

## The Constitutional Right of Defendant (Miranda Right “Warnings”) in the Point of View of the U.S. Supreme Court

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### ABSTRACT

Ernesto Miranda was arrested at his home and taken to the police station in phoenix, Arizona, where he was interrogated by two police officers for two hours. He was not advised of his right to remain silent or his right to attorney. Miranda signed a written confession, and was later convicted of kidnapping and rape. He appealed his conviction to the U.S. Supreme Court. The Supreme Court was asked to decide whether statements by suspects during custodial interrogation, where the suspect was not advised of his right to remain silent or to have any attorney, are admissible in court. The court held that the evidence was not admissible, and that Miranda was therefore entitled to a new trial. Ernesto Miranda was later retried for the same offense without using his confession, and was reconvicted on other evidence. The police gave his alleged assailant, an illegal alien; the proper Miranda rights (warnings).

The case of *Miranda v. Arizona*, 384 U.S. 486, 1966, is the best known and perhaps the most significant case ever decided by the U.S. Supreme Court in the area of criminal procedure.

### INTRODUCTION

Rights of defendants are powers and privileges, which are constitutionally guaranteed to every defendant.

At the time of arraignment a defendant is typically informed of at least the following: the right to remain silent; the right of a court to appoint an attorney, if the defendant does not have the financial means to privately retain an attorney; the right to release on reasonable bail; the right to a speedy public trial before a jury or a judge; the right to the process of the court to subpoena and produce witnesses in the defendant's own behalf and to see, hear and question the witnesses appearing before the defendant; the right not to incriminate himself or herself (Dictionary of Criminal Justice Terms, 1990).

“you have the right to remain silent”.

“you have the right to a lawyer”.

“if you can not afford a lawyer, one will be provided for you”.

“Anything you say can be used against you.”

This police ritual can be witnessed almost every night

on prime-time television. Invariably, the information is delivered in a perfunctory manner; the detective reads from the “Miranda card” in a monotone. These Miranda warnings are the most controversial part of the Supreme Courts revolution in criminal justice.

Responding to criticisms that police procedures were unfair and that the police were not adhering to the procedural requirements of the law, the Supreme Court imposed additional restrictions on police investigative techniques, such as searches, interrogations and lineups.

The court's decisions produced extensive national controversy. Based on *Miranda* and similar cases, trial judges sometimes rule that otherwise valid evidence can not be admitted at trial (Neubauer, 1996).

The right to consult with an attorney during interrogation was first set out by the U.S. Supreme Court in its opinion in *Escobedo V. Illinois* (1964); see Adams (1075: 287).

It was later included in the full set of admonitions, which were set out in the opinion in *Miranda V. Arizona* (1966) (Adams, 1975).

Issues relating to these rights continue to be subject to judicial review and ruling (Dictionary of Criminal Justice Terms, 1990).

This study is divided into the following:

I. Definition of Miranda rights.

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- II. Inclusion of Miranda rights.
- III. Form of Miranda warnings (rights).
- IV. Miranda's application of the U.S. Supreme Court.
- V. Stage at which Miranda warnings must be given.
- VI. Denial of the right (Miranda warnings).
- VII. Situations in which no warnings are required.
- VIII. Burden of proof Miranda rights.
- IX. The focus of investigation.
- X. The exclusionary rule as a result of Miranda reason.
- XI. Effect of Miranda rule on the voluntariness rule.
- XII. Conclusion.

### I. Definition of Miranda Rights

Miranda rights are the set of rights which a person accused or suspected of having committed a specific offense has during interrogation and of which he or she must be informed prior to questioning, as stated by the U.S. Supreme Court in deciding *Miranda V. Arizona* and related cases (Neubauer, 1966).

The act of informing a person of his Miranda rights is often called "admonition of rights" or "admonishment of rights".

The information is called the "Miranda Warning." (Dictionary of Criminal Justice Terms, 1990).

The decision of a person to waive these rights and to give information, or the signed statement recording such decision, is often called "admonition and waiver." (Dictionary of Criminal Justice Terms, 1990).

### II. Inclusion of Miranda Rights

As we said in an attempt at greater precision, the U.S. Supreme Court adopted specific procedures for (American) police interrogations. If the police officer does not have to or does not want to ask questions of the suspect (as in cases of arrest by warrant), there is no need to give the Miranda warnings. The magistrate will give these warnings during the initial appearance of the accused. However, where the police officer wants to ask questions of the arrested person before the initial appearance with the magistrate, he must give the Miranda warning (Del Carmen, 1978); i.e., the police are required to tell the suspect:

- a) He or she has the right to remain silent.
- b) Any statement he/she makes may be used in court against him/her in a court of law.
- c) He/she has the right to an attorney present during questioning.
- d) If he/she can not afford to hire an attorney, he/she has

- e) the right to have an attorney provided free of charge.
- e) If he/she waives the above rights and chooses to give information, he/she has the right to refuse further information at any point in questioning.

There are variations in wording among the different states. Most U.S. jurisdictions add the following warning: "you have the right to terminate this interview at any time". However, this additional statement is not required in order to make the evidence obtained admissible (Del Carmen, 1978).

### III. Form of Miranda Warnings (Rights)

The information "Miranda warnings" may be provided orally, that is to say, these rights are read to a suspect when he or she is questioned or arrested, and at other steps in proceedings, (Dictionary of Criminal Justice Terms, 1990) or in a written statement or both.

The police are usually able to obtain the defendant's signature on the Miranda warnings form, which indicates compliance (Neubauer, 1996).

Many (American) jurisdictions now require a statement, signed by the person to be interrogated, that he or she has heard and understood these rights (Dictionary of Justice Terms, 1990).

Figure 1 provides an example of the form police departments use to comply with the decision.

**Figure 1:**

<p><b>Metropolitan Police Department warnings as to your rights</b></p> <p>You are under arrest. Before we ask you any questions, you must understand what your rights are.</p> <p>You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.</p> <p>You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.</p> <p>If you can not afford a lawyer and want one, a lawyer will be provided for you.</p> <p>If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.</p> <p><b>Waiver</b></p> <p>1- Have you read or had read to you the warnings as your rights? -----</p> <p>2- Do you understand these rights? -----</p>
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3-	Do you wish to answer questions? -----
4-	Are you willing to answer questions without having an attorney present? -----
5-	Signature of defendant on line below. -----
6-	Time ----- Date -----
7-	Signature of officer -----
8-	Signature of witness -----

**Figure 1: Example of a form used by police for all interrogations. Similar forms are used throughout the United States (Washington D.C., U.S. Government Printing Office, 1975).**

#### IV. Miranda's Application of the U.S. Supreme Court

Americans have paid thorough attention to the U.S. Supreme Court, but they have tended to overlook state supreme courts. In recent years, scholars have sought to remedy this oversight, focusing on the significant role state courts of last resort play in governmental policymaking. Application of U.S. Supreme Court decisions is one way in which state supreme courts participate in policymaking. Although in theory federal law, supreme is over the conflicting state law, practice state supreme courts do not invariably follow authoritative pronouncement of the nation's highest court (Tarr, 1982; cited in Neubauer). State supreme courts may erode constitutional standards adopted by the nation's highest court. This clearly occurred in the area of police interrogations, with most state supreme courts carving out exceptions to Miranda (Gruhl, 1981).

The U.S. Supreme Court under the leadership of chief justice Burger limited Miranda's application by carving out exceptions. For example, Z was arrested for certain robberies and given proper Miranda warnings, after which he declined to discuss the robberies and police investigation stopped. Two hours later, Z was given a second Miranda warning and was interrogated about an unrelated murder. During this investigation, Z made incriminating statements about the second crime. The U.S. Supreme Court held that Z's statements were admissible, since his prior invocation of the Miranda rights applied only to the first unrelated interrogation (Mosley, 1975).

Another example, in *Harris V. New York* (401 U.S. S.C. reports: 222 (1971)), the court held that voluntary statements made by the defendants who had not been properly warned of their constitutional rights could be

used during trial to impeach their credibility when they took the witness stand in their own defense and contradicted the earlier statements.

Similarly, in *New York V. Quarles* (467 U.S. S.C.:649 (1984)), justice Rehnquist found that overriding considerations on the public security justify the police officer's failure to provide Miranda warnings before asking questions about the location of a weapon apparently abandoned just before arrest. The Rehnquist Court has likewise moved to narrow the Miranda application protections. The police have been allowed to use some deceit in getting confessions in jail. A law enforcement officer can pose as a prison inmate and elicit a confession from an actual inmate even though the officer gives no Miranda warnings about the inmate's constitutional rights (110 L.S.C. reports, 1990: 243).

The court also refused to extend Miranda to drunk drivers. Police officers may ask suspect "drunken drivers" routine questions and videotape their answers without warn them of their rights (110 L.S.C. reports, 1990:528). Moreover, altered warnings have been upheld. Advising a suspect that counsel could be appointed only "if he goes to court" does not render Miranda warnings inadequate (106 L.S.C. reports 1990:166). And perhaps most for reading of all, a badly divided court held that a coerced confession does not automatically overturn a conviction (S.C. reports, 1990:1189).

However, the Rehnquist court is not always unsympathetic to the plight of criminal defendants. One 6-to-2 decision seemed to take Miranda protections a step further. The court overturned a capital murder conviction, holding that once a suspect has invoked his or her right to counsel, police may not resume interrogation without the suspect having his or her attorney present (L.S.C. reports, 1990: 489).

Some experts say that the decision coming after years in which the Reagan and Bush administrations urged the dismantling of various protections for criminal defendants send an unmistakable signal that the court regards questions about those protections as settled and the protections themselves as unshakable (London, 1990; cited in Neubauer).

Conservative columnist George will agrees writing that the decision indicates that the Miranda decision a target of conservative criticism has become constitutionally uncontroversial.

To liberal law professor Laurence Tribe, the decision's "greatest" significance may be that it defeats

predictions in some quarters that a conservative majority would roll back the protection of the Warren and Burger court.” (Neubauer, 1996: 346-347).

Miranda was a controversial five-to-four decision, with chief justice Warren writing the majority opinion. In his biography of Earl Warren, entitled chief justice, Ed Cray writes about Miranda: the outcry from police was immediate, and predictable. Speaking for departments large and small, Henry C. Ashley, chief of the Garland, Texas police department, grumbled, “we might as well close up shop.” William C. Ransdell, the public prosecutor in Raleigh, North Carolina, scored the high court as “so detached from reality that they cannot possibly make a decision in the matter”. The California Highway patrolman tagged Miranda as one of “the Judicial rules that are making law a shield for the criminal...” (Johnston, 1999: 31-32).

#### V. Stage at Which Miranda Warnings Must Be Given

A very important question for the police is: “At what point should the Miranda warnings be given?” the quick answer is, “whenever there is custodial interrogation.” But what constitutes custodial interrogation?

To avoid confusion, simply remember that custodial interrogation, for purposes of the Miranda warnings, covers two general situations.

- (1) When the person is under arrest: If the elements of arrest; i.e., intent, authority, and understanding are present, there is an arrest and Miranda warnings must be given.
- (2) When a person is not under arrest but is deprived of his freedom in any significant way: this is more difficult to determine and is best analyzed in terms of specific instances.

(a) Questioning at the scene of the crime: Here, a distinction must be made between “general on-the-scene questioning” and questioning after the police officer has “focused” on the individual. General on-the-scene questioning for the purpose of gathering information which might enable the police to identify the criminal does not require the Miranda warnings.<sup>(i)</sup> But questioning after the police officer has “focused” on a particular suspect needs the Miranda warnings, even if the questioning takes place at the scene of the crime.<sup>(ii)</sup>

(b) Questioning at the police station: police questioning at the station house generally requires Miranda warnings.<sup>(iii)</sup> Unless there is a “volunteered” statement; i.e., one given spontaneously and not in

response to police questions.<sup>(iv)</sup>

(c) Questioning in police cars: such questioning generally requires Miranda warnings because of its custodial nature and coercive atmosphere.

(d) Questioning in homes: whether or not Miranda warnings must precede questioning in a suspect’s home depends upon the circumstances in each case. The U.S. Supreme Court has held that the questioning of a suspect in his bedroom by four police officers at four o’clock in the morning needed the Miranda warnings (394 U.S.S.C. reports, 1969: 324). On the other hand, the court has held that statements obtained by Internal Revenue Service agents during a non-custodial, non-coercive interview with a taxpayer under criminal tax investigation, conducted in a private home where the taxpayer occasionally stayed, did not need the Miranda warnings as long as the taxpayer had been told that he was free to leave (96 S.C. reports, 1976: 1612).

(e) Questioning where the defendant is in custody on another offense: Miranda warnings must be given in connection with this type of questioning<sup>(v)</sup>.

#### VI. Denial of the Right (Miranda Warnings)

The initial factor most likely to invalidate a confession is the denial of basic legal rights to an accused person. Unless a police interrogator can state from the witness stand the defendant was in fact warned of his right to remain silent, warned that if he did respond to questions such answers might be used in court against him upon his trial, and told of his right to consult an attorney before he responded to questions, the prosecutor is structuring his case as a week groundwork. The counsel for the defense may enter a motion to suppress a confession that might otherwise be admissible and might contain many legally significant facts (Weston and Wells, 1977: 57).

Some of the cases illustrating this point and have further clarified the scope of the Miranda decision:

**A) Escobedo V. Illinois (1964).** On the night of January 19, 1960, Danny Escobedo’s brother-in-law was fatally shot at 2: 30 a.m. That morning, Escobedo was arrested for murder without a warrant and interrogated for approximately 15 hours. During that time he made no statement and was released at 5 p.m. only after his attorney had obtained a writ of habeas corpus from the state courts. On January 30, 1960, 11 days after the fatal shooting, Escobedo was arrested a second time at about 8:00 and taken into the police station for interrogation.

Shortly after he arrived at police headquarters, his lawyer arrived but the police did not permit the attorney to see his client. The attorney repeatedly requested to see his client and, at the same time, Escobedo repeated but unsuccessful requested to see his lawyer. The police told Escobedo that his lawyer didn't want to see him and that they would not allow him to see his attorney until they were finished interrogating him. It was during this second interrogation that Escobedo made certain incriminating statements that were used against him when he was convicted in the state courts for his involvement in his brother-in-law's murder (Pursley, 1980: 175-176). The defense raised the issue at trial and before the U.S. Supreme Court that the interrogation stage was a "critical stage" in Escobedo's case and that he had been denied the right to counsel under the Sixth Amendment of the U.S. Constitution<sup>(vi)</sup>.

The defense further argued that since Escobedo was denied his right to counsel under the Sixth Amendment, his incriminating statements should have been suppressed and should not have been used against him.

The decision reads, in part "the simple and the peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. Thus the legitimate use grows into the unjust abuse. Ultimately, the innocent are jeopardized by the encroachment of a bad system". So, the court held that this denied Escobedo's right to counsel, and that no statement taken during the interrogation be admitted against him at trial (Del Carmen, 1978:57).

This is the landmark case in which failure of police interrogators to warn the petitioner of his constitution right to counsel and to silence invalidated the results of police diligence and skill. The court's comment indicates that today's test of the voluntariness of a confession must start with an affirmative notice that an accused person has a right to legal advice before he answers any questions; in fact he does not have to respond to police questioning at all if the investigation is no longer a neutral inquiry based on the duty of police to inquire about the facts of an unsolved crime.

**B) People V. Dordo (1965)** (62 California Supreme Court Reports: 338). This California decision clarifies the duty of police officer to warn a person of his constitutional rights to counsel and to silence. The court noted: "once the investigation has focused on defendant, any incriminating statements given by him during interrogation by the investigating officers became

inadmissible in the absence of counsel and by the failure of the officer to advise the defendant of his rights to an attorney and his right to remain silent. The constitutional right to counsel does not arise from the request for counsel, but from the advent of the accusatory stage itself".

**C) Miranda V. Arizona (1966)**. On June 13, 1966 the U.S. Supreme Court spelled in detail the doctrine of Escobedo in four related cases in which Miranda is the reference case. The decision was similar to the California supreme court's holding in Dorado but introduced a new term: custodial interrogation.

On the evening of march 3,1963, an 18-year- old girl was abducted and forcibly raped in Phoenix. Ten days later, Miranda was arrested at his home by Phoenix police and taken to police headquarters where he was put into a police lineup. There he was immediately identified by the victim and within a 2-hour period signed a confession, admitting that he had seized the girl and raped her. At his trial, it was brought out in cross-examination by the defense counsel that Miranda had not been advised before his interrogation of his right to counsel and to have counsel present during the interrogation (Pursley, 1980:176).

The court's holding in Miranda is briefly: "the prosecution may not use the 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". These safeguards, according to the wording of this decision, are: "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 use as evidence against him and that he has the right to the presence of an attorney, either retained or appointed (Plano and Greenberg, 1967: 83-84). The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently, but the prosecution bears a "heavy burden" in proving a valid waiver (Del Carmen, 1978: 58).

If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. If the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." (Weston et al., 1977: 70).

However, in regard to this waiver by the accused person, the courts decision established the following prerequisites:

(1) An individual need not make a preinterrogation request for a lawyer. "While such request affirmatively secure his right to have one, his failure to ask for a lawyer does not constitute a waiver".

(2) A valid waiver will not be presumed simply from the fact that a confession was in fact eventually obtained.

(3) The fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights.

(4) Any evidence that the accused was threatened, tricked or cajoled into a waiver will ("of course") show that the defendant did not voluntarily waive his privilege.

The question of when an in-custody interrogation is admissible upon trial is spelled out in *Miranda*. The majority opinion notes that the court has always set high standards of proof for the waiver of the constitutional rights, and state: "reassert these standards as applied to in-custody interrogation". "Specially, the wording of the decision notes that a heavy burden rests on "the people" to demonstrate that the defendant knowingly and intelligently waived is privilege against self-incrimination and his right to retained or appointed counsel", and adds: "Since the state is responsible for establishing the isolated circumstance under which the interrogation takes place and has the only means of making available corroborated evidence of warning given during incommunicado interrogation, the burden is rightfully on its shoulders". Most police departments have a written waiver form which suspects are asked to sign. This written waiver is usually part of the written confession (either before or after the statement by the accused), or is attached to it. If witnesses to the waiver are available (police officers, other police personnel, or private persons), they should be asked to sign the waiver to strengthen the showing of a voluntary waiver. If the confession is type-written, the defendant should be required to read it and to correct any errors in his own handwriting<sup>(vii)</sup> (Del Carmen, 1978:59).

The majority opinion in this case contains a strange euphemism for the effect of this decision upon police interrogation: "the presence of counsel at the interrogation may serve several significant subsidiary functions as well." While it is true that the subsidiary functions mentioned in this decision might enhance the value of confession as evidence, it is equally true that the court is aware that a competent attorney generally advises his client not to talk to the police, and that the effect of this decision is to reject the use of interrogation as a

police procedure.

**D) Harris V. New York (1971)** (401 U.S. Supreme Court Reports: 222). This case affirmed the principles in *Miranda V. Arizona* that a confession, admission, or statement against interests would not be admissible when the suspect had been advised of his right to an attorney and his rights to remain silent, unless he had made an intelligent waiver. However, the court affirmed the use of confession, which violated the *Miranda* rules, after the defendant testified in his own case to details different from those in his initial police confessions. The court said: "the shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense free from the risk of confrontation with a prior inconsistent utterance." (Weston et al., 1977: 58-60).

While the confession of an accused who was not properly given the *Miranda* warnings is not admissible as part of the prosecution's case, it can be used by the prosecution to impeach testimony of the accused at trial provided that the earlier statement was otherwise voluntary and trustworthy<sup>(viii)</sup>.

The *Miranda* warnings need not to be given in the following situations:

- (1) "General on-the-scene questioning" before the police have focused on a particular suspect.
- (2) "Volunteered confessions" meaning spontaneous confessions or statements made without any interrogation. That the person is not under arrest, gives a confession, and leaves without hindrance (429 S.C. reports, 1977:10).
- (3) Statements or confessions made to private persons:

The right against self-discrimination applies only to interrogation initiated by law enforcement officers. Hence, incriminating statements made by the accused to friends or cellmates while in custody are admissible regardless of *Miranda*.

- (4) Appearance of potential criminal defendants before a grand jury: interrogation before a grand jury does not require the *Miranda* warnings, even if the prosecutor intends to charge the witness with an offense. The theory is that such interrogation does not present the same opportunities for abuse as custodial questioning by police (Del Carmen, 1978: 60-61).

### VIII. Burden of Proof *Miranda* Rights

A defense attorney who believes that his or her client was identified in a defective police lineup, gave a

confession because of improper police activity, or was subjected to an illegal search can file a motion to suppress the evidence. Most U.S. states require that such objections be made prior to trial. During the hearing on these pretrial motions, the defense attorney usually bears the burden of proving that the search was illegal or that the confession was coerced. The only exception involves an allegation that the Miranda warnings were not given (Neubauer, 1996:209), in which case the state has the burden of proof (Neubauer, 1996: 208-209).

The U.S. Supreme Court shifted the burden of proof from the defense, which previously had to prove that a confession was not "free and voluntary" to the police and prosecutor, who now must prove that they have advised the defendant of his or her constitutional rights (384 U.S.S.C. reports, 1966: 436).

Pretrial hearings on a motion to suppress evidence are best characterized as "swearing matches." As one defense attorney phrased it, "the real question in supreme court cases is what's going on at the police station". Seldom is there unbiased, independent evidence of what happened.

The only witnesses are the participant-police and defendant-and, not surprisingly, they give different version. As James Vorenberg notes Miranda "just moves the battle ground from the voluntariness of the waiver ... the police have done pretty well with these swearing contests over the years." (Cipes, 1966: 55; cited in Neubauer: 209).

### **IX. The Focus of Investigation**

The focal point of an investigation of an unsolved crime occurs when police effort is concentrated on one person as a perpetrator of crime. It may not occur at the same point in each investigation. This shift in the investigation of a criminal act occurs at the point when the investigation is no longer a general inquiry into an unsolved crime, a "neutral inquiry," but has begun to focus on a particular suspect; when the police or prosecutor initiates a process of interrogation that lends itself to eliciting incriminating statements from that suspect. In *Miranda V. Arizona*, the U.S. Supreme Court states that the crucial moment when an investigation is no longer neutral involves custodial interrogation: "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."

In extensive and unusual comment in *Miranda*, the court's majority opinion cites suggested police procedures

in standard texts in support of its belief that any person in custody needs the protection of legal counsel, friends or relatives (Weston and Wells, 1977:39).

### **X. The Exclusionary Rules as a Result of Miranda Reason**

The police must often make immediate decisions about searching or interrogating a suspect. In street arrests, officers do not have time to consult an attorney about the complex and constantly evolving law governing these areas. These on-the-spot decisions may later be challenged in court as violations of suspects, constitutional rights. Even though the exclusionary rule is directed at the police, its actual enforcement occurs in the court, particularly the trial courts (Neubauer, 1996: 208).

Assessing how many convictions are lost because of the exclusionary rule is difficult. Case attrition occurs at numerous stages of the proceedings and for various reasons. Several studies shed considerable light on the topic. Exclusionary rules can lead to the freeing of apparently guilty defendants during prosecutorial screening. Prosecutors may refuse to file charges because of a search-and-seizure problem, a tainted confession, or a defective police lineup. However, this occurs very infrequently. A study of seven U.S. communities reports that an average of 2.0 percent of the case rejections by U.S. attorneys were for Miranda reasons (Bonald et al., 1982; cited in Neubauer). The most controversial study analyzed 86,033 felony cases rejected for prosecution in California.

The National Institute of Justice (NIJ) report found that 4,130 (4.8 percent) were rejected for search and seizure reasons. The NIJ conclusion that these figures indicate a "major impact of the exclusionary rules" has been challenged as misleading and exaggerated (Davies, 1983: 611-690). Indeed, compared to lack of evidence and witness problems, *Miranda* is a minor source of case attrition. Examining case attrition data from California, Davies calculated that only 0.8 percent (8 out of a 1,000) arrests were rejected because of *Miranda*. A special panel of the American Bar Association has likewise concluded that constitutional prosecutions of the rights of criminal defendants do not significantly handicap police and persecutors in their efforts to arrest, prosecute and obtain convictions for the most serious crimes. Although many people blame the failures of the criminal justice system on judges' concern for defendants' rights, the blame is misplaced. The main problem is that the criminal justice system is stretched too thin (Neubauer, 1996: 213).

### **XI. Effect of Miranda Rule on the Voluntariness Rule**

In the *Miranda* case, the U.S. Supreme Court went beyond the “voluntariness” test; i.e., “is the confession voluntary?” and applied a formalistic standard; i.e., Were the four *Miranda* warnings given? to determine admissibility. Thus, even if the statement or confession is voluntary, the evidence must be excluded if the police fail to give the *Miranda* warnings. However, even if *Miranda* warnings were given, a defendant can still challenge any confession or incriminating statement made to the police on the ground that it was involuntary of course, the fact that he was given the *Miranda* warnings is relevant in determining voluntariness, for example, the police give John his *Miranda* warnings, but then force him to give a confession by questioning him continuously for 36 hours. John’s confession would undoubtedly be excluded at trial on the ground that it was not voluntary even though he had been given the *Miranda* warnings. In sum, confessions or incriminating statements are admissible only if they are voluntary and if the *Miranda* warnings have been given (Del Carmen, 1978: 61-62).

### **XII. Conclusion**

The significance of the *Miranda* case is followed the highly controversial 1964 decision of *Escobedo v. Illinois*, 378 U.S. 478, which held that when an investigation begins to focus upon an accused, the police must inform him of his rights to remain silent and honor his request to consult counsel. The *Miranda* case extended these rights to all accused persons. Police officials generally opposed the rulings as did many citizens who saw them as stumbling blocks to adequate law enforcement. Support came from those who agreed with the court that criminal law enforcement is more reliable when based on independently secured evidence rather than confessions secured through prolonged interrogation in the absence of counsel (Plano and Greenberg, 1999: 84; Johnston, 1999: 31).

The rule of *Miranda* applies to the admissibility in court of a person’s statements made during a custodial police interrogation, which means a questioning session during which the subject being questioned was the suspect of a criminal case and the investigation had focused on him at the time.

The U.S. Supreme Court ruled that the Fifth and the Sixth Amendments shall directly be applied to all the states, and that the police shall comply with the rule in the case of all custodial interrogations.

Even when a confession or incriminating statement is found to be voluntary, it may still be excluded if some constitutional right of the accused has been violated in connection therewith. The U.S. Supreme Court has recognized a strong relationship between the 6<sup>th</sup> Amendment right to counsel and the 5<sup>th</sup> Amendment privilege against self-incrimination of the U.S. Constitution. Thus, when a confession is obtained from the accused at a time when he is denied his constitutional right to counsel, the confession must be excluded (Del Carmen, 1978: 57).

The subject must be advised as follows, and he must understand the meaning of what he is being told: you have the absolute right to remain silent. Any thing you say can, and will, be used against you in court. You have the right to consult with an attorney, to be represented by an attorney, and to have one present before I ask you any questions. If you cannot afford an attorney, one will be appointed to represent you before you are questioned, if you desire.

The subject may then waive these rights, and the waiver must be made “voluntarily, knowingly, and intelligently.”

(a) Waiver may not be presumed from silence after the defendant has been warned of his rights; i.e., defendant must express the waiver.

(b) The U.S. Supreme Court has not yet decided on the type of express waiver necessary-whether the suspect must openly say so, or whether waiver can be implied from the fact that he voluntarily answers questions after receiving the *Miranda* warnings. The safer practice is for the suspect to openly state that he waives his rights.

(c) Defendant can withdraw a waiver once given. If the waiver is withdrawn, the interrogation must stop. However, evidence obtained before the waiver is withdrawn is admissible in court (Del Carmen, 1978: 58-59).

The court’s rule requires that the officer proceed only after asking the subject: with these rights in mind, are you ready to talk with me about the charges against you? The subject must then reply with an oral affirmative before the officer proceeds. After the interview begins, the subject is given continued protection against himself and any statements he may make by the court’s direction: “if, however, he indicates in any manner and at any state of the process that he wishes to consult with any attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that

he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned" (Adams, 1975: 28).

There is a number of questions concerning Miranda have not yet been clearly answered by the Supreme Court. The more significant of these are:

1. If a person goes to a police station and volunteers a confession, must the police give him the Miranda warnings before asking follow-up questions?

2. Must the Miranda warnings be given to persons arrested for misdemeanor traffic and other minor offenses? Some U.S. jurisdictions say yes; others say no.

3. If a defendant refuse to sign a "waiver of rights" form, is his oral confession nevertheless valid? Most U.S jurisdictions say yes.

4. If the suspect has been warned of his rights by one detective and agrees to talk, may other detectives subsequently question him about another crime without again giving the suspect new Miranda warnings?

5. If a trial judge mistakenly admits into evidence a confession given in violation of Miranda, the conviction will be automatically reversed on appeal because of that mistake. However, the Supreme Court has not decided whether a conviction will be automatically reversed if the statement is merely an admission; i.e., a statement that is incriminatory, but less than an acknowledgment of

commission of the crime. Most jurisdictions use the "harmless error" rule which requires reversal unless the prosecution demonstrates beyond a reasonable doubt that the admission did not contribute to the conviction.

6. Are the "fruits" derived from statements obtained in violation of Miranda (known as "fruits of the poisonous tree") admissible in court even if the statement itself is not? For example, the police interrogate X, a murder suspect, without giving him the Miranda warnings. X confesses and states that the murder weapon can be found in the glove compartment of his car. The police find the murder weapon there with X's fingerprints on it. X's confession is inadmissible. But are the murder weapon and fingerprints likewise inadmissible? Lower courts have split on this issue, but the trend is to exclude such evidence.

7. What about a juvenile's capacity to understand and intelligently evaluate pretrial police advice about his or her rights (Miranda warnings)?

State courts and lower federal courts have given different and sometimes conflicting answers to the above questions on Miranda. Until The U.S. Supreme Court resolve these issues, police officers should follow the decisions of courts in their particular jurisdiction.

As a general rule, police officers are fully aware that the previously unlimited use of police surveillance is now limited by court decision in the Miranda case, which set down guidelines for surveillance when that surveillance is part of in-custody interrogation (Miranda).

#### NOTES

- (i) For example, suppose (B) has been fatally stabbed in a crowded bar. A police officer arrives and questions people at the scene of the crime to determine if anyone saw the actual stabbing. This is considered "general on-the-scene questioning" for which there is no need for a Miranda warning.
- (ii) For example, suppose (B) has been fatally stabbed in a crowded bar, the police officer arrives and sees (X) with a bloody knife in his hands. Here the suspicion of the officer will undoubtedly be "focused" on (X) and any questioning of (X) requires that the Miranda warnings be given.
- (iii) For example, the police invite a suspect to come to the police station "to answer a few questions." This type of interrogation requires the Miranda warnings because a police station lends a "coercive atmosphere" to the interrogation.
- (iv) For example, if a person enters the station and announces, "I killed a man-here is the weapon," such a statement is admissible in court because it was volunteered. Whether or not the police can then ask questions without giving the Miranda warnings has not been decided by the Supreme Court.
- (v) For example, John in jail serving a state sentence, is questioned by federal agents regarding a completely separate offense. John is entitled to Miranda

warnings even though no federal criminal charges were contemplated at the time of questioning.

- (vi) It provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense".
- (vii) In the absence of a written waiver, the issue boils down to the testimony of the suspect against the testimony of the police officer. This is why a signed, written waiver-although not required to establish voluntariness-is always good strategy on the part of the police.
- (viii) For example, Jack's confession is obtained by the

police after Jack is given the first two Miranda warnings ("you have the right to remain silent and anything you say can be used against you") but not the third and fourth warnings ("you have a right to the presence of an attorney, and if you can not afford an attorney, one will be appointed for you"). The confession, even if voluntary, cannot be introduced by the prosecution in its own case to prove Jack's guilt. However, if Jack decides to take the witness stand and testifies that he was not in town at the time of the murder, the prosecutor can then use the confession, if otherwise voluntary and trustworthy, to show that Jack had previously admitted to being in town at the time in order to impeach Jack's testimony.

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