

Hamilton County LAW LIBRARY NEWS

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August 2018

Merit Decision: State-Employed Social Worker Need Not Mirandize Alleged Perpetrator During Jail Interview. *State v. Jackson*, by Professor Marianna Brown Bettman

On June 7, 2018, the Supreme Court of Ohio handed down a merit decision in *State v. Jackson*, [Slip Opinion No. 2018-Ohio-2169](#). In a 6-1 opinion written by Justice O'Donnell, in which Justice Kennedy concurred in judgment only and Justice DeGenaro dissented, the court held that a social worker's statutory duty to cooperate and share information with law enforcement with regard to a child abuse investigation does not, without more, make the social worker an agent of law enforcement for Fifth and Sixth Amendment purposes. The case was argued February 13, 2018.

Case Background

Demetrius Jackson was arrested for raping 14-year-old C.H. Jackson refused to speak with police after he had been *Mirandized*. The incident was reported to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). Jackson was interviewed by CCDCFS social worker and child advocate Holly Mack in the county jail, where Mack was assigned to interview alleged child abuse

perpetrators. Mack testified that when she meets with suspects, she identifies herself, advises them of the allegations, and tells them that anything they say "can be subpoenaed by the courts." She did not give Jackson the *Miranda* warnings. Jackson told Mack that he had had consensual oral sex with C.H., and that he thought she was at least 21 years old.

At a bench trial, over Jackson's objection, the judge allowed Mack to testify as to Jackson's statements from the jail interview. Jackson was convicted of rape and related offenses, and sentenced to eleven years in prison.

In a [split decision](#), the Eighth District Court of Appeals reversed Jackson's conviction. The majority held that Mack had violated Jackson's Fifth and Sixth Amendment rights by failing to give him the *Miranda* warnings and by conducting the interrogation outside the presence of his lawyer. The dissenting judge (Continued on p. 4)

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Tech Tip: Search Terms & Connectors Master Chart

By Julie Koehne, Assistant Law Librarian, Systems

“Using search terms and connectors while conducting research on the library’s legal databases can help quickly hone your search queries, resulting in increased efficiency. However, what search terms and connectors researchers should use can vary greatly between each database. It’s no small feat to keep track of which search terms and connectors are relevant to which legal database (especially when researchers are utilizing multiple databases simultaneously), which is why we’ve compiled a reference chart (below) that details the most popular search terms and connectors for each database.”

- Reprinted from the Stark County Law Library

[June/July 2016 Newsletter](#)

	Westlaw	Lexis	CCH Intelliconnect	Fastcase
Find an exact phrase	Enclose phrase in “quotation marks”	DEFAULT SEARCH	Enclose phrase in “quotation marks”	Enclose phrase in “quotation marks”
Find one term or another	DEFAULT SEARCH	Add OR between terms	Add OR between terms	Add OR between terms
Find both terms	Add & between terms	Add AND between terms	DEFAULT SEARCH	DEFAULT SEARCH
Find both terms in the same sentence	Add /s between terms	Add /s or w/s between terms	Add w/sen between terms	—
Find both terms in the same paragraph	Add /p between terms	Add /p or w/p between terms	Add w/par between terms	—
Exclude the second term	Add % between terms	Add AND NOT between terms	—	Add NOT between terms
Find two terms that are within a specific # of words of each other	Add /# between terms	Add /# or w/# between terms	Add w/# between terms	Add w/# between terms
First term must precede second term within a specific # of words	Add +# between terms	Add pre/# between terms	Add p/# between terms	—
Group search terms and commands	(enclose in parentheses)	(enclose in parentheses)	—	(enclose in parentheses)
Include variant spellings in results	Substitute * for one or more letters	Substitute * for one or more letters	Substitute ? for one or more letters	Substitute ? for one or more letters
Include variant word endings in results	Add ! to end of root word	Add ! to end of root word	Add * to end of root word	Add * to end of root word

To see a full list go to: <http://lawlibrary.hamiltoncountyohio.gov/wp-content/uploads/2016/07/unabridged-chart-MS-pub.pdf>

Topical Updates

After a few months of hiatus our topical updates are coming back! If you were already signed up to receive these updates they should automatically resume. If you were not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- Torts

If you have any questions about this please feel free to contact our Reference Librarian, [Amy Kurlansky](mailto:amy.kurlansky@cms.hamilton-co.org).

Upcoming CLEs

Free to subscribers; \$50 for non-subscribers
Registration is required.

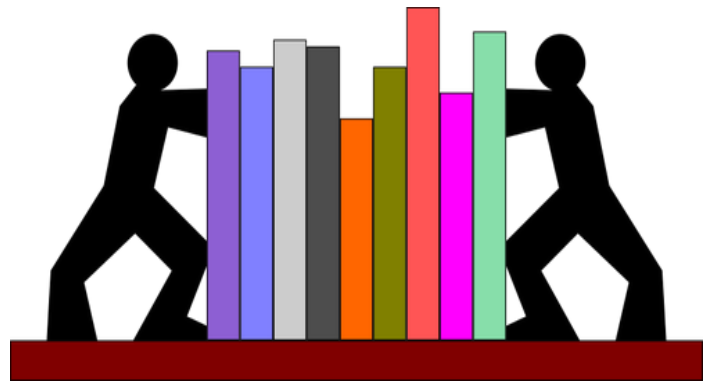
To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/calendar/>

September 28, 2018 noon-1 pm
Cutting Edge Nevada Wills. Are They or Any Electronic Wills Enforceable in Ohio? by Attorney John Cobey

October 26, 2018 noon-1 pm
Stress and the Legal Profession, by Attorney Tabitha Hochscheid

New Books

Is there a treatise that you swear by and think we should carry? Have you looked for something here, but been unable to find it? We consider recommendations from you, our subscribers, when we make decisions about collection development. If there's a specific publication you'd like us to review or a legal subject area in which we need to expand our collection, please don't hesitate to contact Lauren at lmorrison@cms.hamilton-co.org with your suggestions. We can't guarantee that we'll purchase everything, but we certainly value your input and want to provide access to the resources you need.



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As a bonus, you may be eligible to obtain even more Ohio CLE credit as a speaker than an attendee! Feel free to ask Amy for details.

would find that Jackson's constitutional rights were not violated because Mack was not acting as an agent of law enforcement in this situation.

Read the oral argument preview of the case [here](#) and an analysis of the argument [here](#).

Key Statutes and Precedent

[Fifth Amendment of the United States Constitution](#) ("No person shall... be compelled in any criminal case to be a witness against himself...")

[Sixth Amendment of the United States Constitution](#) ("In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him...and to have the Assistance of Counsel for his defense.")

[R.C. 2901\(A\)\(11\)](#) (Definition of "law enforcement officer")

[R.C. 2151.421](#) Reporting Child Abuse or Neglect

(G) ("the public children services agency shall investigate . . . each report of child abuse or child neglect The investigation shall be made in cooperation with the law enforcement agency A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (I)(1) of this section and protects the rights of the person making the report under this section. . . . The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.")

[R.C. 2151.421\(A\)\(1\)\(a\)](#) (Establishing the duty to report child abuse and neglect for members of children services.)

[R.C. 2151.421\(G\)\(1\)](#) (Requiring children services to investigate reports of child abuse or neglect.)

[R.C. 2151.421\(K\)](#) (Requiring child services to provide a memorandum of understanding to law enforcement.)

[Mathis v. United States, 391 U.S. 1 \(1968\)](#) (Defendant was convicted through the testimony of an IRS agent, attained while the defendant was incarcerated for another crime. The Court held that despite the IRS agent questioning the defendant on a matter unrelated to his being in custody, the obligations of *Miranda* still remained.)

[Miranda v. Arizona, 384 U.S. 436 \(1966\)](#) ("[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, 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. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.")

[State v. Bolan, 27 Ohio St.2d 15 \(1971\)](#) ("[T]he duty of giving 'Miranda warnings' is limited to employees of government agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies.")

[State v. Watson, 28 Ohio St.2d 15 \(1971\)](#) (Defendant challenged the trial court's refusal to suppress in-custody statements to a newspaper reporter. "The *Miranda* requirements do not apply when admissions otherwise admissible are given to persons who are not officers of the law or their agents. . . . Although defendant was in custody, the statement in question was not the result of 'questioning initiated by law enforcement officers.' Therefore, it is of no consequence that the statement might have been influenced by earlier statements made by defendant to the police.")

[Estelle v. Smith, 101 S.Ct. 1866 \(1981\)](#) (Defendant held in custody was compelled by the court to submit to a 'mental status examination' performed by a court-appointed psychiatrist. The Court concluded that, "when faced while in custody with a court-ordered psychiatric inquiry, [defendant]'s statements . . . were not 'given freely and voluntarily without any compelling influences' and, as such, could be used . . . only if [defendant] had been apprised of his rights and had knowingly decided to waive them.")

[State v. Roberts, 32 Ohio St.3d 225 \(1987\)](#) ("[S]tatements by an in-custody probationer to his probation officer are inadmissible in a subsequent criminal trial, where prior to questioning, the probation officer failed to advise the probationer of his *Miranda* rights as required by Section 10, Article I of the Ohio Constitution and by the Fifth and Fourteenth Amendments to the United States Constitution.")

[Ohio v. Clark, 135 S.Ct. 2173 \(2015\)](#) ([M]andatory reporting statutes "alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution.")

Merit Decision

As is his custom, Justice O'Donnell begins his opinions with the positions of the parties.

State's Position

Miranda only applies to law enforcement officers or their agents. A social worker is not a law enforcement agent, and the statutory duty of a social worker to cooperate and share information with law enforcement with respect to a child abuse investigation does not transform the social worker into a law enforcement agent for Fifth and Sixth Amendment purposes. These social worker interviews are less coercive than those addressed by *Miranda*, and serve important child health and safety issues. The question to be asked in this context is whether the totality of the circumstances show that the social worker acted at the direction, control, or behest of law enforcement. Mack did not in this case when she interviewed Jackson.

Jackson's Position

Miranda applies to state actors other than law enforcement who subject a defendant to a custodial interrogation, and that includes social workers employed by children's services agencies. In this case Mack was a member of a special unit that collaborated and shared information with law-enforcement, working as a team to investigate and prosecute crimes against children.

What is Undisputed in the Case

Jackson was in custody during Mack's interview, Mack did not *Mirandize* him, and Mack's interview constituted an interrogation.

Analysis

The court buys the state's position in its opinion.

As a public child services agency, CCDCFS has a statutory duty to investigate reports of suspected child abuse in cooperation with law enforcement, to have a memorandum of understanding setting forth standards and procedures to be used in the handling and coordination of investigations of these cases, and to submit a written report of its investigation to law enforcement. (CCDCFS' memorandum of understanding is not part of the record in this case.) But these statutory duties of cooperation and information-sharing do not turn agency employees who interview alleged perpetrators of child abuse into agents of law enforcement, and Mack did not act at the direction or control of law enforcement in this case when she interviewed Jackson. There is simply no evidence law enforcement influenced Mack's interview of Jackson in any way.

Justice DeGenaro's Dissent

Justice DeGenaro agrees with the majority that a state-employed social worker does not automatically become an agent of law enforcement because of the statutory duty to share information with law enforcement about a child-abuse investigation, but favors a case-by-case determination of this issue rather than a bright-line rule, and would find that in this case, Mack was functioning as an agent of law enforcement for Fifth and Sixth Amendment purposes.

Justice DeGenaro believes that the proper analysis required in a given case is to determine whether the social worker was performing the statutory reporting duty or the statutory investigative duty during the interview. The investigative function set forth in R.C. 2151.421(G)(1) mandates that social workers who work for public children's services agencies do more than simply report; they must investigate in cooperation with law enforcement. DeGenaro further details these duties in her dissent, and agrees with Jackson that there need not be a specific request from the police to a social worker for the social worker to be considered an agent of law enforcement

since the institutional arrangement provide by law mostly makes the need for such a request unnecessary.

Key to DeGenaro's conclusion that Mack was functioning as an agent of law enforcement in this case were that one of her primary duties was to interview only alleged perpetrators in jail, but no one else, her 17 years of experience compared with Jackson's relative inexperience with law enforcement, and the fact that she interrogated Jackson in jail after he had already invoked his *Miranda* rights when questioned by police.

"Specifically, there is no indication that Jackson understood that his statements to Mack could be used against him at trial or—what ultimately happened here—that the admission of her testimony would put him in the position of taking the stand at trial when he otherwise would not have. Based on these facts, it is highly questionable whether Jackson would have spoken to Mack had she first advised him of his *Miranda* rights," wrote DeGenaro. "Given the facts of this case, Mack was the functional equivalent of a law-enforcement agent and absent *Miranda* warnings, her interrogation of Jackson violated his right against self-incrimination. 'Any other conclusion would allow the State to ignore a defendant's constitutional rights merely by having the interrogation conducted by someone who lacks the title 'law enforcement officer' but who is otherwise performing the interrogation of such an officer.'" (citing [*State v. Deases*, 518 N.W.2d 784, 790 \(Iowa 1994\)](#)).

In addition to violating Jackson's Fifth Amendment rights, DeGenaro would also find that the admission of Mack's testimony violated Jackson's Sixth Amendment rights. She would affirm the court of appeals.

Disagreement Over Key Federal Precedent

Justice DeGenaro disagrees with the majority interpretation of U.S. Supreme Court

decisions in *Mathis v. United States*, *Estelle v. Smith*, and *Ohio v. Clark*. In *Mathis*, the U.S. Supreme Court held information gathered by an IRS agent who questioned an inmate in prison was inadmissible because the inmate was not *Mirandized*. Here, the Ohio Supreme Court majority found that the U.S. Supreme Court was not asked in *Mathis* to decide if the IRS employee was an agent of law enforcement. To Justice DeGenaro, such a finding was implicit in the decision.

In *Estelle*, the U.S. Supreme Court found that the *Miranda* warnings applied to an examination of the defendant conducted in jail by a court-appointed psychiatrist, and the findings from that interview were properly excluded for failure to give those warnings. The Ohio Supreme Court majority opinion finds *Estelle* inapposite and limited to the particular circumstances presented there. Justice DeGenaro finds *Estelle* very much on point, emphasizing the U.S. Supreme Court's finding that the role of the psychiatrist in that case changed, from just reporting on competence when the psychiatrist testified for the prosecution, and becoming like an agent of the state testifying about unwarned statements in a custodial setting.

And then of course there is *Ohio v. Clark*, the case in which the U.S. Supreme Court reversed [*State v. Clark*, 2013-Ohio-4731](#), which was written by Justice O'Donnell. In *Ohio v. Clark*, the U.S. Supreme Court held, among other things, that a teacher's mandatory duty to report suspected child abuse does not turn that teacher into an agent of law enforcement for purposes of the Confrontation Clause. To Justice DeGenaro, *Ohio v. Clark*, which involves the statutory duty to report suspected abuse, is factually different from a state-employed social worker's statutory duty to cooperatively investigate suspected abuse with law enforcement.

Case Syllabus

A social worker's statutory duty to cooperate and share information with law enforcement with respect to a child abuse investigation does not render the social worker an agent of law enforcement for purposes of the Fifth and Sixth Amendments to the United States Constitution when the social worker interviews an alleged perpetrator unless other evidence demonstrates that the social worker acted at the direction or under the control of law enforcement.

Case Disposition

The decision of the court of appeals was reversed. But since there were other assignments of error that the Eight District Court of Appeals did not consider in light of its holding, the case was sent back to that court to do so.

Concluding Observations

I called this case for the state after oral argument, but I think Justice DeGenaro has by far the better analysis in this opinion. It really dug into the specifics of what happened here. I still think that Justice O'Donnell was stung by the U.S. Supreme Court reversal of the decision he wrote in *State v. Clark*, and unlikely to go out on another limb over social workers, especially with two of the members of his majority in that case—Justices Pfeifer and O'Neill—now gone from the court. (The third, Justice Kennedy, concurred in judgment only in this appeal). At argument, O'Donnell kept asking for cases that have found social workers to be agents of law enforcement, and yet did not even mention [*Jackson v. Conway*, 763 F.3d 115 \(2d Cir. 2014\)](#), on which Justice DeGenaro relied in her extremely well written dissent.

(reprinted with permission from the blog *Legally Speaking Ohio*)

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Topics discussed will include anonymous speech, hate speech, and the First Amendment in the Digital Age.

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This program is free and open to the public.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff, and community organizations. If you would like more information, please contact [Vanessa Seeger](#).

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Please save the date for our next event in the You and the Legal System, on Friday, September 14, 2018, when Attorneys Justin Lawrence and Marisa Dyson discuss worker's compensation from both the employee and the employer perspective.

First Amendment Law Resources

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Constitutional Law
KF4550 .N6 2010

Constitutional Law Deskbook: Individual Rights
KF4550 .C43

Constitutional Law Dictionary
KF4548 .5 .C47

Corporate and commercial free speech: first amendment protection of expression in business
KF1614 .R65 1985

Handbook of free speech and free press
KF4774 .B37

History of free speech in decision making readings and cases
KF4772 .A7 H571985

Internet law: a field guide
KF2750 .H37 2008

Seven dirty words and six other stories: controlling the content of print and broadcast
KR45772 .S65

Technologies of freedom
KF2750 .P6601983

Understanding the First Amendment
KF 4770 .W43 2006

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Constitutional Court Review
Constitutional Commentary
Constitutional Forum
Constitutional Review
First Amendment Law Review
First Amendment Studies

Overdrive

Principals of Constitutional Law

Westlaw (only available in the library)
Freedom of Speech in the Public Workplace
OJur (Freedom of Religion, Speech & Press
Smolla & Nimmer on Freedom of Speech
William & Mary Bill of Rights Journal
The First Amendment: Freedom of Speech
Columbia Journal of Law & the Arts
First Amendment Law Review



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August 17: You and the Legal System: The Importance of Wills

September 28: CLE: Cutting Edge Nevada Wills. Are They or Any Electronic Wills Enforceable in Ohio?

October 26: CLE: Stress and the Legal Profession



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