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A Call for Consistency: State v. Caouette Is No Longer Viable in Light of Colorado v. Connelly and State v. Eastman

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A CALL FOR CONSISTENCY:

STATE v. CAOUETTE IS NO LONGER VIABLE IN LIGHT OF COLORADO v. CONNELLY AND STATE v. EASTMAN

Donald W. Macomber

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I. INTRODUCTION

This Article challenges the Law Court's expansive interpretation in *State v. Caouette* of the scope of the privilege against self-incrimination embodied in Article I, section 6 of the Maine Constitution in the context of reviewing claims of the involuntariness of a confession. The court's declaration that a reliable confession must be suppressed on state constitutional grounds based solely on a suspect's internal factors, and in the absence of any police overreaching in obtaining the confession, contradicted two centuries of constitutional jurisprudence requiring some form of government action to implicate the protections of the Bill of Rights and the Declaration of Rights. In its 1986 decision in *Colorado v. Connelly*, the United States Supreme Court implicitly rejected the Law Court's approach. In view of the Law Court's recent reaffirmation in *State v. Eastman* of the coextensive nature of the federal and state privileges against self-incrimination, it is questionable whether, after *Connelly*, the principle enunciated in *Caouette* is still viable.

Part II of this Article provides a brief introduction to the application of the privilege. Part III discusses the origins and history of the privilege against self-incrimination and its subsequent embodiment in the federal and state constitutions. An explanation of how the privilege has been applied to confessions in federal and state courts is provided in Part IV. Parts V and VI review the holdings of *Caouette* and *Connelly*. This Article concludes that the Law Court erred in abandoning the threshold requirement of police overreaching when assessing the constitutionality of a confession. This is particularly true in view of the United States Supreme Court's subsequent diametrically-opposed treatment of the same question and the Law Court's own longstanding line of cases, stating that the scope of the state privilege against self-incrimination is the same as the scope of the federal privilege.

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1. 446 A.2d 1120 (Me. 1982).
II. BRIEF INTRODUCTION TO THE APPLICATION OF THE PRIVILEGE

In 1982, the Maine Supreme Judicial Court, sitting as the Law Court, declared in *Caouette* that coercive police conduct is not a necessary predicate to finding a confession involuntary.\(^4\) The Law Court stated that trial courts must consider the totality of the circumstances, including internally coercive factors such as the defendant’s mental state, to determine whether a statement “is the result of [a] defendant’s exercise of his own free will and rational intellect.”\(^5\) The court grounded its decision in the privilege against self-incrimination contained within Article I, section 6 of the Maine Constitution.\(^6\) The *Caouette* court also stated that its holding was “consistent with, if not required by, the classic definitions of voluntariness set forth in United States Supreme Court decisions.”\(^7\) Since *Caouette*, the Law Court has considered both external and internal factors in determining whether a statement must be suppressed as involuntary.\(^8\)

Four years after *Caouette* was decided, however, the United States Supreme Court, in determining the scope of the federal constitutional privilege against self-incrimination, categorically rejected the Law Court’s approach. In *Colorado v. Connelly*,\(^9\) the Supreme Court, in a majority opinion authored by Chief Justice William Rehnquist, held that “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.”\(^10\) The majority further held that the Fifth Amendment, likewise, was concerned solely with governmental coercion: “The voluntariness of a waiver of [the] privilege [against self-

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4. See *State v. Caouette*, 446 A.2d at 1123.
5. Id.
6. See id. at 1122. This notion was foreshadowed by the Law Court’s earlier decision in *State v. Collins*, 297 A.2d 620, 625-27 (Me. 1972) (requiring that the State establish voluntariness of confessions beyond a reasonable doubt to better protect the values inherent in the Maine privilege against self-incrimination).
10. Id. at 167. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1.
incrimination] has always depended on the absence of police overreaching, not on 'free choice' in any broader sense of the word.\textsuperscript{11}

For over a decade in Maine, there has been a substantial inconsistency between federal and state law: The extent of a criminal suspect's privilege against self-incrimination depends entirely upon whether he or she is being prosecuted for a federal or a state crime. In a federal case, as long as the police have followed the rules in interrogating the suspect, any statement the suspect may have made will be admissible at trial. In a state case, however, proper police behavior does not end the inquiry. A suspect's confession may be declared involuntary, and thus inadmissible for trial purposes, even if the police employ the most exemplary standards in interrogating the suspect. Internal physical and psychological factors unique to the suspect may be sufficient to cause a suspect's confession to be suppressed.

In 1997, the Law Court may have provided the means to rectify this inconsistency. In \textit{Eastman}, the Law Court repeated, for the first time since \textit{Connelly} had been decided by the United States Supreme Court, what it had indicated in many decisions before \textit{Connelly}:\textsuperscript{12} The privilege against self-incrimination contained in the Maine Constitution is coextensive with the privilege against self-incrimination contained in the Fifth Amendment to the United States Constitution.\textsuperscript{13} The court noted, however, that the \textit{procedures} developed to protect a defendant's privilege against self-incrimination in state courts differed somewhat from those used in federal court. For instance, in Maine, the State has the burden of establishing the voluntariness of a defendant's statement by proof beyond a reasonable doubt as compared to the lower standard of a preponderance of the evidence employed in the federal courts.\textsuperscript{14} Nevertheless, in substance, the court noted what it had always recognized—that the federal and state constitutional privileges against self-incrimination have the same scope of protection.

III. HISTORY OF THE PRIVILEGE AGAINST SELF-INCRIIMINATION

The privilege developed in England during the sixteenth and seventeenth centuries as a result of opposition to the employment of the \textit{ex officio} oath by the Court of the Star Chamber and the Court of the

\textsuperscript{11} Colorado v. Connelly, 479 U.S. at 170. The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall be... compelled in any criminal case to be a witness against himself..." U.S. CONST. amend. V.
\textsuperscript{13} See State v. Eastman, 1997 ME 39, ¶ 12, 691 A.2d 179, 183.
\textsuperscript{14} See id. at n.4; see also Lgo v. Twomey, 404 U.S. 477 (1972) (establishing federal standard of proof); State v. Collins, 297 A.2d 620 (Me. 1972) (establishing state standard of proof).
High Commission in Causes Ecclesiastical. Because of the *ex officio* oath, judges of the ecclesiastical courts were authorized to call persons before the court and actively interrogate them about all aspects of their personal affairs. Torture was often used as a device to extract the "truth" from persons before these courts.

Indeed, prior to 1645, mandatory self-incrimination was the order of the day even in the common law courts of England. The accused was usually interrogated by magistrates prior to trial, with the results of the examination admissible at trial. The accused was also required to submit to vigorous interrogation during trial, upon pains of extreme forms of torture for failure to do so.

Opposition to the coercive tactics used by the Court of the Star Chamber and the High Commission culminated with the trial of John Lilburn, a vocal opponent of the reigning Stuart Monarchy, in 1637. Lilburn was charged in the Court of the Star Chamber with printing or importing heretical and seditious books. He refused to submit to the *ex officio* oath and as a result was whipped and pilloried. Lilburn applied to Parliament for relief, which was ultimately granted. In 1641, Parliament abolished the Court of the Star Chamber and the High Commission and prohibited the use of the *ex officio* oath to require an answer to "things penal." At this time, the common law courts also reformed their procedure with respect to self-incrimination during the trial. Pretrial examination by magistrates continued unabated, however, until the middle of the nineteenth century.

The newly emerged privilege against self-incrimination made its way across the Atlantic to the New England colonies at about the same time. The Puritans were opposed to the New England magistrates' compulsion of self-incriminatory statements because they believed the magistrates were trying to force compliance with an established church. By 1650, the privilege was fairly well-established in New

16. See id.
17. See id. at 280.
18. See id. at 280-81.
19. See id. at 280.
20. See id.
21. See id. The trial is reported at 3 COBBETT'S STATE TRIALS 1315 (1637).
22. See MCCORMICK, supra note 15, at 280.
23. See id. at 280-81.
24. See id. at 281.
25. See id. (quoting J. HENRY WIGMORE, WIGMORE ON EVIDENCE § 2250, at 282-84 (McNaughton rev. 1961)).
26. See id.
27. See id.
28. See id. at 282 (citing R. Carter Pittman, Comment, The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America, 21 VA. L. REV. 763, 775 (1935)).
29. See id.
England. A century later, the privilege was incorporated into several state constitutions, including that of Massachusetts, in 1780. The privilege was also included in the Fifth Amendment to the United States Constitution, which became effective in 1791. The driving force behind inclusion of the privilege in the Bill of Rights appended to the new federal Constitution was "[t]he Colonies['] . . . own experiences with highhanded prerogative courts." In 1820, when Maine separated from Massachusetts and was admitted into the Union as a state, the drafters of the Maine Constitution included the privilege in Article I, the Declaration of Rights, virtually without debate.

IV. THE PRIVILEGE IN THE FEDERAL AND STATE COURTS

A. Federal Courts

The notion that a person's confession was inadmissible in court if it was obtained involuntarily, such as by threats or promises of inducement, was a generally accepted principle of the common law by the late eighteenth century when the Bill of Rights was drafted. The rule was provoked by general concern for the reliability of evidence, rather than the constitutional protection against self-incrimination. Indeed, the United States Supreme Court's first confession case, Hopt v. Utah, was not decided on the basis of the privilege, but on the basis of federal evidence law. In Hopt, the Court adopted the rule requiring exclusion of confessions:

when the confession appears to have been made either in consequence of inducements of a temporal nature, held out by one in authority, touching the charge preferred, or because of a threat or promise by or in the presence of such person, which, operating upon the fears or hopes of the accused, in reference to the charge, deprives him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law.

30. See id.
31. See id. at 282 n.6. Article 12 of the Massachusetts Constitution provides, in pertinent part, that "no subject shall be . . . compelled to accuse, or furnish evidence against himself." MASS. CONST. art. XII, § 1.
32. 8 WIGMORE, supra note 25, § 2250, at 292, at 279-80.
34. See MCCORMICK, supra note 15, § 146, at 372.
35. See, e.g., The King v. Warickshall, 168 Eng. Rep. 234, 234-35, 1 Leach Cr. C. 263, 263-64 (K.B. 1783). See generally 3 JOHN HENRY WIGMORE, WIGMORE ON EVIDENCE § 822 (Chadbourn rev. 1970) (stating that the common-law principle upon which a confession may be excluded is testimonial untrustworthiness).
36. 110 U.S. 574 (1884).
37. Id. at 585 (emphasis added).
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It was not until thirteen years later, in *Bram v. United States*, 38 that the Court applied the Fifth Amendment privilege against self-incrimination in a confession case. The Court stated that the federal constitutional privilege embodied the common law rule of voluntariness, which required either a threat or promise by someone in authority over the confessor. 39

Although the Fifth Amendment privilege against self-incrimination was not incorporated against the states through the Due Process Clause of the Fourteenth Amendment until 1964 in *Malloy v. Hogan*, 40 state criminal convictions relying in whole or in part on coerced confessions were not immune from federal constitutional scrutiny. Beginning with the seminal case of *Brown v. Mississippi* 41 in 1936, the United States Supreme Court reviewed such cases utilizing a Fourteenth Amendment substantive due process analysis. In *Brown*, the Court vacated murder convictions resting in large part on confessions obtained through the whipping of the three defendants by the police: "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process." 42

Even after *Malloy* incorporated the Fifth Amendment's privilege against self-incrimination, the Court continued to employ the substantive due process approach in assessing voluntariness claims. 43 In *Davis v. North Carolina*, 44 the Court noted that the *Brown* due process standard was "the same general standard which [is] applied in federal prosecutions—a standard grounded in the policies of the privilege against self-incrimination." 45

By 1966, the Supreme Court had apparently concluded that its prior line of voluntariness cases had proven inadequate to provide police officers with clear guidelines governing what conduct was appropriate or inappropriate during pretrial interrogations of criminal suspects. 46 That year, the Court decided *Miranda v. Arizona*, 47 concluding for the first time that custodial interrogation by police officers implicated the

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38. 168 U.S. 532 (1897).
39. See id. at 548.
41. 297 U.S. 278 (1936).
42. Id. at 286. There are other Supreme Court involuntary confession cases in which the Court has employed a substantive due process analysis. See generally Townsend v. Sain, 372 U.S. 293 (1963); Culombe v. Connecticut, 367 U.S. 568 (1961); Blackburn v. Alabama, 361 U.S. 199 (1960); Spano v. New York, 360 U.S. 315 (1959); Ashcraft v. Tennessee, 322 U.S. 143 (1944).
43. See, e.g., Mincey v. Arizona, 437 U.S. 385, 401-02 (1978) (holding that any use against a criminal defendant of his involuntary statement constitutes a denial of due process).
44. 384 U.S. 737 (1966).
45. Id. at 740.
46. See MCCORMICK, supra note 15, § 150, at 384.
Fifth Amendment's privilege against self-incrimination. Prior to Miranda, the traditional view had been that the privilege was only implicated in those situations in which the inquiring person had the legal right to compel answers. In speaking to this issue, the Court stated: "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." For over thirty years, fleshing out the requirements of Miranda has dominated federal confessions jurisprudence. As a result, the traditional test of "voluntariness" of a confession has assumed secondary significance except when the strictures of Miranda do not apply to the situation.

B. State Courts

The earliest reported case applying the Maine constitutional privilege against self-incrimination was State v. Gilman in 1862. In Gilman, the Law Court allowed admission of evidence of the defendant's sworn testimony, given at a pretrial coroner's inquest, in the defendant's subsequent criminal trial. The court stated:

The true test of admissibility in this class of cases is, was the statement offered in evidence made voluntarily, without compulsion? If this proposition be answered in the affirmative, then the statement is clearly admissible in principle; but if not voluntary, if obtained by any degree of coercion, then it must be rejected.

Interestingly, the defendant also raised a federal Fifth Amendment challenge to the testimony in addition to his state constitutional claim. The Law Court treated the state claim in the same manner as the federal claim—thus beginning its long tradition of treating the federal and state privileges against self-incrimination as having the same scope of protection.

The coextensive nature of the federal and state privileges against self-incrimination was made explicit by the Law Court in 1951 in Gendron v. Burnham: "These two constitutional provisions [the Fifth Amendment of the United States Constitution and Article I, section 6 of the Maine Constitution] are so similar in nature and identical in purpose that precedent with respect to the construction of the one may well serve..."
as precedent for the construction of the other." 58 In the decades following Gendron, the Law Court continued to treat the state privilege against self-incrimination as having the same substantive scope as the federal privilege against self-incrimination. 59

The Maine privilege against self-incrimination was rarely, if ever, utilized to suppress involuntary confessions, probably because of the general understanding that the privilege did not apply to pretrial police interrogation. Rather, the early rationale for excluding such confessions was based on the common law's concern for evidentiary reliability. 60

The Law Court's early confession cases also adopted the common law's requirement that external coercion exist in order to render a person's confession involuntary. In State v. Grover, 61 the defendant, who had been arrested for arson, attempted to exclude inculpatory statements he made following his arrest to the chairperson of the board of selectmen and to an insurance commissioner. 62 The presiding justice refused to suppress the statements because they were not made as a result of coercion by the arresting constable. 63 The Law Court stated:

[A confession] is voluntary, though made in answer to questions or even solicitations, if it be made from the free, unrestrained will of the respondent. Again, the constraint to make a confession involuntary must come from without, be imposed by some other person apparently vested with power to punish or reward. Hence if without such outside interference the respondent himself reasons that he better confess simply in order to avoid some temporal evil impending over him or to obtain some temporal personal good, his confession is still voluntary, being from his unconstrained will. 64

In the 1965 case of Michaud v. State, 65 the Law Court, in considering an involuntary confession claim in a post-conviction review matter, applied the Brown federal substantive due process analysis. 66 The court, in the context of specifically determining whether an incriminatory admission should be treated in the same fashion as a confession, quoted

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58. Id. at 395, 82 A.2d at 780.
59. See cases cited supra note 12.
61. 96 Me. 363, 52 A. 757 (1902).
62. See id. at 367, 52 A. at 759.
63. See id. at 362, 52 A. at 759.
64. Id. at 365, 52 A. at 758 (emphasis added); see also State v. Priest, 117 Me. 223, 228, 103 A. 359, 363 (1918); SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE § 219, at 354 (16th ed. 1899) ("The material inquiry, therefore, is, whether the confession has been obtained by the influence of hope or fear, applied by a third person to the prisoner's mind.").
65. 161 Me. 517, 215 A.2d 87 (1965).
66. See id. at 531, 215 A.2d at 94.
this passage from Justice Traynor’s decision in People v. Atchley: "Involuntary confessions are excluded because they are untrustworthy, because it offends ‘the community’s sense of fair play and decency’ to convict a defendant by evidence extorted from him, and because exclusion serves to discourage the use of physical brutality and other undue pressures in questioning those suspected of crime." The Law Court spoke to the rationale underlying the voluntariness test: "[W]ith respect to voluntariness the test is always whether or not there has been under all the circumstances a violation of ‘fundamental fairness’ or what we ourselves have sometimes termed ‘governmental fair play.’" This is a substantive due process analysis that requires some form of governmental action to trigger it. In its decision, the Law Court made no mention of the federal or state privileges against self-incrimination.

In 1972, the Law Court upset the apple cart. In State v. Collins, the Law Court discussed the interrelationship of the federal and state privileges against self-incrimination in the context of an involuntariness claim. The court noted that the United States Supreme Court, in Lego v. Twomey, had recently formulated, as a matter of federal constitutional law, the principle that the prosecution had the burden of establishing by a preponderance of the evidence that a defendant’s confession was voluntary. The Law Court pointed out that Lego merely established a minimum standard, citing the Supreme Court’s observation that “the States are free, pursuant to their own law, to adopt a higher standard. They may indeed differ as to the appropriate resolution of the values they find at stake.” The Law Court accepted the Supreme Court’s invitation to adopt a higher standard under Maine law:

Hence, the presiding Justice, although he is “carefully trained in the law and fortified by judicial experience”—as an extra precaution to ensure that the privilege against self-incrimination is being plenarily

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68. Id. at 769, quoted in State v. Michaud, 215 A.2d at 93.
69. State v. Michaud, 161 Me. at 531, 215 A.2d at 94. Similarly, in State v. Smith, 277 A.2d 481 (Me. 1971), the Law Court applied a substantive due process analysis in reviewing the voluntariness of a confession. The court implicitly stated that the ultimate question to be answered was whether the police action towards the suspect was fundamentally fair:

With respect to the voluntariness of confessions the test is whether or not in any given case there has been under the totality of the circumstances fundamental fairness and governmental fair play on the part of the police dispelling any coercive effect from the sum total of the operating factors involved.

The test of the admissibility of confessions is whether they were extorted from the accused by some threat or elicited by some promise (such would be involuntary and inadmissible), or were made from a willingness on the part of the accused to tell the truth and relieve his conscience (such would be regarded as voluntary and admissible).

Id. at 490 (citations omitted).
70. 297 A.2d 620 (Me. 1972).
72. See State v. Collins, 297 A.2d at 625 (citing Lego v. Twomey, 404 U.S. 477 (1972)).
73. Id. at 626 (quoting Lego v. Twomey, 404 U.S. at 489).
implemented—must apply the strict standard that the prosecution establish the legal admissibility of a confession by “proof beyond a reasonable doubt.”

The court readily admitted that its prior case law involving the admissibility of confessions under the Maine Constitution did not specifically address the standard of proof necessary to establish that the statements were made voluntarily. The court could have adopted the Lego preponderance standard based on a century of its cases establishing that the federal and state privileges against self-incrimination are coextensive, but the Law Court failed even to mention those cases.

The court claimed that a higher standard was necessary in Maine courts because the federal preponderance standard of proof, adopted by the United States Supreme Court in Lego, merely reflected the value of deterring lawless conduct by the police and prosecution. Our state’s public policy, proclaimed the court, goes beyond deterring official overreaching to emphasize the right of the individual, embodied in the privilege against self-incrimination, not to be compelled to condemn himself by his own utterances. The court stated that the constitutional privilege against self-incrimination incorporated its own inherent exclusionary rule predicated upon “voluntariness,” which the court defined to mean that the government could not use a person’s confession unless that person chose “freely and knowingly, to provide criminal self-condemnation by utterances from his own lips.” In a related footnote, the court explained that this concept even encompasses situations in which the police conduct is exemplary but “other reasons” render the person’s statement not “the product of his free will and rational intellect.”

Despite this discussion about the privilege against self-incrimination incorporating the “voluntariness” doctrine, the court in several instances made reference to “due process” voluntariness, which, as discussed above, requires governmental action. Indeed, the court recognized in a footnote that the primary values reflected in the constitutional requirement that involuntary confessions be excluded from evidence are (1) safeguarding an individual’s right not to be compelled to condemn himself by his own utterances and (2) deterring lawless conduct by the

74. Id. at 627.
75. See id. at 625.
76. See id. at 626.
77. See id.
78. Id.
79. Id. at 626 n.5. This appears to be the Law Court’s first reference to the “free will and rational intellect” language first used by the United States Supreme Court in Blackburn v. Alabama, 361 U.S. 199, 208 (1960). The Supreme Court’s Blackburn decision was grounded in the Due Process Clause of the Fourteenth Amendment, however, and not in the Fifth Amendment’s privilege against self-incrimination. See id. at 200, 211.
police and the prosecution.® Both of these values either explicitly or implicitly require some form of compulsion.

Because the court found that the hearing justice properly concluded that the defendant’s confession was voluntarily made beyond a reasonable doubt after a consideration of the totality of the circumstances, including both internally and externally coercive factors, its language about the scope of the privilege against self-incrimination was dictum. Nevertheless, the way had been cleared for the court’s subsequent decision in Caouette.

V. STATE V. CAOUETTE

On April 14, 1981, Robert Caouette was indicted and subsequently arrested for murder.® He was taken to the Androscoggin County Jail that same afternoon, and at approximately 8:30 p.m., Caouette became physically ill and was transferred to the medical room at the jail.® He told the deputy sheriff in charge that he had been vomiting since the supper hour.® Caouette was permitted to telephone his wife, and after the call he began to cry.® He asked the deputy sheriff to stay in the medical room and talk with him.® The deputy sheriff “repeatedly told [Caouette] that he did not want to discuss his case because he was not the investigating officer” and “that anything [Caouette] said could be used against him.”® Despite these warnings, Caouette made inculpatory statements.® After each admission, the deputy repeated the warnings.® The deputy asked no questions and returned Caouette to his cell in an effort to stop him from talking.®

Caouette filed a motion to suppress the inculpatory statements he made to the deputy sheriff at the jail.® Caouette’s motion asserted that his jailhouse statements were involuntary and that their use at trial would constitute violations of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.® Caouette testified at the hearing on the

81. See id. at 634 n.13 (citing Lego v. Twomey, 404 U.S. 477, 485, 489 (1972)).
82. See State v. Caouette, 446 A.2d 1120, 1121 (Me. 1982). A person commits the crime of "intentional or knowing" murder if that person "intentionally or knowingly causes the death of another human being." ME. REV. STAT. ANN. tit. 17-A, § 201(1)(A) (West 1983).
83. See State v. Caouette, 446 A.2d at 1121.
84. See id.
85. See id.
86. See id.
87. Id.
88. See id.
89. See id.
90. See id.
91. See id.
92. See id. Interestingly, it does not appear that Caouette explicitly raised the corresponding provisions in the Maine Constitution in his motion. Nevertheless, on appeal, the Law Court construed the voluntariness claim as if the state privilege against self-incrimination had also been raised as an issue. See id. at 1122.
motion that "he had not intended to discuss the case with anyone." He claimed that he did not remember the events following his arrest, including the statements he made to the deputy sheriff, "because he was sick, frightened, and unfamiliar with his surroundings."

The hearing justice granted Caouette's motion and suppressed his inculpatory jailhouse admissions even though the deputy sheriff had not asked Caouette any questions and had warned him repeatedly that his statements could be used against him. The hearing justice ruled that under the totality of the circumstances, including the defendant's illness, emotional state, and lack of familiarity with his surroundings, the State had failed to prove beyond a reasonable doubt that Caouette's admissions were voluntary. Yet, the trial court "did not find that the statements were compelled or elicited by police conduct." The State appealed the trial court's ruling to the Law Court.

The Law Court affirmed the trial court's decision in a unanimous opinion authored by current Chief Justice Daniel E. Wathen. The court rejected the State's argument that improper police conduct is required before a suspect's statement can be suppressed as involuntary. Picking up where the Collins court left off ten years earlier, Justice Wathen explained that the same federal-state relationship exists when dealing with the substance of the privilege against self-incrimination, as well as with the procedure used to uphold it: "It must be remembered that the privilege exists in this case by virtue of the Maine Constitution. The maximum statement of the substantive content of the privilege and the requirements of voluntariness must be decided by this Court—as a matter of Maine law."

The Caouette court asserted that none of its prior cases, before or after Collins, had presented the issue raised in the State's appeal, specifically, whether a statement can be excluded as involuntary if there is no improper police behavior. Justice Wathen mentioned that there were dicta in several of the Law Court's prior cases, including Collins,

93. Id. at 1121.
94. Id.
95. See id.
96. See id.
97. Id.
98. See id. at 1120-21. Pursuant to section 2115-A(1) of title 15 of the Maine Revised Statutes and Maine Rule of Criminal Procedure 37B, the State has the right to pursue an appeal to the Law Court, upon the approval of the Attorney General, of any adverse pretrial order that "has a reasonable likelihood of causing serious impairment to or termination of the prosecution." Me. Rev. Stat. Ann. tit. 15, § 2115-A(1) (West 1980 & Supp. 1996).
99. See State v. Caouette, 446 A.2d at 1121.
100. See id. at 1121.
101. Id. at 1122.
102. See id. The court was wrong in this regard. The issue had been squarely presented in the court's prior decision in State v. Grover, 96 Me. 363, 52 A. 757 (1902), and the court had required that there be some form of external coercion before a statement could be suppressed as involuntary. See id. at 365, 52 A. at 758.
that would suggest that internal coercion, by itself, could be sufficient to render a defendant's confession involuntary. Justice Wathen also cited one federal case and two Pennsylvania cases explicitly holding that internal coercion was enough. "Such a result would appear to be consistent with, if not required by," Justice Wathen noted, "the classic definitions of voluntariness set forth in United States Supreme Court decisions."

After surveying the existing state and federal decisional landscape on this issue, Justice Wathen stated the court's holding in Caouette as follows:

[W]e now hold that in order to find a statement voluntary, it must first be established that it is the result of defendant's exercise of his own free will and rational intellect. While a claim of compulsion will frequently be predicated upon police elicitation or conduct, that element is not a sine qua non for exclusion under the exclusionary rule inherent in the guarantee against self-incrimination. While proof that a defendant's statement is spontaneous and unsolicited will often result in a finding of voluntariness, such proof does not compel a finding that the defendant was free from "compulsion of whatever nature."

By 1982, Collins had established such a firm foundation for applying the state privilege against self-incrimination more stringently than the federal privilege, Caouette created less of a tremor in the legal community than it otherwise would have. Nevertheless, Caouette was

103. See State v. Caouette, 446 A.2d at 1123. The other Law Court cases mentioned were State v. Ashe, 425 A.2d 191 (Me. 1981), State v. Bleyl, 435 A.2d 1349 (Me. 1981), and State v. Gordon, 387 A.2d 611 (Me. 1978).


The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession.

State v. Caouette, 446 A.2d at 1123 (citation omitted) (quoting Culombe v. Connecticut, 367 U.S. at 602 (1961)). The Law Court failed to discuss the fact that the rationale for Culombe was substantive due process concerns, stemming from police coercion. See Culombe v. Connecticut, 367 U.S. at 606-21.

106. State v. Caouette, 446 A.2d at 1123-24 (footnote omitted).

107. For an excellent critique of the Caouette decision, see John C. Sheldon, The Obsolescence of Voluntary Confessions in Maine, 35 ME. L. REV. 243 (1983). Perhaps another explanation for the Law Court's willingness to go beyond the minimum level of protection of individual rights required by the federal Constitution can be found in the desire of many in the legal community in the early 1980s to apply state constitutional law principles to address the Burger
groundbreaking because it was the first time that the Law Court had held that the substance of the state privilege against self-incrimination was more protective of criminal suspects than the federal privilege was. \(^{108}\) Collins had dealt only with procedure.

VI. COLORADO V. CONNELLY

In August 1983, an off-duty, uniformed Denver police officer was approached by Francis Connelly. \(^{109}\) Without any prompting from the officer, Connelly said “that he had murdered someone and wanted to talk about it.” \(^{110}\) The officer immediately advised Connelly of his Miranda rights, but Connelly, after stating that he understood his rights, said he “wanted to talk about the murder.” \(^{111}\) In response to questions from the officer, Connelly stated that he had not been drinking, nor was he under the influence of drugs at that time. \(^{112}\) Connelly also stated that he had been a patient at several mental hospitals in the past. \(^{113}\) The officer “again told Connelly that he was under no obligation to say anything,” but “Connelly replied that it was ‘all right’ and that he would talk to [the officer] because his conscience had been bothering him.” \(^{114}\) “Shortly thereafter,” a homicide detective arrived at the scene, re-advised Connelly of his rights, and “asked him ‘what he had on his mind.'” \(^{115}\) Connelly said “that he had come all the way from Boston to confess” to killing a young girl in Denver nine months earlier. \(^{116}\) Connelly was taken to the police station, where a search of records confirmed that an unidentified female’s body had been found four months earlier. \(^{117}\) The officers asked Connelly to take them to the scene of the killing and he readily agreed to do so. \(^{118}\) With no prompting from the officers, Connelly led the police to “the exact location of the murder.” \(^{119}\) At no time during any of the questioning by the police, or when Connelly was leading the police to the scene of the crime, did any of the officers

\(^{108}.\) See State v. Cadman, 476 A.2d 1148, 1150 (Me. 1984) (requiring that state constitutional claims be analyzed before federal constitutional claims).


\(^{110}.\) Id.

\(^{111}.\) Id.

\(^{112}.\) See id.

\(^{113}.\) See id.

\(^{114}.\) Id.

\(^{115}.\) Id.

\(^{116}.\) Id.

\(^{117}.\) See id.

\(^{118}.\) See id.

\(^{119}.\) Id. at 160-61.
observe that Connelly was suffering from the effects of mental illness. Connelly was held in custody overnight.

The following morning, Connelly became visibly disoriented and told his public defender that voices had told him to come to Denver and confess. Connelly was sent to a state hospital for an evaluation, where he was determined to be incompetent to stand trial until the spring of 1984. Connelly moved to suppress all of his statements, claiming that they were involuntary because they were compelled by his mental illness. A defense psychiatric expert testified that Connelly was a chronic schizophrenic who was in a psychotic state when he approached the off-duty officer in Denver and made his confession. The expert testified that Connelly's illness interfered with his ability to make free and rational choices and that his confession was motivated by his illness.

Based on the expert's testimony, the trial court suppressed Connelly's statements, finding that they were involuntary. The court, relying on the United States Supreme Court's decisions in *Townsend v. Sain* and *Culombe*, held that "a confession is admissible only if it is a product of the defendant's rational intellect and 'free will.'" Even though the trial court found that there was no coercive police conduct whatsoever in procuring Connelly's confession, the court nevertheless suppressed the statements, finding that Connelly's illness compelled him to confess. The Colorado Supreme Court affirmed, finding that the proper test for admissibility of a confession is whether the statements were the "product of a rational intellect and a free will." That court stated that "the absence of police coercion or duress does not foreclose a finding of involuntariness. One's capacity for rational judgment and free choice may be overborne as much by certain forms of severe mental illness as by external pressure."

The Supreme Court reversed. In a majority opinion by Chief Justice William Rehnquist, the Court rejected the notion that a suspect's mental condition alone could ever render a suspect's confession involuntary, under either a Fourteenth Amendment due process analysis or a Fifth Amendment analysis. The Court held that a confession is voluntary if it is a product of the defendant's rational intellect and free will, regardless of whether the defendant suffers from mental illness.

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120. See id. at 161.

121. See id.

122. See id.

123. See id.

124. See id.

125. See id.

126. See id. at 161-62.

127. See id. at 162.


130. See id.


132. Id.
Amendment analysis based on the privilege against self-incrimination.® Chief Justice Rehnquist noted that the Court historically had analyzed involuntary confession claims in state criminal cases under the Due Process Clause of the Fourteenth Amendment. The Chief Justice observed that each of the state confession cases involved some crucial element of police overreaching. He noted that, "absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."36 After rejecting Connelly's assertion that the Court's prior decisions in *Blackburn v. Alabama* 37 and *Townsend* supported the lower court's conclusion that a defendant's mental condition alone can render a confession involuntary, the Chief Justice stated that, "while mental condition is surely relevant to an individual's susceptibility to police coercion, mere examination of the confessant's state of mind can never conclude the due process inquiry."38

The Court assessed the efficacy of applying the exclusionary rule to proscribe the use of Connelly's statements in the absence of any police misconduct in obtaining the statements: "[S]uppressing respondent's statements would serve absolutely no purpose in enforcing constitutional guarantees. The purpose of excluding evidence seized in violation of the Constitution is to substantially deter future violations of the Constitution."39

In summing up the due process analysis, the Court stated:

We hold that coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment. We also conclude that the taking of respondent's statements, and their admission into evidence, constitute no violation of that Clause.40

Chief Justice Rehnquist also assessed the *Miranda* and Fifth Amendment implications of the Colorado Supreme Court's decision.41

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134. See id. at 162.
135. See id. at 163.
136. Id. at 164.
139. Id. at 166. The Law Court has expressly recognized that the primary purpose of the exclusionary rule is to deter police misconduct. See Powell v. Secretary of State, 614 A.2d 1303, 1306 (Me. 1992) (citing United States v. Calandra, 414 U.S. 338, 347 (1974)).
141. In section III-A of the decision, the Court rejected the Colorado Supreme Court's application of the "clear and convincing" standard of proof to the question of the validity of Connelly's waiver of his *Miranda* rights. See id. at 167-69. The Court reaffirmed its previous holding in *Lego* that the State must establish the voluntariness of a suspect's confession, the core of the Fifth Amendment privilege against self-incrimination, by a preponderance of the evidence, and consequently found no need to apply a higher standard in deciding whether there has been a waiver of the auxiliary protections established in *Miranda*. See id. As discussed earlier, the Law Court, in *Collins*, rejected the *Lego* preponderance standard in determining the voluntariness of...
The Court concluded that the Colorado Supreme Court erred by importing notions of “free will” into the assessment of the voluntariness of a Miranda waiver, stating that the analysis of the question in the Miranda waiver context should be no more taxing than the analysis in the Fourteenth Amendment due process context.\textsuperscript{142} Thus, at least since Connelly was decided in 1986, it has been clear that neither the Fifth Amendment nor the Fourteenth Amendment requires the suppression of a suspect’s statement as involuntary unless coercive police conduct was present.

If Caouette had been decided on the basis of federal law, either the Fifth or Fourteenth Amendments, Connelly would have had the effect of superseding Caouette’s holding that improper police conduct was not a necessary predicate to a finding of involuntariness. Caouette and its progenitor, Collins, however, were both grounded in the privilege against self-incrimination contained in Article I, section 6 of the Maine Constitution. Accordingly, the Law Court’s holdings in Caouette and Collins are still binding in Maine courts. The question is whether they should be reconsidered.

VII. \textit{State v. Eastman: The Scope of the Maine Privilege Against Self-Incrimination}

Even though Collins had gone beyond the requirements of the federal Constitution with respect to the burden of proof that the State had to satisfy to demonstrate a confession’s voluntary nature, the Law Court continued to rule that the federal and state privileges against self-confessions in favor of the more stringent protection of a proof beyond a reasonable doubt standard. See supra text accompanying notes 71-79. With respect to the auxiliary protections afforded by Miranda, however, the Law Court has consistently applied the federal standard of a preponderance of the evidence. See, e.g., State v. Marden, 673 A.2d 1304, 1308 (Me. 1996); State v. Hewes, 558 A.2d 696, 700 (Me. 1989). Indeed, the court has also repeatedly stated that Miranda warnings have never been required as a matter of state constitutional law. See, e.g., State v. McKechnie, 1997 ME 40, ¶ 7, 690 A.2d 976, 978 n.1; State v. Gardner, 509 A.2d 1160, 1162-63 (Me. 1986).

142. See Colorado v. Connelly, 479 U.S. at 169-70. The Court specifically addressed the scope of the Fifth Amendment’s protections in this area of the law as follows:

The sole concern of the Fifth Amendment, on which Miranda was based, is government coercion. Indeed, the Fifth Amendment privilege is not concerned “with moral and psychological pressures to confess emanating from sources other than official coercion.” The voluntariness of a waiver of this privilege has always depended on the absence of police overreaching, not on “free choice” in any broader sense of the word.

Respondent urges this Court to adopt his “free will” rationale, and to find an attempted waiver invalid whenever the defendant feels compelled to waive his rights by reason of any compulsion, even if the compulsion does not flow from the police. But such a treatment of the waiver issue would “cut this Court’s holding [in Miranda] completely loose from its own explicitly stated rationale.” Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment; it goes no further than that. Respondent’s perception of coercion flowing from the “voice of God,” however important or significant such a perception may be in other disciplines, is a matter to which the United States Constitution does not speak.

Colorado v. Connelly, 479 U.S. at 170-71 (citations omitted).
incrimination were coextensive in cases leading up to *Caouette*. The Law Court continued in this fashion in the fifteen years following *Caouette*—stating that the federal and state privileges were coextensive in one case, but applying the more protective *Collins/Caouette* standard in addressing claims of involuntariness in other cases.

Until last year, the court had not addressed the coextensive nature of the substantive scope of the federal and state privileges against self-incrimination since *Connelly* had been decided. In March of 1997, however, the Law Court was asked to extend the scope of the state privilege against self-incrimination even further—and the justices refused. In *Eastman*, the court specifically addressed the scope of the state constitutional privilege: "The federal and state privileges against self-incrimination serve the same end. As noted by the United States Supreme Court, 'the constitutional guarantees, however differently worded, should have as far as possible the same interpretation.' We have consistently interpreted the Maine privilege co-extensively with the federal privilege."

The court mentioned in a footnote that the procedures used to effectuate the state privilege against self-incrimination differed from those used in federal court. The court failed to mention that *Caouette* had changed the substantive scope of protections afforded to criminal defendants raising involuntariness claims under the state privilege against self-incrimination. Nor did the court discuss why more rigorous procedures are required in state courts when assessing voluntariness challenges.

The *Eastman* footnote raises the question that is the focus of this Article—is the Law Court signaling a retreat from its previously stated expansive view of the scope of protections afforded criminal suspects under the state privilege against self-incrimination? In *Eastman*, the

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143. For post-*Collins/pre-*Caouette* cases addressing the co-extensive nature of the federal and state privileges against self-incrimination, see, for example, *State v. Nason*, 433 A.2d 424 (Me. 1981); *State v. Hanson*, 342 A.2d 300 (Me. 1975); *State v. Vickars*, 309 A.2d 324 (Me. 1973). For post-*Collins/pre-*Caouette* cases applying the *Collins* proof beyond a reasonable doubt standard in voluntariness challenges, see, for example, *State v. Bleyl*, 435 A.2d 1349 (Me. 1981); *State v. Theriault*, 425 A.2d 986 (Me. 1981); *State v. Ashe*, 425 A.2d 191 (Me. 1981); *State v. Carter*, 412 A.2d 56 (Me. 1980); *State v. Tanguay*, 388 A.2d 913 (Me. 1978); *State v. Tardiff*, 374 A.2d 598 (Me. 1977); *State v. Wallace*, 333 A.2d 72 (Me. 1975); *Duguay v. State*, 309 A.2d 234 (Me. 1973).

144. For the post-*Caouette* case stating that the federal and state privileges are coextensive, see *Board of Overseers of the Bar v. Dineen*, 481 A.2d 499 (Me. 1984). For post-*Caouette* cases dealing with claims of involuntariness, see supra note 8.


146. The Court stated:

The procedures developed to protect defendants pursuant to the Maine privilege, however, differ somewhat from those employed by federal courts. *See State v. Snow*, 513 A.2d 274, 276 (Me. 1986) (citing *State v. Collins*, 297 A.2d 620, 627 (Me. 1972) (when an accused claims his statements are involuntary, then the State must establish voluntariness by proof beyond a reasonable doubt)).
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VIII. CONCLUSION

A confession is often the most powerful piece of evidence the State has in its arsenal to establish that a criminal defendant is guilty beyond a reasonable doubt. As the United States Supreme Court recognized in Connelly, "[t]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence." The Court also stated that, "[w]hile we have previously held that exclusion of evidence may be necessary to protect constitutional guarantees, both the necessity for the collateral inquiry and the exclusion of evidence deflect a criminal trial from its basic purpose." 149

Since the adoption of the Bill of Rights in 1791, and of the Maine Constitution in 1820, the statement of individual rights delineated in these governing documents has always been declared to be a limitation on the power of government to act in a manner that could curtail those rights. 150 With respect to the privilege against self-incrimination contained in the Fifth Amendment to the United States Constitution, the United States Supreme Court recognized that centuries-old constitutional principle in Connelly. With respect to the parallel provision in our state constitution, however, the Law Court abandoned that notion in Caouette.

Eastman provides the Law Court with a fresh opportunity to reexamine its jurisprudence in this area. If, as the court stated in Eastman, the Maine privilege against self-incrimination is coextensive with its federal counterpart in substance, then coercive police conduct should be a necessary predicate to consideration of a defendant's constitutional challenge to the admissibility of a confession on involuntariness grounds, as required under the Fifth Amendment by the United States Supreme Court in Connelly.

147. See, e.g., Arizona v. Fulminante, 499 U.S. 279, 296 (1991) ("A confession is like no other evidence. . . . [A] full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision."); State v. Harper, 613 A.2d 945, 950 (Me. 1992) (refusing to find constitutionally tainted confession harmless error despite presence of overwhelming evidence of defendant's guilt, including other properly obtained admissions).


149. Id.

150. See Laurence H. Tribe, AMERICAN CONSTITUTIONAL LAW § 11-1, at 770 (2d ed. 1988). Indeed, even the Collins court recognized that the privilege against self-incrimination was a limitation upon government. See State v. Collins, 297 A.2d 620, 627 (Me. 1972).
There are a myriad of reasons why a defendant’s confession may be unreliable due to internal compulsion. Those considerations should be dealt with under the Maine Rules of Evidence, however, and not under the Maine Constitution. It would be preferable to allow the defendant to explain to the jury why he or she was compelled to confess, but the confession should not be kept from the jury if the police did nothing improper in obtaining it. The truth-seeking function of the criminal trial process can only be enhanced by allowing the fact-finder to consider all available evidence, as well as any considerations that militate against the reliability of that evidence, in making its ultimate determination of the guilt or innocence of the accused.