

January 1993

Criminal Procedure - Cooper v. Dupnik: Unlawful Interrogation Invites Liability

Stacey L. Kepnes

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Recommended Citation

Stacey L. Kepnes, *Criminal Procedure - Cooper v. Dupnik: Unlawful Interrogation Invites Liability*, 23 Golden Gate U. L. Rev. (1993).
<http://digitalcommons.law.ggu.edu/ggulrev/vol23/iss1/14>

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CRIMINAL PROCEDURE

SUMMARY

COOPER v. DUPNIK: UNLAWFUL INTERROGATION INVITES LIABILITY

I. INTRODUCTION

In *Cooper v. Dupnik*,¹ the Ninth Circuit, sitting *en banc*, held that an interrogation scheme employed by the Tucson Police Department and the Pima County Sheriff's Department intended to elicit a confession infringed on a suspect's constitutional right to remain silent.² The scheme was specifically intended to compel involuntary testimony from a suspect by deliberately ignoring his repeated requests for an attorney.³

The Ninth Circuit also held that Cooper had stated a claim sufficient for Section 1983 purposes.⁴ In reaching this conclusion,

1. *Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992) (*en banc*) (per Trott, J., with whom Browning, J., Hug, J., Schroeder, J., Fletcher, J., Poole, J., Thompson, J., and Wiggins, J., joined; Brunetti, J., and Leavy, J., dissenting).

2. *Id.* at 1223. The court held that the interrogation scheme violated the fifth amendment. *Id.* at 1225. The fifth amendment provides in pertinent part that "no person . . . shall be compelled in any criminal case to be a witness against himself. . . ." U.S. CONST. amend V.

3. *Cooper*, 963 F.2d at 1223.

4. *Id.* at 1242. See 42 U.S.C. §1983 (1988), providing in relevant part that "every person who, under color of any statute, ordinance, regulation, custom or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

the court held that the admissibility of a confession *will not* dictate whether a valid Section 1983 claim has been established. The Ninth Circuit's decision affirmed the district court's denial of a motion for summary judgment based on the defense of qualified immunity.⁵

II. FACTS

A. FACTUAL BACKGROUND

On May 7, 1986, Michael Cooper became a suspect in the search for the Prime Time Rapist.⁶ Cooper's fingerprints were compared and mistakenly identified as latent fingerprints lifted as evidence from one of the attack sights.⁷ Cooper, who was on probation for a fraud conviction,⁸ was formally arrested for the series of rapes in Tucson.⁹

Prior to Cooper's arrest, the Tucson Police Chief and the Pima County Sheriff combined to form the Prime Time Rapist Task Force (the "Task Force").¹⁰ The Task Force, a compilation of experienced law-enforcement officers, was united to develop a strategy for interrogating suspects in the Prime Time Rapist case.¹¹ The strategy consisted of ignoring the suspect's constitutional right to remain silent; refusing any request to speak with an attorney; holding the suspect incommunicado; and pressuring and questioning the suspect until he confessed.¹² The officers *knew* that the confession generated from their tactics would be inadmissible as evidence in a prosecutor's case in chief, but they

5. *Cooper*, 963 F.2d at 1251.

6. *Cooper v. Dupnik*, 963 F.2d 1220, 1228 (9th Cir. 1992). Beginning in 1984, and extending through September of 1986, residents of Tucson, Arizona were beset by a series of rapes, robberies and kidnapping. *Id.* at 1223. The Tucson Police Department and the Pima County Sheriff's Department believed a single individual might be responsible for the attacks. *Id.* That person became known as the "Prime Time Rapist." *Id.*

7. *Id.* at 1228. An identification technician for the Tucson Police Department decided, without authority, that Cooper might be a suspect. *Id.* The technician, who had not conducted any substantial fingerprint work for at least six (and possibly nine) years, compared the prints hastily and without following proper procedure. *Id.* His conclusion was that a positive comparison existed, although he had difficulty making a match. *Id.* The latent prints did not belong to Cooper. *Id.*

8. *Cooper*, 963 F.2d at 1229 n.3.

9. *Id.* at 1229.

10. *Id.* at 1223.

11. *Cooper*, 963 F.2d at 1224.

12. *Id.*

hoped it would be admissible for impeachment purposes if the suspect ever went to trial.¹³ Furthermore, the officers hoped that the confession would prevent the suspect from claiming innocence, and that it would hinder any possible insanity defense.¹⁴

During the interrogation, Cooper was fully advised of his *Miranda* rights.¹⁵ Cooper testified, however, that when the rights were administered, he did not take them seriously.¹⁶ This was the officers' intent, so that Cooper would talk with them. The officers interrogated Cooper persistently, deliberately ignoring his repeated requests for counsel.¹⁷

Late in the interrogation, the detective designated as the primary interrogator concluded that Cooper was innocent.¹⁸ Even so, Cooper was eventually booked in the Pima County Jail, still proclaiming his innocence.¹⁹ The plan, though implemented with great intensity, was ineffective in yielding a confession.²⁰

Cooper had been told by a female fingerprint expert (with the Tucson Police Department) and the lead investigator that

13. *Id.* (emphasis added).

14. *Id.*

15. *Id.*; *Miranda v. Arizona*, 348 U.S. 436, 471 (1966) (requiring that suspects held in custody be permitted to consult with an attorney prior to any interrogation, and allowing a suspect to remain silent with or without an attorney). The officers ignored Cooper's requests to contact an attorney. *Cooper*, 963 F.2d at 1224. They doubted "very seriously" if he would speak to them at all after he contacted an attorney. *Id.*

16. *Cooper*, 963 F.2d at 1228. At the outset of the interview, which was recorded, the officer fully advised Cooper of his *Miranda* rights, but deliberately turned the advisement into what he hoped Cooper would perceive as a joke. *Id.* The officer's ploy was designed to make Cooper ignore the warnings, and begin to talk. *Id.* The officer intended to undercut Cooper's constitutional right not to talk to the Task Force by complying with *Miranda*'s safeguards in form only, not in spirit or in substance. *Id.* For example, the officer jokingly asked Cooper if Cooper had a rights card, and then said, "I could read you my driver's license if you like." *Id.*

17. *Id.* at 1229. The record showed that Cooper was reduced to a state of agitation and anxiety marked by tears and sobbing as he persistently maintained his innocence in the face of the barrage of questioning. *Id.* at 1231. The record also contains evidence indicating he was traumatized by this encounter and later suffered post-traumatic stress syndrome. *Id.*

18. *Id.* The detective, a hardened veteran, testified that Cooper's emotional state caused him to conclude that Cooper was innocent. *Id.* The detective refused to interrogate Cooper any further, stating, "it was becoming clear to me that I could no longer deny my feelings that *we got the wrong guy.*" *Id.* (emphasis added).

19. *Id.* at 1232.

20. *Id.*

the Task Force had identified a positive fingerprint match.²¹ Still, Cooper did not confess.²² Later that evening, the female fingerprint expert left the interrogation to double-check the earlier comparison made by the technician.²³ She concluded a mistake might have been made.²⁴ Her advice was initially ignored by the first identification technician and his supervisor.²⁵ The expert's concern eventually generated further examination of the fingerprint evidence, and led the technicians to conclude that they did not have a match.²⁶ This was reported to the leading sergeant in the Sheriff's Department.²⁷

Nearly twenty-four hours after his arrest, Cooper was released.²⁸ During his incarceration, despite two attempts to contact an attorney, Cooper apparently had no contact with the outside world, including his family.²⁹

The evening of Cooper's arrest, the Sergeant told the media that the Prime Time Rapist had been apprehended.³⁰ The next day, the Chief of Police explained to the media that Cooper had been misidentified by the crime lab.³¹ The FBI subsequently confirmed the mistake.³² Only then did the Tucson Police Department publicly announce that Cooper had been cleared.³³

Cooper alleged that he and his family suffered serious personal and financial injury, and alleged nine causes of action

21. *Id.* Despite the detective's misgivings, the lead investigator wanted to secure a confession. *Id.* The investigator summoned the fingerprint expert and told her, "I want to try to force a confession out of this man." *Id.*

22. *Id.*

23. *Id.*

24. *Cooper*, 963 F.2d at 1232. The expert testified that once removed from the "pressure" generated by the Task Force, she reached this conclusion. *Id.*

25. *Id.*

26. *Id.* at 1233.

27. *Id.* at 1234.

28. *Id.* at 1233.

29. *Id.*

30. *Cooper*, 963 F.2d at 1234. The Sergeant made this statement knowing that Cooper did not fit the physical description of the rapist given by the victims of the two rapes in question. *Id.* His superior also did not believe Cooper was responsible for these incidents. *Id.*

31. *Id.*

32. *Id.* The confirmation of the mismatch came two months after Cooper's release. *Id.*

33. *Cooper*, 963 F.2d at 1234.

under 42 U.S.C. § 1983 and nine causes of action under state tort law.³⁴ He named as defendants the law enforcement agencies, the individual officers and their employers.³⁵

The district court granted summary judgment in favor of the defendants on six of the federal causes of action. The court reasoned that the defendants successfully asserted the defense of qualified immunity.³⁶ The defendants appealed from the district court's denial of qualified immunity for Cooper's claims of (1) denial of right to counsel and right to remain silent, (2) injury to reputation and property interests, and (3) conspiracy.³⁷ On appeal, the Ninth Circuit focused on two issues: the denial of the right to counsel and of the right to remain silent.³⁸

B. PROCEDURAL BACKGROUND

The defendants argued that the record contained clear evidence that they were entitled as a matter of law to the complete defense of qualified immunity as defined by the United States Supreme Court in *Mitchell v. Forsyth*.³⁹ They further argued

34. *Id.* The federal civil rights claims in Cooper's second amended complaint were: denial of right to counsel and right to remain silent; false arrest; false imprisonment; improper training and procedures; injury to reputation and property interests; invasion of privacy; illegal search and seizure (residence); illegal search and seizure (automobile); and conspiracy. *Id.* The state claims were not at issue on appeal. *Id.*

35. *Cooper*, 963 F.2d at 1234.

36. *Id.* at 1235.

37. *Id.* The court left intact the rulings of the district court as to the other counts. *Id.*

38. *Id.* This case was originally heard on appeal by a Ninth Circuit three judge panel, which reversed all counts except a state defamation claim. *Id.* See also *Cooper v. Dupnik*, 924 F.2d 1520 (9th Cir. 1991). Cooper successfully petitioned for a rehearing *en banc*. *Cooper*, 963 F.2d at 1223.

39. *Id.* at 1235. The court discussed the standard of review as well as the test to be applied for determining whether appellants are entitled to qualified immunity:

An appellate court reviewing the denial of the defendant's claim of immunity need not consider the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations actually state a claim. All it need determine is a question of law: whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions or, in cases where the district court has denied summary judgement for the defendant on the ground that even under the defendant's version of the facts the defendant's conduct violated clearly established law, whether the law clearly proscribed the actions the defendant claims he took.

Id. (citing *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985)).

that continuing the interrogation in spite of Cooper's request for counsel merely violated the safeguards set out in *Miranda*,⁴⁰ and did not violate the Fifth Amendment substantive right to remain silent.⁴¹ The defendants argued that Cooper could not bring a claim under Section 1983 since they did not violate the Constitution.⁴² The defendants emphasized that Section 1983 requires a violation of a "right . . . secured by the Constitution" before imposing civil liability.⁴³ Furthermore, the defendants claimed that the only consequence of disregarding *Miranda* was that the evidence obtained might be inadmissible.⁴⁴

The district court's ruling turned mainly on whether the defendants deprived Cooper of a constitutional right. The district court concluded that no such violation occurred, reasoning that *Miranda* warnings are merely procedural safeguards and are not mandatory.⁴⁵

On appeal, a three judge Ninth Circuit panel concluded that Cooper did not state a cause of action under Section 1983.⁴⁶ The panel rejected Cooper's claim on four additional grounds. First, it held that Cooper's Fourteenth Amendment rights were not violated because Cooper did not confess to a crime.⁴⁷ Second, the panel overlooked *Miranda*'s primary holding that the constitutional right against compulsory self-incrimination (the right to remain silent) is applicable to suspects in police custody,⁴⁸ as a

40. *Miranda v. Arizona*, 384 U.S. 436 (1966). See *supra* note 15 and accompanying text.

41. *Cooper*, 963 F.2d at 1235.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Cooper*, 963 F.2d at 1236. Besides stating that *Miranda* warnings are not constitutionally mandated, the district court held there was no civil liability based upon the failure of the police to issue *Miranda* warnings. *Id.* (citing *Cooper v. Dupnik*, 924 F.2d 1520 (9th Cir. 1991)).

46. *Cooper*, 963 F.2d at 1236 (citing *Cooper*, 924 F.2d at 1527). The panel noted that although his request for counsel was not honored, the *Miranda* warnings and rights are not themselves constitutionally mandated. *Id.* The panel stated that they are procedural safeguards, or prophylactic measures, to ensure that the fifth amendment right against compulsory incrimination is not violated. *Id.* The panel observed that all out-of-circuit cases held that a plaintiff may not, as a matter of law, maintain a § 1983 action based on the failure to issue *Miranda* warnings . . . Since *Miranda* requirements are not a constitutional prerequisite, the panel concluded that their violation cannot form the basis of a § 1983 suit. *Id.*

47. *Cooper*, 924 F.2d at 1529.

48. *Cooper*, 963 F.2d at 1236 (citing *Cooper*, 924 F.2d at 1527 n.17).

result, the panel rejected Cooper's Fifth Amendment claim.⁴⁹ Third, the panel determined that Cooper's substantive due process rights were not violated because the Task Force's conduct did not "shock the conscience".⁵⁰ And fourth, the panel decided that all appellants were protected from suit by the doctrine of qualified immunity.⁵¹ The Ninth Circuit, sitting *en banc*, disagreed with the majority of the original panel on each of these issues.⁵²

IV. THE COURT'S ANALYSIS

A. COOPER'S STATEMENTS

Noting that Cooper made statements which could and probably would have been used against him had he gone to trial,⁵³ the Ninth Circuit held that it was *irrelevant* that the Task Force never secured a confession.⁵⁴ The court held further that Cooper's statements hindered any insanity defense and therefore supported a constitutional violation.⁵⁵

The court concluded, based on *Miranda*, that Cooper's statements were sufficient to constitute a breach of his right to remain silent.⁵⁶ The court reasoned that *Miranda* does not distinguish between statements which are direct confessions and statements which are partial admissions of an offense, since both types of statements are incriminating.⁵⁷

B. FIFTH AMENDMENT

The court held that the Task Force's motive was irrelevant, and concluded that its attempt to force Cooper's confession was

49. *Id.*

50. *Id.*

51. *Cooper*, 963 F.2d at 1237. The panel stated "there are simply no § 1983 substantive due process cases with similar facts." *Id.*

52. *Id.* at 1236.

53. *Cooper v. Dupnik*, 963 F.2d 1220, 1237 (9th Cir. 1992). Cooper admitted slapping his wife, and that he often left his home, unaccompanied at night, sometimes for hours at a time. *Id.*

54. *Id.*

55. *Cooper*, 963 F.2d at 1238.

56. *Id.*

57. *Id.* at 1238 (citing *Miranda*, 384 U.S. at 476-77).

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an attempt to compel him to be a witness against himself.⁵⁸ The court reasoned that *Miranda* extends the Fifth Amendment right to interrogations in police stations as well as the courtroom itself.⁵⁹ The court emphasized that *Miranda* warnings are not prophylactic safeguards, but protect a *substantive* constitutional right—the right to remain silent.⁶⁰ Furthermore, the court interpreted *Miranda* as requiring the right to consult counsel prior to and during interrogation.⁶¹ The court noted that the rationale of *Miranda* is relevant to the present case as in-custody interrogations can be overpowering to the suspect's will, thus the right to remain silent needs protection throughout the interrogation.⁶² Once the accused has requested counsel, the interrogation must cease.⁶³

The court concluded that if police conduct departed from prophylactic safeguards, such behavior was an abridgment of constitutional rights. The court emphasized that the nature of the interrogation made Cooper's statements compelled and in-

58. *Id.*

59. *Cooper*, 963 F.2d at 1239. The Court said:

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. *The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself.* Today, then, there can be no doubt that *the fifth amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.* *Miranda*, 384 U.S. at 457-58 (emphasis added).

60. *Id.*

61. *Id.*

62. *Cooper*, 963 F.2d at 1240 (citing *Miranda*, 384 U.S. at 469-70). Even preliminary advice given to the accused by his own attorney can swiftly be overcome by the secret interrogation process. Thus the need for counsel to protect the fifth amendment privilege is not merely the right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires. *Miranda*, 384 U.S. at 469-70.

63. *Cooper*, 963 F.2d at 1240. See also *Fare v. Michael C.*, 442 U.S. 707 (1979), in which the Supreme Court referred to *Miranda*'s "rigid rule that an accused's request for an attorney is *per se* an invocation of his fifth amendment rights, requiring that all interrogation cease." *Cooper*, 963 F.2d at 1240 (citing *Fare*, 442 U.S. at 719).

voluntary.⁶⁴ Cooper's repeated requests for counsel were treated with indifference and he was continuously badgered in order to force a confession.⁶⁵ The court reasoned that since the right against self-incrimination was designed to protect against this type of police misconduct, Cooper had a Fifth Amendment cause of action under Section 1983.⁶⁶

C. FOURTEENTH AMENDMENT

The Ninth Circuit maintained that the coercive police action *alone* violated due process; the actual use or attempted use of the coerced statement was not necessary to complete the affront to the Constitution.⁶⁷ The court held that Cooper's civil rights cause of action was not contingent on Cooper being formally charged, nor on his statements being offered as evidence.⁶⁸ The court observed that the detrimental use of the coerced statements becomes relevant when determining damages.⁶⁹

The Ninth Circuit also held that a violation of the Fourteenth Amendment's Due Process Clause does not require physical coercion.⁷⁰ The court reasoned that the law governing coerced confessions is clear; the Fourteenth Amendment demands that confessions be the voluntary product of a free and unconstrained will.⁷¹ The court concluded that Cooper's statements to the Task Force did not meet this standard. He was emotionally worn down, stressed and filled with a sense of helplessness and fear.⁷² Statements made under these conditions are clearly forbidden by the Fourteenth Amendment.⁷³

64. *Cooper*, 963 F.2d at 1241 (citing *Miranda*, 634 U.S. at 456-58). It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner . . . no statement obtained from the defendant can truly be the product of his free choice. *Cooper*, 963 F.2d at 1242.

65. *Id.* at 1243. The approach was described by an officer as "hammering," and the questioning was harsh and unrelenting. See *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960) (recognizing that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition).

66. *Cooper*, 963 F.2d at 1244.

67. *Id.* at 1245.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Cooper*, 963 F.2d at 1247.

72. *Id.* at 1248.

73. *Id.*

D. THE POLICE CONDUCT "SHOCKS THE CONSCIENCE"

The Ninth Circuit held that Cooper could also claim that the defendants' behavior "shocks the conscience," in violation of the Fourteenth Amendment, providing him with a second cause of action under 42 U.S.C. § 1983.⁷⁴ The Ninth Circuit concluded that although police brutality is the most frequent example of a substantive due process violation, other violations can occur.⁷⁵ The court recognized that the police behavior in this case was intended to prevent Cooper from testifying, and that the Task Force attempted to utilize unlawful tactics to use Cooper's statements to impeach him and deny him use of an insanity defense.⁷⁶ This deliberate ignorance of constitutional standards infringed on Cooper's inalienable rights, and is thus a "shock to the system."⁷⁷

E. QUALIFIED IMMUNITY

Once determining that the Task Force violated Cooper's Fifth and Fourteenth Amendment rights, the court turned to the question of whether the Task Force could successfully rely on qualified immunity as a defense.⁷⁸

The doctrine of qualified immunity was designed to ensure that officials would not be "chilled" in the proper exercise of their public duties, but is inapplicable when an official knowingly violates the law.⁷⁹ The standard for determining whether the defense is applicable is objective. Officials will be liable when their behavior falls below the reasonable person standard.⁸⁰ The

74. *Id.* See also *Rochin v. California*, 342 U.S. 165 (1952) which outlawed all police conduct that "offends those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses." *Id.* at 172.

75. *Cooper*, 963 F.2d at 1249.

76. *Id.* at 1250.

77. *Id.*

78. *Cooper*, 963 F.2d at 1251.

79. *Id.* (citing *Mitchell*, 472 U.S. at 524). "Under the standard of qualified immunity . . . [an official] will be entitled to immunity so long as his actions do not violate clearly established statutory or constitutional rights which a reasonable person would have known. This standard will not allow him to carry out his . . . functions wholly free from concern for his personal liability . . . Where an official could be expected to know that his conduct would violate statutory or constitutional rights, he should be made to hesitate . . ." *Id.*

80. *Cooper*, at 1251. See *supra* note 63 setting forth the standard for applying the

depositions of the Task Force members show that they *knew* they were violating Cooper's Constitutional rights, yet they consciously continued with their actions.⁸¹ The court thus concluded that the defendants violated Cooper's rights and met the criteria set forth in *Mitchell*.⁸² The qualified immunity defense is therefore inapplicable.⁸³

F. CONCURRENCE

According to the majority, the violation of Cooper's Fifth Amendment right to remain silent gave rise to Section 1983 liability.⁸⁴ In contrast, the concurrence noted that the decision in this case does not expand liability under Section 1983 to include ordinary *Miranda* rights violations.⁸⁵ Because a suspect does not have a constitutional right to *Miranda* warnings, the rights are simply a prophylactic device designed to protect the right to remain silent.⁸⁶ The concurrence recognized that in this case, however, Cooper's request for counsel was a *per se* invocation of the constitutional right to remain silent.⁸⁷ Thus, the violation of Cooper's Fifth Amendment right to remain silent, and not the *Miranda* violations, gave rise to Section 1983 liability.⁸⁸

G. DISSENT

The dissent emphasized that Cooper's statements would have been suppressed in any criminal proceeding.⁸⁹ Cooper could not incriminate himself in violation of the Fifth Amendment once the evidence was suppressed.⁹⁰ The dissent argued that it is the *use* of coerced statements that constitutes a Fifth Amendment violation.⁹¹ Since there was no use of the statements, there

doctrine of qualified immunity.

81. *Id.*

82. *Id.*

83. *Id.* The court further concluded that it was irrelevant that the appellants hoped that the confession would be deemed voluntary. This is not a subjective standard. *Id.*

84. *Cooper*, 963 F.2d at 1253.

85. *Id.* at 1252.

86. *Id.*

87. *Id.*

88. *Cooper*, 963 F.2d at 1253.

89. *Id.*

90. *Id.*

91. *Id.*

was no constitutional violation.⁹² Thus, the dissent argued, there is no remedy available to Cooper under Section 1983.⁹³

The dissent also argued that Cooper did not state a valid claim under the Fourteenth Amendment because the police did not "shock the conscience" with their conduct.⁹⁴ Although the behavior might have been extreme, the dissent stated that it was hardly "sophisticated psychological torture," as the majority insists.⁹⁵ The dissent argued that there can be no Section 1983 liability when police conduct does not violate substantive due process.⁹⁶

V. CONCLUSION

In *Cooper v. Dupnik*,⁹⁷ the Ninth Circuit held that the deliberate denial of a suspect's requests for counsel and continuous interrogation specifically intended to compel a confession violated the Fifth and Fourteenth Amendments.⁹⁸ The court held that any violation by the police is complete at the time of the offending behavior, and such behavior "shocks the conscience" because it denies a citizen the right against self-incrimination.⁹⁹ The court emphasized that when officials deliberately choose to ignore the law in favor of their own methods, they attempt to render the Constitution useless, and will be found liable under Section 1983.¹⁰⁰

*Stacey L. Kepnes**

92. *Id.*

93. *Cooper*, 963 F.2d at 1253.

94. *Id.* at 1255.

95. *Id.* The dissent did not defend the police techniques, but noted that Cooper was not physically assaulted, nor was he deprived of sleep, nor was he subjected to incommunicado interrogation over a period of days. *Id.* His interrogation lasted only four hours and consisted of rough questioning by the police. *Id.*

96. *Id.* at 1256.

97. *Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992).

98. *Id.* at 1251.

99. *Id.* at 1252.

100. *Id.*

* Golden Gate University School of Law, Class of 1995.