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Miranda v. Arizona

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384 U.S. 436 (1966), argued 28 Feb. 1966, decided 13 June 1966 by vote of 5 to 4; Warren for the Court, Clark, Harlan, White, and Stewart in dissent. The Warren Court's revolution in American criminal procedure reached its high point (or, depending upon one's perspective, its low point) on 13 June 1966. That day the Court handed down its opinion in *Miranda*, the most famous, and most bitterly criticized, confession case in the nation's history. To some, *Miranda* symbolized the legal system's determination to treat even the lowliest and most despicable criminal suspect with dignity and respect. But to others, especially those who attributed rising crime rates to the softness of judges, the case became a target of abuse.

Background.

Prior to the decision in *Miranda*, the admissibility of a confession in a state criminal case was governed by the due process "voluntariness" or "totality of the circumstances" test. Under this approach, the courts decided on a case-by-case basis whether the will of the person who confessed had been "broken" or "overborne" or whether the confession had been "voluntary." But it soon became clear that these terms were not being used as tools of analysis, but as mere conclusions. When a court concluded that the "totality" of a suspect's treatment had not been too bad (e.g., although the police had exerted considerable pressure and used some trickery, they had given the suspect a sandwich and permitted him to have a normal night's sleep), it called the resulting confession "voluntary." On the other hand, when a court concluded that the police methods were too offensive or too heavy-handed (considering such factors as the suspect's youth, poor education, or low intelligence), it labeled the resulting confession "involuntary" or "coerced."

The vagueness and unpredictability of the "voluntariness" test, its application (or manipulation) by lower courts so as to validate confessions of doubtful constitutionality, and the inability of the Supreme Court, because of its heavy workload, to review more than one or two state confession cases a year, led a growing number of the justices to search for a more meaningful and more manageable alternative approach. *Miranda* was the culmination of these efforts.

Facts of the Case.

Ernesto Miranda, an indigent twenty-three-year-old who had not completed the ninth grade, was arrested at his home and taken directly to a Phoenix, Arizona, police station. There, after being identified by the victim of a rape- kidnapping, he was taken to an "interrogation room," where he was questioned about the crimes. At first, Miranda maintained his innocence, but after two hours of questioning, the police emerged from the room with a signed written confession of guilt. At his trial, the written confession was admitted into evidence and Miranda was found guilty of kidnapping and rape.

Whether Miranda had been told that anything he said could be used against him was unclear. But the police admitted—and this was to prove fatal for the prosecution—that neither before nor during the questioning had Miranda been advised of his right to consult with an attorney before answering any questions or his right to have an attorney present during the interrogation.

Miranda's confession plainly would have been admissible under the "voluntariness" test. His questioning had been quite mild compared to the objectionable police methods that had rendered a resulting confession "involuntary" or "coerced" in previous cases. But the confession was obtained from Miranda under circumstances that did not satisfy the new constitutional standards the Court was to promulgate in this very case.

A remarkable feature of the American history of confessions law is that until the mid-1960s the privilege against self-incrimination (the Fifth Amendment provision that no person "shall be compelled … to be a witness against himself") did not apply to the proceedings in the interrogation room or to in-custody police interrogation.

One reason for this situation was that the privilege was not deemed applicable to the states until 1964 and by that time a large body of law pertaining to "involuntary" or "coerced" state confessions had developed. Moreover, and more important, the prevailing pre-*Miranda* view was that "compelling" someone to testify against himself meant *legal* compulsion. Since a suspect was threatened neither with perjury for testifying falsely nor contempt for refusing to testify at all, it could not be said, ran the argument, that a person undergoing police interrogation was being "compelled" to be "a witness against himself" within the meaning of the privilege—even though under such circumstances a person is likely to assume or to be led by the police to believe that there are legal (or extralegal) sanctions for "refusing to cooperate." Since the police had no lawful authority to make a suspect answer their questions (although, prior to *Miranda*, the police did not have to tell a person that), there was no legal obligation to answer to which a privilege in the technical sense could apply.

Although this reasoning seems quite strained, it prevailed as long as it did probably because of a widely held view that questioning a suspect without advising him of his rights was "indispensable" to law enforcement work. Moreover, the invisibility of police interrogation made it easy for society to be complacent about what really took place in the interrogation room.

On the eve of *Miranda*, however, there was reason to think that the self-incrimination clause would finally apply to the police station. In *Malloy* v. *Hogan* (1964), which did not involve a confession, the Court not only held the privilege against self-incrimination fully applicable to the states but stated by way of dictum that the admissibility of a confession in a state or federal court should be controlled by the Fifth Amendment privilege. The confession rules and the privilege had become intertwined in *Malloy*—and they would be fused in *Miranda*.

Decision.

There are three parts to the *Miranda* decision:

1. The Fifth Amendment privilege is available outside of court proceedings and other formal proceedings and serves to protect persons in all settings from being compelled to incriminate themselves. Thus, the privilege applies to informal

compulsion exerted by law enforcement officers during “custodial interrogation,” that is, questioning initiated by the police after a person has been taken into custody.

2. “An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described in the [standard police interrogation manuals] cannot be otherwise than under compulsion to speak” (p. 461). Because the custodial interrogation environment “carries its own badge of intimidation” that is “at odds” with the privilege, “[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings,” no statement obtained from a person under these circumstances is admissible (pp. 457–458).

3. The Constitution does not require adherence to any particular system for dispelling the coercion of custodial interrogation. However, unless the government utilizes other procedures that are at least as effective, in order for a statement to be admissible a suspect must be given the now familiar four-fold *Miranda* warning (set forth below) before being subjected to custodial interrogation and must effectively waive his rights before any questioning.

According to *Miranda*, advising a suspect that he has a right to remain silent and that anything he says can be used against him is not sufficient to assure that the suspect's right to choose between silence and speech will remain unfettered throughout the interrogation process. Therefore, a suspect must also be told of his right to counsel, either retained or (if he is indigent) appointed.

Although the warnings need not be given in the exact form described in the *Miranda* opinion—indeed, they are not described exactly the same way throughout the opinion—the substance of each of the following four warnings must be effectively given:

(1) you have the right to remain silent; **(2)** anything you say can and will be used against you; **(3)** you have the right to talk to a lawyer before being questioned and to have him present when you are being questioned; and **(4)** if you cannot afford a lawyer, one will be provided for you before any questioning if you so desire.

Miranda has been widely criticized as a case that tilted the balance heavily in favor of criminal suspects. However, as the Court recently noted in *Moran* v. *Burbine* (1986), the decision “embodies a carefully crafted balance designed to fully protect *both* the defendant's and society's interests” (p. 433, n. 4).

Miranda does not require that a person taken into custody first consult with a lawyer or actually have a lawyer present in order for his waiver of constitutional rights to be valid. The decision's weakness (or saving grace, depending upon one's viewpoint) is that it permits someone subjected to the inherent pressures of police custody to “waive” his rights without actually obtaining the guidance of counsel. That waiver, at least in theory, must be “knowing” and “voluntary.”

Miranda allows the police to conduct “general-on-the-scene questioning” without providing the warnings. It also allows the police to interview a suspect in his home or office without advising him of his rights, provided the questioning takes place in a context that does not restrict the person's freedom to terminate the meeting.

Moreover, *Miranda* leaves the police free to hear and act upon “volunteered” statements even though the “volunteer” has been taken into custody and neither knows nor is informed of his rights. “Custody” alone does not call for the *Miranda* warnings. It is the impact on the suspect of the interplay between police interrogation and police custody that makes “custodial police interrogation” so corrosive and calls for “adequate protective devices” (*Illinois* v. *Perkins*, 1990).

Even when warnings and the waiver of rights are required, *Miranda* permits the police to give the warnings and to obtain waivers without the presence of any disinterested observer and without any tape recording of the proceedings. (This is so even when a tape recording is readily available.)

Whether the promptings of conscience or the desire to get the matter over with usually override the impact of the warnings, or whether the police too often mumble or undermine the warnings, almost all empirical studies indicate that in the quarter

century since *Miranda* was decided custodial suspects have continued to make incriminating statements with great frequency. This might not have been the case if a tape recording of police warnings and the suspect's response were required whenever feasible. There is little doubt that it would not have been the case if *Miranda* had required that a suspect first consult with a lawyer or actually have a lawyer present in order for his waiver of rights to be effective.

Future of Miranda.

For supporters of *Miranda*, an ominous note was struck in *Michigan* v. *Tucker* (1974), where the Court, speaking through Justice William Rehnquist, viewed the *Miranda* warnings as "not themselves rights protected by the Constitution," but only "prophylactic standards" designed to "safeguard" or to "provide practical reinforcement" for the privilege against self-incrimination (p. 444). A decade later, first in *New York* v. *Quarles* (1984), recognizing a "public safety" exception to *Miranda*, and then in *Oregon* v. *Elstad* (1985), indicating that the prosecution may make considerable derivative use of *Miranda* violations, the Court reiterated *Tucker*'s way of looking at, and thinking about, *Miranda*. Both *Quarles* and *Elstad* underscored the distinction between statements that are actually "coerced" or "compelled" and those obtained merely in violation of *Miranda*'s "prophylactic rules."

Since the Supreme Court has no supervisory power over state criminal justice and if *Miranda* violations are not constitutional violations, where did the Warren Court get the authority to impose the new confession doctrine on the states? If a confession obtained in violation of *Miranda* does not violate the self-incrimination clause unless "actually coerced," why are the states not free to admit all confessions not the product of actual coercion? *Tucker* and its progeny thus may have prepared the way for the eventual overruling of *Miranda*.

Nevertheless, it would be surprising if the Court did overrule *Miranda*. The Court is well aware of *Miranda*'s rather limited scope—indeed, a number of commentators have forcefully argued that it does not go far enough. The Court is also cognizant of the many studies indicating that the decision has had no significant adverse impact on law enforcement. Despite their initial reaction of dismay, the police seem to have adjusted to *Miranda* fairly well. Under these circumstances, the Court is probably willing to "live with" a case that has become part of the American culture, especially if it continues to view it as a serious effort to strike a proper balance between the need for police questioning and the need to protect a suspect against impermissible police pressure.

Liva Baker, *Miranda: Crime, Law and Politics* (1983).

Gerald Caplan, "*Questioning Miranda,*" *Vanderbilt Law Review* 38 (November 1985): 1417–1476.

Yale Kamisar, *Police Interrogation and Confessions* (1980).

Stephen Schulhofer, "*Reconsidering Miranda,*" *University of Chicago Law Review* 54 (Spring 1987): 435–461.

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