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A Jurisprudence of Doubt: Missouri v. Seibert, United States v. Patane, and the Supreme Court's Continued Confusion About the Constitutional Status of Miranda

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A Jurisprudence of Doubt: *Missouri v. Seibert*, *United States v. Patane*, and the Supreme Court's Continued Confusion About the Constitutional Status of *Miranda*[*]

I. Introduction

In *Dickerson v. United States*,[1] the U.S. Supreme Court declared unconstitutional a federal statute designed to alter how *Miranda* warnings are given and the judicial standards by which judges measure supposed infringements of the right against self-incrimination.[2] In doing so, the Court held that *Miranda v. Arizona*[3] announced a constitutional rule, which Congress was powerless to alter.[4] By departing from previous decisions that identified the warnings as a prophylactic exclusionary rule of evidence,[5] the *Dickerson* decision reopened questions concerning the admissibility of evidence obtained in violation of *Miranda*. With the probable goal of resolving some of the inconsistencies left open by *Dickerson* in its *Miranda* jurisprudence, in its 2003 Term the Court accepted two related cases for review. In *Missouri v. Seibert*[6] and *United States v. Patane*,[7] the Court dealt with the admissibility of evidence derived from unwarned statements by criminal defendants in the context of police interrogations. Rather than answering the many questions in this area of its case law, the Court succeeded in further confusing the issues of constitutionality and derivative evidence. This note analyzes the inconsistent conclusions that these cases reach regarding the admissibility of evidence derived from unwarned confessions.

Part II of this note addresses the history of the *Miranda* doctrine from its inception in 1966 as a constitutional rule through its transformation in subsequent decisions into a prophylactic measure with a number of exceptions. Part II also traces the history of dissenting opinions addressing the perceived dilution of *Miranda* and the rule it announced. Part II continues with the

* The author would like to thank the many people who assisted him in the creation of this article, as well as his family and friends, without whose constant support and understanding neither law school nor this article would have been possible. The phrase "a jurisprudence of doubt" comes from *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 844 (1992).

1. 530 U.S. 428 (2000).
2. *Id*. at 432.
3. 384 U.S. 436 (1966).
4. *Dickerson*, 530 U.S. at 432.
5. *See* Oregon v. Elstad, 470 U.S. 298 (1985); New York v. Quarles, 467 U.S. 649 (1984); Oregon v. Hass, 420 U.S. 714 (1975); Michigan v. Tucker, 417 U.S. 433 (1974).
6. 542 U.S. 600 (2004) (plurality op.).
7. 542 U.S. 630 (2004) (plurality op.).

reemergence of *Miranda* as a constitutional rule in *Dickerson*. After an examination of the *Dickerson* opinion, the focus shifts to the interpretational problems raised by that case, as expressed in both the dissenting opinion and subsequent lower court decisions in *Seibert* and *Patane*. Part III addresses the factual and procedural history of both *Seibert* and *Patane*, paying particular attention to their similarity to certain pre-*Dickerson* prophylactic cases. Part IV examines the contradictory analyses of the pluralities in *Seibert* and *Patane* as a consequence of the divergent case law surrounding the *Miranda* doctrine. Part IV concludes that the best means of resolving the conflicts between these two cases and the *Miranda* decision is to strictly apply the "fruit of the poisonous tree" doctrine as expressed in *Wong Sun v. United States*.[8]

II. Background: The Miranda *Doctrine*

Before its landmark *Miranda* decision, the U.S. Supreme Court tried a number of different methods to prevent the admission of coerced testimony of a criminal defendant at trial.[9] The Court relied alternatively on the Due Process Clause of the Fifth and Fourteenth Amendments, the Sixth Amendment's right to counsel, and the Federal Rules of Criminal Procedure.[10] The hallmark of the Court's analysis, however, was the concept of voluntariness.[11] The test for voluntariness involved a "totality of the circumstances" analysis requiring that courts consider the specific facts of the particular case and determine whether any confession made by the accused was in fact voluntary and thus admissible as evidence, or instead was coerced and inadmissible.[12] The inquiry used by the court was whether "the tactics used overbore the suspect's free will and, therefore, amounted to coercion violative of due process."[13]

Unfortunately, the voluntariness standard failed both to provide a clear standard by which to judge the admissibility of confessions and to prevent

8. 371 U.S. 471 (1963).

9. Elizabeth Copeland, Note, *Back to the Basics: A Fail-Safe Method for Administering the* Miranda *Warnings After* Duckworth v. Eagan, 32 ARIZ. L. REV. 645, 646 (1990).

10. *Id*. at 646-47.

11. *Id*.; *see also* Schneckloth v. Bustamonte, 412 U.S. 218, 223 (1973); Haynes v. Washington, 373 U.S. 503, 513-14 (1963); Columbe v. Connecticut, 367 U.S. 568, 602 (1961); Blackburn v. Alabama, 361 U.S. 199, 205 (1960); Ashcraft v. Tennessee, 322 U.S. 143, 153-54 (1944); Bram v. United States, 168 U.S. 532, 542 (1897); Wilson v. United States, 162 U.S. 613, 621-22 (1896).

12. Copeland, *supra* note 9, at 647.

13. Bettie E. Goldman, Note, Oregon v. Elstad*: Boldly Stepping Backwards to Pre-*Miranda *Days?*, 35 CATH. U. L. REV. 245, 249 (1985).

coercive interrogation practices.[14] Because of its subjective nature, the case-by-case "totality of the circumstances" test invited inconsistent results when applied by lower courts and gave no guidance to law enforcement officers regarding the permissible means of interrogating suspects.[15] Thus, the voluntariness test could not adequately address the difficulties presented in the context of custodial interrogation because the test was inadequate to address the coercive environment of the police station. This inadequacy eventually led to the Court's decision in *Miranda* to abandon the voluntariness standard.

A. Miranda v. Arizona

In *Miranda*, the U.S. Supreme Court addressed the unique pressures imposed by custodial interrogation, and the necessity of providing specific safeguards to ensure that the accused receive the benefit of his Fifth Amendment rights.[16] In *Miranda*, police officers arrested and interrogated Ernesto A. Miranda, an accused kidnapper and rapist. They questioned Miranda for two hours in a Phoenix police station.[17] From the testimony of the interrogating officers and Miranda's own statements, the Court concluded that in securing the accused's confession the officers had neither advised Miranda of his right to counsel nor his right against self-incrimination.[18] Reversing the trial court's decision to admit Miranda's confession, the Court attached particular significance to the fact that the police had obtained Miranda's confession during custodial interrogation.[19] The Court noted that "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."[20] The desire to eliminate the pressures of such interrogation practices and to provide an opportunity for the accused individual to exercise his Fifth Amendment right against self-incrimination[21] first prompted the Court to issue its famous warnings:

> [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he

14. *Id*. at 250.
15. *Id*. at 250-51.
16. Miranda v. Arizona, 384 U.S. 436, 467 (1966).
17. *Id*. at 491-92.
18. *Id*.
19. *Id*. at 467.
20. *Id*.
21. *Id*.

> says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed to him prior to any questioning if he so desires.[22]

From the beginning, the Court apparently assumed that the warnings it announced were constitutional in nature.[23] The Court described its decision as giving "concrete constitutional guidelines for law enforcement agencies and courts to follow."[24] Moreover, the Court found that, in the absence of either the warnings enumerated above or some legislatively mandated warnings that were "at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it,"[25] statements obtained by police during custodial interrogations "[do] not meet constitutional standards for protection of the privilege" and thus should be excluded.[26]

The Court continued to characterize *Miranda* as a constitutional rule in subsequent decisions. For example, in *Orozco v. Texas*,[27] the Court refused to admit an unwarned confession into trial, holding that obtaining Orozco's confession without providing the warnings required by *Miranda* was "a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*."[28] Thus, at least in the immediate aftermath of its decision in *Miranda*, the Court apparently believed that the Fifth Amendment required the *Miranda* warnings.

B. After Miranda*: The Rise of the Prophylactic Standard*

Despite the announced constitutional nature of *Miranda*, the U.S. Supreme Court quickly began to distance itself from the constitutional characterization of the *Miranda* decision.[29] In *Michigan v. Tucker*,[30] the Court reinterpreted *Miranda* as simply establishing "procedural safeguards [that] were not themselves rights protected by the Constitution," but instead were "measures

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22. *Id*. at 478-79.

23. Conor G. Bateman, Note, Dickerson v. United States*:* Miranda *Is Deemed a Constitutional Rule, but Does It Really Matter?*, 55 ARK. L. REV. 177, 193 (2002).

24. *Miranda*, 384 U.S. at 442.

25. *Id*. at 467.

26. *Id*. at 491.

27. 394 U.S. 324 (1969).

28. *Id*. at 326.

29. Benjamin D. Cunningham, Comment, *A Deep Breath Before the Plunge: Undoing* Miranda*'s Failure Before It's Too Late*, 55 MERCER L. REV. 1375, 1387 (2004).

30. 417 U.S. 433 (1974). In this case, the interrogating officers failed to notify the accused that he had a right to free counsel if he could not afford to pay for the services. *Id*. at 436.

to insure that the right against compulsory self-incrimination was protected."[31] According to the *Tucker* majority, the police conduct at issue in the case, while certainly deviating from the procedural rules laid down in *Miranda*, departed insignificantly from the prophylactic standards embodied in *Miranda*.[32] Thus, the conduct did not interfere with the accused's constitutional rights.[33]

Unfortunately, as the *Tucker* dissent noted, the characterization of *Miranda* as merely creating prophylactic measures is inherently problematic. According to the dissent, the Court lacked the authority "to prescribe preferred modes of interrogation absent a constitutional basis."[34] Instead, *Miranda* "held the 'requirement of warnings and waiver of rights to be fundamental with respect to the Fifth Amendment privilege' and without so holding [the Court] would have been powerless to reverse Miranda's conviction."[35] Nevertheless, in a series of cases following *Tucker*, a majority of the Court supported and expanded the prophylactic interpretation of *Miranda*.[36] In *New York v. Quarles*,[37] the majority concluded that the use of *Miranda* warnings in custodial interrogation gave nothing more than "'practical reinforcement' for the Fifth Amendment right."[38] Similarly, in *Oregon v. Elstad*,[39] the Court determined that a violation of *Miranda* was not itself coercion in violation of the Fifth Amendment but instead created only a presumption of coercion.[40]

In addition to reinterpreting *Miranda* as a prophylactic rule, the Court created a number of exceptions to the rule that confessions, and the fruits thereof, acquired via unwarned custodial interrogations were inadmissible.[41] In *Quarles*, the Court justified creating a public safety exception, concluding that the public interest in allowing officers to secure dangerous situations outweighed the interest of a defendant in receiving his *Miranda* warnings before interrogation.[42] Likewise, in *Oregon v. Hass*,[43] the Court recognized an

31. *Id*. at 444.
32. *Id*. at 445.
33. *Id*.
34. *Id*. at 462 (Douglas, J., dissenting).
35. *Id*. at 462-63 (Douglas, J., dissenting) (alterations omitted).
36. *See* Oregon v. Elstad, 470 U.S. 298 (1985); New York v. Quarles, 467 U.S. 649 (1984); Oregon v. Hass, 420 U.S. 714 (1975).
37. 467 U.S. 649 (1984). The U.S. Supreme Court overturned the trial court's suppression of physical evidence obtained through questioning that occurred before the police read the suspect his *Miranda* warnings. *Id*. at 652.
38. *Id*. at 654.
39. 470 U.S. 298 (1985).
40. *Id*. at 307 n.1.
41. Cunningham, *supra* note 29, at 1387.
42. New York v. Quarles, 467 U.S. 649, 651 (1984).
43. 420 U.S. 714 (1975). This case reaffirmed the holding of *Harris v. New York*, 401 U.S. 222, 226 (1971).

impeachment exception for the use of unwarned confessions during cross-examination.[44]

Finally, in *Elstad*, the Court admitted evidence obtained through an unwarned confession by refusing to apply the fruit of the poisonous tree doctrine.[45] Developed in the Fourth Amendment context, this doctrine requires the exclusion of evidence derived from illegal searches as the tainted fruit of illegal government action.[46] Thus, in *Wong Sun v. United States*, the Court excluded a confession obtained by police from a criminal suspect after the police unlawfully entered the suspect's home and questioned him.[47] The Court noted that the rule barred both tangible and testimonial evidence obtained through such illegal governmental action,[48] whether such evidence was directly or indirectly obtained.[49] Because an illegal search violates a suspect's constitutional rights, a court should exclude any evidence derived from such an invasion.[50]

The Court's decision in *Elstad* is particularly important because it expressed the Court's previous position on derivative evidence claims based on *Miranda* violations. In *Elstad*, a criminal defendant questioned in his home by officers before receiving *Miranda* warnings admitted to being present during a burglary.[51] After subsequently receiving warnings at the police station, Michael Elstad waived his rights and signed a confession.[52] The Oregon Court of Appeals excluded the subsequent confession as the illegal fruit of a violation of Elstad's Fifth Amendment rights, likening it to an invasion of an individual's rights under the Fourth Amendment.[53] In reversing this determination, the Supreme Court explained that a violation of *Miranda* was not necessarily a violation of a subject's constitutional rights.[54] Instead, *Miranda* violations could occur in circumstances in which a statement was still voluntary and did not implicate Fifth Amendment rights.[55] Thus, in the

44. *Hass*, 420 U.S. at 722.
45. Oregon v. Elstad, 470 U.S. 298, 306-07 (1985).
46. Wong Sun v. United States, 371 U.S. 471, 484 (1963).
47. *Id*. at 485-86.
48. *Id*. at 486.
49. *Id*. at 484.
50. *Id*. at 485; *see also* Elizabeth Harris, *Admissibility of "Fruits" of a* Miranda *Violation in a Criminal Case*, COLO. LAW., Sept. 2004, at 81, 82.
51. *Elstad*, 470 U.S. at 300-01.
52. *Id*. at 301.
53. *Id*. at 302-04.
54. *Id*. at 306-07.
55. *Id*.

absence of coercion leading to an involuntary confession, no justification exists for the application of the fruits doctrine to subsequent statements.[56]

In each of these cases, the Court based its exceptions on the fact that *Miranda* was a prophylactic rule, rather than a constitutional requirement.[57] Unsurprisingly, these cases resulted in a consistent series of dissents in which a minority of the Court urged a return to an interpretation of *Miranda* more consistent with a constitutional view of its warnings.[58] In *Quarles*, the dissent addressed what it perceived to be the withdrawal of constitutional significance from *Miranda* and rejected the idea of a public safety exception.[59] The dissent indicated that if *Miranda*'s rule were constitutional in nature, the Court should not permit such exceptions.[60] Likewise, the dissent in *Hass* rejected the argument that courts could admit unwarned confessions for impeachment purposes, concluding that such use was directly contrary to the general rule that unconstitutional evidence is inadmissible for any purpose in trial.[61] Finally, the dissent in *Elstad* similarly opposed admitting a subsequent confession following a prior statement made by a criminal defendant who was interrogated before receiving *Miranda* warnings.[62] The dissent noted that under accepted precedent courts could not admit for any purpose derivative evidence gained through unconstitutional interrogation that violated the Fifth Amendment.[63]

C. Dickerson v. United States*: A Partial Reaffirmation of the Constitutional Rule*

Given the confused and contradictory state of jurisprudence surrounding *Miranda*, when the U.S. Supreme Court finally decided *Dickerson*, many critics thought that "[a]t long last the Court would have to either repudiate *Miranda*, repudiate the prophylactic rule cases . . . or offer some ingenious reconciliation of the two lines of precedent."[64] In *Dickerson*, the district court granted a robbery defendant's motion to suppress a statement obtained in the

56. *Id*. at 309.

57. Dickerson v. United States, 530 U.S. 428, 454 (2000) (Scalia, J., dissenting).

58. *See* Oregon v. Elstad, 470 U.S. 298 (1985) (Brennan, J., dissenting); New York v. Quarles, 467 U.S. 649 (1984) (Marshall, J., dissenting); Oregon v. Hass, 420 U.S. 714 (1975) (Brennan, J., dissenting).

59. *Quarles*, 467 U.S. at 680-81 (Marshall, J., dissenting).

60. *Id*.

61. *Hass*, 420 U.S. at 724 (Brennan, J., dissenting).

62. *Elstad*, 470 U.S. at 354 (Brennan, J., dissenting).

63. *Id*. at 349-51 (Brennan, J., dissenting).

64. Yale Kamisar, *Foreword: From* Miranda *to § 3501 to* Dickerson *to* . . ., 99 MICH. L. REV. 879, 879 (2001).

absence of *Miranda* warnings.[65] The U.S. Court of Appeals for the Fourth Circuit reversed, holding that the statement violated *Miranda* but complied with 18 U.S.C. § 3501, which mandated the pre-*Miranda* voluntariness test as the measure of whether a defendant's statement was compelled.[66] Section 3501, passed only two years after *Miranda* but never applied until *Dickerson*, represented Congress's attempt to overrule the supposed prophylactic rule created by *Miranda*.[67]

Instead of following its general trend of holdings that *Miranda* merely announced a prophylactic evidentiary rule that Congress was free to change, the seven-justice majority in *Dickerson* reaffirmed the pre-*Tucker* view that *Miranda* established a constitutional rule.[68] Noting that the constitutionality of § 3501 turned on the question of "whether the *Miranda* Court announced a constitutional rule or merely exercised its supervisory authority to regulate evidence in the absence of congressional direction,"[69] the Court downplayed the importance of those cases, which "repeatedly referred to the *Miranda* warnings as 'prophylactic.'"[70] The Court noted that it had repeatedly applied the *Miranda* requirements to state proceedings, something the Court would be powerless to do in the absence of a constitutional requirement.[71]

Although *Dickerson* at first appeared to repudiate the prophylactic cases, the Court conspicuously declined to overrule those cases and instead went out of its way to accommodate them.[72] In particular, the Court emphasized that its decision did not contradict the judicially created exceptions to the warning requirements.[73] Addressing the fruits doctrine, the Court held that *Miranda* warnings and the protections those warnings provide were broader than constitutionally required by the Fifth Amendment;[74] therefore, violations of the

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65. Dickerson v. United States, 530 U.S. 428, 432 (2000).

66. 18 U.S.C. § 3501(a) (2000).

67. *Dickerson*, 530 U.S. at 435-36.

68. *Id*. at 438.

69. *Id*. at 437.

70. *Id*.

71. *Id*. at 438. Generally, the Supreme Court may prescribe evidentiary rules only for lower federal courts, not for state courts. *Id*.

72. *Id*. at 441. The Court explained that

> [t]hese decisions illustrate the principle — not that *Miranda* is not a constitutional rule — but that no constitutional rule is immutable. No court laying down a general rule can possibly foresee the various circumstances in which counsel will seek to apply it, and the sort of modifications represented by these cases are as much a normal part of constitutional law as the original decision.

Id.

73. *Id*.

74. *Id*.

warning requirement alone could not justify excluding derivative evidence from trial.[75]

The *Dickerson* dissent rejected the majority's attempt to retain *Miranda* as a constitutional rule impervious to congressional abrogation while reinforcing its prophylactic characterizations, finding the two views of *Miranda* fundamentally incompatible.[76] As the dissent pointed out, the characterization of *Miranda* as a prophylactic decision, the violation of which does not implicate the Constitution, was "central to the *holdings* of *Tucker*, *Hass*, *Quarles*, and *Elstad*."[77] The determination that a violation of *Miranda* is itself unconstitutional, however, is a necessary prerequisite to the Court's authority to render *Miranda* "impervious to supersession by congressional legislation."[78]

Many commentators have characterized the *Dickerson* decision as confused and incoherent, resulting in two seemingly irreconcilable lines of cases.[79] Indeed, as the Court itself noted, after *Dickerson*, the courts of appeals have split on the question of how to resolve questions concerning the admissibility of different kinds of evidence.[80]

III. A Court Divided: United States v. Patane *and* Missouri v. Seibert

Perhaps with an eye toward resolving confusion in the lower courts, in 2003 the U.S. Supreme Court heard oral arguments in two related *Miranda* cases: *United States v. Patane*[81] and *Missouri v. Seibert*.[82] The decisions in those two cases, however, fail to clarify the *Miranda* doctrine. In two fractured opinions, different pluralities reached decidedly different conclusions regarding *Miranda*'s effect on derivative evidence claims. An analysis of both the plurality and dissenting opinions demonstrates the unsettled state of the current interpretive standards surrounding the *Miranda* doctrine.

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75. *Id*.

76. *Id*. at 453-55 (Scalia, J., dissenting).

77. *Id*. at 454 (Scalia, J. dissenting).

78. *Id*.

79. Paul G. Cassell, *The Paths Not Taken: The Supreme Court's Failures in* Dickerson, 99 MICH. L. REV. 898, 902 (2001).

80. United States v. Patane, 542 U.S. 630, 634 (2004) (plurality op.).

81. *Id*.

82. 542 U.S. 600 (2004) (plurality op.).

A. United States v. Patane

1. Facts of the Case

Samuel Francis Patane was arrested in Colorado Springs in June 2001 for harassment of a former girlfriend, Linda O'Donnell.[83] While out on bond, Patane attempted to contact O'Donnell, violating a temporary restraining order and prompting a police investigation.[84] On the same day, Patane's probation officer informed a local ATF agent that Patane was illegally in possession of a firearm.[85] The ATF agent then informed a local detective, Benner, who was closely affiliated with the ATF about Patane's firearm possession.[86] Subsequently, Detective Benner and a local Colorado Springs police officer named Fox went to Patane's residence to question him regarding both charges.[87]

After first inquiring about the violation of the restraining order, Officer Fox arrested Patane.[88] When Detective Benner began reciting the requisite *Miranda* warnings to Patane, Patane interrupted him, claiming "that he knew his rights."[89] Neither official finished the warnings.[90] Detective Benner then asked about the gun.[91] With some stated reluctance, Patane told Detective Benner that the gun was in his bedroom and gave the detective permission to retrieve the firearm.[92]

After a grand jury indicted Patane for illegal possession of a firearm, Patane filed a motion to suppress the gun as the fruit of an unwarned confession.[93] The district court granted the motion on the ground that the officers had no probable cause to arrest Patane for violating his restraining order.[94] The U.S. Court of Appeals for the Tenth Circuit reversed as to probable cause but affirmed the ruling on the motion.[95] The Tenth Circuit concluded that the Supreme Court's two earlier decisions admitting the fruits of unwarned statements, *Elstad* and *Tucker*, had been based on the assumption that *Miranda*

83. *Patane*, 542 U.S. at 634 (plurality op.).
84. *Id*.
85. *Id*.
86. *Id*. at 634-35 (plurality op.).
87. *Id*. at 635 (plurality op.).
88. *Id*.
89. *Id*.
90. *Id*.
91. *Id*.
92. *Id*.
93. *Id*.
94. *Id*.
95. *Id*.

was merely a prophylactic rule.[96] In contrast, *Dickerson* had announced that *Miranda* was a constitutional rule.[97] Because the Court of Appeals now viewed the failure to warn as a constitutional violation, the court determined that the fruits doctrine of *Wong Sun v. United States*[98] now applied.[99] Therefore, the gun was inadmissible as the result of an unconstitutional interrogation.[100]

2. Decision of the Court

A plurality led by Justice Thomas considered the issue of "whether a failure to give a suspect the warnings prescribed by *Miranda* . . . requires suppression of the physical fruits of the suspect's unwarned but voluntary statements."[101] The plurality reversed the Tenth Circuit, holding that the *Miranda* rule was merely a prophylactic rule designed to prevent violations of the Fifth Amendment and that "police do not violate the Constitution (or even the *Miranda* rule, for that matter) by mere failures to warn."[102] Thus, the *Wong Sun* doctrine was inapplicable, and the gun was admissible.[103]

In reaching this conclusion, the plurality specifically noted that many of the Court's pre-*Dickerson* cases supported the conclusion that failing to provide warnings was not unconstitutional[104] and that the Self-Incrimination Clause simply provided a trial right.[105] Therefore, violations of a suspect's constitutional rights occurred only when courts admit the unwarned statements themselves as evidence in a criminal trial.[106] In addition, the plurality failed to perceive any connection between *Dickerson*'s characterizing *Miranda* as a constitutional rule and the requirement that courts exclude evidence obtained in violation of such a constitutional rule from trial.[107] Addressing the need for a close fit between any exclusionary rule and the constitutional provision such a rule protects, the plurality found the suppression of the unwarned confession to sufficiently deter violations of *Miranda*.[108] Justice Kennedy echoed this view in his concurring opinion, finding it "doubtful that exclusion [of the

96. *Id*. at 635-36 (plurality op.).
97. Dickerson v. United States, 530 U.S. 428, 437-38 (2000).
98. 371 U.S. 471 (1963).
99. *Patane*, 542 U.S. at 636 (plurality op.).
100. *Id*.
101. *Id*. at 633-34 (plurality op.).
102. *Id*. at 636-37 (plurality op.).
103. *Id*. at 637 (plurality op.).
104. *Id*. at 641 (plurality op.).
105. *Id*.
106. *Id*.
107. *Id*. at 643-44 (plurality op.).
108. *Id*. at 643 (plurality op.).

physical fruit] can be justified by a deterrence rationale sensitive to both law enforcement interests and a suspect's rights during an in-custody interrogation."[109]

In contrast, Justice Souter's dissent rejected the plurality's suggestion that the suppression of the unwarned statements alone, rather than the physical fruits thereof, sufficiently deterred future violations of *Miranda*.[110] Justice Souter foresaw the creation of an exception admitting the fruits of an unwarned confession as further incentive for the willful withholding of warnings by officers.[111] Accordingly, the dissent argued that a violation of *Miranda* necessarily created a presumption of coercion that extended via the Fifth Amendment's privilege to all forms of derivative evidence.[112] Justice Breyer likewise found the application of the fruits doctrine appropriate in the context of unwarned custodial confessions, leaving only the question of a good faith exception for determination by the lower court.[113] While these views did not prevail with regard to derivative physical evidence, the views of the dissenters in *Patane* ultimately prevailed with regard to derivative testimonial evidence in *Missouri v. Seibert*.

B. Missouri v. Seibert

1. Facts of the Case

When Patrice Seibert's twelve-year-old son died in his sleep from cerebral palsy, Seibert feared that authorities would accuse her of neglect because of the presence of bed sores on her son's body.[114] Her other sons and she devised a plan to conceal the circumstances of his death by staging an accidental fire in their portable home and destroying the body.[115] The plan involved leaving a mentally ill teenager and housemate, Donald Rector, in the home to avoid a potential claim by investigators that the dead son had been left unattended.[116] Seibert's son set the fire, which resulted in Donald's death.[117]

Officer Clinton arrested Seibert at the hospital where one of her sons was being treated for burns.[118] Officer Clinton intentionally refrained from

109. *Id*. at 645 (Kennedy, J., concurring).
110. *Id*. at 646-47 (Souter, J., dissenting).
111. *Id*. at 647 (Souter, J., dissenting).
112. *Id*. at 646 (Souter, J., dissenting) (relying on United States v. Hubbell, 530 U.S. 27, 37-38 (2000) and Kastigar v. United States, 406 U.S. 441, 453 (1972)).
113. *Id*. at 647-48 (Breyer, J., dissenting).
114. Missouri v. Seibert, 542 U.S. 600, 604 (2004) (plurality op.).
115. *Id*.
116. *Id*.
117. *Id*.
118. *Id*.

providing Seibert with the required *Miranda* warnings.[119] Taking her into custody and questioning her for half an hour, Officer Clinton elicited a confession from Seibert that she knew the fire would kill Donald.[120] Following this confession, Officer Clinton gave Seibert a twenty-minute break, advised Seibert of her *Miranda* rights, and then began a recorded interrogation.[121] Officer Clinton elicited a taped confession by exerting pressure based on the prior questioning and confession.[122]

After her indictment for first-degree murder, Seibert moved to exclude her prewarning and postwarning statements.[123] Specifically, Seibert contended that the postwarning statements were the fruits of an unwarned prior statement, and were therefore inadmissible.[124] Although the trial court refused to admit the unwarned component, it admitted the postwarning responses.[125] The Missouri Court of Appeals affirmed, basing its decision on *Elstad*, which had found such subsequent statements based on prior unwarned statements were admissible.[126] The Supreme Court of Missouri reversed, however, distinguishing *Elstad* because in the case at bar, the officer intentionally failed to warn Siebert.[127] Further, the court found Siebert's two statements so closely related that the second statement was "the product of the invalid first statement" and therefore "should have been suppressed."[128]

2. Decision of the Court

The U.S. Supreme Court granted certiorari to consider the issue of whether confessions obtained through the double questioning technique used in *Siebert* are admissible into evidence.[129] A different plurality, this time led by Justice Souter, affirmed the ruling of the Supreme Court of Missouri, holding that "[b]ecause this midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with *Miranda*'s constitutional requirement . . . a statement repeated after a warning in such circumstances is inadmissible."[130]

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119. *Id*.
120. *Id*. at 604-05 (plurality op.).
121. *Id*. at 605 (plurality op.).
122. *Id*.
123. *Id*.
124. *Id*. at 612 n.4 (plurality op.).
125. *Id*. at 606 (plurality op.).
126. *Id*.
127. *Id*.
128. *Id*. (quoting State v. Seibert, 93 S.W.3d 700, 701 (Mo. 2002)).
129. *Id*. at 604 (plurality op.).
130. *Id*.

In refusing to allow the admission of the subsequent statement, the plurality distinguished the factual situation in Seibert's case from the situation in *Elstad*.[131] The plurality found that the form of questioning practice at issue violated *Miranda*'s objective of avoiding practices that prevent a suspect from voluntarily choosing to confess.[132] The question-first technique failed to convey to a suspect his Fifth Amendment rights[133] and specifically misled the suspect concerning the admissibility of the statements already given.[134] Thus, the facts of the case were distinguishable from those in *Elstad* where a prior unwarned statement was obtained through a good faith failure to warn and where the subsequent statement posed no direct threat to *Miranda*'s objective of obtaining confessions free from coercion.[135] Therefore, the plurality thought that the exclusion of the subsequent statement was necessary to insure that "[s]trategists dedicated to draining the substance out of *Miranda* cannot accomplish by training instructions what *Dickerson* held Congress could not do by statute."[136]

Justice Kennedy's concurrence in *Seibert* also addressed the precedent of *Elstad*, distinguishing the two cases by emphasizing the different objectives and actions of the interrogating officers in each case.[137] According to the concurrence, the technique of two-step questioning "distorts the meaning of *Miranda* and furthers no legitimate countervailing interest."[138] The concurrence recognized the need for police officers to question individuals before taking them into custody, as well as the need to use prior statements as a means of determining the truthfulness of an individual's subsequent responses.[139] Justice Kennedy, however, would prohibit the admission of subsequent warned statements taken as a result of a prior unwarned statement, at least in the narrow circumstances where the goal of the prior interrogation was to undermine *Miranda*'s protections.[140]

Justice Breyer's concurrence approached the issue of the admissibility of the subsequent statement slightly differently than Justice Kennedy. Rather than addressing the plurality's complex distinctions between the facts in *Seibert* and *Elstad*, Justice Breyer advocated the straightforward application

131. *Id*. at 614-15 (plurality op.).
132. *Id*. at 611-13 (plurality op.).
133. *Id*.
134. *Id*. at 613 (plurality op.).
135. *Id*. at 615 (plurality op.).
136. *Id*. at 617 (plurality op.).
137. *Id*. at 620-21 (Kennedy, J., concurring).
138. *Id*. at 621 (Kennedy, J., concurring).
139. *Id*. at 620 (Kennedy, J., concurring).
140. *Id*. at 621-22 (Kennedy, J., concurring).

of the fruits doctrine to exclude the subsequent testimony as the fruits of an initial unwarned confession.[141] Like Justice Kennedy, however, Justice Breyer's analysis turned on whether the prior failure to warn was committed in good faith.[142]

In contrast, the dissent rejected both the concept of subjective intent and the application of the fruit of the poisonous tree doctrine.[143] Finding the reasoning in *Elstad* controlling, the dissent adopted the view that the deterrent goal of such exclusionary rules was not appropriate for derivative evidence questions based on the Fifth Amendment privilege.[144] Instead, under the dissent's interpretation, the analysis turned on the voluntariness of the prior confession and not on any technical violation of *Miranda*.[145] This dual construction, following a formula often used in the prophylactic line of cases, separates the question of voluntariness from the question of whether *Miranda* has been violated.[146] This separation permits the admission of a warned confession that follows an unwarned confession whenever the unwarned confession would meet the pre-*Miranda* voluntariness standard.[147]

IV. Analysis

Because of the Court's decisions in *Patane* and *Seibert*, lower courts are now left with a confusing synthesis of pre- and post-*Dickerson* case law. Under the plurality's interpretation in *Patane*, the physical fruit of an unwarned confession was admissible in a criminal trial.[148] Under the plurality's rule in *Seibert*, however, a subsequent warned confession obtained using information derived from a previous unwarned confession was inadmissible.[149] Thus, the Court reached decidedly different conclusions about the admissibility of evidence obtained through techniques that technically violate *Miranda*. To highlight the ideological division between the two cases, the different alternatives proposed by *Siebert* and *Patane* in their competing pluralities, concurrences, and dissents are addressed separately below.

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141. *Id*. at 617 (Breyer, J., concurring).
142. *Id*.
143. *Id*. at 623 (O'Connor, J., dissenting).
144. *Id*. at 622-23 (O'Connor, J., dissenting).
145. *Id*. at 628 (O'Connor, J., dissenting).
146. *Id*. at 627-28 (O'Connor, J., dissenting).
147. *Id*. at 628 (O'Connor, J., dissenting).
148. United States v. Patane, 542 U.S. 630, 644 (2004) (plurality op.).
149. *Seibert*, 542 U.S. at 617 (plurality op.).

A. Continued Reliance on the Prophylactic Rationale in Patane*: An Untenable Solution*

By rejecting the Tenth Circuit's conclusion that *Dickerson* required the exclusion of the physical fruits of *Miranda* violations, the *Patane* plurality concluded that derivative evidence is admissible at trial.[150] Despite recognizing that "the fruits of actually compelled testimony cannot" be used against a criminal defendant in any manner,[151] the plurality insisted that a violation of *Miranda* does not necessarily result in compelled testimony.[152] Instead, the plurality noted that *Miranda*'s "prophylactic rule[] . . . necessarily swe[pt] beyond the actual protections of the Self-Incrimination Clause," and no deterrence justification existed for applying the fruits doctrine to potential violations of such prophylactic rules.[153] Thus, the plurality justified its view that physical evidence derived from an unwarned confession is admissible on the presumption that the failure to warn is not itself a violation of the Constitution.[154]

To reach this conclusion, the *Patane* plurality relied on the prophylactic cases, particularly *Elstad*,[155] and specifically denied any contradiction between these cases and the decision in *Dickerson*.[156] Of course, the plurality presumed that the validity of these decisions was unaffected by *Dickerson*'s determination that *Miranda* was a constitutional rule.[157] Unfortunately, the primary basis for the decision in *Elstad*, as well as the decisions in the other prophylactic cases, was that the Court did not perceive *Miranda* to be a constitutional rule.[158]

In contrast, the *Dickerson* decision belied such a conclusion. As noted by the *Dickerson* dissent, the single reason that a decision is "'constitutional' in

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150. *Patane*, 542 U.S. at 637 (plurality op.).

151. *Id*. at 639 (plurality op.).

152. *Id*.

153. *Id*. at 639-40 (plurality op.). Justice Kennedy's concurrence also found the deterrence rationale of an exclusionary rule unjustified under the circumstances, although he specifically refused to address "whether the detective's failure to give Patane the full *Miranda* warnings should be characterized as a violation of the *Miranda* rule itself, or whether there is '[any]thing to deter' so long as the unwarned statements are not later introduced at trial." *Id*. at 645 (Kennedy, J., concurring).

154. *Id*. at 637 (plurality op.).

155. *Id*. at 639-40 (plurality op.).

156. *Id*. at 640 (plurality op.) (finding that "nothing in *Dickerson*, including its characterization of *Miranda* as announcing a constitutional rule . . . changes any of these observations").

157. *Id*.

158. Dickerson v. United States, 530 U.S. 428, 454 (2000) (Scalia, J., dissenting).

the only sense relevant here — in the sense that renders it impervious to supersession by congressional legislation such as § 3501 — is the determination that the Constitution *requires* the result that the decision announces and the statute ignores."[159] A similar finding is also a prerequisite for the continued application of *Miranda* to state court decisions because the Court lacks the authority to provide procedural rules for states absent a federal statutory or constitutional basis.[160]

Without the underlying assumption that *Miranda* was a prophylactic measure and not a constitutional decision, *Elstad* no longer rests upon a firm foundation.[161] Therefore, despite the *Patane* plurality's assertions to the contrary, *Dickerson* necessarily undermines the basis for the decision in *Elstad*, leaving the Court free to apply the fruits doctrine in cases such as these. To justify its continued refusal to apply the *Wong Sun* doctrine to *Miranda* violations, the Court "must come up with some *other* explanation."[162]

Unfortunately, the *Patane* plurality failed to provide such a rationale.[163] The plurality rested its decision to admit the physical evidence on the assertion that "there is . . . nothing to deter"[164] concerning failures to warn because "'[t]he exclusion of unwarned statements . . . is a complete and sufficient remedy' for any perceived *Miranda* violation."[165] The plurality also found that the Self-Incrimination Clause applied only to testimonial evidence, so an exclusionary rule would not reach physical evidence anyway.[166] Further, the plurality clearly recognized that actual coercion would require suppression of derivative evidence, physical or otherwise.[167]

Thus, the plurality implicitly relied on the assumption that a violation of *Miranda* does not always constitute coercion but merely creates a presumption of coercion.[168] The presumption itself, however, could only be validly applied

159. *Id*.

160. Michigan v. Tucker, 417 U.S. 433, 462 (1974) (Douglas, J., dissenting).

161. *See The Supreme Court, 2003 Term–Leading Cases: Fifth Amendment–Two-Step Interrogation*, 118 HARV. L. REV. 306, 310 (2004) ("In holding, essentially, that unwarned confessions are deemed coerced for constitutional purposes, *Dickerson* eviscerated the reasoning that undergirded *Elstad*.").

162. *See Dickerson*, 530 U.S. at 455 (Scalia, J., dissenting).

163. *The Supreme Court, 2003 Term–Leading Cases: Fifth Amendment–Testimonial Fruits*, 118 HARV. L. REV. 296, 296 (2004).

164. United States v. Patane, 542 U.S. 630, 642 (2004) (plurality op.).

165. *Id*. at 641-42 (plurality op.) (quoting Chavez v. Martinez, 538 U.S. 760, 790 (2003)) (alteration in original).

166. *Id*. at 643 (plurality op.).

167. *Id*. at 644 (plurality op.).

168. *Id*. The plurality actually stated as much, basing this claim on its prior argument against the constitutional interpretation of the lower court. *Id*. at 643-44 (plurality op.). Therefore, acceptance of the prophylactic argument is a prerequisite to accepting the plurality's

to the states "if it is assumed that there is always a coercive aspect to custodial interrogation that is not preceded by adequate advice of the constitutional right to remain silent."[169] *Miranda* acknowledged the inherently coercive nature of custodial interrogation and the need to provide warnings to remove the coercive environment.[170] Therefore, any distinction between the presumption of coercion arising from the constitutional rule of *Miranda* and other forms of coercion in violation of the Fifth Amendment fails to justify the refusal to apply the fruits doctrine to *Miranda* violations.

B. A Step in the Right Direction: Application of the Constitutional Requirement in Seibert

Departing from the prophylactic rationale embraced by the plurality in *Patane*, the *Seibert* plurality explicitly acknowledged the constitutional foundation of the *Miranda* rules.[171] By holding that statements made pursuant to a failure to comply with the "constitutional requirement"[172] of *Miranda* were inadmissible, the *Seibert* plurality avoided the illegitimacy issues of treating *Miranda* as a constitutional requirement for some purposes and a prophylactic rule for others.[173] Nevertheless, the plurality's decision is not without its own problems.

First, despite the implicit rejection of the prophylactic rationale permitting the admission of derivative evidence, the plurality nevertheless felt the obligation to follow the dictates of *Elstad* governing the admissibility of derivative evidence.[174] The plurality distinguished *Elstad* and *Seibert*, noting that *Elstad* involved a good faith mistake under circumstances that allowed the subsequent warnings to function adequately.[175] *Seibert*, however, involved a

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conclusion that "statements taken without sufficient *Miranda* warnings are presumed to have been coerced only for certain purposes and then only when necessary to protect the privilege against self-incrimination." *Id*. at 644 (plurality op.).

169. Oregon v. Elstad, 470 U.S. 298, 368 (1985) (Stevens, J., dissenting).

170. Miranda v. Arizona, 384 U.S. 436, 458 (1966) (holding that "[u]nless adequate protective devices [like the warnings provided here] are employed to dispel the compulsion inherent in custodial surroundings, *no statement obtained from the defendant can truly be the product of his free choice*") (emphasis added).

171. Missouri v. Seibert, 542 U.S. 600, 604 (2004) (plurality op.).

172. *Id*.

173. Dickerson v. United States, 530 U.S. 428, 456 (2000) (Scalia, J., dissenting) (commenting that the "continued application of the *Miranda* code to the States despite our consistent statements that running afoul of its dictates does not necessarily — or even usually — result in an actual constitutional violation, represents not the source of *Miranda*'s salvation but rather evidence of its ultimate illegitimacy"); *see* Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 NW. U. L. REV. 100 (1985).

174. *Seibert*, 542 U. S. at 612 n.4 (plurality op.).

175. *Id*. at 615 (plurality op.).

calculated and continued effort that prevented subsequent warnings from adequately protecting the defendant's right to remain silent.[176] Therefore, the plurality's concern in question-first situations was "whether it would be reasonable to find that in these circumstances the warnings could function 'effectively' as *Miranda* requires."[177] In effect, the plurality abandoned the *Wong Sun* analysis in favor of concentrating independently on the second confession and the warnings preceding it.[178]

The plurality's decision not to apply the *Wong Sun* analysis to subsequent warned statements apparently rests on *Elstad*'s rejection of the fruits doctrine in the context of prior failures to provide *Miranda* warnings.[179] The decision in *Elstad*, however, only warranted this conclusion because "a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings."[180] As previously noted, *Elstad*'s distinction between actually coerced confessions and unwarned confessions is unsound, when the presumption of coercion may only apply to the states if the failure to warn is considered to actually violate the U.S. Constitution.[181] Thus, any reluctance to apply the *Wong Sun* doctrine based on *Elstad* is justified only by an unwillingness to depart from the dictates of stare decisis.

A second problem with the plurality's proposed analysis is that, while it does not accept that merely reciting warnings before the subsequent confession is sufficient to overcome the presumption of coercion, the plurality entirely ignores the warned or unwarned status of the previous statement.[182] Instead, the *Seibert* plurality focuses on the subsequent statement itself and whether that statement was voluntary.[183] Consequently, the plurality's approach leaves the courts in the unenviable position of determining the voluntariness of the subsequent statement independently from the presence of *Miranda*

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176. *Id*. at 616-17 (plurality op.).

177. *Id*. at 611-12 (plurality op.). In answering this question, the plurality considered:

> the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first.

Id. at 615 (plurality op.).

178. *Id*. at 612 n.4 (plurality op.).

179. *Id*.

180. Oregon v. Elstad, 470 U.S. 298, 318 (1985).

181. *See supra* Part IV.A.

182. *Seibert*, 542 U.S. at 612 n.4 (plurality op.).

183. *Id*.

warnings.[184] Judging the subjective voluntariness of a criminal defendant's confession, however, was precisely the analysis the *Miranda* Court found unworkable.[185]

C. Justice Breyer's Alternative: Application of the Fruits Doctrine to All Evidence Derived from Miranda *Violations*

Justice Breyer's concurrence in *Seibert*, like his dissent in *Patane*, presented an alternative more consistent with the constitutional underpinnings of *Miranda*: application of the fruits doctrine to all evidence derived from unwarned custodial confessions.[186] This approach would correspond with the general practice of the Court in excluding the fruits of compelled or coerced testimony.[187] A number of considerations support this approach.

First, this approach most clearly reflects the constitutional nature of *Miranda*. Since *Wong Sun*, the Court has held that any evidence directly obtained through unconstitutional means, as well as the indirect fruits of such violations, is inadmissible at trial.[188] The language of *Miranda* itself makes clear that "[t]he requirement of warnings and waiver of rights is . . . fundamental with respect to the Fifth Amendment privilege,"[189] and without the provision of warnings, any statements obtained through custodial interrogation are inherently compelled.[190] The Court's consistent application of *Miranda* to the states only strengthens the inference that *Miranda* is a constitutional requirement. A violation of *Miranda* is therefore a violation of the Constitution.[191] Because a failure to warn results in the presumption of compulsion in violation of the Self-Incrimination Clause, the generalized rule of *Wong Sun* should apply both to the compelled confession and to any evidence derived from that confession.

The second consideration supporting the application of the fruits doctrine is that, despite contrary assertions by both the *Patane* plurality and the *Seibert*

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184. *Id*.

185. Goldman, *supra* note 13, at 253.

186. *Seibert*, 542 U.S. at 617 (Breyer, J., concurring).

187. United States v. Patane, 542 U.S. 630, 644 (2004) (plurality op.).

188. Harris, *supra* note 50, at 81.

189. Miranda v. Arizona, 384 U.S. 436, 476 (1966).

190. *Id*. at 467.

191. Oregon v. Elstad, 470 U.S. 298, 370 (1985) (Stevens, J., dissenting) ("This Court's power to require state courts to exclude probative self-incriminatory statements rests entirely on the premise that the use of such evidence violates the Federal Constitution."); Michigan v. Tucker, 417 U.S. 433, 462-63 (1974) (Douglas, J., dissenting) ("The Court is not free to prescribe preferred modes of interrogation absent a constitutional basis. . . . [W]ithout so holding we would have been powerless to reverse Miranda's conviction.").

dissent,[192] there is indeed a "place for a robust deterrence doctrine"[193] regarding violations of *Miranda*. This unwillingness to accept the deterrence rationale embodied in the fruits doctrine originated in the presumption that violations of *Miranda* are not violations of the Fifth Amendment.[194] As noted above, such a presumption cannot be justified under the current jurisprudence that applies *Miranda* to the states and cannot alone preclude the use of the fruits test.[195] Moreover, the *Patane* plurality concluded that deterrence was served by simply excluding the unwarned statement.[196] As the *Patane* dissent noted, however, a rule allowing the admission of the fruits of unwarned statements encouraged the police to "flout *Miranda* when there may be physical evidence to be gained."[197] The *Patane* plurality's rule would undermine the primary function of the *Miranda* warnings,[198] while failing to actually deter police from pursuing incriminating derivative evidence in violation of *Miranda*.

The third factor in support of applying the fruits doctrine to cases like *Patane* and *Siebert* is that this alternative alleviates the need to apply the subjective standard proposed by the *Seibert* plurality. As Justice Breyer noted, the *Seibert* plurality's test, which involves factors that effectively break any causal connection between the original unwarned confession and the subsequent warned confession, would function in a similar fashion to a fruits test.[199] Therefore, applying *Wong Sun* to the circumstances of derivative evidence would not be a great departure from the *Seibert* plurality's test. The fruits test has the advantage of simplicity over the more complex question of whether the *Miranda* warnings in a subsequent warned confession were "effective."[200] The more complex test envisioned by the *Seibert* plurality is necessary only if the Court determines that the second confession is not the fruit of the poisoned first confession. Overall, the simplicity of this rule and the manner by which it reflects the constitutional nature and evidentiary concerns of *Miranda* both encourage the application of *Wong Sun* to evidence derived from an unwarned confession.

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192. Missouri v. Seibert, 542 U.S. 600, 623 (2004) (O'Connor, J., dissenting); *Patane*, 542 U.S. at 639-40 (plurality op.).

193. *Seibert*, 542 U.S. at 623 (O'Connor, J., dissenting).

194. *Patane*, 542 U.S. at 639-41 (plurality op.).

195. *See supra* Part IV.A.

196. *Patane*, 542 U.S. at 641-42 (plurality op.).

197. *Id*. at 647 (Souter, J., dissenting).

198. *Id*. at 646 (Souter, J., dissenting).

199. Missouri v. Seibert, 542 U.S. 600, 618 (2004) (Breyer, J., concurring). Even the dissent recognized the similarities between the test proposed by the *Seibert* plurality and a traditional fruits test. *Id*. at 624 (2004) (O'Connor, J., dissenting).

200. *Id*. at 617-18 (Breyer, J. concurring).

V. Conclusion

Since the Court first handed down its decision in *Miranda*, lawyers, judges, and scholars have debated the wisdom of the Court's ruling. Yet, despite all of its problems, *Miranda* had the virtue of being a legitimate exercise of the Court's authority to interpret the Constitution.[201] Unfortunately, with the addition of the prophylactic cases, the continued legitimacy of *Miranda* was undermined, resulting in a confused body of case law apparently irreconcilable with the original opinion.[202] As Justice Scalia noted in *Dickerson*, however, in the end, "logic will out."[203] As long as the Court continues to apply *Miranda* to the states and to prevent its modification by Congress, the Court must also accept the necessary conclusion that *Miranda*'s warnings are a constitutional requirement of the Fifth Amendment. Violations of *Miranda* must be treated like any other violation of a constitutional provision. Under the principles of *Wong Sun*, the fruit of the poisonous tree doctrine should apply to evidence derived from unwarned confessions. If the Court cannot accept this conclusion, it remains free to overrule *Miranda* or to cease applying it to states and permit congressional modification. Until the Court does so, however, or offers some other justification for its divided case law, the *Miranda* decisions will continue to stand for "nothing more than an illegitimate exercise of raw judicial power."[204]

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201. Dickerson v. United States, 530 U.S. 428, 465 (2000) (Scalia, J., dissenting) (observing that "[i]n imposing its Court-made code upon the States, the original opinion at least *asserted* that it was demanded by the Constitution").

202. *Id*. at 461-62 (Scalia, J., dissenting).

203. *Id*. at 461 (Scalia, J., dissenting).

204. Oregon v. Elstad, 470 U.S. 298, 371 (1985) (Stevens, J., dissenting).