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Military Law - Application of Miranda to Courts-Martial Admissions - U.S. v. Lincoln, 17 U.S.M.C.A. 330 (1967)

for the holding delineates a change in the Court's position regarding the legal profession in this country. This change appears to be toward more permissiveness, if such permissiveness is aimed at aiding a client in attaining his constitutionally guaranteed freedoms, and its effect on the profession will undoubtedly be marked.

Military Law—Application of Miranda to Courts-Martial Admissions. Specialist Fourth Class Richard C. Lincoln, on trial for premeditated murder before a general court-martial, testified that he did not intend to kill the deceased. Without initially proving that the accused had been warned of his rights, trial counsel sought to impeach his testimony with statements Lincoln had made at a pretrial interrogation. The statements were admitted as evidence and Lincoln was subsequently convicted of voluntary manslaughter. The sentence was approved by the convening authority and affirmed by the Army Board of Review.

In reversing the Board's decision, the Court of Military Appeals held that without prior proof of compliance with the warnings against self-incrimination set forth in *Miranda v. Arizona*[1] and *United States v. Tempia*,[2] allowing the introduction of an admission used to impeach the accused's testimony was prejudicial error and a denial of due process of law.[3]

Due process has always been guaranteed to the armed forces of the United States,[4] however, military due process had been defined as the fair and uniform application of military law enacted by Congress.[5] Consequently, military courts were bound by Article 31 of the Uniform Code

(1966). In considering *United Mine Workers*, the Illinois Supreme Court felt that upholding the Mine Workers program might lead unions to expand into the offering of legal advice in areas unrelated to the members' jobs. The court also saw the possibility of *any* group with a similarity of interests being allowed to form to hire an attorney to deal with individual problems. Illinois State Bar Ass'n v. United Mine Workers of America, Dist. 12, *supra* at 510. One writer, looking ahead to the *United Mine Workers* holding, concluded that, taken together, *Button*, *Trainmen*, and *United Mine Workers* may well establish "a strong impetus for reform." Zimroth, *Group Legal Services and the Constitution*, 76 Yale L.J. 966, 984 (1967).

1. 384 U.S. 436 (1966).

2. 16 U.S.C.M.A. 629, 137 C.M.R. 249 (1967).

3. United States v. Lincoln, 17 U.S.C.M.A. 330, 38 C.M.R. 128 (1967).

4. *E.g.*, Reaves v. Ainsworth, 219 U.S. 296, 304 (1910).

5. French v. Weeks, 259 U.S. 326 (1922); United States v. Grisby, 335 F.2d 652 (4th Cir. 1964); Innes v. Hiatt, 141 F.2d 664 (3d Cir. 1944).

of Military Justice to provide safeguards against self-incrimination,[6] thus the accused had to be warned *inter alia* that he had the right to remain silent, that any statement he made could be used as evidence against him,[7] and that no statement could be admitted as evidence without complying with this Article.[8] Although the UCMJ encompassed all interrogations,[9] only when an interrogation produced a confession was the government compelled to prove that the accused had been warned of these rights before the confession could be admitted as evidence.[10] In *United States v. Seymour*,[11] for example, the Court of Military Appeals held that an admission did not require this prior affirmative proof of compliance with the UCMJ unless there was an indication that the Code had been violated.[12] This standard was applied to statements made by a suspect at an interrogation, and later used at the trial to impeach his testimony.[13]

This distinction between an admission and a confession has persisted

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6. 10 U.S.C. § 831. (The Uniform Code of Military Justice, 10 U.S.C. §§ 801-940, is hereinafter cited as UCMJ).

7. 10 U.S.C. § 831(b) "(H)e does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him . . ."

8. 10 U.S.C. § 831(d) "No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence or unlawful inducement may be received in evidence against him in a trial by court martial."

9. United States v. Wimberly, 16 U.S.C.M.A. 3, 36 C.M.R. 159 (1966); United States v. Famighetti, 15 U.S.C.M.A. 152, 35 C.M.R. 124 (1964); United States v. Peder son, 2 U.S.C.M.A. 263, 8 C.M.R. 63 (1953).

10. *E.g.*, United States v. Josey, 3 U.S.C.M.A. 767, 14 C.M.R. 185 (1954).

11. 3 U.S.C.M.A. 401, 12 C.M.R. 157 (1953).

12. Exec. Order No. 10214 (1951). MANUAL FOR COURTS-MARTIAL (1951) 140 a: "The admissibility of a confession of the accused must be established by an affirmative showing that it was voluntary, unless the defense expressly consents to the omission of such a showing, but an admission may be introduced without such preliminary proof if there is no indication that it is involuntary. . . ."

The apparent conflict between the MANUAL FOR COURTS-MARTIAL, 1951 and 10 U.S.C. § 831 was reconciled by United States v. Seymour, 3 U.S.C.M.A. 401 at 402, 12 C.M.R. 157 at 158 (1953):

> The article makes no attempt to provide detailed rules governing the admission of incriminatory statements. That function has been left to the President under authority delegated by Article 36 (50 U.S.C. § 611). . . . The rules promulgated by the President are of course, those contained in the Manual for Courts-Martial. . . .

Accord, United States v. Gann, 3 U.S.C.M.A. 12, 11 C.M.R. 12 (1953).

13. United States v. Davis, 10 U.S.C.M.A. 624, 627, 28 C.M.R. 190, 193 (1959).

up to the present time,[14] although more recent decisions have intimated that admissions, received into evidence without prior proof of sufficient warning, might be antithetical to due process.[15]

Recently the tendency has been to define military due process as emanating from the Constitution, rather than from Congress,[16] in civilian[17] and in military courts.[18] Accordingly, the Court of Military Appeals announced in *United States v. Jacoby*[19] that the protections of the Bill of Rights, except those which are expressly or impliedly inapplicable, are available to servicemen.

Applying this principle, the court in *Tempia* held that proof that accused had been warned of his right to counsel, was insufficient if the interrogator had merely complied with the UCMJ, as in addition, the government had to prove that the warnings set forth in *Miranda* had been observed if a confession was to be admitted as evidence.[20] Thus the accused had to be warned that he had the right to counsel, either retained or appointed, during the entire custodial interrogation.[21] This ruling has been applied in similar factual situations[22] and has been expanded to guarantee to servicemen other rights accorded civilians by *Miranda*.[23]

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14. *E.g.*, United States v. Lake, 17 U.S.C.M.A. 3, 37 C.M.R. 267 (1967).

15. *E.g.*, United States v. Macauley, 17 U.S.C.M.A. 81, 86, 37 C.M.R. 345, 350 (1967).

16. *See* Warren, *The Bill of Rights and the Military*, 37 N.Y.U.L. REV. 181 (1962); Quinn, *The United States Court of Military Appeals and Military Due Process*, 35 ST. JOHN'S L. REV. 225 (1961); Note, *Constitutional Rights of Servicemen Before Courts Martial*, 64 COLUM. L. REV. 127 (1964).

17. Burns v. Wilson, 346 U.S. 137 (1953); Shapiro v. United States, 69 F. Supp. 205 (Ct. Cl. 1947).

18. *Compare* United States v. Culp, 14 U.S.C.M.A. 199, 33 C.M.R. 411 (1963), *with* United States v. Clay, 1 U.S.C.M.A. 74, 1 C.M.R. 74 (1951) (earlier view).

19. 11 U.S.C.M.A. 428, 29 C.M.R. 244 (1960). *Accord*, United States v. Culp, 14 U.S.C.M.A. 199, 133 C.M.R. 411 (1963). While this case held that the Sixth Amendment did not entitle the accused to legally qualified counsel in special courts martial, the court unanimously agreed that the Bill of Rights applied to servicemen. *See also*, United States v. Tempia, 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967).

20. 16 U.S.C.M.A. 629, 636, 37 C.M.R. 249, 246 (1967).

21. 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967). *See generally*, Note, *Partial Protection from Self Incrimination*, 9 WM. & MARY L. REV. 844 (1968).

22. United States v. Groover, 17 U.S.C.M.A. 295; 38 C.M.R. 93 (1967); United States v. Wood, 17 U.S.C.M.A. 257, 38 C.M.R. 55 (1967); United States v. Pearson, 17 U.S.C.M.A. 204, 38 C.M.R. 33 (1967) (per curiam); United States v. McCauley, 17 U.S.C.M.A. 81, 37 C.M.R. 345 (1967); United States v. Burns, 17 U.S.C.M.A. 39, 37 C.M.R. 303 (1967)

23. The Court of Military Appeals, in applying United States v. Tempia, has held: (1) that the accused may invoke his silence at any time during questioning. United

Here, *United States v. Lincoln*[24] extends this doctrine one step further by obliterating the previous distinction between confessions and admissions, thus marking the culmination of the trend begun by *Tempia*, extending the protections of servicemen to include substantially all of the protections accorded to civilians by *Miranda*.[25] Though the contention has been made that such an extension to servicemen would undercut the discipline necessary for the proper functioning of the armed forces,[26] it would appear that in the future, military personnel can be assured of the full scope of protections afforded by the first ten amendments, with the exception of those "privileges under the Bill of Rights which by necessary implication are inapplicable to servicemen." [27]

Federal Taxation—REORGANIZATION—SPIN-OFFS—LABOR DIFFICULTIES AS A VALID BUSINESS PURPOSE. During 1961 and prior years taxpayers conducted, in various capacities, the business affairs of several electronics merchandising corporations, known collectively as the Olson Group. One of these corporations, Cleveland, owned all the stock in

States v. Bollons, 17 U.S.C.M.A. 157, 38 C.M.R. 55 (1967); and (2) that the government has the affirmative burden to show conclusively that the accused has waived his right to remain silent. United States v. McCauley, 17 U.S.C.M.A. 81, 37 C.M.R. 345 (1967); United States v. Gustafson, 17 U.S.C.M.A. 150, 37 C.M.R. 414 (1967).

24. 17 U.S.C.M.A. 330, 38 C.M.R. 128 (1967).

25. Thus the accused, either serviceman or civilian, has the right to remain silent. *Compare* Miranda v. Arizona, 384 U.S. 436 (1966) *with* 10 U.S.C. § 831(b). He has the right to counsel, either retained or appointed, from the beginning of the custodial interrogation. *Compare* Miranda v. Arizona, 384 U.S. 436, 472 (1966), *with* United States v. Tempia, 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967). Should the government contend that the accused waived the above rights, it must prove this waiver conclusively, before the waiver is admitted. For counsel; *compare* Miranda v. Arizona, 384 U.S. 436, 474 (1966), *with* United States v. Tempia, 16 U.S.C.M.A. 629, 638, 640, 37 C.M.R. 249, 258, 260 (1967); and for the right to remain silent; *compare* Miranda v. Arizona, 384 U.S. 436, 474 (1966) *with* United States v. Bollons, 17 U.S.C.M.A. 253, 38 C.M.R. 51 (1967). Admissions have the same incriminating effect as confessions. *Compare* Miranda v. Arizona, 384 U.S. 436, 476, 477 (1966), *with* United States v. Lincoln, 17 U.S.C.M.A. 330, 38 C.M.R. 128 (1967). An affirmative burden is placed upon the government to prove conclusively that the above has transpired, or the statement risks the fate of inadmissibility as evidence. *Compare* Miranda v. Arizona, 384 U.S. 436, 475 (1966) *with* United States v. Gustafson, 17 U.S.C.M.A. 150, 37 C.M.R. 414 (1967) *and* United States v. Solomon, 17 U.S.C.M.A. 262, 38 C.M.R. 60 (1967).

26. Burns v. Wilson, 346 U.S. 137 (1953); United States v. Jacoby, 11 U.S.C.M.A. 428, 441, 29 C.M.R. 244, 257 (1960) (dissenting opinion). *See generally*, Note, 64 COLUM. L. REV. 127, *supra* note 17. *But see* Henderson, *Courts Martial and the Constitution: The original understanding*, 71 HARV. L. REV. 293 (1957).

27. *See* United States v. Tempia, 16 U.S.C.M.A. 629, 633, 37 C.M.R. 249, 253 (1967).