

MR. JUSTICE BRENNAN, concurring:

I join ~~fully~~ in the Court's opinion in these cases, and
I write merely to emphasize ~~my understanding~~ that the Court
has not, as ^{the} dissents ~~would~~ suggest, ^{claimed no room for other} imposed a mandatory system
~~for protection of the privilege upon the States. As the Court~~
~~of the privilege, for the Court expressly states,~~
states, "It is impossible for us to foresee the potential
alternatives for protecting the privilege which might be de-
vised by Congress or the States in the exercise of their
creative rule-making capacities. Therefore, we cannot say that
the Constitution necessarily requires adherence to any particu-
lar solution for the inherent compulsions of the interrogation
process as it is presently conducted." Ante at p. 29. It is
certainly true, as Justice ^{Mr. Justice Harlan} ~~Harlan~~ aptly states, that the
rules we have found necessary in lieu of such creative action
~~leave open~~ ^{are not adequate safeguards against} the possibility of prevarication by the police,
as to whether warnings have been ^{/whether waivers have been} given or not, or ~~warnings~~ re-
ceived. ~~xx~~ Through ~~the~~ Federal Rule of Criminal Procedure 5(a) and the
exercise of our supervisory authority over federal courts, the
Court has found it possible to ^{fashion a prophylactic rule designed to} escape the "evil potentialities"
of ~~xx~~ a contest over such issues in federal criminal prosecu-
tions. See Mallory v. United States, 354 U.S. 449, 456-457~~xx~~.
That avenue is ^{not open to this Court in its review of} ~~Such means may not be available to this Court when it deals with~~
convictions in State courts. ^{But nothing we hold to-day prevents} ~~But if the States can devise~~
~~appropriately prophylactic means of~~ ^{the States from devising or applying similar} avoiding the dangers of
~~for~~

interrogation ^{while} and at the same time eliminating ^e the possibility
of such ~~unreliable~~ ^{contests of veracity}
of swearing contests between the police and the accused.

~~certainly nothing we say today prevents them from doing so.~~

~~It is appropriate to note that ^{many} the voices today raised in
alarm have been heard, not only upon this occasion, but on
many ~~many~~ occasions in recent memory -- whether before or after
our decision in Malloy v. Hogan, supra -- when this Court has
applied and enforced the ~~Fifth Amendment's~~ sweeping principles
embodied in the privilege. See, e.g., Culombe v. Connecticut,
367 U.S. 568, 642; Gallegos v. Colorado, 370 U.S. 49, 55;
Haynes v. Washington, 373 U.S. 503, 520.~~