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Constitutional Law: The Invisible Line Between Intentional and Unintentional Miranda Violations

Melissa A. Register

CASE COMMENT

CONSTITUTIONAL LAW: THE INVISIBLE LINE BETWEEN INTENTIONAL AND UNINTENTIONAL *MIRANDA* VIOLATIONS

Missouri v. Seibert, 93 S.W.3d 700 (Mo. 2002)*

*Melissa A. Register***

Appellant was convicted of second-degree murder for the death of her son and was sentenced to life imprisonment.[1] Subsequently, Appellant appealed to the Court of Appeals of Missouri,[2] asserting that her *Miranda*[3] rights had been violated due to improper police interrogation techniques.[4] The Court of Appeals of Missouri rejected Appellant's argument[5] and affirmed the trial court's ruling.[6] The Missouri Supreme Court granted transfer,[7] and in reversing the Court of Appeals of Missouri and remanding Appellant's case for a new trial, HELD, that the intentional violation of Appellant's *Miranda* rights rendered her post-warning statement inadmissible.[8]

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* Editor's Note: This Case Comment received the *Huber C. Hurst Award* for the outstanding case comment of Fall 2003.

** This comment is dedicated to my parents, Richard and Joanne Register. Thank you so much for your unwavering support.

1. Missouri v. Seibert, 93 S.W.3d 700, 701 (Mo. 2002). Appellant, Patrice Seibert, conspired to murder her son, Donald Rector, as part of a cover-up to hide the death of her other son, Jonathan. *See id.* Jonathan, who was severely handicapped due to cerebral palsy, died of natural causes. *Id.*

2. Missouri v. Seibert, No. 23729, 2002 Mo. App. LEXIS 401, at *1 (Mo. Ct. App. Jan. 30, 2002), *rev'd*, 93 S.W.3d 700 (Mo. 2002).

3. *See* Miranda v. Arizona, 384 U.S. 436 (1966).

4. *Seibert*, 2002 Mo. App. at *12. The interrogating officer questioned Appellant for approximately thirty minutes during which time Appellant confessed. *Id.* at *13. After a twenty minute break, the officer read Appellant her *Miranda* rights, which she waived and then repeated her previous confession. *Id.* at *14. Appellant argued that this interrogation tactic "purposefully violated her constitutional rights to due process and her privilege against self-incrimination." *Id.* at *12.

5. *Id.* at *22. After an examination of existing precedent and persuasive authority, the Court of Appeals of Missouri ruled that "[Appellant's] statements must be assessed for voluntariness in light of all of the circumstances." *Id.* The Court of Appeals of Missouri found that Appellant's post-warning confession was voluntary. *Id.* at *25.

6. *Id.* at *26.

7. *Seibert*, 93 S.W.3d at 701.

8. *Id.* at 707.

The Fifth Amendment to the U.S. Constitution grants a privilege against self-incrimination.[9] The Supreme Court has rejected the notion that the Fifth Amendment prohibits self-incrimination at trial alone,[10] extending the right to periods of custodial interrogation as well.[11] The Court has also demonstrated a willingness to ensure that the suspect in custody is fully aware of his or her Fifth Amendment privilege against self-incrimination.[12] In *Miranda v. Arizona*,[13] the Court explicitly detailed the rights that must be explained to a suspect in police custody prior to any questioning.[14]

In *Miranda*, the Court considered the need for procedural safeguards to assure that a suspect in police custody is accorded his or her constitutional privilege against self-incrimination.[15] Petitioner was arrested and taken in custody to the police station.[16] After two hours of interrogation, he gave a written confession to the police.[17] Petitioner, however, had not been advised that he had the right to have an attorney present during the questioning.[18] Petitioner was later found guilty of kidnapping and rape after his written confession was admitted into evidence over his objection.[19] On appeal, the Court reversed the conviction after concluding that Petitioner's constitutional rights had been violated.[20]

Justifying the need for procedural safeguards of a suspect's Fifth Amendment rights, the Court stressed the necessity of a limitation upon custodial interrogation.[21] A suspect in custody must be apprised of certain

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9. The Fifth Amendment to the U.S. Constitution, in relevant part, states that no person "shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

10. Miranda v. Arizona, 384 U.S. 436, 444 (1966). The Court defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.*

11. *See id.* at 460-61. The Court noted: "As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations . . . ." *Id.* at 461.

12. *See id.* at 444.

13. *Id.*

14. *Id.*

15. *Miranda*, 384 U.S. at 439.

16. *Id.* at 491.

17. *Id.* at 491-92. At the top of the written confession was a typed paragraph stating that the confession was made voluntarily and with the suspect's full knowledge of his legal rights. *Id.* at 492. One of the officers stated that he read this paragraph to Petitioner, but only after Petitioner had orally confessed. *Id.* at 492 n.67.

18. *Id.* at 491.

19. *Id.* at 492.

20. *Miranda*, 384 U.S. at 492.

21. *Id.* at 447. The Court noted that without such limitations, there would be no deterrent to objectionable police interrogation tactics. *Id.*

rights, the first being the right to remain silent.[22] Next, the suspect must be informed that anything said can and will be used against the suspect in court.[23] Finally, the suspect must be told of his or her right to an attorney,[24] and if he or she cannot afford one, that one will be provided.[25] The suspect may waive these rights if he or she so chooses.[26] Thus, in *Miranda*, as prerequisites to the admissibility of any statement made by a suspect, the Court mandated that a clear warning of rights must be given and a waiver received.[27]

Analyzing the practical effects of the *Miranda* warning in *Oregon v. Elstad*,[28] the Court ruled that the initial failure of the police to administer the warning does not render post-*Miranda* statements inadmissible.[29] In *Elstad*, law enforcement officers went to Respondent's home to arrest him for burglary.[30] While one officer explained the situation to Respondent's mother, a second officer questioned Respondent in another room, eliciting a confession.[31] Later, at the police station, Respondent was advised of his *Miranda* rights, but chose to waive those rights and make a full statement.[32] At trial, Respondent objected to the admission of his post-

22. *Id.* at 467-68. Expanding on the point, the Court stated that a suspect's "age, education, intelligence, or prior contact with authorities" is not determinative as to whether this warning must be administered. *Id.* at 468-69.

23. *Id.* at 469. The Court expounded on the purpose of this provision as "needed in order to make [the suspect] aware not only of the privilege, but also of the consequences of foregoing it." *Id.*

24. *Id.* at 471-72. The Court added that this right includes not only consultation with counsel prior to questioning, but also to have counsel present during the interrogation. *Id.* at 470.

25. *Miranda*, 384 U.S. at 472-73. Noting that the authorities "have the obligation not to take advantage of indigence in the administration of justice," the Court continued "[w]ithout this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one." *Id.*

26. *Id.* at 475. Though finding the burden of proving a waiver of constitutional rights rests heavily on the government, the Court held that such a waiver is permissible so long as the suspect "knowingly and intelligently" waives those rights. *Id.* For example, a suspect may still make an admissible confession if it is given "freely and voluntarily without any compelling influences." *Id.* at 478.

27. *Id.* at 476. The Court also added that its decision was "not intended to hamper the traditional function of police officers in investigating crime." *Id.* at 477.

28. Oregon v. Elstad, 470 U.S. 298 (1985).

29. *Id.* at 318.

30. *Id.* at 300.

31. *Id.* at 300-01.

32. *Id.* at 301.

Miranda confession.[33] His objection was overruled, and Respondent was convicted of burglary.[34]

In denying Respondent's appeal, the Court distinguished the procedural *Miranda* violation of *Elstad* from the narrower Fifth Amendment privilege against self-incrimination.[35] Acknowledging the fallibility of law enforcement,[36] the Court declared that a violation may be remedied by a careful and thorough administration of the *Miranda* warning.[37] The Court ruled that the relevant inquiry as to whether a post-*Miranda* confession is admissible turns on its voluntary nature.[38]

The dissent agreed with Respondent that the post-*Miranda* confession should have been excluded, expressing concern that the majority was undermining the purpose of the *Miranda* warning.[39] Nevertheless, the Court allowed Respondent's post-*Miranda* confession and upheld the conviction.[40] In *United States v. Esquilin*,[41] the First Circuit Court of

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33. *Elstad*, 470 U.S. at 302. Respondent argued that the prior confession at his house had "let the cat out of the bag, [thus] tainting his subsequent confession." *Id.* (citation omitted).

34. *Id.*

35. *Id.* at 306. The Court noted that the *Miranda* exclusionary rule "may be triggered even in the absence of a Fifth Amendment violation." *Id.*

36. *Id.* at 309. The Court advanced:

> It is an unwarranted extension of *Miranda* to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period.

Id.

37. *Id.* at 310-11. The Court first stated: "Of the courts that have considered whether a properly warned confession must be suppressed because it was preceded by an unwarned but clearly voluntary admission, the majority have explicitly or implicitly recognized that *Westover's* requirement of a break in the stream of events is inapposite." *Id.* at 310. In these situations, the Court added, a thorough administration of the Miranda warning "serves to cure the condition that rendered the unwarned statement inadmissible." *Id.* at 311.

38. *Elstad*, 470 U.S. at 318. The Court noted that a suspect's release of a "guilty secret" does not qualify as state compulsion nor does it compromise the voluntary nature of a subsequent informed waiver. *Id.* at 312.

39. *Id.* at 319 (Brennan, J., dissenting). The dissent argued that the Court's "marble-palace psychoanalysis... demonstrates a startling unawareness of the realities of police interrogation...." *Id.* at 324. When describing this reality, the dissent imagined the following situation: "Police may obtain a confession in violation of *Miranda* and then take a break for lunch or go home for the evening. When questioning is resumed, this time preceded by *Miranda* warnings, the suspect is asked to 'clarify' the earlier illegal confession and to provide additional information." *Id.* at 330.

40. *Id.* at 318.

41. United States v. Esquilin, 208 F.3d 315 (1st Cir. 2000).

Appeals reached a similar conclusion, finding that a voluntary post-*Miranda* statement is admissible.[42]

In *Esquilin*, Appellant was arrested on charges of drug possession.[43] Before being read his *Miranda* rights Appellant, prompted by questions from law enforcement, confessed to drug possession.[44] After the *Miranda* warning was administered, Appellant verbally waived his rights and repeated his confession.[45] Appellant later sought to suppress the post-*Miranda* confession.[46] On appeal, the First Circuit ruled that the post-warning statements had been properly admitted.[47]

In reaching its decision, the First Circuit relied heavily upon the *Elstad* decision in ruling against Appellant.[48] Appellant first argued that his pre-warning and post-warning statements were indistinguishable due to the lack of temporal separation.[49] However, the First Circuit found that short of actual coercion, no such distinction exists in *Elstad*.[50] Appellant next asserted that his pre-*Miranda* confession was obtained using improper interrogation tactics, thus irreparably tainting his subsequent post-*Miranda* confession.[51] The First Circuit rejected this theory, noting that it ignores *Elstad*'s overall emphasis on "voluntariness" while relying heavily upon a piece of vague wording.[52] The *Esquilin* court discounted Appellant's argument that improper conduct differs from coercive conduct and upheld

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42. *Id.* at 316.

43. *Id.* at 317.

44. *Id.*

45. *Id.* After a Maine Drug Enforcement Agency agent asked Respondent whether he would like a lawyer, Respondent stated, "I'll talk to you man to man." *Id.* Respondent then confessed to drug possession with the intent to sell the drugs in Maine. *Id.*

46. *Esquilin*, 208 F.3d at 317. Respondent preserved the issue for appeal by entering a conditional guilty plea. *Id.* at 317-18.

47. *Id.* at 316.

48. *See id.* at 319-21.

49. *Id.* at 319. Respondent asserted that "there was only one interrogation with the *Miranda* warnings occurring mid-stream." *Id.*

50. *Id.* The First Circuit noted: "[A]lthough the elapsed time between interrogations is one factor that may dissipate the taint of a coerced confession, the lesser taint of a *Miranda* violation may be dissipated by subsequent warnings even if the unwarned and warned statements are obtained during the same interrogation." *Id.*

51. *Esquilin*, 208 F.3d at 319-20. Respondent claimed that the deliberate violation of his *Miranda* rights constituted per se "improper tactics" as referenced by the *Elstad* court. *Id.* at 320.

52. *Id.*

the admissibility of the post-warning confession,[53] despite the intentional violation of *Miranda*.[54]

Similar to the First Circuit in *Esquilin*, the instant court drew much of its support from *Elstad*.[55] However, unlike *Esquilin*, the instant court found that an intentional violation of *Miranda* rendered a post-warning statement inadmissible.[56] In its opinion, the majority first examined the purpose and protections of *Miranda*, noting that not all violations of the warning result in the exclusion of a suspect's statement.[57] The instant court referred to *Elstad* as an illustration of an unintentional *Miranda* violation that did not taint a post-warning confession.[58] Yet, the majority drew a distinction between the unintentional violation of *Elstad* and the intentional violation of the instant case, questioning whether the outcomes should be the same.[59]

In addition, the instant court debated the merits of the investigating officer's two-step interrogation technique.[60] After finding an intentional *Miranda* violation, the instant court looked to the motive behind the violation.[61] The instant court found that the officer's intent was to deprive Appellant of the ability to exercise her constitutional rights.[62] Moreover, the instant court considered the close proximity of time and place between Appellant's pre- and post-*Miranda* warning statements as further negating the voluntary nature of the confession.[63]

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53. *Id.* The First Circuit stressed that improper and coercive tactics are not "two distinct categories . . . but simply alternative descriptions of the type of police conduct that may render a suspect's initial, unwarned statement involuntary." *Id.*

54. *Id.* at 321. The First Circuit concluded: "The addition of a subjective intent by the officer to violate *Miranda*, unaccompanied by any coercive conduct, cannot in itself undermine the suspect's free will." *Id.*

55. *See generally* Missouri v. Seibert, 93 S.W.3d 700, 703-07 (Mo. 2002).

56. *Id.* at 701.

57. *Id.* at 703.

58. *See id.* at 703-04.

59. *Id.* at 704.

60. *See supra* text accompanying note 4. The instant court added that had a *Miranda* warning preceded the interrogation, this would be "a perfectly legitimate technique." *Seibert*, 93 S.W.3d at 704. However, the instant court believed that "[t]his was undeniably an 'end run' around *Miranda*." *Id.*

61. *Seibert*, 93 S.W.3d at 705. "The court should ascertain whether the purpose of the violation was to 'undermine the suspect's ability to exercise his free will.'" *Id.* (quoting Oregon v. Elstad, 470 U.S. 298, 309 (1985)).

62. *Id.* The instant court noted that the interrogator would not have instructed the arresting officer to withhold Appellant's *Miranda* warning if this deprivation had not been his intent. *Id.*

63. *Id.* Discounting the interrogating officer's reading of the *Miranda* warning, the instant court asserted: "Adherence to such formality thirty minutes into the interrogation does not change

Next, the instant court struggled to distinguish the instant case from *Elstad*.[64] The majority placed substantial weight on the unintentional violation of *Elstad* as distinct from the intentional violation of the instant case.[65] The instant court also noted that the interrogating officer used Appellant's statements from the pre-*Miranda* warning interview to prompt her confession after her rights had been waived.[66]

Finally, the majority reflected on the public policy implications of its ruling.[67] The instant court questioned the validity of the *Miranda* warning if such an interrogation tactic were permitted.[68] Troubled by the resulting lack of incentive to warn, the majority further noted that police officers are being trained in this interrogation technique.[69] After concluding that this technique was a deliberate violation of Appellant's constitutional rights, the instant court reversed Appellant's conviction and remanded the case for a new trial.[70]

The dissent attacked the majority view as a contradiction of the binding precedent of *Elstad*.[71] Quoting heavily from *Elstad*, the dissent believed that the reading of Appellant's *Miranda* rights served to cure the pre-warning omission.[72] The dissent then attacked the majority's reliance upon the "improper tactics" language of *Elstad*, asserting that no evidence was presented to prove a purposeful violation of Appellant's rights.[73] Concluding that strategic deception was distinct from coercion,[74] the dissent would have found the post-*Miranda* warning confession admissible.[75]

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the fact that she was subjected to a nearly continuous interrogation, which began without a proper *Miranda* warning." *Id.* at 706 n.4.

64. *Id.* at 706.

65. *Id.* Adding that the *Elstad* court found no "improper tactics," the instant court found that "the breach of *Miranda* was intentional and part of a tactic to elicit a confession." *Id.*

66. *Seibert*, 93 S.W.3d at 706.

67. *See id.* at 706-07.

68. *Id.* The instant court described this interrogation as an "end run" around *Miranda*, which rendered the warning "meaningless." *Id.* at 707.

69. *Id.*

70. *Id.*

71. *Seibert*, 93 S.W.3d at 708 (Benton, J., dissenting).

72. *Id.* (Benton, J., dissenting).

73. *Id.* at 709 (Benton, J., dissenting).

74. *Id.* at 709-10 (Benton, J., dissenting). "*Miranda* forbids coercion, not mere strategic deception . . . . Ploys to mislead a suspect or lull [her] into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*'s concerns." *Id.* at 710 (quoting Illinois v. Perkins, 496 U.S. 292, 297 (1990)).

75. *Id.* at 711 (Benton, J., dissenting).

In its opinion, the instant court referred extensively to the public policy goals of the *Miranda* ruling, such as the deterrence of objectionable police conduct.[76] The *Miranda* Court sought to curtail these practices by placing limitations on custodial interrogation and those tactics used to secure a suspect's confession.[77] However, the Court specifically stated that all confessions are not inadmissible,[78] adding that volunteered statements of any kind are not barred by the Fifth Amendment.[79]

The practical effect of *Miranda* has been that of a bright-line rule: statements made during custodial interrogation prior to the administration of the *Miranda* warning are generally inadmissible,[80] while statements made after those rights are waived are generally admissible.[81] The instant court's decision, however, has blurred that bright-line by holding Appellant's confession inadmissible despite her clear waiver of *Miranda* rights.[82] The instant court has instead held that certain police practices operate to negate an intelligent and voluntary waiver of those rights.[83]

Elstad involved a similar omission of the *Miranda* warning,[84] but the instant court insisted that the dissimilar outcomes rest on the distinction between the unintentional *Miranda* violation in *Elstad* and the intentional violation in the instant case.[85] However, the importance of this distinction is questionable, as articulated by the First Circuit in *Esquilin*.[86]

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76. *Seibert*, 93 S.W.3d at 703. Other stated goals included the assurance of "trustworthy evidence, specifically evidence that has not been obtained in circumstances that appear to be coercive." *Id.*

77. *See* Miranda v. Arizona, 384 U.S. 436, 447 (1966). Without such limitations, the Court feared that such practices would continue unchecked by the law. *Id.*

78. *Id.* at 478. The Court stated: "Confessions remain a proper element in law enforcement." *Id.*

79. *Id.*

80. *See* Oregon v. Elstad, 470 U.S. 298, 300-02 (1985) (holding that a suspect's pre-warning confession was excluded because he had not been warned of his *Miranda* rights); United States v. Esquilin, 208 F.3d 315, 318-19 (1st Cir. 2000) (stating that the government did not attempt to admit suspect's pre-warning statement, conceding that the statements were in violation of *Miranda*).

81. *See Miranda*, 384 U.S. at 479 (stating that a suspect may "knowingly and intelligently waive these rights and agree to answer questions or make a statement").

82. Missouri v. Seibert, 93 S.W.3d 700, 706 (Mo. 2002).

83. *Id.* The instant court held that the interrogating officer's tactics rendered Appellant's waiver involuntary. *Id.*

84. *See Elstad*, 470 U.S. at 300-01. Respondent was arrested at his home, but he was not warned of his *Miranda* rights until he was brought to police headquarters. *Id.*

85. *Seibert*, 93 S.W.3d at 704.

86. United States v. Esquilin, 208 F.3d 315, 320 (1st Cir. 2000).

The First Circuit was not persuaded that a deliberate violation of the *Miranda* warning constitutes per se improper tactics.[87] Furthermore, the *Esquilin* court found that *Elstad* had not intended to create a distinction between improper and coercive as Appellant asserted.[88] Thus, the deliberate withholding of Appellant's *Miranda* warning did not rise to the level of coercion, and the post-warning statement was admissible.[89]

The instant court rejected this analysis, finding that an improper interrogation technique was sufficient to bar Appellant's post-*Miranda* confession.[90] In the instant case, the interrogating officer secured Appellant's confession prior to the reading of her Miranda rights, then encouraged her to repeat the confession once she had waived those rights.[91] The instant court believed this technique was meant to weaken Appellant's ability to exercise her constitutional rights,[92] rendering her subsequent waiver meaningless.[93]

However, the *Elstad* Court specifically rejected the idea that once a suspect has confessed, the psychological impact of the confession renders further statements involuntary.[94] The Court characterized such a confession as the release of a "guilty secret" rather than the result of coercion.[95] If the suspect has made a rational decision whether to waive or invoke his or her rights, he or she is free to confess that secret again.[96] Thus, the holding of the instant case seems to be in contradiction with the holding in *Elstad.*

By examining interrogating officer's subjective intent in withholding Appellant's *Miranda* rights, the instant court determined that improper

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87. *See id.* Appellant had attempted to categorize the intentional violation of *Miranda* as the "improper tactic" described in *Elstad. See id.*

88. *See supra* text accompanying note 53.

89. *Esquilin*, 208 F.3d at 321.

90. *Seibert*, 93 S.W.3d at 706.

91. *See supra* text accompanying note 4.

92. *Seibert*, 93 S.W.3d at 705.

93. *Id.* at 706.

94. Oregon v. Elstad, 470 U.S. 298, 311 (1985). The *Elstad* Court noted that such a finding would paralyze the ability of law enforcement to interrogate. *Id.*

95. *Id.* at 312. The Court concluded:

> There is a vast difference between the direct consequences flowing from coercion of a confession by physical violence or other deliberate means calculated to break the suspect's will and the uncertain consequences of disclosure of a "guilty secret" freely given in response to an unwarned but noncoercive question, as in this case.

Id.

96. *See id.* at 314.

tactics had been used by the interrogating officer.[97] The instant court reasoned that had the omission been accidental, as in *Elstad*, the subsequent confession would be admissible.[98] In contrast, the interrogating officer in the instant case readily admitted that he hoped to secure a confession from Appellant before her rights were read to her.[99] The instant court believed that this tactic was sufficiently egregious to render Appellant's post-warning confession inadmissible.[100]

However, in *Esquilin*, the First Circuit took the opposite approach, finding the interrogating officer's intent to violate *Miranda* irrelevant.[101] The First Circuit reasoned that without additional coercive conduct, the subjective intent of the officer by itself does not undermine the suspect's free will.[102] The suspect is free to invoke his right to remain silent regardless of this intent.[103] Under the logic of the instant court, future courts would be forced to weigh the subjective intent of the interrogating officer to determine whether post-*Miranda* statements are admissible.

In its desire to find Appellant's post-*Miranda* confession inadmissible, the instant court has weakened the *Miranda* decision rather than strengthened it. *Miranda* created a bright-line rule allowing a suspect to voluntarily waive his or her Fifth Amendment privilege against self-incrimination.[104] The language of *Elstad* indicates that the admissibility of a suspect's statement turns on its voluntary nature.[105] So long as no coercion is involved, *Miranda* rights may be waived following a curative administration of the warning.[106] Scrutinizing the subjective intent of law enforcement officers who fail to properly warn a suspect would greatly hinder the investigative process, an outcome specifically shunned by the *Miranda* court.[107] Ultimately, the only intent in question should be that of the suspect, not law enforcement.

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97. *Seibert*, 93 S.W.3d at 704.

98. *Id.* The instant court reasoned that if the *Miranda* warning preceded the interrogation, this would be a "perfectly legitimate technique." *Id.*

99. *Id.*

100. *Id.* at 706.

101. United States v. Esquilin, 208 F.3d 315, 321 (1st Cir. 2000).

102. *See supra* text accompanying note 54.

103. *Esquilin*, 208 F.3d at 321. The First Circuit stated that Appellant's own sense that his initial statement had "let the cat out of the bag" did not qualify as coercion. *Id.*

104. *See supra* text accompanying notes 80-81.

105. *See supra* text accompanying note 38.

106. *See supra* text accompanying note 36.

107. *See supra* text accompanying note 27.