



Written by [Jack Kenny](#) on June 2, 2010

## Court Holds Suspect Must Invoke the Right to Silence

Police may continue to question a silent suspect until he invokes his right to remain silent, the U. S. Supreme Court said yesterday in its latest ruling on the "Miranda rights" the Court first proclaimed 44 years ago. In a 5-4 decision, the Court ruled that a defendant's silence does not automatically require an end to an interrogation. The ruling leaves intact the requirement that the police inform the suspect of his right to remain silent and to have the assistance of an attorney. But Tuesday's ruling holds that if he talks to police after that, the suspect has effectively waived his right to silence and whatever he says may be used by prosecutors against him.



The case involved Van Chester Thompkins, convicted of a murder in Southfield, Michigan. Thompkins had remained mostly silent through a three-hour police interrogation before implicating himself in the murder. In his appeal, Thompkins claimed the interrogation should have stopped at the beginning of the questioning, when he did not answer. He had invoked his right to remain silent simply by reaming silent, his lawyer argued. But Justice Anthony Kennedy in the majority opinion said the initial silence was not enough to render the interrogation invalid and the suspect's words inadmissible at trial.

"Thompkins did not say that he wanted to remain silent or that he did not want to talk to police," Kennedy wrote. "Had he invoked either of these simple unambiguous statements, he would have invoked his 'right to cut off questioning.' Here he did neither, so he did not invoke his right to remain silent."

Kennedy's opinion was joined by the court's conservative bloc, with chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Samuel Alito in favor of upholding the conviction, while the liberal foursome of Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor voted to overturn it. Sotomayor, the court's newest member, claimed the defendant's rights under *Miranda* "upside down." Elena Kagan, President Obama's nominee to replace the retiring Stevens, argued against the appeal in her role as U.S. solicitor general.

The ruling was welcomed by prosecutors, who said it makes clear when police are required to stop questioning. "Is it too much to ask for a criminal suspect to say he doesn't want to talk to police?" asked Scott Burns, executive director of the National District Attorneys Association.

The oft-quoted 'Miranda rights' came from the 1966 Supreme Court decision in *Miranda v Arizona*. The ruling consolidated four cases in which the defendants had been convicted of kidnapping, rape, robbery, and murder. The defendants in all four cases had been found guilty based on confessions made after extended questioning and none had been informed of the right to remain silent or the right to an attorney, the Court found.



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"To be sure, the records do not evince overt physical coercion or patented psychological ploys," Chief Justice Earl Warren conceded in writing the opinion of the court overturning the convictions. But the atmosphere of a police interrogation room "carries its own badge of intimidation," he said. "The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice." The necessary safeguards include notifying the suspect of his right to remain silent, warning that anything he says may be used against him, and informing him of his right to either his own or an appointed lawyer.

"After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement," the court ruled. "But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

The court on Tuesday, then, reversed the requirement of evidence that the defendant had waived his Miranda rights, requiring instead some indication that he had invoked them.

The Miranda ruling has been a source of controversy from the beginning, with law enforcement personnel and others arguing that it tipped the balance too far in favor of the accused and resulted in uncoerced confessions being thrown out because of even minor infractions of the rule promulgated by the court. Among the dissenters in that 5-4 ruling, Justice John Harlan argued that "nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously undertaken by the Court in the name of fulfilling its constitutional responsibilities."

"I have no desire whatsoever to share the responsibility for any such impact on the present criminal process," wrote Justice Byron White.

"In some unknown number of cases, the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity."



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