

Thursday, August 28, 2008

### **When Miranda does and does not come to the rescue.**

Â Â Bill of Rights.Â (From the public domain.)Â Â Many of my clients complain that the police never read them their rights. I wish the police always had that obligation when questioning a person, but that is not the situation. Generally, the police must advise a suspect of his or her Miranda rights if the suspect is in custody; if not, the failure to so advise is grounds for suppressing the defendant's statements to the police. Â Following are a few key court opinions that address when the police do and do not need to advise suspects of their Miranda rights, and how those rights need to be asserted

Â - Once Miranda rights are invoked, they remain invoked until the in-custody suspect initiates communication. *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880 (1981). This is even the situation when the suspect is a convict who demands an attorney's presence during questioning, the case goes cold, and police return to question the suspect in the same prison system from which s/he has never been released. *Shatzer v. Maryland*, \_\_ Md. \_\_ (Aug. 26, 2008).Â - The trial judge in the Lee Boyd Malvo sniper prosecution initiated inÂ Fairfax County, Virginia, ruled that the Sixth Amendment right to counsel is offense-specific, and cannot be invoked by one's attorney for future criminal charges that have not yet been filed. For that reason alone, said Virginia trial judge ruled that Mr. Malvo's Miranda rights in Virginia state court could not be asserted by his Maryland federal court-appointed lawyers. As the newspapers confirmed, Malvo wagged his tongue so much that he guaranteed himself the conviction and life without parole sentence that he received. *Commonwealth of Virginia v. Malvo*, 2003 Va. Cir. LEXIS 188, 63 Va. Cir. 22 (2003).Â - Miranda rights need not be automatically given to those present in a house being searched pursuant to a warrant. The Ninth Circuit recently said that "several factors are relevant to whether the circumstances of [the defendant's] interrogation effected a police dominated atmosphere: (1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made." *U.S. v. Craighead*, \_\_ F.3d \_\_ (9th Cir. Aug. 21, 2008). Â Craighead further observed: "If a reasonable person is interrogated inside his own home and is told he is 'free o leave,' where will he go? The library? The police station? He is already in the most constitutionally protected place on earth. An interrogation conducted within the suspect's home is not per se custodial. See *Beckwith v. United States*, 425 U.S. 341,Â 342-43, 347 (1976). On the contrary, courts have generally been much less likely to find that an interrogation in the suspect's home was custodial in nature. *United States v. Ritchie*, 35 F.3d 1477, 1485 (10th Cir. 1994); 2 Wayne R. LaFave, *Criminal Procedure* Â§ 6.6(e) (3d ed. 2007)."Â . *U.S. v. Craighead*, \_\_ F.3d \_\_. Thanks to Scott Greenfield for discussing this Craighead case. Â - Unless a state's constitution is more protective than the federal Constitution, a police officer's questioning after a traffic violation stop generally does not, at the early stages, trigger a need to give Miranda warnings, because the stop and initial questioning, by themselves, do not put the suspect in custody that would require the MirandaÂ warnings. *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138 (1984); *McAvoy v. State*, 314 Md. 509, 551 A.2d 875 (1989). Â What to do with the many times courts do not require Miranda rights? For starters, how about if each of us puts slogans on our cars, t-shirts and front doors proclaiming "Say no to police questioning and police searches." No means no. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00