Recent United States Supreme Court decisions concerning the admissibility of statements or confessions into evidence have sharply curtailed haphazard interrogation procedures. As courts have become more punctilious about "due process" and other constitutional guarantees, a greater degree of care and fairness has been demanded in soliciting information and advising uninformed individuals of their rights.

The principal case, an April 24 decision, represents one more step toward the guaranteeing of fairness and equality of constitutional protection for all. A pre-Miranda decision, the case holds that coercive tactics used by the police to elicit a confession render the confession inadmissible.

Petitioner (Marvin Peterson Clewis) appealed from a conviction of murder for strangling his wife. During the course of his trial, he moved to exclude from evidence three statements made by him while in custody.

Clewis was taken into custody and held for over 38 hours before he was brought before a magistrate. Three separate confessions were elicited from Clewis, and he was never advised of any of his constitutional rights, except that he was warned that the third confession, if signed, might be used as evidence against him. There were great discrepancies in the first two confessions. For example, the accused admitted shooting his wife, when in fact she was strangled. Clewis was not told of his right to remain silent and to have an attorney appointed for him if he could not afford one.

1 The trial of this case was prior to Miranda v. Arizona, 384 U.S. 436 (1966). In Johnson v. New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L. Ed. 2d 882 (1966) the court denied retroactive effect to the principles proclaimed in the Miranda case.

2 In Toland v. United States, 365 F. (2d) 304 (1966) at p. 306 the court declared, "(F)ailure to make objection to evidence either before or at trial precludes consideration of objections thereto on appeal. . . ."

3 "The State contends that Clewis did consult with an attorney on Thursday morning." (Clewis was taken into custody on the previous Sunday at 6:00 a.m.) "He insists the conference took place on Friday morning. . . . (T)he only subject discussed with the lawyer was the matter of a fee, and that the lawyer declined to represent him." P. 4372 of 35 L.W.
The Supreme Court stated that "the trial of this case was prior to the date of decision of *Miranda v. Arizona*, 384 U. S. 436 (1966) the requirements of which, therefore, are not directly applicable."\(^4\)

The court nevertheless reversed the case, stating that among the factors compelling the conclusion that the petitioner's confession was not voluntarily given were these: During the long period of custody petitioner was never fully advised that he could consult with counsel and have counsel appointed if necessary; he was never instructed that he was entitled to remain silent; and he was never told that anything he said could be used as evidence against him.\(^5\)

The court could have reversed merely on the obvious violation of petitioner's rights under the Texas Code of Criminal Procedure.\(^6\)

An enigma appears to have been raised by the Court's decision in this case. One of the factors determining its outcome was declared by it not to be decisive. In other cases\(^7\) the court has declined to apply the principles set forth in *Miranda* and has stated that they were not applicable to cases tried before that decision.\(^8\) This would seem to be the trend the Supreme Court has been following. The *Clewis* case appears to represent a deviation from this trend, one that in all probability will be ignored by future Supreme Court decisions. However, as the matter now stands a shadow has been thrown over the court's doctrine that *Miranda* will not apply retroactively.

**Howard E. Mentzer**

\(^4\) P. 4371 of 35 L.W.


\(^6\) Tex. Code Crim. Proc. art. 217 (1960) requires that an accused be taken before a magistrate "immediately."

\(^7\) *Davis v. North Carolina* (supra note 5) and *Johnson v. New Jersey* (supra note 1).

\(^8\) *Supra* note 2.