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What Does it Mean to Remain Silent?

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justice was done. However, Fisher has a different perspective on this case. She states that it was Briteramos' public health counselor who turned him in to the police after Briteramos went to get tested for HIV. Fisher warns against any law that deters people from getting tested for HIV and any law that so easily convicts an HIV-positive person.

There have been approximately 300 prosecutions under HIV laws among the approximately 800,000 people with AIDS in this country, according to the HIV Criminal Law and Policy Project.[12] However, 70% of these prosecutions entail spitting, biting or scratching which pose a remote risk of HIV transmission and do not involve transmitting the virus through sexual contact, the most common form of transmission.

As Fisher and other AIDS advocates caution, when enacting these laws, legislators should consider the possibility that they may actually be deterring testing. On both sides of this issue, the question remains as to how effective these laws are in achieving their goal-preventing the spread of HIV/AIDS and protecting the public's health.

1. Cal. Health & Safety Code § 120291 (1998); State v. Hill, No. 2127994 [San Francisco Crim. Ct.].
2. *Lister v. Hill*, No. 318443 (San Francisco Super. Ct.).
3. Time Wire Report, *Ex-official Denies Exposing Two to HIV*, L.A. TIMES, Sept. 27, 2003, at Cal. Metro 8; Jaxon Van Derbeken, Ex-S.F. Official Jailed On HIV Charge; Grand Jury Says Former Nurse Passed on Virus Knowingly, S.F. Chronicle, Sept. 18, 2003, at A17.
4. Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nevada, New Jersey, Oklahoma, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Washington. HIV Criminal Law and Policy project funded by the CDC, HIV Specific Criminal Transmission Law, available at http://www.hivcriminallaw.org/laws/hivspec.cfm (last visited Oct. 19, 2003)
5. Sabin Russell, *Shift in AIDS Prevention Strategy; Emphasis Now On Accountability of Those Infected*, S.F. Chronicle, Sept. 21, 2003, at A3.
6. Telephone Interview with Ann Hilton Fisher, Director, AIDS Legal Council of Chicago (Oct. 8, 2003).
7. 720 Ill. Comp. Stat. 5/12-16.2 (1989).
8. Cal. Health & Safety Code § 120291 (1998).
9. John M. Glionna, *Law On HIV Infection Little Used; As A Victim Finds, State's Tough Standards Means Few Who Knowingly Pass The Virus Are Prosecuted*, L.A. TIMES, Sept. 10, 2003, at Cal. Metro 1.
10. Id; State v. Briteramos, [Beadle Co., S.D., Cir. Ct.].
11. S.D. Codified Laws §22-18-31 (2000).
12. HIV Criminal Law and Policy Project funded by the CDC, HIV Specific Criminal Transmission Law, available at http://www.hivcriminallaw.org/laws/hivspec.cfm (last visited Oct. 19, 2003).

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Any statements you make during a custodial arrest can be used against you, so long as you have been read your Miranda Rights.[1] Evidence found during a search incident to an arrest can also generally be used against you. So, what happens to evidence discovered during an interrogation and search incident to an arrest in which the officers fail to read you your Miranda Rights?

That is the situation that the United States Supreme Court will be faced with when they review United States v. Patane during this upcoming term. In Patane, the defendant was arrested for violating a restraining order.[2] During the arrest, when the officers were reading Patane his Miranda Rights, he interrupted them, and the officers failed to finish reading the remainder of the rights. Patane was later questioned, and during a search of his home, the police found an illegal handgun. The main question in the case now before the Supreme Court is whether that illegal handgun should be considered "fruit of the poisoned tree" for evidence purposes since the police did not properly conduct Patane's arrest and Patane did not truly waive his Miranda Rights.

> "...the Supreme Court will truly have to decide if we still have the right to remain silent and just what the implications of that right are."

The Federal District Court for the District of Colorado found that the gun was illegally obtained and granted Patane's motion to suppress the illegal handgun.[3] The District Court reasoned that there had never been probable cause to arrest Patane. The court held that the investigation leading to the discovery of the gun was invalid and that any evidence from that unconstitutional investigation could not be used against Patane.

The 10th Circuit Court of Appeals agreed with both the District Court and Patane, finding that the evidence was inadmissible.[4] However, the Appellate Court disagreed with the District Court in its rationale. The Appellate Court held that probable cause to arrest Patane did exist.[5] The Appellate Court noted that prosecution conceded that the officers questioned Patane without fully informing him as to his Miranda rights, and the officers' violation of Miranda v. Arizona justified suppressing the illegal handgun for evidence purposes. The Appellate Court held that the gun was fruit of the poisoned tree and that physical fruits of a Miranda violation must be suppressed where necessary to serve Miranda's purpose of deterrence.

The Bush Administration,

however, disagreed with both courts.[6] Though not a judicial body, the Administration is, in fact, behind the petition to the United States Supreme Court. In requesting that the state pursue an appeal of the 10th Circuit Court of Appeals decision, the Bush Administration argues that Patane refused Miranda warnings to keep silent when he interrupted the federal agents and that anything he stated was willingly volunteered. They argue that criminals should not be benefited by suppression of evidence when they dismiss police attempts to inform them of their constitutional rights.

Some prosecutors also support the arguments presented by the Bush Administration. Prosecutors add to those arguments that the suppression of physical evidence in cases like Patane's poses serious problems for the judicial system. Requiring prosecutors to attempt conviction without persuasive and probative evidence affects both the cost and administration of criminal trials.

Opponents of the Bush Administration hope that the Supreme Court will uphold both the District and Appellate court opinions suppressing the evidence. Criminal Defense attorneys argue that Miranda protections, such as the deterrence of coercive police questioning and the guarantee of valid and trustworthy evidence, will be greatly affected if the Supreme Court finds against Patane.[7] They argue that a decision by the Supreme Court against Patane would give policemen another incentive to ignore Miranda warnings. H. Michael Steinberg, an attorney specializing in criminal defense, adds that allowing evidence found in situations similar to Patane's, "would need [a] fact specific determination as to what factually occurred during the administration of the warnings," frustrating the judicial process as well.

Some legal analysts argue that the Supreme Court should not have granted writ in this case since the issue is moot and that two previous Supreme Court cases, Michigan v. Tucker, 417 U.S. 433 (1974), and Oregon v. Elstad, 470 U.S. 298 (1985), expressly hold that fruits of unwarned statements are admissible. Supporters of Patane's position, however, argue that fruits of unwarned statements do not include physical objects constituting evidence and that the Supreme Court has failed to clearly rule on that issue.

Both sides are hopeful that this case will not only force the United States Supreme Court to confront issues on Miranda rights, but also issues of probable cause, warrantless arrests, as well as illegal searches and seizures under the Fourth Amendment. Regardless of the Supreme Court's decision, prosecutors, criminal defense attorneys, and their respective clients alike hope that the decision from United States v. Patane will provide much needed guidance in a legal area that is presently clear as mud.

NOTES

1 Miranda v. Arizona, 396 U.S. 868 (1966)
2 United States v. Patane, 304 F.3d 1013, 1015 (10th Cir. 2002).
3 Patane, 304 F.3d at 1014.
4 Id.
6 Bill Mears, Justices will review 'Right to Remain Silent,' (April 22, 2003), available at CNN.com/LAW CENTER, http://www.cnn.com/2003/LAW/04/21/scotus.miranda/ml.
7 Statement of Susan N. Herman, ACLU General Counsel, The Fourth Amendment and Miranda in the Supreme Court Spotlight (October 1, 2003), available at http://www.aclu.org/court/court.cfm?ID=13873&c=261