Maine Law Review

Volume 47
Number 2 *Tribute to Dean Edward Settle Godfrey III*

Article 6

January 1995

Justice Godfrey on Constitutional Criminal Procedure

David D. Gregory
University of Maine School of Law

JUSTICE GODFREY ON CONSTITUTIONAL CRIMINAL PROCEDURE

*David D. Gregory**

I. THE WEIGH OF A JUDGE

One of the finest traditions of Anglo-American law is the customary requirement that judges explain their decisions. Judicial explanations are tellingly called "opinions," for that is exactly what they are, "opinions" of the individual judge and, when speaking for a majority, "opinions" of the court. Judicial decisions, however faulty or sound in result or explanation, are binding on the parties and are accorded qualities of finality and precedential weight that the opinions of the rest of us can never enjoy. Yet a court's opinions are in some real sense on a par with our own. We are entitled to examine judicial opinions with a critical eye (a pastime lawyers and amateurs quite enjoy) and to decide for ourselves whether the court's results are soundly based and adequately explained.

The traditional duty of explaining one's decisions in writing must be a daunting challenge to a judge new at the job, especially one who has moved from the serene atmosphere of estate planning and probate to the turbulence of constitutional criminal procedure. When you have to write it up, you are exposed. Your written opinions are reproduced and disseminated, permanently bound in the books of the reporters, and nowadays rapidly disbursed to critics everywhere through the mysteries of data banks and computer networks. The difficulties of opinion-writing are all the worse in constitutional criminal procedure, a domain of the United States Supreme Court in which it hands down grand pronouncements and leaves the refinements to percolate upward mainly from the state courts until the Court decides in its discretion to set them straight. Even those of us who are more or less professional students of judicial decision-making, finding it hard to keep up with developments, sometimes secretly wish that the Court would take a breather for a few years to give us time to figure out where the law stands and where it is going. State appellate court judges not only have to discern the Supreme Court's present position and future direction but also simultaneously have to decide the multitude of cases being flung fast and furiously at them from below.

Two thoughts stay with me as I read Justice Godfrey's opinions for the Maine Supreme Judicial Court. First, his opinions contain meticulously detailed statements of facts. They read as if the writer

* Professor, University of Maine School of Law; B.A., Duke University; LL.B., University of Maine; LL.M., Harvard University.

wanted to be sure that readers know all that the records disclosed in order to be able to judge the validity of the court's analysis. I have no sense of his sweeping issues or facts under the rug, just the opposite. Second, I noticed the frequency with which his former students appeared before him. I can easily imagine his pride in having lawyers whom he had taught debating the issues presented to his court.[1]

The Godfrey decision I have most frequently cited and relied on in presenting my own cases on criminal procedure is *State v. Bean*,[2] a decision on the substantive criminal law. Justice Godfrey traced the statutory history of the crime of operating a motor vehicle while under the influence of intoxicants and announced the rule that to commit the crime one "need only operate a motor vehicle within this state while under the influence of intoxicating liquor or drugs to any extent."[3] The significance for constitutional criminal procedure of that decision and other definitions of crime is a point often overlooked.[4] Correctly applying the standards of articulable suspicion and probable cause validating searches and seizures necessarily depends on the elements of offenses being investigated. The lower the evidentiary standard for proving an offense, the lower will be the factual content required for articulable suspicion and probable cause to believe that the offense has been committed. After *State v. Bean* all an officer needs to justify a traffic stop is to be able to state "specific and articulable facts which, taken together with rational inferences from those facts,"[5] support a suspicion of influence on operation to any degree.

In *State v. Thornton*[6] Justice Godfrey had to decide the validity of a search warrant challenged on both the requirement of a particular description of the goods to be seized and the requirement that it be supported by probable cause. The court upheld the warrant on both scores and also held that the officers acted within proper bounds in executing the warrant (to search for drugs in a dormitory room at the University of Maine in Orono) although "they dismantled furni-

1. Thus Justice Godfrey concurred in State v. Parkinson, 389 A.2d 1, 13 (Me. 1978), to keep the court honest in its statement of the facts known to police officers and held to constitute probable cause to arrest. The state was represented by Henry N. Berry, III, District Attorney, Peter G. Ballou, Deputy District Attorney, and Joanne Sataloff, "Law Student," all of whom with others named below are graduates of the law school that Dean Godfrey made and made his own.

2. 430 A.2d 1109 (Me. 1981).

3. *Id.* at 1111.

4. *See, e.g.*, State v. Nelson, 638 A.2d 720, 722 (Me. 1994) (seeing a driver nursing a can of beer for the better part of an hour in his vehicle before driving off does not constitute articulable suspicion of operating under the influence; elements of offense not discussed).

5. Terry v. Ohio, 392 U.S. 1, 21 (1968).

6. 414 A.2d 229 (Me. 1980). The state was represented by David M. Cox, District Attorney, and Assistant District Attorneys Gary F. Thorne and Margaret J. Kravchuk. Jay P. McCloskey represented one of two defendants.

ture, door casings, mouldings, light switches and chessmen."[7] Justice Godfrey wrote the opinion for the court in *State v. Clark*[8] upholding a search of a pedestrian for weapons on the authority of *Terry v. Ohio*[9] and *Adams v. Williams*.[10] Justice Godfrey's opinion for the court in *State v. Darling*[11] sustained a search of an automobile for weapons based on the articulable-suspicion standard of *Terry v. Ohio* correctly anticipating the Supreme Court's decision five years later in *Michigan v. Long*.[12] In *State v. Albert*[13] the court held that a defendant who had borrowed a car and returned it had no standing to contest a search of the vehicle under a warrant three weeks later. The court also rejected on standing grounds an oddball claim that the state's using a particular method of analyzing a breath sample for alcohol content in which the sample was consumed in the process denied defendant the opportunity to verify the results in violation of due process and equal protection.[14]

A defendant's testimony that he had taken two "hits" of LSD six or seven hours before being interrogated in police custody was not enough to persuade Justice Godfrey that the defendant had been unable to waive his rights under *Miranda v. Arizona*[15] knowingly and voluntarily.[16] In *State v. Theriault*[17] Justice Godfrey wrote for the court that a defendant's confession (after having been properly advised of *Miranda* rights) was not rendered involuntary by a police officer's having prompted him with such helpful suggestions as "it would make him feel better" to tell the truth and "people would think more of him if he got it off his chest."[18]

---

7. *Id.* at 234.

8. 365 A.2d 1031 (Me. 1976). The district attorney was assisted by Theodore H. Kirchner, "Law Student," while the defendant was represented by Wallace S. Reed.

9. 392 U.S. 1 (1968).

10. 407 U.S. 143 (1972).

11. 393 A.2d 530 (Me. 1978). Thomas E. Delahanty, II, District Attorney, and Linda Sibery Crawford, Assistant District Attorney, represented the state. Paul H. Mills represented the defendant.

12. 463 U.S. 1032 (1983).

13. 426 A.2d 1370 (Me. 1981). Bronson Platner, Assistant District Attorney, argued for the state.

14. State v. Sutherburg, 402 A.2d 1294 (Me. 1979). The court set aside defendant's sentence because the superior court had based the fine on the cost to the county of conducting a jury trial. The sentencing judge had stated, "A .29 blood test is ordinarily a sufficiently high test that warrants a non-trial." *Id.* at 1296. Joseph H. Field, Assistant District Attorney, represented the state.

15. 384 U.S. 436 (1966).

16. State v. Gordon, 387 A.2d 611 (Me. 1978).

17. 425 A.2d 986 (Me. 1981). Charles K. Leadbetter, Assistant Attorney General, represented the state. Franklin Stearns represented the defendant.

18. *Id.* at 990.

II. ELABORATING *MIRANDA*

Justice Godfrey was assigned to write a series of opinions for the court on the predicate for activating the protective rules announced by the Supreme Court in the great and leading decision of *Miranda v. Arizona*. "*Miranda* warnings" were required to be given at the outset whenever a person was subjected to custodial interrogation. On what was meant by "custodial interrogation" the Court in *Miranda* had planted a false clue. "By custodial interrogation," the Court said, "we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[19] In other words in a rare logical lapse the Court had defined "custodial interrogation" to mean interrogation both in custody and sometimes not in custody.[20] Twice before Justice Godfrey turned his hand to the task had the Court applied *Miranda* to cases of official interrogation not involving station-house questioning. In *Mathis v. United States*[21] the Court held that a federal revenue agent's interviewing a state prisoner was custodial interrogation requiring *Miranda* warnings even though the questioning was part of a routine tax investigation that might not lead to criminal charges and the questioning and custodial authorities were not the same. In *Orozco v. Texas*[22] the Court held that police officers' questioning a suspect who was under arrest in his own bedroom likewise amounted to custodial interrogation activating the requirement of *Miranda* warnings. In *Beckwith v. United States*[23] the Court had refused to apply *Miranda* to a suspect who had been questioned by revenue agents both where he was staying and where he worked. Although the defendant-taxpayer was the "focus" of a criminal investigation, the Court agreed with both lower courts that there was no evidence that the defendant was in custody.

In Justice Godfrey's first case, *State v. McLain*,[24] California police officers acting on a tip had gone to defendant's home and, having been admitted by another occupant, had seen antiques matching the description of goods stolen from a summer home in Blue Hill,

19. Miranda v. Arizona, 384 U.S. at 444 (footnote omitted). *See id.* at 477.

20. That logical flaw was not finally corrected until the Court decided Berkemer v. McCarty, 468 U.S. 420 (1984) (custody means a deprivation of liberty that is the functional equivalent of arrest) although the result there reached was a foregone conclusion after the Supreme Court decided Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (valid consent to a search by a suspect who has been deprived of liberty short of arrest does not require knowledge of right to refuse).

21. 391 U.S. 1 (1968).

22. 394 U.S. 324 (1969).

23. 425 U.S. 341 (1976).

24. 367 A.2d 213 (Me. 1976). The state was represented by among others Sandra Hylander Collier, "Student."

Maine.[25] Without warning him of his *Miranda* rights they questioned the defendant on how he had come by the stolen goods. The defendant told them a cock and bull story, which despite his exculpatory lies nevertheless placed him in Maine at the time of the theft. Unable to confirm defendant's alibi with Maine police, the officers returned to defendant's home the next night and questioned him again also without giving him a *Miranda* warning.[26] Over defendant's objection one of the officers testified at trial to the defendant's fabrications and admissions, and he was convicted and appealed. The issue presented was whether defendant's statements were the product of custodial interrogation. If so, they would have been inadmissible for failure to give a *Miranda* warning.

Misled not by *Miranda*'s false clue but by an accurate explanatory dictum in *Miranda* that "[g]eneral on-the-scene questioning . . . or other general questioning of citizens . . . is not affected by our holding,"[27] a remark elevated above its rightful status by an earlier decision of the Law Court,[28] Justice Godfrey drew a dichotomy between "general investigation" on one hand and "custodial interrogation" on the other and posed the question of whether the line between the two had been crossed.[29] His opinion notes that the defendant had been interviewed in his own home at a reasonable hour in the presence of friends and had been free to move about his house and states that "[a]ny suspicions aroused by the discovery of stolen property in his home were apparently allayed by his convincing explanation and cooperative manner" and thus credits an officer's testimony that the defendant did not become a suspect until after the two conversations.[30] The opinion states, "We conclude that at the two times appellant spoke to the police, the police were still conducting a general investigation and that appellant's statements were not made in the course of a custodial interrogation."[31] The court reached the right result. In attaching weight to whether the police suspected the defendant when they questioned him, the court did not notice *Beckwith v. United States*,[32] decided eight months earlier, in which the Supreme Court had held that a suspect's being the "focus" of a criminal investigation when he was questioned was not evidence of being in custody. To treat the two as functional or legal equivalents,

25. *Id.* at 216.
26. *Id.* at 216, 219-20.
27. Miranda v. Arizona, 384 U.S. at 477.
28. State v. Inman, 350 A.2d 582, 597-99 (Me. 1976). Justice Godfrey's opinion also cited a Second Circuit opinion, United States v. Hall, 421 F.2d 540 (2d Cir. 1969), in support of the proposition that "[w]hether police conduct amounts to a significant deprivation of freedom depends on the many circumstances then existing." State v. McLain, 367 A.2d at 220.
29. State v. McLain, 367 A.2d at 220.
30. *Id.*
31. *Id.*
32. 425 U.S. 341 (1976).

the Court said, "would cut this Court's holding in [*Miranda*] completely loose from its own explicitly stated rationale"[33] (which was to counteract compulsion inherent in custodial interrogation by giving an elaborate admonition of rights on a theory that knowledge is power).

Four years later the same issue of custodial interrogation was posed in *State v. Preston*.[34] Police had executed a valid warrant to search a trailer belonging to one defendant (Dale Preston) and had seized stolen goods and had looked through a window of a cabin belonging to the other defendant (Wallace Preston) and seen a mattress matching the description of other stolen property. When they returned to Dale Preston's trailer, Dale ran into the woods, and Wallace met the officers outside. A state trooper "invited Wallace into his police cruiser," where the two sat in the front seat while a game warden sat in the back.[35] The trooper testified that he told Wallace that " 'he was talking to me of his own volition, that he could leave any time he wanted to. I didn't have any plans of making any arrest.' "[36] Wallace admitted that he and Dale had stolen a stove and two mattresses, and he went to his cabin and retrieved the stolen mattresses. At about that time Dale came out of the woods. The trooper "told Dale he would like to talk to him a few minutes, that he had no intention of arresting him at that time, and that if he chose not to talk, he did not have to."[37] Dale got into the cruiser with the state trooper and the game warden, and he admitted the crime. On those facts the superior court granted the defendants' motions to suppress their statements and the two mattresses produced by Wallace as the product of improper interrogation. The state appealed. Justice Godfrey writing the opinion for the court posed the issue presented: "The only issue is whether defendants were in custody within the meaning of *Miranda*."[38]

By the time *Preston* reached the Law Court, the United States Supreme Court had issued a major clarification of custodial interrogation in *Oregon v. Mathiason*[39] on facts indistinguishable from *Preston*. Instead of inviting the defendant to sit and talk in a police car, a police officer had asked a burglary suspect to meet him at police headquarters to discuss something, and when the defendant arrived, the officer took him to an office and closed the door. Just as the Maine officer had told the Preston boys that they could leave and were not under arrest, the officer in *Oregon v. Mathiason* told

33. *Id.* at 345.
34. 411 A.2d 402 (Me. 1980). The state was represented by among others Sandra Hylander Collier, Assistant District Attorney.
35. *Id.* at 404.
36. *Id.*
37. *Id.*
38. *Id.* at 405.
39. 429 U.S. 492 (1977) (per curiam).

the suspect that he was not under arrest. The officer told the defendant that the police believed he had been involved in a burglary, as the Prestons had been told that they were under suspicion of theft, and the officer falsely stated that the defendant's fingerprints had been found at the scene. After sitting and thinking for a few minutes the defendant confessed. Then the officer advised the defendant of his *Miranda* rights and took a taped confession. The officer said that he was not arresting defendant at that time and allowed him to leave. The state supreme court held that the officer had obtained the defendant's confession during interrogation in a "coercive environment" without having given the requisite *Miranda* warning. The Supreme Court reversed. Quoting *Miranda* the Court said that *Miranda* warnings are required only when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[40] Observing that the defendant had come voluntarily to the station, where he was informed that he was not under arrest, and that he had left without hindrance after a half-hour interview, the Court said, "[T]here is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way."[41] Accepting as a fact of life that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it,"[42] the Court said, "But police officers are not required to administer *Miranda* warnings to everyone whom they question."[43]

> Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody."[44]

A recent clarifying decision by the United States Supreme Court on a point of constitutional law presented in your case is a nice thing to have. The question for the Law Court in *Preston* pretty clearly was whether that case fell within the principle of *Oregon v. Mathiason.*

The Law Court's opinion noticed the Supreme Court's decision but cited it only in a compare-*Oregon v. Mathiason*-with-*Orozco v. Texas* citation for the proposition that all circumstances must be considered in determining custody. The court held that the lower court's finding of custody was supported by the evidence showing that the police suspected the defendants of a crime and told them so

40. *Id.* at 494.
41. *Id.* at 495.
42. *Id.*
43. *Id.*
44. *Id.*

and questioned them inside a police car.[45] The court turned for authority for giving decisive weight to the officers' focusing on the defendants as suspects not to the contrary holding of *Beckwith v. United States* but rather to the old Second Circuit opinion in *United States v. Hall.*[46] Without disputing the state's argument that "no arrest was made or any physical restraint imposed" and acknowledging that the interrogating officer "informed each defendant that he was free to leave and did not have to talk"[47] the court reasoned that by telling the defendants that they were suspects the police had "increased the potential for creating the coercive atmosphere which triggers the requirement of the *Miranda* warnings."[48] Similarly the officers "increased the coercive nature of the interrogation by conducting it in the police car instead of inside the trailer or outdoors . . . ."[49] Thus, the court said, the record supported the lower court's finding "that the line between general investigatory questioning and custodial interrogation was crossed . . . ."[50] The court reached the wrong result by applying a legal standard equivalent to the one rejected by the Supreme Court in *Oregon v. Mathiason.*

Then came *State v. Thurlow*[51] in which a police officer, responding to another officer's call for help on account of a burglary in progress at a closed tavern, stopped his cruiser at the tavern entrance, where defendant was standing, and, recognizing the defendant as someone he had arrested two months earlier for auto theft, approached the defendant "as low key as possible" and asked him what he was doing there. The defendant gave a false exculpatory reply. The superior court denied defendant's motion to suppress on the ground that no *Miranda* warning was necessary because "investigation had not yet focused on Thurlow"[52] when the officer asked him the question. On appeal from his conviction of burglary defendant argued that the lower court had applied an erroneous legal standard by denying the motion to suppress on the basis of the officer's lack of "focus" on the defendant. *Oregon v. Mathiason* implicitly and *Beckwith v. United States* explicity supported defendant-appellant's position.

45. State v. Preston, 411 A.2d 402, 405-06 (Me. 1980).

46. 421 F.2d 540 (2d Cir. 1969). *See supra* note 28. The court cited *Miranda* for the statement that one circumstance relevant to custody is whether questioning has begun to focus on the interrogated person as a suspect, but the reference, Miranda v. Arizona, 384 U.S. 436, 490 (1966), does not support that proposition.

47. State v. Preston, 411 A.2d at 405.

48. *Id.* at 406.

49. *Id.* at 405.

50. *Id.* at 406.

51. 434 A.2d 1 (Me. 1981). The state was represented by District Attorney Henry N. Berry, III, Deputy District Attorney Peter G. Ballou, and William Darrow, law student intern. The defense was represented by C. Alan Beagle of Glassman, Beagle & Ridge.

52. *Id.* at 3.

The Law Court would hear nothing of it.[53] "Whether investigation by the police has focused on the defendant . . . is one circumstance to be weighed" in determining custody.[54] "Though not a controlling factor in establishing the existence of custody," the court said, "focus is at least relevant"[55] citing *State v. Preston*, *State v. Inman*, and "[a]ccord" *Beckwith v. United States* and, naturally, the Second Circuit opinion in *United States v. Hall*. Later the court made a point of saying that "[s]pontaneous encounters with potential suspects where preliminary questioning is necessary are bound to occur in the course of on-the-scene investigations. But such encounters are not perforce custodial"[56] citing *Oregon v. Mathiason*, which was the opposite of such an encounter. As to the officer's testimony that he was suspicious of the defendant, the court said: "That a person is a suspect, though relevant to focus and thus to custody, does not conclusively establish custody"[57] citing *Oregon v. Mathiason*.

The court concluded by seemingly adopting the same "coercive environment" standard that the Supreme Court had rejected in *Oregon v. Mathiason*. The Law Court said that the police officer's conduct "had not become sufficiently aggressive or intimidating to create the type of coercive, confining environment the notion of *Miranda* custody connotes."[58] As to the officer's testimony that he would have detained the defendant had he attempted to leave, that testimony was "immaterial to our inquiry, limited as it is to assessing the environment created by the police officer" just before defendant spoke.[59]

Justice Godfrey partially redeemed himself and the court in *State v. Bleyl*[60] upholding a superior court's finding that a defendant who had responded to a police officer's request to come to the police station by saying that he would be glad to come and help in any way he could was not in custody when he was thereafter interrogated at

53. Whether the superior court's error should have resulted in overturning the conviction is another question because an officer's focusing on someone as a suspect is a standard more lenient toward the defendant than the correct standard of custody. No serious argument could be made that an officer's approaching a suspect "as low key as possible" and asking what he was doing there amounted to custody except for the officer's testimony that he would have detained the defendant had he attempted to leave.

54. State v. Thurlow, 434 A.2d at 3.

55. *Id.*

56. *Id.* at 4 (citation omitted). The court then quoted statements from an intermediate state court opinion that were actually unattributed (and slightly altered) quotations from *Oregon v. Mathiason*. *Id.*

57. *Id.* at 5.

58. *Id.* at 4.

59. *Id.* at 5.

60. 435 A.2d 1349 (Me. 1981). The state was represented by Wayne S. Moss, Charles K. Leadbetter, and Herbert Bunker, Assistant Attorneys General, and one of three defendants was represented by Stephen Y. Hodsdon.

the station. Curiously the court's analysis of custody was preceded by a lengthy discussion sustaining the trial court's holding that defendant's Fourth Amendment rights had not been violated by his station-house interview because he had not been seized. If he had not been seized (even short of arrest), how could he possibly have been in custody? Trial courts must examine all the facts, the court said, "to determine whether the line between general investigation and custodial interrogation has been crossed" citing *State v. Inman*.[61] "[W]hether police imposed restraint on him at the time of questioning" was no more than one factor "bearing on a person's deprivation of freedom."[62] Others included "focus" on the defendant as a suspect, the place of questioning, and "a police-dominated atmosphere."[63]

III. SEARCH AND SEIZURE

State v. Bleyl[64] was also one of a series of opinions that Justice Godfrey wrote for the court applying the principles announced in *Brown v. Illinois*[65] for determining when a defendant's statements, although voluntarily given and preceded by proper *Miranda* warnings, should nevertheless be suppressed as a product of an illegal arrest. The first such case was *State v. Turner*,[66] an appeal by the state from an order granting a motion to suppress defendant's confession made while under arrest without probable cause. (A companion admitted committing a burglary and identified the defendant as his accomplice. The defendant was a passenger in the automobile containing the stolen goods. The superior court held that the companion's statement was insufficient to establish probable cause because it was uncorroborated.) Without deciding whether the arresting officer had probable cause, the Law Court held that the defendant's own statement was admissible on the authority of *Brown v. Illinois*. Defendant had been given a *Miranda* warning and had spoken voluntarily. Although he made his statement while he was under an arrest that the court assumed to be unlawful, he had not been detained long or intensively interrogated. Hence

61. *Id.* at 1358.

62. *Id.*

63. *Id.* The court's discussion cited *State v. Preston*, *State v. Thurlow*, and *Beckwith v. United States* (the latter for the proposition that "focus" alone is not equivalent to custody), of course included the obligatory citation to the Second Circuit's opinion in *United States v. Hall*, and quoted the same statements quoted in *State v. Thurlow* but this time correctly attributing them to the Supreme Court's opinion in *Oregon v. Mathiason*.

64. 435 A.2d 1349 (Me. 1981).

65. 422 U.S. 590 (1975).

66. 394 A.2d 798 (Me. 1978). The state was represented by David M. Cox, District Attorney, and Gary F. Thorne and Margaret J. Kravchuk, Assistant District Attorneys. Whether or when the defendant was arrested is not really clear.

"[t]here was no undue exploitation of the arrest."[67] The most important consideration for the court was that the arrest was neither a purposeful nor flagrant violation of the Fourth Amendment. "We are unable to draw any inference" that the officer, who believed he was acting on reliable information, "thought the arrest of Turner to be improper."[68] "We do not interpret [the superior court's] finding to mean that the arrest of Turner was not made in good faith."[69] Considering "the deterrence rationale of the exclusionary rule" the court said, "We conclude that the defendant's confession was not unconstitutionally tainted by his prior arrest."[70] That holding, presumably all to avoid reviewing what looks like an obviously erroneous ruling on probable cause, comes perilously close to adopting a good faith exception to the Fourth Amendment exclusionary rule or at least a good-faith-plus-*Miranda*-warning-and-waiver exception to the rule.

State v. Bleyl presented startling facts. Two other defendants had confessed (voluntarily and after *Miranda* warnings) while under arrest pursuant to warrants supported by probable cause but issued by a New Hampshire justice of the peace who had neither read the supporting affidavit nor taken a sworn statement from the officer who applied for the warrants.[71] No matter. "Although Coyne and Bleyl made their statements shortly after their arrests, the record contains no evidence that officers exploited the arrests in obtaining the statements. Perhaps most importantly, the record reveals that the police conduct in effecting the arrests was in no way purposefully or flagrantly illegal."[72] The police had probable cause to arrest and believed in good faith that they had obtained valid warrants. "Nothing in the conduct of the local New Hampshire officers or of Maine State Police officers manifested the kind of willful or purposeful misconduct that the exclusionary rule was fashioned to deter."[73] Shades of *United States v. Leon*?[74]

---

67. *Id.* at 800.

68. *Id.*

69. *Id.*

70. *Id.*

71. State v. Bleyl, 435 A.2d at 1349, 1354, 1360-61. If, as the court states, the police had probable cause to arrest, then why were arrest warrants necessary? The court states in a footnote, "The State has conceded that Coyne's and Bleyl's arrests cannot be justified as warrantless arrests, and we agree." *Id.* at 1360 n.9. No authority was given. The only conceivable basis for requiring warrants is Payton v. New York, 445 U.S. 573 (1980). Defendants were arrested in the home of one of them where the other was an overnight guest. State v. Bleyl, 435 A.2d at 1361.

72. State v. Bleyl, 435 A.2d at 1361 (citing State v. Turner, 394 A.2d at 800).

73. *Id.* The result would be correct under New York v. Harris, 495 U.S. 14 (1990) (violation of Payton v. New York, 445 U.S. 573 (1980) does not require suppressing evidence including confession obtained outside home).

74. 468 U.S. 897 (1984) (refusing to require suppression of evidence obtained by police officers in good faith reliance on invalid search warrant).

The court drew the line in *State v. LeGassey*[75] under the beneficent influence of *Taylor v. Alabama*.[76] Much about the case is unclear largely because of the manner in which the case was presented to the Law Court. Proceeding on an assumption that defendant had been unlawfully detained or arrested for lack of probable cause, the court affirmed a district court order suppressing defendant's admission, although made voluntarily after a *Miranda* warning, and the results of a breath test to which he had consented. The record presented no evidence to suggest that the officer believed in good faith that he had the authority to detain the defendant. Considering the closeness in time between the seizure and obtaining the evidence and the absence of any intervening circumstances, the court held that the evidence was properly suppressed. The rule that emerges from the cases is that statements made voluntarily after *Miranda* warnings and other evidence yielded by consent will not be suppressed despite the illegality of a seizure of the defendant if the officers acted in (presumably objectively reasonable) good faith.

Two last opinions by Justice Godfrey on the constitutional law of search and seizure are particularly noteworthy. One is Maine's leading decision on return of property illegally seized, *State v. Sweatt*.[77] The other is *State v. Nason*[78] the facts of which preclude discussing it in mixed company. Rule 41(e) of the Maine Rules of Criminal Procedure authorizes "a person aggrieved by an unlawful seizure" to move in the superior court "for return of the property on the ground that it was illegally seized." Motions under Rule 41(e) for return of property assertedly unlawfully seized, having been virtually eclipsed by motions to suppress, are relatively rare these days.[79] Rule 41(e) motions are atavisms of the old procedure from

75. 456 A.2d 366 (Me. 1983). Gary F. Thorne, Assistant District Attorney, represented the state, and Norman S. Heitmann, III, represented the defendant.

76. 457 U.S. 687 (1982).

77. 427 A.2d 940 (Me. 1981). The state was represented by Janet T. Mills, District Attorney, and the defendant was represented by Craig E. Turner, who was assisted by one of Justice Godfrey's former law-faculty colleagues.

78. 433 A.2d 424 (Me. 1981) (upholding against Fourth and Fifth Amendment claims a certain body-cavity search of a prisoner and subsequent seizure of contraband purportedly authorized by a warrant). Patricia Goodridge Worth, Assistant District Attorney, represented the state. The problematical issue that cannot be discussed is the testimonial aspects of the act of production under the Fifth Amendment. *See* United States v. Doe, 465 U.S. 605 (1984); Baltimore City Dep't of Social Servs. v. Bouknight, 493 U.S. 549 (1990).

79. Only three times has the Law Court directly reviewed orders granting or denying motions for return of property under Rule 41(e). *See* State v. Bevins, 446 A.2d 1119, 1119-20 (Me. 1982) (property no longer in possession or control of court, police, or prosecutor cannot be ordered to be returned); State v. Sweatt, 427 A.2d 940, 950-51 (Me. 1981) (property unlawfully seized that is neither contraband, stolen property, nor evidence of a crime must be returned); State v. Cadigan, 249 A.2d 750, 760 (Me. 1969) (contraband, property that is illegal to possess, need not be returned although unlawfully seized). *See also* State v. One Uzi Semi-Automatic 9mm Gun,

which motions to suppress originated. Reaching all the way back to *Weeks v. United States*[80] we find that petitions or motions for return of seized property were the typical means of raising the issue of the validity of searches and seizures. The Supreme Court's ruling in *Weeks* that is commonly regarded as having announced the Fourth Amendment exclusionary rule was actually that the trial court had infringed the rights of the accused under the Fourth Amendment by denying his petition for return of property seized without a warrant and had erred thereafter in admitting the property in evidence.[81] Not until *Husty v. United States*[82] and *Taylor v. United States*[83] did the Court adopt today's terminology of "motion to suppress"[84] and say, "The evidence was obtained unlawfully and should have been suppressed."[85]

No criminal prosecution or other proceeding was pending when the movant in *State v. Sweatt* filed a motion for return and suppression of tourmaline gems seized pursuant to warrants from his home, office, and bank vault and from a safe in his attorney's office and tourmaline jewelry seized without a warrant from a retail store selling it on consignment. Holding that the warrants were not supported by probable cause to believe that the movant had stolen the rocks and the warrantless seizure was unsupported by exigent circumstances, the superior court granted the motion (except for items taken from the attorney's safe on grounds of standing), and both the movant and the state appealed. Not batting an eye at the unusual orphan-motion procedure, Justice Godfrey's opinion affirmed the conclusion "that there was no showing of probable cause to believe that any of the seized property had been illegally acquired,"[86] reversed the lower court's order insofar as it denied standing to contest the search of the attorney's safe, and ordered that all of the gems and jewelry be returned and suppressed.[87]

589 A.2d 31, 33 n.1, 35 n.9 (Me. 1991) (contraband unlawfully seized need not be returned even if not subject to forfeiture); Plumbago Mining Corp. v. Sweatt, 444 A.2d 361, 370-71 (Me. 1982) (on third-party claims to property unlawfully seized); State v. McKenzie, 440 A.2d 1072, 1077 n.2 (Me. 1982) (pretermitting question of returning property illegally seized); State v. Smith, 381 A.2d 1117, 1123 (Me. 1978) (in granting motion to suppress court may *sua sponte* order property returned).

80. 232 U.S. 383 (1914).
81. *Id.* at 398.
82. 282 U.S. 694 (1931).
83. 286 U.S. 1 (1932).
84. Husty v. United States, 282 U.S. at 701.
85. Taylor v. United States, 286 U.S. at 6.
86. State v. Sweatt, 427 A.2d at 951.
87. *Id.*

IV. A Parting Thought

To me Justice Godfrey is more properly called Dean, for I was and remain one of his students. I remember spending with my classmates a solid hour in trusts and estates on the single issue of whether a power of appointment is an "interest" in property within the Rule Against Perpetuities ("No interest is good unless . . . [etc.]"). I remember his circling my commas in red and calling them "false" and so being required for the first time in my life to justify each one. No surprise will come to all who were similarly situated to learn that the abiding characteristic of our hero's judicial opinions is forthright honesty.