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FIFTH AMENDMENT—VALIDITY OF WAIVER: A SUSPECT NEED NOT KNOW THE SUBJECTS OF INTERROGATION

Colorado v. Spring, 107 S. Ct. 851 (1987).

I. INTRODUCTION

In *Colorado v. Spring*,¹ the United States Supreme Court continued to narrowly construe the fifth amendment rights of a suspect established in *Miranda v. Arizona*.² In *Spring*, the Court found that the traditional *Miranda* warnings are explicit as to their requirements and convey to the suspect "his constitutional privilege and the consequences of abandoning" his rights.³ The Court held, therefore, that "a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his fifth amendment privilege."⁴ The *Spring* Court held that the suspect's waiver of *Miranda* rights was not invalidated simply because the interrogating officers failed to inform the suspect that they intended to question him about an unrelated murder.⁵

This Note examines the *Spring* decision and concludes that the Supreme Court correctly held that *Miranda* does not require a suspect to know all the possible subjects of questioning in order to make a valid waiver of constitutional rights. The *Spring* Court, however, failed to adequately recognize and address the *Miranda* Court's concerns for providing effective law enforcement and criminal prosecution. This Note presents and discusses these policy concerns and also addresses the question of whether police silence or nondisclosure constitutes "trickery" within the meaning of *Miranda*.⁶

¹ 107 S. Ct. 851 (1987).

² 384 U.S. 436 (1966). For an explanation of the application of the fifth amendment in protecting the right against self-incrimination, see *infra* note 8 and accompanying text.

³ *Spring*, 107 S. Ct. at 859.

⁴ *Id.*

⁵ *See id.*

⁶ The Court in *Miranda* stated that "any evidence that the accused was threatened, tricked, or cajoled into a waiver will . . . show that the defendant did not voluntarily

II. HISTORY

In *Miranda v. Arizona*, the Court sought to protect the suspect of a crime from the "inherently compelling pressures" of custodial interrogation.⁷ In an effort to minimize these pressures, the Court established a set of proscribed warnings to inform a suspect of his rights during a custodial interrogation.⁸ These warnings were intended to act as a procedural safeguard for the suspect's fifth amendment right against self-incrimination.⁹

In *Miranda*, the Court also established that a suspect may waive his fifth amendment rights, provided that his waiver is made "voluntarily, knowingly, and intelligently."¹⁰ In an effort to prevent the protections of the *Miranda* warnings from becoming overly broad, the Court has limited those instances in which a suspect's waiver will be held to be invalid.¹¹

Prior to the Court's decision in *Miranda v. Arizona*, the test for determining the admissibility of a suspect's statement was the "voluntary test."¹² Under this standard, the Court determined under a

waive his privilege." *Miranda v. Arizona*, 384 U.S. 436, 476 (1966). For a presentation of the *Miranda* warnings, see *infra* note 8.

⁷ *Miranda*, 384 U.S. at 467.

⁸ *Id.* The *Miranda* Court established that the prosecution cannot use a defendant's statement obtained during a custodial interrogation unless the defendant has been warned prior to questioning that he has "a right to remain silent, that anything he says can be used against him in a court of law, that he has a right to the presence of an attorney, and that if he can not afford an attorney one will be appointed for him prior to any questioning if he so desires." *Id.* at 479.

The *Miranda* Court based its decision on the fifth amendment to the United States Constitution. *Id.* at 439. The fifth amendment reads, in relevant part, that no person "shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

⁹ See *Moran v. Burbine*, 106 S. Ct. 1135, 1143 (1986). In *Moran*, Justice O'Connor asserted that "'the *Miranda* warnings are 'not themselves rights protected by the Constitution but [are] instead measures to insure that the [suspect's] right against compulsory self-incrimination [is] protected.'" *Id.* (quoting *New York v. Quarles*, 467 U.S. 649, 654 (1984) (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974))).

¹⁰ *Miranda*, 384 U.S. at 444. In *Moran v. Burbine*, 106 S. Ct. at 1141, the Court stated that a voluntary waiver is one which is "the product of a free and deliberate choice rather than intimidation, coercion or deception," and that a waiver must be made "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."

¹¹ See *Moran*, 106 S. Ct. 1135 (holding that the validity of a suspect's waiver of his rights is not affected by a police failure to inform the suspect that his family had retained counsel for him); *Colorado v. Connelly*, 107 S. Ct. 515 (1986) (holding that the confession of a mentally ill defendant, properly advised of his *Miranda* rights, is valid); *North Carolina v. Butler*, 441 U.S. 369 (1979) (holding that an explicit statement by the suspect is not invariably necessary to prove a proper waiver of his right to remain silent or his right to counsel).

¹² For examples of the Supreme Court's use of the voluntary test, see *Haynes v. Washington*, 373 U.S. 503 (1963); *Culombe v. Connecticut*, 367 U.S. 568 (1961); *Rog-*

“totality of the circumstances” whether the suspect’s confession and statements were uncoerced and were the result of the suspect’s free will.¹³ However, as a result of the societal concerns presented in *Miranda*, the Court established a set of proscribed warnings to be provided to a suspect prior to a custodial interrogation as a prerequisite for a valid waiver.¹⁴

The Court, however, in adopting these procedural warnings, did not completely abandon the “totality of the circumstances” requirement. Currently, the Court examines the totality of the circumstances surrounding the suspect’s waiver of his *Miranda* rights to determine if his fifth amendment privilege was voluntarily waived.¹⁵ As a result of the Court’s decision in *Miranda*, much of the attention and focus of the custodial interrogation analysis has switched from an examination of the voluntariness of the suspect’s confession to an examination of the voluntariness of the suspect’s waiver.¹⁶

III. FACTUAL BACKGROUND OF *SPRING*

On March 30, 1979, John Leroy Spring was arrested for firearms violations.¹⁷ Spring was apprehended in Kansas City, Missouri after an informant advised the Bureau of Alcohol, Tobacco, and Firearms (ATF) that Spring was engaged in the interstate transportation of stolen firearms.¹⁸ The informant also told the ATF agents

ers v. Richmond, 365 U.S. 534 (1961). See also NATIONAL DISTRICT ATTORNEYS ASSOCIATION, CONFESSIONS AND INTERROGATIONS AFTER MIRANDA: A COMPREHENSIVE GUIDELINE OF THE LAW 1 (rev. 6th ed. 1978). For an explanation of the history of the “voluntary test,” see Caplan, *Questioning Miranda*, 38 VAND. L. REV. 1417 (1985).

¹³ W. LAFAYE & J. ISRAEL, CRIMINAL PROCEDURE 266 (1985). See also Note, *Fifth and Sixth Amendments—Changing the Balance of Miranda*, 77 J. CRIM. L. & CRIMINOLOGY 666, 668 (1986).

¹⁴ W. LAFAYE & J. ISRAEL, *supra* note 13, at 268. See also Note, *supra* note 13, at 668.

¹⁵ W. LAFAYE & J. ISRAEL, *supra* note 13, at 268. See *Moran*, 106 S. Ct. at 1141; *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979); *North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979). Factors that the Court will consider in examining the totality of the circumstances include:

[T]he youth of the accused; his lack of education or low intelligence; the lack of any advice to the accused of his constitutional rights; the length of the detention; the repeated and prolonged nature of the questioning; and the use of physical punishment such as the deprivation of food or sleep.

Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

¹⁶ J. HADDAD, J. ZAGEL, G. STARKMAN & W. BAUER, CASES AND COMMENTS ON CRIMINAL PROCEDURE 131 n.1 (3d ed. 1987). The question, however, of whether a suspect’s confession was voluntary cannot be ignored because it is possible to have “an effective waiver of *Miranda* followed by police conduct which ma[kes] the subsequently given confession involuntary.” W. LAFAYE & J. ISRAEL, *supra* note 13, at 264.

¹⁷ *Colorado v. Spring*, 107 S. Ct. 851, 853 (1987).

¹⁸ *Id.*

that Spring and a companion had killed Donald Walker during a hunting trip in Colorado.¹⁹ At the time the ATF agents received the informant's information, however, Walker's body had not been discovered nor had a report of Walker's disappearance been filed.²⁰ Based on the informant's information, ATF agents set up an undercover operation to purchase firearms from Spring.²¹ The ATF agents subsequently arrested Spring during an undercover purchase.²²

At the time of Spring's arrest for the firearms violations, an ATF agent advised Spring of his rights under *Miranda v. Arizona*.²³ At the ATF office in Kansas City, Spring was once again advised of his *Miranda* rights and of his right to stop the questioning at any time or to postpone the questioning until an attorney was present.²⁴ Spring, after signing a statement indicating that he understood his rights and that he agreed to waive them, responded to the agents' questioning.²⁵

The ATF agents initially questioned Spring about his firearms transactions.²⁶ When the agents asked Spring if he had a criminal record, Spring admitted to shooting his aunt when he was ten years old.²⁷ When asked if he had ever shot anyone else, Spring lowered his head and mumbled, "I shot another guy once."²⁸ Spring, however, denied shooting a man named Walker in Colorado or even entering that state.²⁹ At this point, the ATF agents ended their

¹⁹ *Id.* In February of 1979, Donald Walker went on a nighttime elk hunting trip with John Spring and Donald Wagner near Craig, Colorado. *People v. Spring*, 713 P.2d 865, 868 (Colo. 1985). Walker was asked to walk ahead of Spring and Wagner and search for elk in a ravine next to the road. *Id.* at 868. As Walker moved ahead, Wagner asked Spring to shine a flashlight in Walker's direction. *Id.* Wagner then fired a rifle shot at Walker, striking Walker in the head. *Id.* Wagner walked to where Walker was laying on the ground and fired a second shot which resulted in Walker's death. *Id.* At trial, Spring admitted to helping Wagner bury Walker's body in the snow. *Id.* Spring testified, however, that he had no knowledge of Wagner's intent to kill Walker and that he had concealed the murder only because he was afraid of Wagner. *Id.*

²⁰ *Spring*, 107 S. Ct. at 853. On March 22, 1979, Spring made statements to George Dennison (the ATF informant) during a phone conversation recorded by the ATF agents which indirectly referred to his participation in the Walker murder. *People v. Spring*, 713 P.2d 865, 871 (Colo. 1985).

²¹ *Spring*, 107 S. Ct. at 853.

²² *Id.*

²³ *Id.* at n.1. For the content of the requisite *Miranda* warnings, see *supra* note 8.

²⁴ *Spring*, 107 S. Ct. at 854.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

questioning of Spring.³⁰

On May 26, 1979, while Spring was in a Kansas City jail, Colorado law enforcement agents questioned him.³¹ Prior to the questioning, the Colorado officers provided Spring with the requisite *Miranda* warnings.³² Spring again signed a statement stating that he understood his rights and that he wished to waive them.³³ The officers informed Spring that they wanted to question him about the Walker murder.³⁴ Spring, stating that he "wanted to get it off his chest," confessed to killing Walker.³⁵ During the interrogation, which lasted approximately one-and-one-half hours, Spring spoke openly and freely, never requesting counsel nor indicating a desire to stop the questioning.³⁶ Spring subsequently edited and signed a statement prepared by the Colorado authorities which summarized the interview and his confession.³⁷

In a Colorado state trial court, Spring was charged with first-degree murder.³⁸ At trial, Spring attempted to have his statements of March 30, 1979 and May 26, 1979 suppressed on the grounds that the waiver of his rights under *Miranda* was invalid.³⁹ The trial

³⁰ *Id.*

³¹ *Id.* After the ATF agents completed their questioning of Spring in March of 1979, the agents sent the results of their interrogation to the Colorado Bureau of Investigation (CBI) so that the CBI could continue their independent investigation into the Walker murder. *People v. Spring*, 671 P.2d 965, 967 (Colo. Ct. App. 1983).

³² *Spring*, 107 S. Ct. at 854.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* Spring also moved to suppress a third statement which he made on July 13, 1979, after pleading guilty to the federal firearms charge and after an information charging him with the Walker murder had been issued in Colorado. *Id.* at 855 n.2.

On July 13, 1979, after being found guilty of the federal firearms charges, ATF agents interviewed Spring in jail. *People v. Spring*, 713 P.2d 865, 876 (Colo. 1985). The agents told Spring that they had some questions concerning the weapons investigation. *Id.* The agents gave Spring the *Miranda* warnings, in response to which Spring agreed to speak to the agents but refused to sign a written waiver form without consulting an attorney. *Id.* The questioning covered a wide range of topics, including Spring's involvement in the Walker murder. *Id.* During the course of the questioning, Spring stated that the .22 caliber pistol found in his possession at the time of his arrest had belonged to Walker. *Id.* Spring also admitted that he had been in Colorado in 1979 and that Walker had been riding with Wagner and himself. *Id.* However, in response to several questions during the interrogation, and specifically, to the question of whether either he or Wagner had shot Walker, Spring replied "I'd rather not talk about that." *Id.*

The Colorado Supreme Court held that Spring's statement of July 13, 1979, should have been suppressed because the officials conducting the investigation made no effort to "reaffirm Spring's decision to waive his constitutional rights after he declined to answer

court denied this motion,⁴⁰ holding that the ATF agents' failure to inform Spring before the March 30 interview that the questioning would concern the Walker murder did not invalidate Spring's waiver of his *Miranda* rights.⁴¹ However, the trial court did find that the March 30 statement was irrelevant and thus not admissible at trial.⁴² The trial court determined that the May 26 statement "was made freely, voluntarily, and intelligently, after [Spring's] being properly and fully advised of his rights."⁴³ As a result, the court admitted the May 26 statement into evidence and subsequently convicted Spring of first degree-murder.⁴⁴

On appeal, Spring claimed that the March 30 statement was invalid because it was obtained without prior notification that he would be questioned about the Walker murder.⁴⁵ Spring argued that the May 26 statement should have been suppressed because it was the illegal "fruit" of the March 30 statement.⁴⁶

The Colorado Court of Appeals ruled that the March 30 statement was invalid because the ATF agents failed to advise Spring that he was a suspect in the Colorado murder or to advise him of his *Miranda* rights before questioning him about the Walker murder.⁴⁷

particular questions" or to establish that he did not intend to exercise his rights with respect to the rest of the investigation. *Id.* at 878.

⁴⁰ *Spring*, 107 S. Ct. at 854.

⁴¹ *Id.* The trial court held that "the questions themselves suggested the topic of inquiry . . . [and] were not designed to gather information relating to a subject that was not readily evident or apparent to Spring." *Id.* (quoting *People v. Spring*, 713 P.2d 865 (Colo. 1985), *petition for cert.* 4-A (No. 85-1517)). Spring knew the questioning concerned the shooting of a man named Walker, and Spring had been fully advised of his "right to remain silent, his right to stop answering questions, and his right to have an attorney present during the interrogation." The trial court found, however, that the defendant chose not to exercise those rights. *Id.* (quoting *People v. Spring*, 713 P.2d 865 (Colo. 1985), *petition for cert.* 4-A (No. 85-1517)).

⁴² *Id.* The Court held that in the context of the questioning, the statement was not sufficiently related to the Walker murder. *Id.* For the content of Spring's March 30, 1979 statement, see *supra* notes 26-30 and accompanying text.

⁴³ *Id.* For the content of Spring's May 26, 1979 statement, see *supra* text accompanying notes 26-30.

⁴⁴ *Id.* at 855.

⁴⁵ *Id.*

⁴⁶ *Id.* The "fruit of the poisonous tree" doctrine provides that "evidence which is spawned by or directly derived from an illegal search or an illegal interrogation is generally inadmissible against the defendant because of its original taint . . . [A]n unlawful search taints not only evidence obtained at the search, but facts discovered by process initiated by the unlawful search." BLACK'S LAW DICTIONARY 603 (5th ed. 1979).

Spring claimed that because his confession of May 26 was the result of his invalid statement of March 30, the May 26 confession was the "fruit of the poisonous tree" and therefore, not admissible into evidence. *Spring*, 107 S. Ct. at 855.

⁴⁷ *Spring*, 107 S. Ct. at 855. Specifically, the Colorado Court of Appeals held that "[t]he agents had a duty to inform Spring that he was a suspect, or to read him of his

As a result, the court held that Spring's waiver was not given "knowingly or intelligently."⁴⁸ In reversing Spring's conviction and remanding the case for a new trial, the court ordered the state to prove that the May 26 statement was not the product of the prior illegal statement of March 30.⁴⁹

The Colorado Supreme Court affirmed the decision of the court of appeals on the grounds that the validity of the waiver of a suspect's *Miranda* rights must be "determined upon the examination of the totality of the circumstances surrounding the making of the statement to determine if the waiver was voluntary, knowing, and intelligent."⁵⁰ The court held that Spring's lack of knowledge and his lack of expectation as to the line of questioning regarding the Walker murder were "determinative factors in undermining the validity of the waiver."⁵¹

In contradiction to the Colorado Supreme Court's holding, the court's dissenting justices stated:

Law enforcement officers have no duty under *Miranda* to inform a person in custody of all charges being investigated prior to questioning him. All that *Miranda* requires is that the suspect be advised that he has a right to remain silent, that anything he says can and will be used against him in court, that he has a right to consult with a lawyer and to have the lawyer present during interrogation, and that if he can not afford a lawyer one will be appointed to represent him.⁵²

The dissent accordingly rejected "the majority's conclusion that Spring's waiver of his *Miranda* rights on March 30, 1979, was invalid because he was not informed of all matters that would be reviewed."⁵³

The United States Supreme Court granted certiorari to resolve a split in the circuits⁵⁴ and to review the Colorado Supreme Court's

Miranda rights before questioning him about the murder." *People v. Spring*, 671 P.2d 965, 966 (Colo. Ct. App. 1983).

⁴⁸ *Spring*, 107 S. Ct. at 855.

⁴⁹ *Id.*

⁵⁰ *People v. Spring*, 713 P.2d 865, 872-73 (Colo. 1985). The Colorado Supreme Court held that no one factor is always conclusive in a determination of the validity of a *Miranda* waiver. However, "to what extent, a suspect has been informed or is aware of the subject matter of the interrogation prior to its commencement is simply one factor in the court's evaluation of the total circumstances, although it may be a major or even a determinative factor in some situations." *Id.*

⁵¹ *Spring*, 107 S. Ct. at 855.

⁵² *People v. Spring*, 713 P.2d at 880 (Erickson, J., dissenting).

⁵³ *Id.* at 881 (Erickson, J., dissenting). The dissent found "ample evidence to support the trial court's conclusion that Spring waived his *Miranda* rights." *Id.* (Erickson, J., dissenting).

⁵⁴ Several federal courts of appeals have held that a suspect's prior knowledge of the topics of interrogation is one factor to be considered in determining the validity of a

decision that a suspect's prior knowledge of the possible subjects for questioning is a relevant factor in determining whether Spring's waivers of his *Miranda* rights and his fifth amendment privilege against self-incrimination were valid.⁵⁵

IV. THE MAJORITY OPINION

In *Colorado v. Spring*,⁵⁶ the United States Supreme Court reversed and remanded the Colorado Supreme Court's decision, holding that Spring's fifth amendment privilege had not been violated. Justice Powell delivered the majority opinion.⁵⁷ Justice Powell stated that the Court's inquiry focused solely on the validity of Spring's March 30 statement.⁵⁸ Justice Powell explained that it was the alleged illegality of this statement which purportedly tainted Spring's May 26 confession.⁵⁹

Initially, the majority examined the fifth amendment privilege

suspect's waiver of his fifth amendment privilege. See, e.g., *United States v. Burger*, 728 F.2d 140, 141 (2d Cir. 1984); *Carter v. Garrison* 656 F.2d 68, 70 (4th Cir. 1981)(per curiam), cert. denied, 455 U.S. 952 (1982); *United States v. McCray*, 643 F.2d 323, 328 (5th Cir. 1981). Other federal courts of appeals have held that a suspect's prior knowledge of the topics of interrogation is not a relevant factor in determining the validity of the suspect's waiver of his fifth amendment privilege. See, e.g., *United States v. Anderson*, 533 F.2d 1210, 1212 n.3 (D.C. Cir. 1976); *United States v. Campbell*, 431 F.2d 97, 99 n.1 (9th Cir. 1970).

⁵⁵ *Spring*, 107 S. Ct. at 856. The Supreme Court granted certiorari only with respect to the question of whether Spring's second statement of May 26 could be admitted into evidence. *Id.* at 855 n.2. For an explanation of the Court's focus in *Spring* see *infra* note 58 and accompanying text.

⁵⁶ 107 S. Ct. 851 (1987).

⁵⁷ Justice Powell was joined by Chief Justice Rehnquist and Justices White, Blackmun, Stevens, O'Connor and Scalia.

⁵⁸ *Spring*, 107 S. Ct. at 856. Justice Powell stated that the Court focused on the March 30 statement because the Colorado Supreme Court "held that the confession [of May 26] should have been suppressed because it was the illegal 'fruit' of the March 30 statement." *Id.* The Colorado Supreme Court stated in its opinion that the "attenuation issue" of whether the May 26 statement is the "direct fruit" of the illegally obtained March 30 statement is an issue for the trial court to resolve. *Spring*, 713 P.2d at 876. Nonetheless, Justice Powell indicated that "[a] confession cannot be 'fruit of the poisonous tree' if the tree itself is not poisonous." *Spring*, 107 S. Ct. at 856. Thus, if Spring's statement of March 30 was valid, then his confession of May 26, given after complete *Miranda* warnings and notification that he was to be questioned about the Walker murder, cannot be considered a tainted statement, i.e., poisonous fruit.

⁵⁹ *Spring*, 107 S. Ct. at 856. On its petition for a rehearing to the Colorado Supreme Court, the State of Colorado argued for the first time that the United States Supreme Court's decision in *Oregon v. Elstad*, 470 U.S. 298 (1985), made the May 26 confession an admissible statement independent of a determination of the validity of the March 30 statement. *Id.* at n.4. The Court concluded, however, that this question was not at issue because the state would be free to assert this argument at trial on remand. *Id.* The Colorado Supreme Court reached this same conclusion. *Spring*, 713 P.2d at 876 n.6.

against self-incrimination⁶⁰ and its applicability to in-custody interrogation.⁶¹ Justice Powell noted that the procedural safeguards of the *Miranda* warnings⁶² were established to protect an individual's ability to choose between silence and speech throughout the interrogation process and that " 'without [these] proper safeguards the process of in-custody interrogation of persons suspected or accused of crime[s] contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he otherwise would not do so freely.' " ⁶³ The majority indicated that the *Miranda* warnings were intended " 'to assure that the individual's right to choose between silence and speech remain unfettered throughout the interrogation process.' " ⁶⁴

The majority established that consistent with a suspect's privilege against self-incrimination is the right to waive the fifth amendment privilege if that waiver is done " 'voluntarily, knowingly, and intelligently.' " ⁶⁵ In its analysis, the *Spring* majority followed the waiver analysis established by the Court in *Moran v. Burbine* and separated the examination of a suspect's waiver into two distinct inquiries.⁶⁶

Justice Powell identified the necessity of a "voluntary" waiver as the first requirement for a valid *Miranda* waiver.⁶⁷ Justice Powell established a voluntary waiver as a waiver that is not the result of intimidation, coercion, or deception.⁶⁸ Applying this test to the *Spring* facts, the majority found that Spring's waiver was clearly voluntary

⁶⁰ For the text of the fifth amendment privilege, see *supra* note 8.

⁶¹ See *Spring*, 713 P.2d at 876. The Court in *Miranda v. Arizona* established that the privilege against self-incrimination "is fully applicable during a period of custodial interrogation." *Miranda*, 384 U.S. at 461. This privilege against self-incrimination is made applicable to the states through the due process clause of the fourteenth amendment. See *Malloy v. Hogan*, 378 U.S. 1 (1964).

⁶² For the text of the *Miranda* warnings, see *supra* note 8.

⁶³ *Spring*, 107 S. Ct. at 856 (quoting *Miranda*, 384 U.S. at 467).

⁶⁴ *Id.* (quoting *Miranda*, 384 U.S. at 469).

⁶⁵ *Id.* at 857 (quoting *Miranda*, 384 U.S. at 444).

⁶⁶ *Id.* In *Moran v. Burbine*, the Court stated that:

First the relinquishment of the right [against self-incrimination] must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with the full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

106 S. Ct. 1135, 1141 (1986).

The Court also recognized that the waiver of a suspect's *Miranda* rights is valid "only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension." *Id.* (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

⁶⁷ See *Spring*, 107 S. Ct. at 857.

⁶⁸ See *id.* See also *Colorado v. Connelly*, 107 S. Ct. 515, 523 (1986); *Oregon v. Elstad*, 470 U.S. 298, 312 (1985); *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961).

because the record indicated that there was no allegation or finding of coercion through physical violence or other deliberate means used to break Spring's will.⁶⁹ Justice Powell stated that the defendant's claim that his waiver was not made voluntarily was based entirely on his charge that the police did not supply him with certain information.⁷⁰ Justice Powell, however, noted that a simple failure to supply information falls outside the traditional view of police coercion.⁷¹

The second requirement of a valid waiver, according to Justice Powell, mandates that a waiver be given "knowingly and intelligently."⁷² Justice Powell stated that "[t]he Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of his fifth amendment privilege."⁷³ Rather, the majority noted that the *Miranda* warnings were intended to ensure that a suspect knows his rights with respect to police interrogation.⁷⁴ Justice Powell indicated that a waiver of these rights is knowingly and intelligently made if a suspect is fully advised of his fifth amendment constitutional privilege.⁷⁵ The majority held that Spring's waiver of his fifth amendment privilege was made knowingly and intelligently because there was no allegation that Spring failed to understand the *Miranda* warnings clearly given to him or the consequences of his responding to police questioning.⁷⁶

Finally, the majority addressed Spring's claim that the ATF agents' failure to inform him that he would be questioned about the Walker murder constituted police "trickery."⁷⁷ Justice Powell stated

⁶⁹ *Spring*, 107 S. Ct. at 857. At trial, the court found specifically that "there was no element of duress or coercion used to induce Spring's statements" of March 30, 1978. *Id.* (quoting *People v. Spring*, 713 P.2d 865 (Colo. 1985), *petition for cert.* 3-A (No. 85-1517)).

⁷⁰ *Id.* The Colorado Supreme Court stated that whether the ATF agents told Spring that they intended to question him about the firearms violations or whether they simply began the questioning without disclosing the subjects of investigation was unclear. *Id.* at 858 n.7 (citing *Spring*, 713 P.2d at 871). However, it was clear that the agents never specifically told Spring that they intended to question him about the Walker homicide. *Id.* at n.7.

⁷¹ *Id.* at 857. Traditionally, the Court has considered the effect of coercion in terms of "the duration and conditions of detention . . . , the manifest attitude of the police toward him [the suspect], his physical and mental state, [and] the diverse pressures which sap or sustain his powers of resistance and self control." *Id.* (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)).

⁷² *See id.*

⁷³ *Id.* (citing *Moran v. Burbine*, 106 S. Ct. 1135, 1142 (1986); *Oregon v. Elstad*, 470 U.S. 298, 316-17 (1985)).

⁷⁴ *Id.* at 857-58.

⁷⁵ *Id.* at 858.

⁷⁶ *Id.*

⁷⁷ *See id.* The Court in *Miranda v. Arizona* stated that "any evidence that the accused

that the Supreme Court has “never held that mere silence by law enforcement officials as to the subject matter of an interrogation is ‘trickery’ sufficient to invalidate a suspect’s waiver of *Miranda* rights and we expressly decline so to hold today.”⁷⁸ Justice Powell also noted that the Colorado courts made no finding of police “trickery.”⁷⁹

The majority asserted that once a suspect is given his *Miranda* rights, official silence should not cause a suspect to misunderstand those rights.⁸⁰ Justice Powell also noted that a valid waiver does not require that a suspect be given all information that might affect his decision to waive his rights.⁸¹ Justice Powell affirmed that “‘we have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.’”⁸² The majority held that “additional information could affect only the wisdom of a *Miranda* waiver, not its essentially voluntary and knowing nature.”⁸³

Based upon the Court’s findings that Spring voluntarily, knowingly, and intelligently waived his fifth amendment rights, the Supreme Court held that the ATF agents’ failure to inform Spring

was threatened, tricked, or cajoled into a waiver will . . . show that the defendant did not voluntarily waive his privilege.” *Miranda v. Arizona*, 384 U.S. 436, 476 (1966).

⁷⁸ *Spring*, 107 S. Ct. at 858. The Court has found that affirmative misrepresentations by the police are sufficient to invalidate a suspect’s waiver of his fifth amendment privilege against self-incrimination. *See, e.g.*, *Lynumn v. Illinois*, 372 U.S. 528 (1963); *Spano v. New York*, 360 U.S. 315 (1959). Justice Powell noted that *Spring* did not involve an affirmative misrepresentation as to the scope of the interrogation, and thus, the Court did not address the validity of a waiver in such a situation. *Spring*, 107 S. Ct. at 858 n.8.

⁷⁹ *Spring*, 107 S. Ct. at 858. The Colorado trial court found that although the ATF agents did not specifically inform Spring that he would be questioned about the Colorado homicide, “‘the questions themselves suggested the topic of inquiry.’” *Id.* at 858 n.7 (quoting *People v. Spring*, 713 P.2d 865 (Colo. 1985), *petition for cert.* 4-A (No. 85-1517)). The Colorado Supreme Court ruled that although it was unclear whether the ATF agents specifically told the suspect that they wanted to question him about the firearms violations or whether they simply began questioning him without disclosing the topics of investigation, it was clear that the agents never informed Spring that they intended to question him about the Walker murder. *Spring*, 713 P.2d at 871.

⁸⁰ *Spring*, 107 S. Ct. at 858-59.

⁸¹ *Id.* at 859.

⁸² *Id.* (quoting *Moran v. Burbine*, 106 S. Ct. 1135, 1142 (1986)).

⁸³ *Id.* Justice Powell noted in a footnote that any extension of *Miranda* to include a requirement that a suspect be supplied with all available information which might affect his waiver decision would cause “numerous problems of interpretation because any number of factors could affect a suspect’s decision to waive his *Miranda* rights.” *Id.* at n.9. Additionally, Justice Powell noted that such a requirement would also greatly limit one of the *Miranda* rules’ greatest virtues, namely, “‘informing police and prosecutors with specificity’” how to conduct a pretrial custodial interview. *Id.* (quoting *Fare v. Michael C.*, 442 U.S. 707, 718 (1979)).

of the subject matter of the interrogation did not affect the validity of his *Miranda* waiver.⁸⁴ The Court accordingly reversed the Colorado Supreme Court's decision and remanded the case for further proceedings.⁸⁵

V. THE DISSENTING OPINION

Justice Marshall, joined by Justice Brennan, dissented from the majority opinion. Justice Marshall essentially agreed with the Colorado Supreme Court and concluded that because of the circumstances of the case the state did not meet the "heavy burden" established in *Miranda v. Arizona* for proving the validity of Spring's waiver of his fifth amendment privilege against self-incrimination.⁸⁶

Justice Marshall noted that consistent with the Court's prior decisions, the majority accepted the requirement that the validity of a suspect's *Miranda* waiver be determined from the "totality of the circumstances."⁸⁷ Justice Marshall, however, rejected the majority's holding that "the specific crimes and topics of investigation known to the interrogating officers before questioning begins are 'not relevant' to, and in this case 'could not affect,' the validity of the suspect's waiver."⁸⁸ Instead, the dissent concluded that a suspect's waiver of his *Miranda* rights would "necessarily [be] influenced by his awareness of the scope and seriousness of the matters under investigation."⁸⁹

Justice Marshall criticized the Court for determining that knowledge of the topics of investigation "could only affect the wisdom of [the suspect's waiver]," as opposed to the validity of that waiver.⁹⁰ The dissent stated that "wisdom and validity in this context are overlapping concepts, as circumstances relevant to assessing the validity of a waiver may also be highly relevant to its wisdom in any given context."⁹¹ Justice Marshall questioned how the Court, under a "totality of the circumstances" analysis, could conclude that

⁸⁴ See *id.* at n.9.

⁸⁵ *Id.*

⁸⁶ *Id.* at 859 (Marshall, J., dissenting). The Court established in *Miranda v. Arizona* that if an interrogation takes place "without the presence of an attorney, a heavy burden rests upon the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Miranda*, 384 U.S. at 436 (emphasis added).

⁸⁷ *Spring*, 107 S. Ct. at 859 (Marshall, J., dissenting)(quoting *Moran v. Burbine*, 106 S. Ct. 1135, 1141 (1986)).

⁸⁸ *Id.* at 859-60 (Marshall, J., dissenting)(quoting majority opinion, at 859).

⁸⁹ *Id.* at 860 (Marshall, J., dissenting).

⁹⁰ *Id.* (Marshall, J., dissenting)(quoting at majority opinion, 107 S. Ct. at 859).

⁹¹ *Id.* (Marshall, J., dissenting).

although the informing of a suspect that whatever he says may be used against him in court is clearly relevant to a suspect's decision to waive his *Miranda* rights, the knowledge of the specific crimes and topics of investigation is never a relevant consideration in determining the validity of such a waiver.⁹²

Justice Marshall also discussed the similarity between the Court's holdings in *Moran v. Burbine* and in *Spring*.⁹³ The dissent noted that in *Spring*, the Court specifically avoided the question of whether the lack of "any indication" as to the scope of questioning is relevant in determining the validity of a suspect's waiver of his fifth amendment rights.⁹⁴

Justice Marshall concluded that a suspect's knowledge of the crimes the police suspect him of committing and the line of questioning the police intend to pursue relevant information that the suspect should possess, whether through an inference from the surrounding circumstances of his arrest or from the officers involved.⁹⁵ According to the dissent, a holding that such knowledge is relevant information would not interfere with "legitimate interrogation techniques" or with the police and prosecutors' understanding of how a custodial interview should be conducted.⁹⁶

The dissent, moreover, criticized the police tactics used to obtain *Spring*'s confession to the Walker murder.⁹⁷ In Justice Marshall's opinion, *Spring* could not have anticipated questions about the murder because the offense occurred in a different state and because the offense was a violation of a state law, which is normally outside the investigative interests of the Bureau of Alcohol, Tobacco, and Firearms.⁹⁸

⁹² See *id.* (Marshall, J., dissenting).

⁹³ See *id.* (Marshall, J., dissenting). The majority noted that in *Moran*, the Court held "a valid waiver does not require that an individual be informed of all information 'useful' in making his decision or all information that 'might . . . affect[t] his decision to confess.'" *Id.* at 859 (quoting *Moran v. Burbine*, 106 S. Ct. at 1142). The Court in *Spring* held that "a suspect's awareness of all possible subjects of questioning in advance of interrogation is not relevant to determining" the validity of a suspect's waiver. *Id.*

⁹⁴ See *id.* at 860 (Marshall, J., dissenting).

⁹⁵ See *id.* (Marshall, J., dissenting).

⁹⁶ *Id.* (Marshall, J., dissenting). Justice Marshall reasoned that requiring officers to inform a suspect of the crimes for which he is suspected of committing would "contribute significantly toward ensuring that the arrest was in fact lawful and the suspect's statement was not compelled because of an error . . ." *Id.* (Marshall, J., dissenting). See *Brown v. Illinois*, 422 U.S. 590, 601 (1975).

⁹⁷ See *Spring*, 107 S. Ct. at 860 (Marshall, J., dissenting). The interrogating officers "hoped to obtain from *Spring* a valid confession to the federal firearms charge for which he was arrested and then parlay this admission into a confession of first degree murder." *Id.* at 860-61 (Marshall, J., dissenting).

⁹⁸ *Id.* at 861 (Marshall, J., dissenting).

The dissent noted that interrogators consider the first admission in an interrogation as the "breakthrough" that will give police tremendous tactical advantage.⁹⁹ Justice Marshall stated that "[t]he coercive aspects of the psychological ploy intended in this case, when combined with an element of surprise which may far too easily rise to a level of deception, cannot be justified in light of *Miranda's* requirement that waiver and confession be voluntary, knowing, and intelligent."¹⁰⁰

The dissent interpreted the majority's holding in *Spring* to indicate that a suspect's waiver of *Miranda* protections and agreement to make a statement concerning a specific crime would validate such a waiver with respect to questioning concerning any other crime.¹⁰¹ Justice Marshall indicated that such a situation was unfair to the suspect because, once a waiver is given and a statement made, the protections of the *Miranda* rights against the "inherently compelling pressures" of interrogation have disappeared and "[a]dditional questioning about entirely separate and more serious suspicions of criminal activity can take unfair advantage of the suspect's psychological state."¹⁰² The dissent thus concluded that a suspect's knowledge of the topics of investigation are relevant in determining whether a suspect's waiver of his fifth amendment privilege was made voluntarily, knowingly, and intelligently.¹⁰³ Finally, Justice Marshall emphasized that the state's burden in proving the validity of a suspect's waiver is a "heavy one"¹⁰⁴ and that "every reasonable presumption against waiver' of fundamental constitutional rights"

⁹⁹ *Id.* (Marshall, J., dissenting)(citing *Oregon v. Elstad*, 470 U.S. 298, 328 (1985)(Brennan, J., dissenting)).

¹⁰⁰ *Id.* (Marshall, J., dissenting)(citing *Miranda*, 384 U.S. at 445-58, 475-76)(footnote omitted). Justice Marshall noted that he joined Justice Steven's *Moran v. Burbine* dissent which stated that "there can be no constitutional distinction . . . between a deceptive misstatement and the concealment by the police of the critical fact that an attorney retained by the accused or his family has offered assistance . . ." *Id.* at n.1 (Marshall, J., dissenting) (quoting *Moran v. Burbine*, 106 S. Ct. 1135, 1158 (1986)(Stevens, J., dissenting)). Justice Marshall concluded that the failure to inform *Spring* about the subjects of questioning was an equally critical concealed fact. *Id.* at n.1 (Marshall, J., dissenting).

¹⁰¹ *See id.* (Marshall, J., dissenting).

¹⁰² *Id.* (Marshall, J., dissenting). Justice Marshall reasoned that conducting unexpected questioning could cause "the compulsive pressures suddenly to reappear." *Id.* (Marshall, J., dissenting).

¹⁰³ *See id.* (Marshall, J., dissenting).

¹⁰⁴ The dissent concluded that the state would not be able to meet its burden in proving that *Spring's* waiver was given voluntarily, knowingly, and intelligently because of the investigators' plan to first obtain *Spring's* confession to the federal firearms offense and then question him about the unrelated homicide. *Id.* at n.1 (Marshall, J., dissenting).

should be made.¹⁰⁵

The dissent concluded that Spring would not have waived his fifth amendment privilege without consulting an attorney had he known that the topics of the interrogation would include the Walker murder.¹⁰⁶ The dissent therefore joined with the Colorado Supreme Court in concluding that Spring's waiver was not made voluntarily, knowingly, and intelligently.¹⁰⁷

VI. DISCUSSION AND ANALYSIS

The Supreme Court's decision in *Colorado v. Spring* is one in a long line of decisions attempting to restrain a suspect's fifth amendment privilege.¹⁰⁸ Although *Miranda* attempted to balance society's need to deter and punish criminal activity with the need to protect individual liberty and the privilege against self-incrimination, these decisions have not been made easily and have been criticized and challenged with great fervor.¹⁰⁹ The Court's decision in *Spring* correctly concluded that a suspect's knowledge of the subjects of interrogation is not relevant to a valid waiver of a suspect's *Miranda* rights, but the majority essentially glossed over the sound policy considerations for such a decision. Instead, the Court focused on the basic requirements of *Miranda* and concluded that simple compliance with these requirements was sufficient for a valid waiver.

The Court's opinion in *Spring*, though correct in its conclusion, is lacking in two respects. First, the majority opinion in *Spring* did not identify and address the policy considerations involved in this case. Second, the majority failed to explore the issue of whether

¹⁰⁵ *Id.* at 861 (Marshall, J., dissenting)(quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¹⁰⁶ *Id.* at 861-62 (Marshall, J., dissenting).

¹⁰⁷ *See id.* at 862 (Marshall, J., dissenting).

¹⁰⁸ Many commentators feel that the Burger Court acted to severely limit a suspect's rights established under *Miranda*. *See, e.g.*, *Oregon v. Elstad*, 470 U.S. 298 (1985); *New York v. Quarles*, 467 U.S. 649 (1984); *Fare v. Michael C.*, 442 U.S. 707 (1979); *North Carolina v. Butler*, 441 U.S. 370 (1979); *Michigan v. Tucker*, 417 U.S. 649 (1974). *See Machlis, Criminal Procedure II: The Privilege Against Self-Incrimination*, 1985 ANN. SURV. OF AM. L. 289 (1985); Sonenshein, *Miranda and the Burger Court: Trends and Countertrends*, 13 LOY. U. CHI. L.J. 405 (1982); Grossman & Lane, *Miranda: The Erosion of a Doctrine*, 62 CHI. B. REC. 250 (1980).

¹⁰⁹ For discussions criticizing the Court's application of the *Miranda* doctrine, see Schulhofer, *Reconsidering Miranda*, 54 U. CHI. L. REV. 435 (1987); Broome, 'You (Might) have a Right to Remain Silent . . .', 7 CAL. LAW. 37 (March 1987); Grossman & Lane, *supra* note 108. For discussions calling for the overruling of the *Miranda v. Arizona* decision, see Caplan, *supra* note 12; Frey, *Modern Police Interrogation Law: The Wrong Road Taken*, 42 U. PITT. L. REV. 731 (1981); Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 VA. L. REV. 859 (1979). For a discussion supporting the *Miranda* decision, see White, *Defending Miranda: A Reply to Professor Caplan*, 39 VAND. L. REV. 1 (1986).

silence regarding the topics of investigation can constitute trickery and therefore invalidate an otherwise voluntary waiver.

The Court has never accepted the notion that a waiver is valid simply because the required *Miranda* warnings have been given.¹¹⁰ Instead, the Court has required that a suspect must relinquish his privilege voluntarily, knowingly, and intelligently.¹¹¹ The primary purpose for establishing the *Miranda* warnings was "to dissipate the compulsion inherent in a custodial interrogation and, in so doing, guard against abridgement of the suspect's fifth amendment rights."¹¹² At the same time, however, the *Miranda* Court had to address the interest of society in preventing crime.¹¹³

The United States Supreme Court reaffirmed in *Moran v. Burbine*¹¹⁴ that a waiver is valid as a matter of law if the waiver of the fifth amendment privilege is given "voluntarily, knowingly, and intelligently."¹¹⁵ In *Spring*, the Court found that the defendant's waiver of his fifth amendment privilege was voluntarily¹¹⁶ made and that his waiver, furthermore, was given knowingly and intelligently.¹¹⁷ Accordingly, the *Spring* Court held that the law enforcement officers' failure to advise Spring of the subject matter of the investigation

¹¹⁰ See *Miranda*, 384 U.S. at 470, 476.

¹¹¹ See *id.* at 444.

¹¹² *Moran v. Burbine*, 106 S. Ct. 1135, 1143 (1986).

¹¹³ See *id.* at 1144. The Court stated that "[a]dmissions of guilt are more than merely 'desirable,' they are essential to society's compelling interest in finding, convicting and punishing those who violate the law." *Id.* (quoting *United States v. Washington*, 431 U.S. 181, 186 (1977)). In *Miranda*, the Court stated that "[c]onfessions remain a proper element in law enforcement." 384 U.S. at 478.

¹¹⁴ 106 S. Ct. 1135.

¹¹⁵ *Id.* at 1142 (emphasis added). The Court stated that:

Once it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure his conviction, the analysis is complete and the waiver is valid as a matter of law.

Id. (footnote omitted).

¹¹⁶ *Spring*, 107 S. Ct. at 857. "Absent evidence that Spring's 'will [was] overborne and his capacity for self-determination critically impaired' because of coercive police conduct, his waiver of his fifth amendment privilege was voluntary . . ." *Id.* (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)). Spring claimed "no 'coercion of a confession by physical violence or other deliberate means calculated to break [his] will,' and the trial court found none." *Id.* (quoting *Oregon v. Elstad*, 470 U.S. 298, 312 (1985)). See *supra* notes 67-71 and accompanying text.

¹¹⁷ *Spring*, 107 S. Ct. at 857. The Court found that "Spring understood that he had a right to remain silent and that anything he said could be used as evidence against him." *Id.* The *Spring* majority also stated that Spring made no allegation that he failed to understand his constitutional privilege or the consequences of speaking with the officers. *Id.* at 858. In fact, Spring's only challenge to the validity of his waiver was based on his claim that his statement was not made voluntarily because he was tricked or deceived as a result of the police officers' failure to inform him of the intended scope of their investigation. *Id.* See *supra* notes 72-76 and accompanying text.

“could not affect Spring’s decision to waive his fifth amendment privilege in a constitutionally significant manner.”¹¹⁸

Although the dissent in *Spring* never specifically claimed that Spring’s waiver was not given knowingly or intelligently,¹¹⁹ Justice Marshall did focus on the voluntariness of the suspect’s waiver as a consequence of the *Miranda* Court’s concern for protecting the suspect from the “inherently compelling pressures of . . . custodial interrogation.”¹²⁰ The dissent, however, failed to recognize that the warnings provided Spring went beyond the requirements for protecting the suspect’s rights because the officers advised Spring that he had a right to stop the questioning at any time.¹²¹ This fact is significant because it supports the contention that Spring’s will was not overburdened. If Spring felt uncomfortable when the officers began discussing the murder, he was well aware of the fact that he had the ability and the right to stop the interrogation at that point.¹²² Thus, considering Spring’s understanding of his rights, it is difficult to say that Spring’s waiver was made voluntarily and that the officers did not adequately protect the suspect’s constitutional rights.

A. THE OTHER POLICY CONCERN OF *MIRANDA*: A LOOK AT LAW ENFORCEMENT

The United States Supreme Court correctly concluded in *Colorado v. Spring* that a suspect need not be informed of the intended subjects of interrogation prior to making a valid *Miranda* waiver, but essentially ignored the *Miranda* Court’s concern for maintaining a strong system of law enforcement and criminal prosecution. Though the dissent in *Spring* focused on the policy concern in *Mi-*

¹¹⁸ *Spring*, 107 S. Ct. at 859.

¹¹⁹ The dissent did question how, under a totality of the circumstances analysis, the majority could claim that informing a suspect that “whatever he says may be used against him” is a relevant factor for determining the validity of a waiver but that a suspect’s knowledge of the topics of investigation is not relevant. *Id.* at 860 (Marshall, J., dissenting).

The dissent overlooked the fact that the Court’s decision in *Miranda* requires that a suspect be advised of the fact that his statements can later be used against him at trial. *Miranda*, 384 U.S. at 469. The *Miranda* Court, however, did not require that a suspect be advised of the subjects of interrogation or even of all topics which may affect the wisdom of the suspect’s decision to make a waiver of his *Miranda* rights.

¹²⁰ *Spring*, 107 S. Ct. at 861 (quoting *Miranda*, 384 U.S. at 467).

¹²¹ See *People v. Spring*, 713 P.2d 865, 881 (Colo. 1985) (Erickson, J., dissenting). For the content of the *Miranda* warnings, see *supra* note 8.

¹²² The fact that Spring had spent time in prison is also important to the analysis. See Brief for Petitioner at 3, *Colorado v. Spring*, 107 S. Ct. 851 (1987). Spring’s background and experience made him familiar with the criminal justice system and less susceptible to overbearing persuasion.

randa of protecting the suspect from the inherently compelling pressures of interrogation as a basis for invalidating *Spring*'s waiver, the *Spring* majority failed to address *Miranda*'s alternative policy concern: the interest of society in a strong system of criminal justice. This interest is also compelling and clearly supports the decision in *Spring*.

In *Miranda*, the Court was concerned not only with protecting the individual's rights, it was also mindful of the important function the police play in maintaining law and order.¹²³ The *Moran* Court recognized these conflicting concerns and identified the "subtle balance" in *Miranda*:

On the one hand, "the need for police questioning as a tool for effective law enforcement of criminal laws" cannot be doubted. Admissions of guilt are more than "merely desirable," they are essential to society's compelling interest in finding, convicting and punishing those who violate the law. On the other hand, the Court has recognized that the interrogation process is "inherently coercive" and that, as a consequence, there exists a substantial risk that the police will inadvertently traverse a fine line between legitimate efforts to elicit admissions and constitutionally impermissible compulsions.¹²⁴

As a result of society's concern for maintaining law and order, the *Miranda* Court was careful not to overburden the police in their law enforcement efforts.¹²⁵ However, what the dissent proposed in *Spring*, that a suspect be informed of the subjects of interrogation prior to questioning,¹²⁶ would certainly place an additional burden

¹²³ As the Court stated in *Miranda*:

This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude the police from carrying out their traditional investigatory functions.

Miranda, 384 U.S. at 481.

¹²⁴ *Moran*, 106 S. Ct. at 1144 (citations omitted).

¹²⁵ In an effort to protect the role of the police in our society, the Court stated in *Miranda* that "[t]he limits we have placed on the interrogation process should not cause an undue interference with a proper system of law enforcement." *Miranda*, 384 U.S. at 481.

The *Moran* Court, in reaffirming that the police should not be overburdened in the performance of their duties, stated that "[b]ecause neither the letter nor the purpose of *Miranda* require this additional handicap on otherwise permissible investigatory efforts, we are unwilling to expand the *Miranda* rules to require the police to keep the suspect abreast of the status of his legal representation." *Moran*, 106 S. Ct. at 1144.

¹²⁶ The dissenting Justices in *Spring* would require "the officers to articulate at a minimum the crime or crimes for which the suspect was arrested." *Spring*, 107 S. Ct. at 860 (emphasis added). However, this was not at issue in *Spring*. In *Spring*, the question before the Court was whether knowledge of the subjects of interrogation is a relevant factor for the Court to consider in determining the validity of the suspect's waiver. *Id.* at 856. The question of whether the police should inform the defendant of the suspected crimes

on law enforcement. This additional requirement is not called for by the *Miranda* decision, would upset the careful balance established by the *Miranda* Court, and would interfere with effective law enforcement.

First, the Court's decision in *Miranda* "was painstakingly specific in listing the basic constitutional rights which the police must propound to a suspect before questioning."¹²⁷ Nowhere in the *Miranda* decision is there any indication that a suspect should be provided with all the information in the possession of the police. The Court, moreover, has refused in the past to expand the *Miranda* requirements to include a mandatory requirement that a suspect be provided with all available information.¹²⁸

Second, a requirement that the police inform a suspect of all possible subjects of interrogation would greatly interfere with the police in the performance of their duties. One of the greatest virtues and principle advantages of *Miranda* has been "the ease and clarity of its application."¹²⁹ As the Court stated in *Fare v. Michael C.*, "*Miranda's* holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation . . ." ¹³⁰ If the police were forced to consider the individual circumstances in each and every interrogation, the intent of the *Miranda* decision would be defeated.¹³¹ The police could no longer be confident that the suspect's constitutional rights had been preserved and that the suspect's waiver was truly valid because there

for which he has been arrested may be an easier question than the issue in *Spring*. The police will presumably know why the suspect was arrested but may not be familiar with all the potential areas of investigation prior to the questioning. See *infra* text accompanying note 133.

¹²⁷ *Collins v. Brierly*, 492 F.2d 735, 738-39 (3rd Cir.), cert. denied, 419 U.S. 877 (1974).

¹²⁸ See *Moran*, 106 S. Ct. 1135 (1986), in which the Court stated:

[A] rule requiring the police to inform a suspect of an attorney's efforts to contact him would contribute to the protection of the fifth amendment privilege only incidentally, if at all. This minimal benefit, however, would come at a substantial cost to society's legitimate and substantial interest in securing admissions of guilt.

Id. at 1144.

¹²⁹ *Id.* at 1143. See also *New York v. Quarles*, 467 U.S. 649, 663 (1984); *Fare v. Michael C.*, 442 U.S. 705, 718 (1979); *Michigan v. Tucker*, 417 U.S. 433, 443-46 (1974).

¹³⁰ *Fare*, 442 U.S. at 718. The *Fare* Court also explained that *Miranda* has the virtue of "informing courts under what circumstances statements obtained during such interrogation are not admissible." *Id.*

¹³¹ As the *Miranda* Court stated: "Our decision is not intended to hamper the traditional function of the police officers in investigating crime." *Miranda*, 384 U.S. at 477.

The Supreme Court later reaffirmed in *Moran* that the Court was "unwilling to modify *Miranda* in [a] manner that would so clearly undermine the decision's central 'virtue of informing the police and prosecutors with specificity . . . what they may do in conducting a custodial interrogation.'" *Moran*, 106 S. Ct. at 1143 (quoting *Fare v. Michael C.*, 442 U.S. at 718).

would not be an established standard by which the police could judge the propriety of their conduct. The legitimacy of police conduct would continually be questioned, even in cases such as *Spring*, in which the police went beyond the required warnings in guarding the suspect's rights.¹³²

There are also practical considerations to contemplate. As Justice Erickson of the Colorado Supreme Court stated in dissent:

Prior to questioning a suspect, the police may have insufficient information to determine what charges will ultimately be filed against him. The nature of the offense may depend upon circumstances unknown to the police, such as whether the suspect has a criminal record. It may also turn upon an event yet to occur, such as whether the victim of the crime dies.¹³³

If the interrogating officers were forced to provide the suspect with the topics of questioning prior to the interrogation, the officers would have to determine what charges were to be brought against the suspect. This question, however, is normally outside the police officers' expertise and training and may be outside the realm of their knowledge.¹³⁴ Such a requirement would be impractical and unrealistic. An obvious problem also arises if the suspect reveals information about additional offenses during the interrogation. The police should not be required to stop the questioning and advise the suspect that he will be questioned about a new offense or remind the suspect of his *Miranda* rights. Any requirement that the interrogating officers inform the suspect of all possible topics of investigation or reissue the warnings at each turn in the interrogation would be unworkable and would interfere with the traditional duties of law enforcement officials.

Finally, a requirement that the police disclose all the topics of interrogation prior to obtaining a valid waiver might well be extended to force the police to disclose any possible relevant information.¹³⁵ Such a requirement would clearly be an added burden on the police and might well conflict with police operations. As the Department of Justice stated in its *amicus curiae* brief,

a miscalculation in either direction could prove costly: if he [a police

¹³² See *supra* text accompanying note 121.

¹³³ *People v. Spring*, 713 P.2d 865, 881 (Colo. 1985) (Erickson, J., dissenting).

¹³⁴ The arresting officers would know on what charge the suspect was arrested, but the officers may not know the crime or crimes for which the suspect will ultimately be prosecuted.

¹³⁵ Prior to obtaining a valid *Miranda* waiver, the police might be required to disclose any physical evidence they had obtained against the suspect, whether there were any witnesses to the crime, the condition of the victim, and whether any other suspects in the crime had been arrested or had given a statement.

officer] erred in failing to supply the information, any confession he obtained would have to be suppressed; if he erred on the side of caution, his action could needlessly discourage the making of a statement and thwart successful investigation of a serious crime.¹³⁶

As a result, the police would have to make a careful ad hoc inquiry of the relevant circumstances surrounding every suspect's arrest before a confession or a statement could be obtained. Requiring such an analysis would clearly place an unjustifiable burden on the police in the performance of his duties.

B. IS SILENCE TRICKERY?

The United States Supreme Court correctly concluded in *Colorado v. Spring* that police nondisclosure of the subjects of investigation does not constitute the kind of "trickery" that would invalidate a suspect's waiver within the meaning of the Court's decision in *Miranda v. Arizona*. The Court stated in *Miranda* that "any evidence that the accused was threatened, *tricked*, or cajoled into a waiver, will . . . show that the defendant did not voluntarily waive his privilege."¹³⁷ The dissent relied on this statement in *Miranda* in an effort to demonstrate that Spring's waiver was not made voluntarily but was the result of trickery due to the failure of the police to inform Spring of the topics of interrogation prior to questioning.¹³⁸

In determining whether a suspect's waiver is voluntary, the Court has traditionally examined whether the interrogation was coercive.¹³⁹ The Supreme Court has previously held that affirmative misrepresentations by the police can be coercive or deceptive and can invalidate a suspect's waiver.¹⁴⁰ The Court, however, has never specifically defined the activities that constitute trickery within the meaning of *Miranda*.¹⁴¹ Nor has the Court, prior to its decision in *Spring*, addressed the issue of whether a failure to supply a suspect

¹³⁶ Brief *Amicus Curiae* (United States Department of Justice) for Petitioner at 23, *Colorado v. Spring*, 107 S. Ct. 851 (1987)(No. 85-1517).

¹³⁷ *Miranda*, 384 U.S. at 476 (emphasis added).

¹³⁸ See *Spring*, 107 S. Ct. at 858; *Id.* at 861 n.1 (Marshall, J., dissenting).

¹³⁹ *Colorado v. Connelly*, 107 S. Ct. 515, 523 (1986)("[t]he sole concern of the fifth amendment, on which *Miranda* was based, is governmental coercion"). See *Miranda*, 384 U.S. at 460. See also *United States v. Washington*, 431 U.S. 181, 187 (1977).

¹⁴⁰ *Spring*, 107 S. Ct. at 858 n.8. See *Lynnum v. Illinois*, 372 U.S. 528 (1963); *Spano v. New York*, 360 U.S. 315 (1959); *Lisenba v. California*, 314 U.S. 219 (1941).

¹⁴¹ See White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581, 583 (1979). Professor White's article identifies and evaluates several interrogation methods which may be considered trickery. *Id.* at 601-28. These methods include: (a) deception about whether an interrogation is taking place; (b) deception that distorts the meaning of the *Miranda* warnings; (c) deception that distorts the seriousness of the crime; (d) assumption of nonadversary roles by interrogating officers; (e) tricks that take on the character of threats or promises; (f) repeated assurances that the suspect is known to be

with the subject matter of the interrogation before commencing the questioning constitutes "trickery."¹⁴²

In *Moran v. Burbine*, however, the Court indicated that any investigation into the circumstances of a suspect's waiver must focus on whether the suspect was tricked in such a manner that he did not understand or was unable to exercise his constitutional rights.¹⁴³ In *Moran*, the Court held that the failure of the police to inform the defendant of a telephone call from his attorney was not "the kind of 'trickery' that can vitiate the validity of a waiver."¹⁴⁴ The *Moran* Court reasoned that although the defendant would probably want to know that an attorney had attempted to communicate with him, such information was not required under *Miranda*.¹⁴⁵ The *Moran*

guilty; and (g) the "Mutt and Jeff" routine, also known as "good guy, bad guy." *Id.* See also, Note, *Police Use of Trickery as an Interrogation Technique*, 32 VAND. L. REV. 1167 (1979).

Some state courts have indicated that the test for determining whether a particular police tactic is trickery should be based on whether the interrogation method used is likely to produce an untrue statement, thereby leading an innocent person to make an untrue confession. See D. NISSMAN, E. HAGEN, & P. BROOKS, *LAW OF CONFESSIONS* 22 (1985)(citing, Annot., 99 A.L.R.2D 772, 777 (1979)); see also White, *supra*, at 581. White, however, notes that this test is not completely consistent with prior Supreme Court holdings. White suggests that the Court has ruled that a "totality of the circumstances" analysis must demonstrate that "the suspect's statement was 'the product of his free and rational choice.'" *Id.* at 583 (quoting *Greenwald v. Wisconsin*, 390 U.S. 519, 521 (1968)(per curiam)). White also notes, that the Court has held, certain interrogation methods are so coercive that their use results in an "involuntary" confession as a matter of law, irrespective of the likelihood that they did or could produce a false confession." *Id.* at 583-84 (citing *Ashcraft v. Tennessee*, 322 U.S. 143, 154 (1944)(holding that continuous interrogation for thirty-six consecutive hours was "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom"))).

¹⁴² *Spring*, 107 S. Ct. at 858. In *Spring*, the Court only cursorily addressed this issue by stating that "[t]his Court has never held that mere silence by law enforcement officials as to the subject matter of an interrogation is 'trickery' sufficient to invalidate a suspect's waiver of *Miranda* rights and we expressly decline to so hold today." *Id.* (footnote omitted).

A number of lower courts have addressed the issue of the effect of silence on the validity of a suspect's waiver in the situation in which the interrogators fail to advise the suspect of all possible charges against him, and these courts have concluded that such activity will not invalidate a suspect's waiver. See, e.g., *United States v. Burger*, 728 F.2d 140 (2d Cir. 1984); *United States v. Dorsey*, 591 F.2d 922 (D.C. Cir. 1978); *Harris v. Riddle*, 551 F.2d 936 (4th Cir. 1977); *Collins v. Brierly*, 492 F.2d 735 (3d Cir. 1974); *United States v. Campbell*, 431 F.2d 97 (9th Cir. 1970).

¹⁴³ *Moran*, 106 S. Ct. at 1142. The *Moran* Court found that even:

[g]ranting that the 'deliberate or reckless' withholding of information is objectionable as a matter of ethics, such conduct is only relevant to the constitutional validity of a waiver if it deprives a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.

Id.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* The *Moran* Court stated that "we have never read the Constitution to require the police to supply a suspect with a flow of information to help him calibrate his self interest in deciding whether to speak or stand by his rights." *Id.* (citing *Oregon v. El-*

Court, concluded therefore, that the defendant's waiver was valid because the defendant made a voluntary decision to speak to the police "with full awareness and comprehension of all information *Miranda* requires the police to convey."¹⁴⁶ Thus it appears from the Court's decision in *Moran* that a failure to disclose useful information is not trickery if the withholding of such information does not interfere with the suspect's ability to exercise his *Miranda* rights.

Applying the logic of *Moran*, a failure to disclose the subject matter of questioning should not invalidate Spring's waiver. In *Spring*, there was "no allegation that Spring failed to understand the basic privilege guaranteed by the fifth amendment [n]or . . . that he misunderstood the consequences of speaking freely to the law enforcement officials."¹⁴⁷ Thus, although Spring may have been denied access to useful information, the lack of such information did not interfere with the exercise of his constitutional rights.¹⁴⁸ Accordingly, the failure of the police to provide Spring with information concerning the subject matter of the investigation should not be considered the "kind of trickery that can vitiate the validity of a waiver."¹⁴⁹

Furthermore, because the question of trickery in *Spring* involved a failure to provide the suspect with information which could not affect his decision to exercise his rights under *Miranda*, the suspect was unharmed in a constitutionally significant manner. Thus the question of trickery is not an issue.¹⁵⁰ Moreover, as the Department

stad, 105 S. Ct. 1285, 1297-98 (1985); *United States v. Washington*, 431 U.S. 181, 188 (1977). *Cf.* *Hill v. Lockhart*, 106 S. Ct. 366, 369 (1985) (the Court stated "[w]e have never held that the United States Constitution requires the State to furnish a defendant with information about parole eligibility in order for the defendant's plea of guilty to be voluntary . . ."); *McMann v. Richardson*, 397 U.S. 759, 769 (1970) (the Court stated that a defendant's "decision to plead guilty or not turns on whether he thinks the law will allow his confession to be used against him" and that a mistaken assessment as to the admissibility of his confession because of erroneous advice as to the applicable law, does not make his plea an involuntary act).

¹⁴⁶ *Moran*, 106 S. Ct. at 1142.

¹⁴⁷ *Spring*, 107 S. Ct. at 858.

¹⁴⁸ As the Court stated in *Spring*, "the additional information [concerning the subjects of investigation] could only affect the wisdom of a *Miranda* waiver, not its essentially voluntary and knowing nature." *Id.* at 859.

¹⁴⁹ *Moran*, 106 S. Ct. at 1142. As the Court established in *Moran*, withholding information "is only relevant to the constitutional validity of a waiver if it deprives a defendant of knowledge essential to his ability to understand the nature and the consequence of abandoning [his rights]." *Id.*

¹⁵⁰ This situation can be contrasted with a case in which a suspect receives false information regarding, for example, the seriousness of the matter under investigation. Because a suspect must be able to reassert his *Miranda* rights at any point during an interrogation, once a waiver is given, a misrepresentation of the seriousness of the crime interferes with the suspect's ability to assess the desirability of asserting his *Miranda*

of Justice's *amicus curiae* brief highlights: "[t]he limits upon a police officer's obligation to provide information to a suspect would be meaningless if the failure to supply extraneous information could constitute deception that vitiates a suspect's waiver."¹⁵¹ Because the information concerning the subjects of questioning could not affect Spring's waiver decision in a constitutionally significant manner, the withholding of such information should not constitute "trickery" within the meaning of *Miranda*.¹⁵²

VII. CONCLUSION

In *Colorado v. Spring*, the United States Supreme Court refused to require the police to supply a suspect with information concerning the subjects of investigation prior to the obtainment of a valid waiver of the suspect's *Miranda* rights. According to the Court, such information was not needed for a constitutionally valid waiver of the suspect's fifth amendment privilege against self-incrimination and could not affect the voluntary, knowing, and intelligent nature of such a decision.¹⁵³

The Court's decision in *Spring* supports legitimate law enforcement efforts and recognizes that suspect confessions are often crucial to criminal investigations. As the Court stated in *Culombe v. Connecticut*:

Despite modern advances in the technology of crime detection, offenses frequently occur about which things can not be made to speak. And where there cannot be found innocent human witnesses to such offenses, nothing remains—if police investigation is not to be balked before it has fairly begun—but to seek out possibly guilty witnesses and ask them questions.¹⁵⁴

The Court's decision in *Colorado v. Spring* maintains the balance sought by the *Miranda* Court. Though the majority opinion in *Spring*

rights. See White, *supra* note 141, at 613. According to Professor White, a misrepresentation concerning the seriousness of the crimes under investigation "achieves as pernicious an effect as direct distortion of the *Miranda* warnings." *Id.*

The Court has ruled in prior decisions that a suspect may be coerced or tricked if presented with false information. See, e.g., *Lynumn v. Illinois*, 372 U.S. 528 (1963) (defendant's confession not valid because of police officer's false statements that defendant would be denied financial aid for her children if she failed to cooperate with the police). The Court in *Spring* specifically chose not to rule on the question of whether affirmative misrepresentations as to the subject matter of an interrogation would invalidate a *Miranda* waiver. See *Spring*, 107 S. Ct. at 858 n.8.

¹⁵¹ Brief *Amicus Curiae* (United States Department of Justice) at 25, *Spring* (No. 85-1517).

¹⁵² See *Spring*, 107 S. Ct. at 859. See also text accompanying notes 147-49.

¹⁵³ *Spring*, 107 S. Ct. at 859.

¹⁵⁴ 367 U.S. 568, 571 (1961).

did not specifically address society's interest in preventing crime and the value to society of obtaining a suspect's confession, the *Spring* decision effectively preserves the critical balance between protecting individual liberties and maintaining an effective system of law enforcement.

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