhere to the letter, the Rules are effectual because of the unique rapport between the courts and the police, an example to be encouraged in this country. The advisory Judges' Rules have some workable qualities which would not frustrate the enforcement of our laws. The indulgence of the Court in this suggestion is respectfully requested.

CONCLUSION.

Amicus curiae requests that the Court limit *Escobedo* v. *Illinois,* 378 U. S. 478 (1964), to its facts and that the rule in *Escobedo* be prospective only, in the form of an advisory rule to guide the administrators of our criminal laws.

For these reasons the decision in *California* v. *Stewart* should be reversed and the decisions in *Miranda* v. *Arizona, Vignera* v. *New York* and *Johnson* v. *New Jersey* should be affirmed.

Respectfully submitted,

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Counsel for the National District Attorneys Association, Amicus Curiae.

Appendix

INDEX.

PROSECUTING ATTORNEYS CONTRIBUTING DATA.

Alameda County, Oakland, California
J. Frank Coakley, District Attorney
Robert H. McCreary, Assistant District Attorney

Sacramento County, Sacramento, California
John M. Price, District Attorney

Hartford County, Hartford, Connecticut
John D. LaBelle, State's Attorney

Eleventh Judicial District (Dade County), Miami, Florida
Richard E. Gerstein, State's Attorney

Atlanta Judicial Circuit (Fulton County), Atlanta, Georgia
Lewis R. Slaton, Solicitor General

Orleans Parish, New Orleans, Louisiana
Jim Garrison, District Attorney
Charles R. Ward, Chief Assistant District Attorney

City of Baltimore, Baltimore, Maryland
Charles E. Moylan, Jr., State's Attorney
John D. Hackett, Assistant State's Attorney

Wayne County, Detroit, Michigan
Samuel H. Olsen, Prosecuting Attorney
Samuel J. Torina, Assistant Prosecuting Attorney

Hennepin County, Minneapolis, Minnesota
George M. Scott, County Attorney
Donald J. Omodt, Assistant County Attorney

Douglas County, Omaha, Nebraska
Donald L. Knowles, County Attorney

Essex County, Newark, New Jersey
Brendan T. Byrne, County Prosecutor
Barry H. Evenchick, Assistant County Prosecutor

Kings County, Brooklyn, New York
Aaron Koota, District Attorney
Elliott Golden, Chief Assistant District Attorney
Ronald B. Bianchi, Assistant District Attorney

Nassau County, Mineola, New York
William Cahn, District Attorney

New York County, New York, New York
Frank S. Hogan, District Attorney
David S. Worgan, Assistant District Attorney

Westchester County, White Plains, New York
Leonard Rubenfeld, District Attorney
Thomas A. Facelle, Jr., Senior Assistant District Attorney

Franklin County, Columbus, Ohio
C. Howard Johnson, Prosecuting Attorney

Hamilton County, Cincinnati, Ohio
Melvin G. Rueger, Prosecuting Attorney

Montgomery County, Dayton, Ohio
Lee C. Falke, Prosecuting Attorney
Walter H. Rice, Assistant Prosecuting Attorney

Philadelphia County, Philadelphia, Pennsylvania
James C. Crumlish, Jr., District Attorney
(to 12/31/65)
Arlen Spector, District Attorney
(effective 1/1/66)
Richard A. Sprague, Assistant District Attorney

INTRODUCTION.

This Appendix contains charts showing facts, figures and relative percentages for individual jurisdictions and on a national scale in regard to confessions and criminal cases. In most instances the data collected was sent in affidavit form with some additional information by letter. The original materials, that is, request for data forms, the affidavits (which have been condensed and correlated for this presentation) and other information received have been filed with the Clerk of the Supreme Court.

Realizing that a great many of the opinions on the relative significance of confessions (statements) to the process of criminal cases have been based upon supposition rather than fact, the National District Attorneys Association in October 1965 requested the cooperation of metropolitan prosecuting attorneys to search files and records to ascertain the actual use of confessions in felony cases. Those listed herein responded to the request. The year 1961 was selected for uniformity. To give an insight into the number of felony defendants who might still be incarcerated (having been convicted at trial as distinguished from entering a plea of guilty) and thus have possible recourse if retroactive application were found, case summaries were requested. Those jurisdictions who had sufficient time provided this information and it is included herein. Data from those jurisdictions that did not fit into the format requested for the year 1961 are part of the dossier of original data filed with the Clerk of the Supreme Court.

Generally, the data was obtained by assistants in the prosecuting attorney's office, although in one instance law students were employed for this purpose and in others, police officers or other law enforcement personnel collected the data or otherwise assisted in its compilation.

At first a request was made to check each case. This was done in a number of the offices; but because of lack of time and personnel, other offices asked to make samplings. All variations in the method of data collection are noted.

Many difficulties were encountered due to insufficient information in the records. In Miami, Oakland and Baltimore, through the use of samplings, such limitation in data was noted. Presumably this was true in other jurisdictions as well, so that the ratio of the number of cases involving confessions, as reported herein, would be low.

In some jurisdictions special data was reported. For example, both Minneapolis and Detroit classified their data into types of crimes. Also the Minneapolis data was further anaylzed to distinguish exculpatory statements from admissions of guilt, to show use in trials, pleas of guilty, etc. Miami included information on confessions in homicide cases.

Usually opinion is involved as to the essentiality of confessions at trial or plea proceedings. Therefore, the request for data excluded the reporting of such information, although it may be readily deduced from some of the abstracts. However, generally it would be conceded that the "confession" was a factor in the cases—whether in obtaining a plea of guilty or in the conviction at trial. The latter situation would include the use of exculpatory statements for impeachment purposes or otherwise aid in the trial. The fact that statements may have been used to secure evidence of the crime would preclude the determination of whether it was "essential" to conviction.

No comment is made on the data, allowing the facts and figures to speak for themselves. The data was collected, compiled and included in this brief for the assistance of the Court. The only other data of this type known is that

found in the supplementary memorandum to this Court submitted by this amicus in *Linkletter* v. *Walker:* in a table of 100 defendants, 85 gave statements.

GLOSSARY.

(Terms Used in Tables and Original Data.)

Confessions: extrajudicial statements of all kinds, admissions or exculpatory, oral or written.

Convictions: pleas of guilty and convictions at trial.

Dispositions: pleas of guilty, trials, nolle prosequi, dismissals, etc.—where case file is closed.

Pleas of Guilty: convictions without trial verdict or judgment; includes cases where defendant pleaded guilty after trial commenced.

Prosecutions: pleas of guilty and trials by judge or jury.

Trials: acquittals, verdicts, findings, dismissals by court, insanity, etc.

Trial Convictions: verdicts of guilty by jury and/or findings of guilty by judge sitting without jury after trial on the facts.

TABLE I.

CONFESSIONS: NATIONAL RELEVANCE REVIEW OF ALL 1961 CASES.

Jurisdiction	Confessions/ Pleas Of Guilty	Confessions/ Trial Convictions	Confessions/ Trials	Confessions/ Convictions	Confessions/ Prosecutions	Confessions/ Dispositions
California,						
Sacramento County (Sacramento)	45.3% (351/774)	64.7% (55/88)	57% (63/110)	47% (406/859)	46.9% (414/884)	—
Florida,						
Eleventh Judicial Circuit[1] (Dade County, Miami)	—	—	—	43.5% (750/1722)	—	35.8% (791/2206)
Maryland,						
City of Baltimore[1]	29% (61/210)	37% (112/300)	32% (137/428)	33.9% (173/510)	30.9% (198/638)	—
Michigan,						
Wayne County (Detroit)	—	—	—	—	60.8% (879/1445)	—
New York,						
Westchester County (White Plains)	84.6% (608/718)	71% (5/7)	80% (8/10)	82% (613/725)	84.7% (616/728)	83.8% (622/742)
Ohio,						
Hamilton County (Cincinnati)	—	—	—	—	—	64.4% (667/1035)
Ohio,						
Franklin County (Columbus)	—	—	—	82% (731/891)	—	—
Ohio,						
Montgomery County (Dayton)	76.8% (483/629)	43.3% (13/30)	38% (19/50)	75% (496/659)	73.8% (502/680)	—

Note: Figures in brackets refer to number of cases which have a record of confessions over the number of case files examined which equals the percentage given in each category.

1. It is clear that the records in these jurisdictions are not complete, in that in many instances the record did not indicate whether a confession (statement) was involved or not.

TABLE II.

CONFESSIONS: NATIONAL RELEVANCE
REVIEW OF 1961 CASES BASED PARTLY UPON SAMPLING

Jurisdiction	Confessions/ Pleas Of Guilty	Confessions/ Trial Convictions	Confessions/ Trials	Confessions/ Convictions	Confessions/ Prosecutions	Confessions/ Dispositions
California,						
Alameda County[1] (Oakland)	60% (21/35)	—	—	—	—	—
Connecticut,						
Hartford County[2] (Hartford)	53.8% (7/13)	9.5% (2/21)	—	—	—	—
Georgia,						
Atlanta Judicial Circuit[3] (Fulton County, Atlanta)	52.7% (69/131)	—	—	—	47% (71/150)	—
Louisiana,						
Parish of Orleans[4] (New Orleans)	78.4% (22/28)	—	47.8% (22/46)	—	—	—
Minnesota,						
Hennepin County[5] (Minneapolis)	86.7% (26/30)	80.7% (21/26)	80% (28/35)	—	—	—
New Jersey,						
Essex County[6] (Newark)	93% (55/59)	62% (18/29)	53.6% (22/41)	82.9% (73/88)	77% (77/100)	—
New York,						
Kings County[7] (Brooklyn)	47% (51/108)	0% (0/8)	11.8% (2/17)	44% (51/116)	42.4% (53/125)	—
New York,						
New York County[8] (New York)	50% (139/277)	24.4% (23/94)	19% (23/120)	—	—	—
Pennsylvania,						
Philadelphia County[9] (Philadelphia)	—	—	—	50% (189/376)	—	—

Note: Figures in brackets refer to number of cases which have a record of confessions over the number of case files examined which equals the percentage given in each category.

1. Examination of every 25th case.
2. Pleas of Guilty—examination of every 25th case; Trials—all cases checked.
3. Sampling of 10% of all cases prosecuted.
4. Pleas of Guilty—examination of every 25th case; Trials—all cases checked.
5. Pleas of Guilty—sampling of 1 out of 20 cases; Trials—sampling of 35 cases of 65 cases tried.
6. Based on random sampling of 100 cases.
7. Every 25th case checked.
8. Pleas of Guilty—review of every 25th case where pleas came before trial and of all pleas given after trial had commenced; Trials—review of all cases.
9. Review of all cases in which defendants convicted and sentenced to term of at least two years.

TABLE III.

CONFESSIONS: NATIONAL RELEVANCE OF PLEAS AND TRIALS—1961.

COMBINED TABLE—DATA OBTAINED BY COMPLETE CHECK OR BY SAMPLING.

Jurisdiction	Confessions/ Pleas of Guilty	Confessions/ Trial Convictions	Confessions/ Trials
California, Sacramento County (Sacramento)	45.3%	64.7%	57%
Maryland, City of Baltimore	29%	37%	32%
Minnesota, Hennepin County (Minneapolis)	86.7%	80.7%	80%
New Jersey, Essex County (Newark)	93%	62%	53.6%
New York, Kings County (Brooklyn)	47%	0%	11.8%
New York, New York County (New York)	50%	24.4%	19%
New York, Westchester County (White Plains)	84.6%	71%	80%
Ohio, Montgomery County (Dayton)	76.8%	43.3%	38%

Note: California, Maryland, New York (Westchester County), and Ohio based upon review of all cases. New York (New York County)—trial convictions and trials based upon review of all cases. All other percentages based upon sampling.

California.

ALAMEDA COUNTY, Oakland
J. Frank Coakley, District Attorney

Data compiled by Robert H. McCreary,
Assistant District Attorney

1960 County Population: 908,209

In "Crime in California," 1961, as compiled in the State's Bureau of Criminal Statistics, the figures for the County of Alameda were: felony filings on defendants—1258; felony defendants—1304; convicted—1229; pleaded guilty—1043.

Examining the Registers of Criminal Actions for the County (County Clerk No. 32134 to and including County Clerk No. 33271) for the year 1961, Mr. McCreary found 888 cases in which guilty pleas were entered. Of the 888 cases, every 25th case was reviewed for a total of 35 cases specifically considered. The check of these cases revealed that extrajudicial confessions were involved in 21 cases; no extrajudicial confessions were involved in 11 cases; no data was available on the confession issue in 3 cases. Thus, 60% of the cases wherein pleas of guilty were registered also contained verifiable extrajudicial confessions.

No data was to be had in the records or files concerning the use or nonuse of confessions at trial, except in the very few cases where appeal transcripts were prepared.

California.

SACRAMENTO COUNTY, Sacramento
John M. Price, District Attorney

Data compiled under the direction of
John M. Price, District Attorney

1960 County Population: 502,778

1961: 884 FELONY PROSECUTIONS
Based on a Review of All Felony Prosecutions

		Pleas of Guilty	Trials[1]	Total
Convictions		774	85	859
Confessions		351	55[2]	406
Relativity:	Confessions / Convictions	45.3%	64.7%	47%
Relativity:	Confessions 414 / Prosecutions 884	—	—	46.9%
Relativity:	Confessions 63 / Trials 110	—	57%	—

1. Total tried: 110.
2. Total confessions involved in 110 trials: 63, of which 3 found not guilty by reason of insanity.

In 1961 there were 965 felony dispositions, but no data was available on confessions in the total dispositions other than by trials or pleas of guilty (e. g., nolle prosequi).

There remain under the control of the penal authorities 15 defendants who were convicted at trials (as distinguished from pleas of guilty) in which their statements were a factor. Resumes of these cases are as follows:

Superior Court #24754—James Vienni:

Convicted of three counts of armed robbery after trial by jury. An exculpatory-type statement was used at trial to impeach defendant as it varied from his sworn testimony. Conviction was the result of a combination of circumstances: (1) Identification of defendant by four eyewitnesses; (2) Fact defendant had prior felony convictions; (3) Use of district attorney's statement as impeachment.

Superior Court #25294—William Henry Houghton, age 35:

Convicted of assault with intent to commit murder, armed robbery and ex-convict with a gun. Sentenced January 17, 1962; all counts consecutive, and adjudged a habitual criminal. Defendant asked three people to accompany him in a holdup, showed them the gun he intended to use and testified for them; each refused. When arrested defendant made statement that he is fighting for 15 to 20 years of his life—that he had no one to blame but himself, that he was willing to pay for his actions and that he knew he had to.

Superior Court #25356—Robert O. Dingman, age 29:

Convicted of two counts of second-degree burglary. Sentenced to state prison on February 16, 1962. Defendant did not take the stand; however, his confession was introduced against him.

Superior Court #25301—Ervin Lewis Zander, age 19:

Defendant, in conjunction with two others who pleaded guilty, committed an armed robbery. He pleaded not guilty, was convicted on January 30, 1962, and sentenced to California Youth Authority on February 21, 1962. His confession was used against him at trial.

Superior Court #25326—Arthur Davis, age 55:

Convicted of first-degree robbery. Charged November 21, 1961; jury trial; sentenced to state prison February 14, 1962. Defendant, an on-duty policeman in a small town, was look-out while Freeman and DeLouize robbed bar. During investigation Freeman confessed, naming Davis. Had suspicion focused on Davis? By use of electronic device (. . .), made recording of damaging admissions by Davis relative to his part in robbery. This statement vital to conviction as corroboration of Freeman's testimony. Davis now on parole.

Superior Court #25047—Sidney Lewis, age 39:

Convicted of burglary, second; sentenced to one to 15 years on September 27, 1961; affirmed on appeal. No eyewitnesses. Defendant walked into the Los Angeles Sheriff's office and confessed the crime to two officers. Confession used as only means of connecting him to crime. Defendant admitting smashing a jewelry store window and stealing miscellaneous jewelry.

Superior Court #24935—Kenton Dale McHenry, age 32:

Convicted of four counts of incest and one count of lewd and lascivious conduct with a child under the age of 14; sentenced to one to 50 years on each count of incest and one year to life on the child molest. Two eyewitnesses. Admission that one day his wife "came home too soon" was closest thing to a confession in the case. Sentence was imposed August 11, 1961.

Superior Court #24918—Joseph C. Davis, age 34:

Convicted of first-degree robbery; sentenced to five years to life on August 23, 1961. Eyewitnesses, plus defendant confessed to aiding and abetting in the robbery of a service station attendant.

Superior Court #25177—Martha Seach, age 37:

Convicted of attempted burglary, placed on felony probation. No confessions or admissions, but demonstrably false and evasive self-exculpatory statements were introduced against her.

Superior Court #25176—Billy Tildon Brown, age 27:

Convicted of forcible rape; sentenced to three years to life on November 29, 1961. No confession or admissions, but formal statement used to impeach defendant on basis of prior inconsistent statements as to whereabouts at particular times.

Superior Court #25373—William J. Songs, age 49:

Convicted by jury of robbery, first degree, on February 9, 1962. Sentenced to state prison for five years to life on March 1, 1962. Convicted on testimony of eyewitness-victim. Made statement denying crime. Defendant's testimony at trial was, in several material respects, inconsistent with his statement. Statement was, therefore, used on cross-examination of defendant for impeachment.

Superior Court #25415—Jesse Allen, age 48:

Convicted by jury of murder, second degree, on March 14, 1962. Sentenced to state prison for five years to life on March 19, 1962. Made statement confessing shooting an acquaintance in the course of an argument in a pool hall. Convicted upon eyewitness testimony and confession.

Superior Court #25034—Harold Pearl, age 33:

Convicted by jury October 26, 1961, of murder, second degree, and abortion. Sentenced to state prison on November 7, 1961, for five years to life and six months to five years concurrent. There were no eyewitnesses to the

crimes, and defendant was convicted solely on circumstantial evidence. He gave an extrajudicial statement denying involvement. This statement contained demonstrably false statements plus admissions showing a consciousness of guilt. Defendant declined to testify in his own behalf because of probability of damaging cross-examination on the basis of his extrajudicial statement.

Superior Court #25034—Robert Kennedy, age 41:

Convicted by jury October 26, 1961, of murder, second degree, and abortion. Sentenced to state prison on November 7, 1961, for five years to life and six months to five years concurrent. There were no eyewitnesses to the crimes, and defendant was convicted solely on circumstantial evidence. He gave an extrajudicial statement denying involvement. This statement contained demonstrably false statements plus admissions showing a consciousness of guilt. Defendant declined to testify in his own behalf because of probability of damaging cross-examination on the basis of his extrajudicial statement.

Superior Court #24438—Edward Potter, age 34:

Convicted by jury of lewd and lascivious conduct with a child under the age of 14 years (violation of Section 288 of the Penal Code). On January 6, 1961, he was convicted and on January 27, 1961, sentenced to the state prison for a term of one year to life. Defendant convicted on testimony of the victim, age 13, plus his extrajudicial confession.

Connecticut.

HARTFORD COUNTY, Hartford
John D. LaBelle, State's Attorney

Data compiled by John D. LaBelle,
State's Attorney
1960 County Population: 689,555

There were 593 defendants docketed on felony charges for the calendar year 1961.

1961: 319 PROSECUTIONS.

Based on Sampling of Pleas of Guilty and Review of All Trials.

	Pleas of Guilty	Trials[1]
Convictions	13	21
Confessions	7	2
Relativity: Confessions / Convictions	53.8%[2]	9.5%

1. Total tried 33 of which 21 were convicted; 6 were acquitted; 4 were found not guilty by reason of insanity and committed to state mental institution; 2 were found guilty of lesser charges.

2. Based on an examination of approximately every 25th case, for a total of 13 files checked. A review of these files disclosed that in 7 cases extrajudicial confessions had been made by the defendants.

There remain under the control of penal authorities 15 of the defendants convicted (by plea or trial) of felonies. Of the defendants so incarcerated, 8 of them confessed. Since all eight of these cases involved pleas of guilty, resumes thereof are not set out here.

Florida.

ELEVENTH JUDICIAL CIRCUIT, Miami
Richard E. Gerstein, State Attorney

Data compiled under the direction of
Richard E. Gerstein, State Attorney

1960 Judicial Circuit Population: 935,047
(Dade County)

The files were reviewed and the data correlated by Denis Dean and Philip S. Goldin, law students at the University of Miami School of Law, who were retained for that purpose by Mr. Gerstein.

In the calendar year 1961, there were 2206 felony charges filed. Defendants convicted for the period numbered 1722, which count includes felonies reduced to misdemeanors; pleas of guilty totaled 1294. The difference between convictions and pleas is attributed primarily to the inclusion of felonies reduced to misdemeanors (especially automobile thefts) in the total conviction count; no specific check was made to reflect this misdemeanor-conviction figure. No information was reported of cases tried.

An extrajudicial confession was a factor in 791 felonies. Confessions were involved in 750 of the convictions; again the conviction figure incorporates felonies reduced to misdemeanors; also no attempt was made to further classify as to guilty plea or trial. However, in a check of 25 files (approximately every 25th case) wherein the defendant had entered a plea of guilty, it was determined that no evidence of a confession appeared in 17 of these cases while in 8 of these cases no specific data was available regarding the existence or nonexistence of a confession. Thus, from a consideration of this sampling, it can be assumed

that a substantial number of the total cases filed did not contain a record indicating the use or nonuse of a confession; consequently, the percentage of confessions to convictions, 43.5% (750/1722), is low for it is very likely to be considerably higher in view of the sampling. The ratio of confessions to dispositions, 35.8% (791/2206), also is low for the very same reason.

Of those convicted in 1961, 73 remain incarcerated.

1961: 24 HOMICIDE PROSECUTIONS

Based on Review of All Cases Prosecuted

	Pleas of Guilty	Trials[1]	Total
Convictions	20	3	23
Confessions	—	—	21
Relatively: $\frac{\text{Confessions}}{\text{Convictions}}$	—	—	91%
Relativity: $\frac{\text{Confessions}}{\text{Prosecutions}}$	—	—	87.5%

1. Total tried: 4.

Georgia.

ATLANTA JUDICIAL CIRCUIT, Atlanta

Lewis R. Slaton, Solicitor General

Data compiled under the direction of
Lewis R. Slaton, Solicitor General

1960 Judicial Circuit Population: 556,326
(Fulton County)

A sampling of 10% of the following cases for the year 1961 were taken:

Number of felony cases handled:		1502
Number of pleas of guilty	1146	
Number of cases tried (all jury)	211	
Others (nolle prosequi, dead docket, etc.)	145	

1961: 1357 FELONY PROSECUTIONS

Sampling of 10% of All Cases Prosecuted[1]

	Pleas of Guilty	Jury Trials	Total
Convictions	131	—	—
Confessions	69	2	71
Relativity: $\frac{\text{Confessions}}{\text{Convictions}}$	52.67%	—	—
Relativity: $\frac{\text{Confessions}}{\text{Prosecutions}}$ $\frac{71}{150}$	—	—	47%

1. Cases reviewed: 131 pleas of guilty; 19 trials.

Louisiana.

ORLEANS PARISH, New Orleans
Jim Garrison, District Attorney

Data compiled by Charles R. Ward,
Chief Assistant District Attorney

1960 County Population: 627,525

Information regarding the total number of felonies disposed of in 1961 is unavailable.

However, there were 700 pleas of guilty entered, and a check of every 25th case (for a total of 28 cases) indicated that 22 extrajudicial confessions were involved while in 6 cases there were no confessions. From this sampling, the percentage of confessions in pleas of guilty equals 78.4%.

There were 46 cases tried before a jury: confessions were used in 22 of these cases; all 22 cases resulted in convictions. The percentage of confessions to trials equals 47.8%. No other data was available.

Maryland.

City of Baltimore
Charles E. Moylan, Jr., State's Attorney

Data compiled by John D. Hackett,
Assistant State's Attorney
1960 City Population: 939,024

Maryland, a common law state, lists many statutory felonies of other jurisdictions as misdemeanors, e.g., daytime and store house burglaries, both of which comprise a sizeable number of indictments in the City of Baltimore. Also many felony charges result in misdemeanor convictions under multiple-type indictments. Consequently, the separation of felonies and misdemeanors in the State of Maryland cannot afford a meaningful comparison with these classifications as employed in other states. In a number of files the records do not indicate whether a confession was used or not, as reflected by a sampling set out in the original data.

In Baltimore the guilty plea is infrequent; likewise, the jury trial is notably rare. Hearings are almost exclusively by the bench: it is possible for as many as four or five cases to be disposed of in one day by one judge and by one prosecuting attorney. The experience of the State's Attorney has been that the small number of guilty pleas have resulted from defense counsels' concern with defendants' stock claim in their petitions that counsel was "professionally incompetent."

1961: 638 Felony Prosecutions

Based on Review of All Felony Prosecutions

			Pleas of Guilty	Trials	Total
Convictions			210	300	510
Confessions			61	112	173
Relativity:	Confessions / Convictions		29%	37%	33.9%
Relativity:	Confessions / Prosecutions	198 / 638	—	—	30.9%
Relativity:	Confessions / Trials	137 / 428	—	32%	—

Defendants still incarcerated where confessions were used in their cases number 33.

Resumes of every 25th case of the 198 cases tried in which confessions were used (for a review of 8 cases) follow (cases selected reflect defendants still incarcerated which fall closest to the actual 25th case):

1. Case No. 682, William Holmes, then age 49, convicted of murder in the first degree, court trial, court appointed attorney, on December 18, 1961 (companion conviction for rape, sentence suspended). Sentenced to life imprisonment on January 5, 1962. No appeal taken. No eyewitness. Confession admits sexual intercourse, binding and gagging of victim, abandoning victim behind locked door, and returning in week's time to find the victim dead. Psychiatric examination completed pre-trial: diagnosis:—legally sane then, legally sane at time of trial.
2. Case No. 1535, Sylvester Alphonse Evans, then age 18, convicted of murder in the first degree on October 24, 1961, court trial, court-appointed attorney.

Sentenced to life imprisonment on March 16, 1962 in the Maryland Penitentiary. Motion for new trial, other court-appointed attorney, heard, denied. Appeal not taken. Defendant identified during trial. Confession admits joining group of youths in pool room, leaving en masse to punish others for "messing" with his sister, a confrontation of sister and victim, age 14, in front of ten friends and beating of victim by group. Confession also admits taking shot gun, on the following night to a "rumble" with victim's friends, chasing the victim and shooting as he fled down the alley. Defendant also admits an immediate change of clothing to avoid police detection.

3. Case No. 1031, Floyd Jorstad, then age 34, convicted on April 7, 1961, after pleading guilty to armed robbery of $2863.00 from bank teller, refused court appointed counsel. Sentenced to nine years in the Maryland Penitentiary on April 7, 1961. Four eyewitnesses identified defendant in police lineup and trial. Statement admitted, contains story of arrival in Baltimore City via freight car to study historical monuments, and makes no reference to bank hold up.

4. Case No. 2165, Paul D. King, then age 45, convicted of second degree murder on September 25, 1961, after entering guilty plea with retained attorney. Sentenced to 18 years in the Maryland Penitentiary on September 25, 1961. No appeal taken. Pre-trial psychiatric report: diagnosis—legally sane. One eyewitness identified defendant at trial. Confession admits slapping, chasing and shooting victim following argument in victim's home after evening date refusal. Defendant, a

longshoreman, also admitted carrying unlicensed gun at all times.

5. Case No. 2652, Emory McNeal, then age 37, convicted on August 9, 1961, of armed robbery, court trial, court-appointed attorney. Electroencephalograph studies ordered by court: diagnosis—no brain injury. Sentenced to 10 years in the Maryland Penitentiary on August 9, 1961. No appeal taken. Both cab driver victims identified defendant at trial. One confession admits hold up in attempt to get money for drink. Other confession admits drinking and "amnesia" concerning possession of leather pocket watch of victim.
6. Case No. 4080, James D. Clay, then age 27, convicted on December 11, 1961 of two cases of armed robbery and assault, court trial, court-appointed counsel, guilty plea. Sentenced to 20 years in the Maryland Penitentiary on December 11, 1961. No appeal taken. Both victims identified defendant at trial. The one confession admits planning with another and execution of robbery of one victim, a used-car office. Denial of weapon used with admission of hand in pocket and death threat. Other confession admits planning with two others, execution of robbery and beating of barber who resisted hold up trip.
7. Case No. 442, Matthew Forrester, then age 26, convicted on January 17, 1962 of mayhem and assault to rob, court trial, court-appointed attorney. Sentenced to ten years in the Maryland Penitentiary, after denial of motion for new trial, by another court-appointed attorney, on June 7, 1962. No appeal taken. Victim, who lost an eye and is deaf, identified defendant as one of four men who as-

saulted him, ripped off his trousers and fled scene with victim's money. Statement asserts defendant only offered victim handkerchief to stop face bleeding and carrying victim into tavern wash room, admits sharing loot taken from victim.

8. Case No. 4793, William Cole, then age 22, convicted on January 24, 1962, of armed robbery, court-appointed counsel. Sentenced to ten years in the Maryland Penitentiary on January 24, 1962. No appeal taken. Truck driver victim identified defendant on street at time of arrest and at trial. Confession admits planning with codefendant to "get some money", agreement to rob truck driver, concealed "gun" in coat pocket, beating of victim, flight and chase by police cruiser and admission of lies to conceal identity when first questioned.

Michigan.

WAYNE COUNTY, Detroit

Samuel H. Olsen, Prosecuting Attorney

Data compiled under the direction of Samuel J. Torina, Chief Appellate Attorney, by the Criminal Investigation Division, Detroit Police Department

1960 County Population: 2,666,297

1961: 1445 PROSECUTIONS.

Crime	Prosecution	Conviction	Confession	Relativity: Confession/ Prosecution
Unlawful driving away auto and possession of stolen auto	392	270	233	52%
Uttering & publishing; larceny over $100 (shoplifting)	337	331	241	71.5%
Homicide	115	105	61	53%
Narcotic violations	240	197	124	51.7%
Kidnapping, extortion, arson, larceny by trick	24	9	7	29%
Robbery	181	170	148	81.7%
Burglary	62	60	40	64.5%
Forcible rape	74	56	18	24%
Carrying concealed weapon; possession of burglar tools; receiving and concealing stolen property over $100	20	18	7	35%
Total	1445	1216	879	60.8%

Minnesota.

HENNEPIN COUNTY, Minneapolis
George M. Scott, County Attorney

Data compiled by Donald J. Omodt, Assistant County Attorney with the assistance of Charles Rogers, Investigative Clerk, County Attorney's Office

1960 County Population: 842,854

In 1961, felony dispositions totaled 658. There were 593 pleas of guilty entered; in a sampling of 1 out of 20 cases (30 cases checked), the ratio of confessions to convictions was 86.7%. A total of 65 cases were tried: 50 convictions and 14 acquittals. A sampling of 35 of these cases revealed a confession to conviction ratio of 80.7% and a confession to prosecution ratio of 80%.

The following two charts disclose the detail of the samplings:

PLEAS OF GUILTY.

Type of Crime	Cases	Signed Confession	Oral Confession	Exculpatory Statement	Defendant Stood Silent	Defendant Still Incarcerated
Robbery	12	9		1	2	5
Rape	1	1				1
Narcotics	3	3				0
Assault	2	1	1			0
Indecent Assault	1				1	0
Murder	3	3				2
Sodomy	3	2		1		0
Carnal Knowledge	2	1			1	1
Arson	1	1				1
Abortion	2	1		1		0
	30	22	1	3	4	10

TRIALS—COURT OR JURY

Type of Crime	Number of Trials	Found Guilty by Court or Jury	Acquitted	Signed Confession	Oral Confession	Exculpatory Statement	Defendant Stood Silent	Totals	Defendant still Incarcerated
Robbery	3	3		*1/0		2/0		3/0	2
Grand Larceny	5	4	1	1/0	1/1	1/0	1/0	4/1	0
Forgery	4	4		1/0	1/0		2/0	4/0	0
Using Auto	2	1	1			1/1		1/1	1
Swindling	1	1				1/0		1/0	0
Burglary	9	5	4	0/1	0/1	4/1	1/1	5/4	3
Rape	5	5		1/0	1/0	3/0		5/0	1
Narcotics	1	1			1/0			1/0	0
Assault	1		1	0/1				0/1	0
Insufficient Fund Checks	1	1					1/0	1/0	0
Criminal Negligence	1	1			1/0			1/0	0
Indecent Assault	1		1			0/1		0/1	0
Bribery	1		1				0/1	0/1	0
	35	26	9	4/2	5/2	12/3	5/2	26/9	7

* Above the slanted line indicates "of the number found guilty"; below the slanted lines indicates "of the number acquitted."

New Jersey.

ESSEX COUNTY, Newark
Brendan T. Byrne, County Prosecutor

Data compiled under the direction of Barry H. Evenchick, Assistant County Prosecutor by Charles H. Acocella, County Investigator and Evan E. Miles, County Detective, both on the staff of the County Prosecutor

1960 County Population: 923,545

1961: SAMPLING OF 100 CASES

	Pleas of Guilty	Trials	Total
Convictions	59	29	88
Confessions	55	18	73
Relativity: $\frac{\text{Confessions}}{\text{Convictions}}$	93%	62%	82.9%
Relativity: $\frac{\text{Confessions}}{\text{Prosecutions}}$ $\frac{77}{100}$	—	—	77%
Relativity: $\frac{\text{Confessions}}{\text{Trials}}$ $\frac{22}{41}$	—	—	53.6%

A chart detailing the review of each individual case is filed in the Office of the Clerk of the Supreme Court.

New York.

KINGS COUNTY, Brooklyn

Aaron E. Koota, District Attorney

Data compiled under the direction of Elliott Golden, Chief Assistant District Attorney, by Ronald B. Bianchi, Assistant District Attorney

1960 County Population: 2,627,319

Number of felony dispositions in 1961:		3334
Number of defendants convicted	2890	
Number of pleas of guilty	2695	
Number of trials (195 convictions; 217 acquittals)	412	

1961: 3107 FELONY PROSECUTIONS

Based Upon Sampling of Every 25th Case

		Pleas of Guilty	Trials	Total
Convictions		108	8	116
Confessions		51	0	51
Relativity: Confessions / Convictions		47%	0%	44%
Relativity: Confessions / Prosecutions	53 / 125	—	—	42.4%
Relativity: Confessions / Trials	2 / 17	—	—	11.8%

Of the 108 pleas of guilty, the records indicated 51 confessions, 43 no confessions, 14 no data available. This again shows that the percentage of confessions is low because it is probable that in some of the cases wherein no data was available confessions were involved. In the 8 trial convictions, the files showed 7 without a confession and 1 with

no data. Of the 9 trial acquittals, the records indicated no confessions in 7 cases and 2 cases with confessions. It is interesting to note that in the 2 cases tried involving confessions (statements) there were acquittals. In at least 7 of the 8 convictions there were eyewitnesses but no confessions.

New York.

NEW YORK COUNTY, New York
Frank S. Hogan, District Attorney

Data compiled under the direction of David S. Worgan, Executive Assistant District Attorney, by Criminal Law Investigators on the staff of the District Attorney

1960 County Population: 1,698,281

The files were reviewed and the data correlated by John G. Guyet, David H. Lamson, Robert D. Mac Lachlon, Jr. and Jay Harris, Criminal Law Investigators, Office of the New York County District Attorney.

1961: 4191 FELONY DISPOSITIONS

Based on a Review of *All* Trials and a *Sampling* of Pleas of Guilty

			Pleas of Guilty[1]	Trials[2]
Convictions			277	94
Confessions			139	23
Relativity:	Confessions / Convictions		50%	24.4%
Relativity:	Confessions / Trials	23 / 120	—	19%

1. Based upon review by sampling of every 25th case where pleas of guilty came before trial (159 cases with 96 confessions) and of all pleas of guilty given after trial had commenced (118 cases with 43 confessions).

2. Based upon review of all cases tried.

New York.

WESTCHESTER COUNTY, White Plains
Leonard Rubenfeld, District Attorney

Data compiled by Leonard Rubenfeld,
District Attorney with the assis-
tance of Thomas A. Facelle, Jr.,
Senior Assistant District Attorney

1960 County Population: 808,891

1961: 742 FELONY DISPOSITIONS[1]

Based on Review of *All* Felony Files Closed

	Pleas of Guilty	Trials[2]	Total
Convictions	718	7	725
Confessions	608	5	613
Relativity: Confessions / Convictions	84.6%	71%	82%
Relativity: Confessions[3] 622 / Dispositions 742	—	—	83.8%
Relativity: Confessions 616 / Prosecutions 728	—	—	84.7%

1. Total indictments: 611 of which 581 were disposed of by plea of guilty, trial, or otherwise (death, fugitive, acquitted, dismissed, etc.); the 581 indictments covered 511 defendants and constituted 742 cases (a case being defined as each indictment against each defendant, e.g., one indictment involving four defendants would be computed as four cases; so also four separate indictments against one defendant would be computed as four cases).

2. Total trials: 10.

3. Total confessions: 622.

Ohio.

FRANKLIN COUNTY, Columbus

C. Howard Johnson, Prosecuting Attorney

Data compiled by Assistant
Prosecuting Attorneys

1960 County Population: 864,121

The following information was prepared by Assistant Prosecuting Attorneys under the supervision and control of Mr. Johnson (review of all cases):

Felony cases processed in 1961:		1038
Convictions	891	
Convictions having confessions prior to arraignment	731	
Relativity: $\frac{\text{Confessions}}{\text{Convictions}}$		82%
Incarcerations:		400
Incarcerations having confessions prior to arraignment	330	
Still subject to penal uthorities, having given confessions prior to arraignment:		149
Incarcerated	82	
Parolees	42	
Escaped parole violators (per Department of Mental Hygiene and Correction of Ohio)	25	

Each case has been listed in a record filed in the Office of the Clerk of the Supreme Court.

Ohio.

HAMILTON COUNTY, Cincinnati
Melvin G. Rueger, Prosecuting Attorney

Data compiled by Assistant Prosecuting Attorneys

1960 County Population: 864,121

The data was obtained by Mr. Rueger's assigning the review of the 1961 felony cases to members of his staff.

In a count of 1035 felony dispositions, there was a combined conviction figure of 926 (220 by trials; 706 by guilty pleas); furthermore, there were 667 extrajudicial confessions involved in the total felony count, being 64.4% of these cases.

Ohio.

MONTGOMERY COUNTY, Dayton
Lee C. Falke, Prosecuting Attorney

Data compiled by Walter H. Rice,
Assistant Prosecuting Attorney
1960 County Population: 527,080

There were 756 felony dispositions, but data regarding confessions as to those cases dismissed, nol-prossed, etc. is not available.

1961: 680 FELONY PROSECUTIONS[1]
Based on Review of All Felony Prosecutions

	Pleas of Guilty	Trials	Total
Convictions	629	30	659
Confessions	483	13	496
Relativity: $\frac{\text{Confessions}}{\text{Convictions}}$	76.8%	43.3%	75%
Relativity: $\frac{\text{Confessions } 502}{\text{Prosecutions } 680}$	—	—	73.8%
Relativity: $\frac{\text{Confessions } 19}{\text{Trials } 50}$	—	—	38%

1. Pleas of Guilty (629) plus Trials (51).

1961: 51 TRIALS (JUDGE OR JURY)

Based on Review of All Cases Tried

	Total	Confessions Employed	Percentage of Confessions
Convictions	30	13	43.3%
Acquittals	21	6	28.6%
Percentage of Convictions	58.8%	68.4%	—

There remain incarcerated 6 defendants convicted at trials (judge or jury) through the use of confessions; a resume of these cases follows:

1. Case 22434, Billy Joe Humphrey, age 33 years—convicted on May 3, 1961 by a three-judge panel, of murder in the first degree while perpetrating a Robbery; sentenced to life imprisonment in the Ohio State Penitentiary. Defendant gave full written statement which explained all details and corroborated dying declaration of complainant.
2. Case 22459, Ben G. Holston, age 38 years—convicted on August 11, 1961 by a jury, of Murder in the first degree, with a recommendation of mercy; sentenced to life imprisonment in the Ohio State Penitentiary. Defendant gave full written statement, corroborating all details of witnesses and explaining all elements of shooting.
3. Case 22541, Raymond Byrd, age 33 years—convicted on July 7, 1961 by a jury, of armed robbery; sentenced to a term of 10-25 years in the Ohio State Penitentiary. Defendant gave full written statement which corroborated complaining witness' testimony. Defendant was on parole at the time of offense.
4. Case 22752, Alonzie Phillips, age 32—convicted on

November 29, 1961 by a jury, of armed robbery; sentenced to 10-25 years in the Ohio State Reformatory. Defendant gave full written statement concerning this and other armed robberies; said statement corroborated testimony of the complaining witness.

5. Case 22730, Ronald Edwin Lawson, age 21 years—convicted on September 12, 1961 by a jury, of operating a motor vehicle without the owner's consent; sentenced to a term of 1-20 years in the Ohio State Reformatory. Defendant gave oral statement corroborating the testimony of an accomplice. Defendant was on parole at the time of the offense.
   Note: Defendant was released on parole in 1963 but returned as a parole violator on July 7, 1964 and is presently incarcerated.
6. Case 22489, Paul Edward Coble, age 30 years—convicted on October 17, 1961, by a jury, of Grand Larceny; sentenced to a term of 1-7 years in the Ohio State Reformatory; said jury verdict was affirmed on appeal. Defendant gave full written statement which corroborated accomplice testimony. Defendant was on parole at time of offense.
   Note: Defendant was released on parole in 1963 but returned as a parole violator in May of 1965 and is presently incarcerated.

Pennsylvania.

PHILADELPHIA COUNTY, Philadelphia
James C. Crumlish, Jr., District Attorney (to 12/31/65)
Arlen Spector, District Attorney (effective 1/1/66)

Data compiled under the direction of Richard A. Sprague, Chief Assistant District Attorney, Prosecution Department, by the County Detectives Staff of the Office of the District Attorney

1960 County Population: 2,002,512

In a review of 376 cases in which defendants were convicted of a crime and sentenced to a term of imprisonment of at least two years, confessions were obtained in 189 of these cases. The percentage of confessions in such cases is 50%.

JUDGES' RULES [1964] 1 ALL. E. R. 237-239.

(Note: In [1964] All England Reports 237-240, coverage of the latest Judges' Rules (effective January 27, 1964) have been reported by N. P. Metcalfe as coming from Home Office Circular No. 31/1964, dated January, 1964, in a pamphlet entitled "Judges' Rules and Administrative Directions to the Police." Footnote (2) is set out verbatim except for deletions which refer to other footnotes. The complete unabridged Judges' Rules, as given in said Reports, are also included. Appendix B which is entitled "Administrative Directions on Interrogation and the Taking of Statements," involving the interpretation and directives from the Home Office is not reproduced in this brief.)

"(2) A note printed before the Judges' Rules in Appendix A in the pamphlet . . . explains that the judges control the conduct of trials and the admission of evidence against persons on trial before them, but do not control or in any way initiate or supervise police activities or conduct. The rules do not purport to deal with many varieties of conduct which might render answers and statements involuntary and therefore inadmissible, but deal merely with particular aspects of the matter. . . .

"Appendix A, in the introduction before the terms of the Rules are set out, contains the following statement: 'These Rules do not affect the principles (a) that citizens have a duty to help a police officer to discover and apprehend offenders; (b) that police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station; (c) that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the proc-

esses of investigation or the administration of justice by his doing so; (d) that when a police officer who is making inquiries of any person about an offense has enough evidence to prefer a charge against that person for the offense, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence; (e) that it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

'The principle set out in para. (e) above is overriding and applicable in all cases. Within that principle the Judges' Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.' ''

JUDGES' RULES.

''1. When a police officer is trying to discover whether, or by whom, an offense has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

''2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

"The caution shall be in the following terms:

'You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.'

"When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

"3. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:

'Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.'

"(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

'I wish to put some questions to you about the offence with which you have been charged (*or* about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.'

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and

the record signed by that person or if he refuses by the interrogating officer.

"(c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

"4. All written statements made after caution shall be taken in the following manner: (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

'I, ..., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.'

"(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

"(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

> 'I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.'

"(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person

making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him.

"(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

> 'I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.'

"(f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like the correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

"5. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply,

or starts to say something, he shall at once be cautioned or further cautioned as prescribed by rule 3(a).

"6. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules (3)."

TABLE IV.

COMPARISON OF CRIME INCIDENCE—1964
ENGLAND-WALES-UNITED STATES-CHICAGO AREA
(CRIMES KNOWN TO POLICE).

Classification	England and Wales	United States	Chicago, Ill. Metropolitan Area
Population	47,402,000	191,334,000	6,531,000
Crimes:			
Murder and Non-negligent Manslaughter	278 (.6)	9,249 (4.8)	468 (7.2)
Forcible Rape	517 (1.1)	20,551 (10.7)	1,381 (21.1)
Robbery	3,066 (6.5)	111,753 (58.4)	17,887 (273.9)
Auto Theft	13,989 (29.5)	462,971 (24.2)	38,027 (582.3)

1. Sources: HOME DEPARTMENT, CRIMINAL STATISTICS (ENGLAND AND WALES), 1964, 2-5 (November 1965); FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES (1964) 49-72 (July 1965).

2. The number of crimes committed per 100,000 inhabitants is given in parenthesis.