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Courts are looking more closely at the methods and duration of interrogation.

Interrogations: Times Are Changing

Corley v. United States

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Interrogation has come more directly under fire in the last several years with the interrogation of terrorists and the use of DNA in criminal proceedings. Judges are looking more closely than ever at the length of interrogations and the way interrogations are conducted. Even federal judges are beginning to question why interrogations are not recorded by investigators. In the last

several years states have been turning more and more frequently to requiring police officers to record interrogations in light of the miscarriages of justice highlighted by DNA testing.

In addition, academics have begun appearing as expert witnesses attempting to convince the court false confessions are commonplace and interrogation techniques are wrought with coercion. One of the problems the academics have faced is a lack of recorded interrogations in cases where they have been retained to testify. As a result, they must ask the defendant to tell them what happened during the interrogation and base their conclusions on the individual's recollections. While this seems like a highly flawed effort, some courts have allowed the testimony. Increasingly, the academics have been prevented from offering testimony since it does not add to the juries' body of knowledge.

In a new case decided by the United States Supreme Court on April 6, 2009, *Corley v. United States* addressed the issue of bringing a suspect before a magistrate as soon as possible, along with the length of questioning. Although this is a case applying only to federal officers, it is worth looking at the court's thoughts since the states often look to the Supreme Court for direction.

Johnnie Corley was suspected of robbing a bank in Norristown, Pennsylvania. Federal agents learned Corley had an outstanding local warrant and was subject to arrest. Agents and state officers went together to arrest Corley on September 17, 2003, locating him as he was pulling out of a driveway in his car. Corley nearly ran over one officer before jumping out of his car and pushing another officer to the ground before he attempted to flee on foot. The officers gave chase, arresting him for assaulting a federal officer. The arrest occurred about

8 a.m.

Keeping Corley at a local police station, agents questioned residents near where he was captured. Around 11:45 a.m. they took him to a hospital to treat a minor cut on his hand he received while trying to escape. At 3:30 p.m., agents moved him from the hospital to the Philadelphia FBI office, where he was told he was a suspect in the Norristown bank robbery. Even though the FBI office was in the same building as the nearest magistrate, agents did not immediately bring Corley before a magistrate, but questioned him instead.

Between 5:27 p.m. and 6:30 p.m. and after a *Miranda* admonition, Corley made a confession to the Norristown robbery. This was about 9.5 hours after his arrest. At 6:30 p.m. agents asked Corley to make a written statement, but he asked for a break and agents decided to hold him overnight and take the statement in the morning. At 10:30 a.m. on September 18, agents interrogated again and ended when Corley signed a written statement. Corley was finally presented to a magistrate at 1:30 p.m. September 18, some 29.5 hours after his arrest.

There are two decisions establishing the precedents.

"McNabb v. United States raised the question of how to enforce a number of federal statutes codifying the presentment rule. 318 U.S., at 342 (citing, among others, 18 U.S.C. §595 (1940 ed.), which provided that "[i]t shall be the duty of the marshal ... who may arrest a person ... to take the defendant before the nearest ... judicial officer ... for a hearing"). There, federal agents flouted the requirement by interrogating several murder suspects for days before bringing them before a magistrate, and then only after they had given the confessions that convicted them. 318 U.S., at 334 -338, 344-345."

Mallory v. United States, holding a confession given seven hours after arrest inadmissible for "unnecessary delay" in presenting the suspect to a magistrate, where the police questioned the suspect for hours "within the vicinity of numerous committing magistrates."

Without the McNabb-Mallory decisions, federal agents would be free to question suspects for extended periods before bringing them out in the open. Justice David Souter wrote in the Corley decision:

*"No one with any smattering of the history of 20th-century dictatorships needs a lecture on the subject, and we understand the need even within our own system to take care against going too far. "[C]ustodial police interrogation, by its very nature, isolates and pressures the individual, and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed, see, e.g., Drizin * Leo, The Problem of False Confessions in the Post-DNA World, 82 N. C. L. Rev. 891, 906-907 (2004)."*

Drizin and Leo are two of the academics critical of interrogation. Interestingly, the "frighteningly high percentage of people confess to crimes they never committed" is mostly anecdotal evidence. The difficulty the critics face is actually determining the percentage of false confessions. There is no question false confessions exist, but how often they occur and the actual causes are speculation. The academics use a questionable study to support their position conducted on students by another professor. In that study students were accused of hitting the Alt key on the keyboard while typing. Almost three quarters of the students falsely confessed to hitting the key. This hardly replicates the certainty of whether or not someone committed a murder, yet the academics flout the study as evidence of the frequency of false confessions.

Yet, to find a reference to the questionable conclusions reached by academics in a Supreme Court decision says the thinking of the court is being influenced and confessions will face additional scrutiny in the future.

The Supreme Court determined in the *Corley* case:

"We hold that §3501 modified McNabb-Mallory without supplanting it. Under the rule as revised by §3501(c), a district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was "reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]"). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was "made voluntarily and ... the weight to be given [it] is left to the jury." Ibid. If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the McNabb-Mallory cases, and if it was, the confession is to be suppressed.

In this case, the Third Circuit did not apply this rule and in consequence never conclusively determined whether Corley's oral confession "should be treated as having been made within six hours of arrest," as the District Court held. 500 F 3d, at 220, n.7. Nor did the Circuit consider the justifiability of any delay beyond six hours if the oral confession should be treated as given outside the six-hour window; and it did not make this enquiry with respect to Corley's written confession. We therefore vacate the judgment of the Court of Appeals and remand the case for consideration of those issues in the first instance, consistent with this opinion."

To determine if the confession was voluntary the District Court will consider:

1. the circumstances surrounding the giving of the confession, and
2. whether such defendant knew the nature of the offense with which he was charged, and
3. whether the subject waived his *Miranda* rights

Corley v. United States will be reconsidered by the District Court. Investigators should take this as a warning about the Court's sensitivity to the length of an interrogation and the possibility of false confessions due to confinement.

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