OUR MIRANDA RIGHTS
NEED TO KNOW SERIES

All you need to know about
Miranda Rights
and
Warning.

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About this book

This book aims to inform students of constitutional law and criminal justice about the fundamental law that governs criminal justice and the first contact with law enforcement in the United States. It may also appeal to those who may have an interest in the rights of suspects in police custody when subjected to police interrogations.

The objective is to provide basic information of the Miranda Warning. It does so by discussing the underpinnings of the doctrine as it relates to our constitution and its impact on law enforcement. It concludes by exploring the debate surrounding Miranda case law, its relationship with the US Criminal Justice System and the disposition of criminal cases.

Revised and updated, 2017.

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Preface

Miranda V. Arizona: 50 Years of Judges Regulating Police Interrogation¹

Thanks to countless movies and television shows, these words evoke one of the most well-known Supreme Court decisions of all time, Miranda v. Arizona (1966). This decision famously requires the police to give specific warnings to a suspect as a condition to custodial interrogation: that the suspect has the right to remain silent; that statements by the suspect may be used in court; that the suspect may consult with a lawyer during interrogation; and that a lawyer will be provided if the suspect cannot afford one.

A controversial decision, “Miranda [nevertheless] has become embedded in routine police practice to the point where the warnings have become part of our national culture.”¹ Even a popular movie like 21 Jump Street could drop a Miranda joke about Officer Jenko’s inability to recite Miranda warnings correctly, and count on the fact that most people would know the proper language for those warnings, more or less.² “You have the right to remain an attorney.” Everybody knew Jenko dropped the ball with that line.

The nation’s cultural understanding of Miranda, however, has not always matched Miranda’s reality. For beyond the familiar Miranda warnings themselves, the Miranda rule includes other important features and limitations to address the constitutional concerns that motivated the Miranda decision. Miranda’s 50th anniversary in 2016 presents a valuable opportunity to reflect on the history, meaning, and impact of this decision.

Miranda Warning - An Introduction

Anyone familiar with certain TV shows about crime and police interrogation or who has been arrested by the police in the US would be aware of the warning known popularly as the Miranda warning. Miranda warning has become an inherent part of the police questioning procedure since it was introduced by the US Supreme Court in 1966. In its most basic format, its objective is to ensure that any improperly obtained evidence from a suspect cannot be used in a subsequent criminal trial against that suspect and to warn the suspect against giving up his constitutional rights.

This approach of this book is to enlighten and inform the reader rather than delve into the legal arguments and philosophies underpinning Miranda. That will be undertaken in a forthcoming book entitled ‘So…you’ve been arrested’ – a legal odyssey into the public’s interaction with the law in light of recent police-public fatal encounters.

¹ Brooks Holland. Insights on Law & Society Vol. 16 No. 1
What it means

This means that upon arrest and holding in police custody, the police must advise the suspect certain of his constitutional rights (and warn him of the dangers of giving them up) before they can begin to question him. If they fail to do so, any evidence they obtain during the interrogation cannot be used at trial against that suspect.

The *Miranda* warning, as used in law enforcement and criminal law, refers to a very important concept of respect for civil liberties and the adducing of evidence when suspects are held in custody and being dealt with by the police. Its requirements are so well known that the Supreme Court remarked that “*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture”.

The rationale

The doctrine of *Miranda* was established by the US Supreme Court case of *Miranda v. Arizona*.

The ruling identified certain constitutional rights which every citizen has upon being subjected to police questioning when in custody. These rights ensure that a criminal suspect in police custody must be informed of his basic constitutional rights before being interrogated.

The court reasoned, in its ruling that: “the inherently coercive setting of custodial questioning required greater protection for the defendant than the voluntariness standard provided”.

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3 384 U.S 436 (1966)
4 *Miranda* rights are applicable only to those who have been arrested and are in police custody. The court determined that to be in custody, one must either had been taken into physical custody by the police or otherwise, deprived of his freedom in any significant way. 384. U.S at 444.
6 Interrogation refers to lawful attempts by the police to obtain information from a suspect by asking him questions pertaining to the crime alleged to have been committed.
7 The test of voluntariness excluded confessions obtained from suspects after unnecessary delay in arraignment. This was dealt with by previous Supreme Court cases in the matter and by congressional action: *McNabb v. United States*, 318 U.S 332 (1943), *Mallory v. United States*, 354 U.S. 449 (1957), *Federal Criminal Procedure 5 (a)*.
Miranda warning: The scope

Miranda represents a legal doctrine of civil rights designed to protect the citizen from overzealous police action that may deprive the suspect of basic constitutional protection.

It is enforced as a rule by the courts in order to ensure that there is no abuse of process by the state. The “Miranda rule is a procedural safeguard mandated by the Supreme Court as a specific set of warnings that must be given to an individual who is in custody and subject to interrogation”.

<table>
<thead>
<tr>
<th>Note Point: The court identified three basic rights available to a suspect upon arrest as follows:</th>
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<tr>
<td>• The right to silence and the warning that anything said can be used as evidence against the suspect in a court of law</td>
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<td>• The right to have an attorney present during questioning and</td>
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<tr>
<td>• The right to have an attorney appointed if the suspect cannot afford one</td>
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To Mirandarize a suspect: When the right is read and warning given

This is what it means to Mirandarize a suspect - to read him his basic constitutional rights (with the accompanying warning on silence) by reciting the following to them, in the form of a warning, upon being arrested and put into custody:

“‘You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?’”

The Supreme Court held that the prosecution or state is not allowed to use statements stemming from custodial interrogation of the defendant unless it can show that the method used to obtain the statement did not deprive the suspect of his rights against self-incrimination.

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9 http://www.Mirandawarning.org/whatareyourMirandarights.html
Privilege against self-incrimination – Pleading the Fifth Amendment

The privilege against self-incrimination is an important constitutional provision that gives the suspect the right to decide, at any time, before or during questioning, the right to remain silent and the right to talk to a lawyer while being questioned. In other words, the suspect is protected by law from saying anything that may incriminate him.

Thus, under *Miranda*, there is no obligation to speak to the police beyond providing answers to basic questions such as name, address and date of birth.

The *Miranda* right reading and warning does not have to be in any particular format. In fact, many states have adopted their own versions but all of them contain the spirit of *Miranda* in its three basic components.

### Waiver of the right to silence

If a suspect wishes to evoke his right to silence, he must, unambiguously invoke his right (Fifth Amendment) to silence, as well other rights under *Miranda* and communicate this to the police. According to *Miranda*, the suspect must have been specifically advised of these rights.

In the recent case of *Berghuis*, the Supreme Court has refined the meaning and scope of invocation and waiver of the *Miranda* right to silence. It stated that once the warnings and rights have been read out to him, the suspect must waive his rights before making any statement that can be used at trial. Alternatively, the suspect may plead the Fifth Amendment to silence, invoke the right to have a counsel present during questioning or both. All questioning by the police must cease once the suspect invokes any of these rights.

In summary, a suspect in custody must specifically waive his rights to silence by speaking up or must directly invoke his rights to silence by some unambiguous act. His silence in the face of questioning cannot be a clear and unambiguous invocation of his rights to remain silent.

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10 *This is the act or process of petitioning for help or support.* [http://www.merriam-webster.com/dictionary/invocation](http://www.merriam-webster.com/dictionary/invocation)

11 *The act of intentionally relinquishing or abandoning a known right, claim, or privilege; also the legal instrument evidencing such an act.* [http://www.merriam-webster.com/dictionary/waiver](http://www.merriam-webster.com/dictionary/waiver)


13 *Per Justice Kennedy, delivering the 5-4 opinion of the Supreme Court in Berghuis.*
In the latest attempt by the Supreme Court to clarify the reaches and implications of the rights enshrined under the *Miranda* doctrine, the *Berghuis* court held that:

- The invocation of *Miranda* right to silence by a suspect in custody must be unambiguous. Mere silence, even for an extended period of time does not constitute an invocation of the right to silence.
- A suspect’s waiver of the rights to silence may be implied once he has been sufficiently *Mirandarized*. Merely responding to an interrogator’s questions could be considered a waiver of the right to silence (the government still has to show that the waiver was voluntary, intelligent and knowing).
- Police officers are not required to obtain a waiver of a suspect’s right to remain silent before beginning the questioning session.

**The Consequences of not Mirandizing a suspect**

If the police fail to read a suspect his *Miranda* rights and warning before questioning him following an arrest, the result is immediate (and automatic) suppression of any evidence obtained. This will have the effect of rendering whatever statements the suspect made to the police inadmissible in court. In theory, without a *Miranda* warning, nothing a person says in response to questioning while in custody can be used as evidence against him at trial. In practice, never mind what you see on TV, the reality can be quite different.

**Note Point:** A violation of *Miranda* doctrine, in itself, is not grounds for an acquittal or a reversal of conviction. Two rules have been established in appeal procedures that are followed strictly.

1. The Harmless Error Doctrine. If a suspect’s involuntary confession is used as evidence at trial but there is overwhelming evidence against the suspect negating or reducing the confession’s impact on the jury, a conviction will be reversed by the superior courts.
2. The Automatic Reversal Rule. If an involuntary confession is admitted at trial and the constitutional violation is such that the suspect never understood his rights or was never properly Mirandized, the conviction must be reversed.

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14 This is an error that does not affect a party’s substantive rights of the Case’s outcome. Black’s law Dictionary, 7th Edition, 1999. Thomson West.

15 This states that if a suspect’s involuntary confession is used as evidence at his or her trial, and it can be proved that the defendant was not properly read the Miranda Warning or did not understand the rights explicit in that warning, then the defendant’s constitutional rights have been abused and any conviction will probably be dropped. [http://www.mirandawarning.org/self-incrimination.html](http://www.mirandawarning.org/self-incrimination.html)
Custody and Interrogation

Miranda warnings must be given if two elements are present: custody and interrogation.

**Custody:**

Custody indicates arrest – the suspect is under arrest by the police. Thus, Miranda rights are applicable only to those who have been arrested and are in police custody. The Supreme Court held that to be in custody, one must either have been taken into physical custody by the police or otherwise, deprived of his freedom in any significant way.

Custody does not include other pedestrian activities such as traffic stops, crime-scene questioning or brief field interviews based on reasonable suspicion. The test for custody is an objective one. It is based on the reasonable person. Would a reasonable person believe that an officer conveyed, by words or actions, that a suspect is not free to leave?

The following examples illustrate the narrow definition of the rule on custody:

**Questioning at the police station:** This is not automatically a custodial situation. It depends on whether the suspect was brought in handcuffed or accompanied officers voluntarily. It also depends upon whether questioning takes place in a closed room across a desk or not. Some parts of police stations, like interrogation rooms, are examples of hostile surroundings, while other parts are not hostile at all.

**Questioning in a police vehicle:** This is not automatically a custodial situation. If a suspect is locked in the back seat of a cruiser equipped with a screen, this is obviously a hostile surrounding. However, the matter of custody becomes questionable when other types of vehicles are involved or the suspect is in the front seat of the police car.

**Questioning at the crime scene:** Generally, Miranda does not apply to crime-scene and on-the-scene questioning. Officers routinely ask “What happened” at traffic accidents without Miranda warnings. However, if the circumstances are such that it can be reasonably

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inferred that police are probably going to arrest somebody, Miranda warning must be issued.

An example would be if somebody appeared intoxicated after a traffic accident where the reasonable belief that police wouldn't let this person drive home triggers a Miranda warning situation.

Questioning at the suspect’s home: For Miranda to be triggered, the words and actions of the police officer questioning a suspect at home must be hostile or intimidating. An example of intimidating action would be one where the police officer wakes the suspect up very early in the morning for an interview. A non-intimidating action would be dropping by the suspect’s house at a less inconvenient time of day.

Interrogation

Interrogation is questioning that goes beyond the simple “What happened” and “What did you do, see, or hear?” to questions that imply a suspect’s involvement in crime. Questions about motive, alibi, ability or opportunity to do the crime are all examples of interrogation, such as “Where were you on the night of October 13th?” Usually, this insinuating or judgmental tone is prefaced by rapport-building or treating the suspect like family.  

Interrogation inherently involves persuasion or some degree of pressure. The ultimate goal of interrogation is to obtain a confession, or at least an admission (soft confession)..., anything that would implicate the suspect in criminal behavior. It can safely be assumed nobody would voluntarily implicate themselves to police, but interrogation necessarily involves persuading or convincing a person that it would be in their best interests to do so. Interrogation is the art of changing a person's mind so that they want to tell the police everything they did wrong. In the process they help convict themselves.

The Supreme Court ruled, in Miranda, that interrogation refers to the process of questions propounded by police to person arrested or suspected to seek solution of crime. The Court held that such a person is entitled to be informed of his rights, including right to have counsel present, and the consequences of his answers. If the police fail or neglect to

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give these warnings, the questions and answers are not admissible in evidence at the trial or hearing of the arrested person.\textsuperscript{21}

Thus, spontaneous utterances or asking a suspect to write down in their own words what happened is the functional equivalent of interrogation. The functional equivalence rule covers any action, deception, or trickery designed to elicit an incriminating response.

For example, two police officers talk out loud to themselves in front of a suspect with the intent of being overheard and eliciting a “Hey, wait a minute” response from the suspect, this is the functional equivalent of an interrogation. Asking somebody to fill out the narrative section of a police form is also a functional equivalent.\textsuperscript{22}

Note Point: Legally, there are three levels of communication as follows:

(1) spontaneous utterances;
(2) express questioning (Would you like to make a phone call?);
(3) interrogation. Lying to a suspect that an eyewitness has fingered them is a functional equivalent of express questioning, not interrogation, but if it is designed to elicit an incriminating response, it is interrogation.

**Rules on interrogation**\textsuperscript{23}

The **Functional Equivalence Rule**:\textsuperscript{24} Silence, manipulation, “guilt trips” and any other tricks by interrogators designed to elicit a spontaneous incrimination constitute functional equivalence of an interrogation.

The **Deliberately-Eliciting-a-Response Standard**\textsuperscript{25}: High-tech listening, or bugging, devices that are unknown to the suspect do not deliberately elicit an incriminating response, and therefore can be used without *Miranda* warnings.

\textsuperscript{21} *Miranda v. State of Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694


\textsuperscript{24} “Functional equivalent,” in terms of interrogation, refers to “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. 291 (1980). For example, if the police know the person in custody may be susceptible to certain forms of persuasion, any statements or actions designed to play upon such susceptibilities may be deemed the functional equivalent of interrogation. [http://www.lexisnexis.com/lawschool/study](http://www.lexisnexis.com/lawschool/study)

\textsuperscript{25} [http://faculty.ncwc.edu/mstevens/410/410lect19.htm](http://faculty.ncwc.edu/mstevens/410/410lect19.htm)
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**The Massiah Doctrine:** If an undercover officer is used, and the suspect doesn't know it's an undercover officer, *Miranda* does not apply. Also, if a previously Mirandized suspect is let out on bail or held in lockup, an undercover operative can obtain incriminating testimony through infiltration or sharing a jail cell.

**The Edwards Rule:** If a suspect makes a clear, unambiguous request for counsel, police must cease questioning. Clear and unambiguous must be robust and unequivocal. However, if after police cease questioning, the suspect himself re-initiates conversation, any exchanges or further communication with police and incriminating statements obtained thereafter, may be used at trial.

**Exceptions to the *Miranda* Rule**

According to the FBI, the strength of the *Miranda* decision is its clarity and in its unwavering protection of a suspect’s Fifth Amendment rights against self-incrimination. Thus, the Supreme Court recognizes only one exception to the rule – “the public safety exception.”

This exception, it has been argued, allows law enforcement to engage in a limited and focused unwanted interrogation and allows the government to introduce the statement as direct evidence. This exception owes its origin to the case of Quarles which provides a framework that police officers can use to assess a particular situation, determine whether the exception is available and ensure that their questioning remains within the scope of the rule. The rationale for the decision in this case is public safety concerns.

However, there are other exceptions to *Miranda* as follows:

**Attorney Waivers** If a suspect is talking to police after having waived his right to have an attorney present and the suspect's lawyer has called the police to indicate a desire to

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26 *The Massiah doctrine, based on the Sixth Amendment right to counsel, excludes statements deliberately elicited from an accused in the absence of a lawyer or a waiver of the right. Massiah v. United States, 377 U.S. 201 (1964).*

27 *Edwards v. Arizona, 451 U.S 477 (1981).* In this case, the Supreme Court held that once a defendant invokes his Fifth Amendment right to counsel, police must cease custodial interrogation. Interrogation may only resume once defendant's counsel has been made available to him or the suspect himself initiates further communication, exchanges or conversations with the police. Statements obtained in violation of this rule are a violation of a defendant's Fifth Amendment rights.


advise his client not to talk, the police are under no obligation to inform the suspect of his lawyer's wishes.

**Booking Procedures.**\(^{31}\) *Miranda* is not required if standard police procedures are being followed, specifically booking procedures, where a suspect is fingerprinted and photographed.

**Delayed Warnings.**\(^{32}\) If a suspect confesses right away prior to receiving *Miranda* warnings but is later given warnings at the police station and confesses, the initial statements may not be used, but the later confession can be used. The failure to give warnings right way does not invalidate later interrogations.

**Derivative Evidence.**\(^{33}\) Applies if suspect has not been Mirandized and asserts an alibi defense in response to police questioning. If police check out the alibi, and it, or the witness leads from it, lead to incriminating information against the suspect, it can be used against them. The reliability of any witness's testimony is not affected by *Miranda* violations.

**Illegal search and seizure.**\(^{34}\) If the police unlawfully enter a home and illegally make an arrest but then take the suspect to the police station, read him his rights, and he confesses, the illegal search and seizure do not taint the subsequent legal confession.

**Impeachment.**\(^{35}\) Impeachment is the in-trial process of destroying a witness' credibility. The law allows an illegally obtained confession to be admitted at trial if the defendant testifies on their own behalf. This is to show that the defendant committed perjury. Also, silence at the time of police interrogation is a presumption of guilt if the defendant later attempts a defense strategy of self-defense at trial. This is because if self-defense was the motive, it would have been reasonable for the defendant to tell the police about it.

**Independent Evidence.**\(^{36}\) If an inmate is under threat of physical attack by other prisoners and a fellow inmate, in reality an undercover officer, promises to protect him in return for the truth, the confession is coerced because of the threat of physical attack, but the conviction need not be overturned if sufficient independent evidence supporting a guilty verdict is introduced.

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\(^{31}\) *Pennsylvania v. Muniz* - 496 U.S. 582 (1990)

\(^{32}\) *Oregon v. Elstad* - 470 U.S. 298 (1985)


\(^{34}\) *New York v. Harris* - 495 U.S. 14 (1990)

\(^{35}\) *Harris v. New York* - 401 U.S. 222 (1971)

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Private Security.37 Talking to a probation officer, a private detective (perhaps one hired by the victim's family), or any private law enforcement official does not involve *Miranda* at all. Even the most outrageous conduct of private actors cannot violate a suspect's Fifth Amendment right against self-incrimination.

Purged Taint.38 A confession obtained following an unlawful arrest is admissible if the “taint” caused by the police illegality is somehow “purged”. This will normally apply in cases involving multiple questioning at different points in time; e.g., marathon interrogations with breaks, or (more commonly) the suspect coming back voluntarily to continue answering questions after being released. The suspect's voluntariness to talk after a break in time "purges" the taint of previous police illegality.

Resumed Questioning.39 If a second officer a few hours later in a different room starts a new interrogation, the suspect does not have to be re-Mirandized although something called the *staleness doctrine* will apply if a significant period of time has passed. Re-Mirandizing is required if there are two or more interrogations by different police agencies - state and federal, for example.

Surreptitious Questioning.40 The *Miranda* rule and a suspect’s Fifth Amendment rights are not violated if undercover police or their informants are used to obtain incriminating testimony from a suspect. The suspect’s Sixth Amendment rights are violated, however, if any of these techniques are used after formal charges have been filed. *Miranda* warnings are not required when suspect is unaware he is speaking to a law enforcement official.

Pre-Arrest Questioning. The *Miranda* warning which protects rights of a suspect during police interrogation does not need to be given to a person that is not under arrest.

**Note Point:**
*Miranda* rights are only applicable when one has been arrested and placed in custody by the police.

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37 *United States v. Garlock*, 19 F.3d 441, 443 (8th Cir. 1994)
Stop and Frisk

Police have powers to stop and frisk anyone for questioning based on “reasonable suspicion” if they suspect criminal activity. As a form of self-defense, an officer may pat down a suspect in order to search for weapons. This process is referred to as “stop and frisk.” Running from the police is enough of a reason for a “stop and frisk.” The “frisk” is limited, but it can lead to a full blown search and possibly, an arrest.

A suspect who has been arrested by the police must be read his Miranda rights if the police intend to charge him and use any verbal evidence in his prosecution. Under the constitutional amendments as discussed, everyone has a right to silence and to have an attorney present during interrogation. The police must make the suspect aware of these rights.

Miranda: The Legal Landscape

The 1966 case of Miranda v Arizona was one that helped to define the due process clause of the 14th Amendment. The case involved Ernesto Miranda who had confessed to a crime during police questioning oblivious of his constitutional right to have an attorney present. At his trial, his confession was admitted into evidence and he was convicted.

Case Study: The Miranda case was heard along with the three other cases of Vignera v. New York, Westover v. United State and California v. Stewart.

The common threads running through all these cases were as follows:

- The defendant, while in police custody, was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world.
- None of the defendants was given a full and effective warning of his rights at the outset of the interrogation process.
- The questioning of the defendants produced oral admissions and signed statements.
- These admissions and statements were admitted at their trials.
- All the defendants were convicted and all convictions, except in one, were affirmed on appeal.

The opinion of the Supreme Court was delivered by Chief Justice Warren. In that opinion, he started by observing that:

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41 The Fourteenth Amendment to the US Constitution, ratified on July 9, 1868, granted citizenship to “all persons born or naturalized in the United States”. In addition, it forbids states from denying any person “life, liberty or property, without due process of law” or to "deny to any person within its jurisdiction the equal protection of the laws." By directly mentioning the role of the states, the 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment. http://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html

“The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.”

In this landmark case, the Court stated that it was not being innovative but rather, clarifying issues that had been a part of the US Criminal jurisprudence and held as follows:

1. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from 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, unless it demonstrates the use of procedural safeguards effective to secure the Fifth Amendment’s privilege against self-incrimination.
   (a) The atmosphere and environment of incommunicado interrogation, as it exists today, is inherently intimidating and works to undermine the privilege against self-incrimination. Unless adequate preventive measures are taken to dispel the compulsion inherent in custodial surroundings, no statement obtained from the suspect can truly be the product of his free choice.
   (b) The privilege against self-incrimination, which has had a long and expansive historical development, is the essential mainstay of our adversary system and guarantees to the individual, the "right to remain silent unless he chooses to speak in the unfettered exercise of his own will," during a period of custodial interrogation as well as in the courts or during the course of other official investigations.
   (c) The decision in Escobedo stressed the need for protective devices to make the process of police interrogation conform to the dictates of the privilege.
   (d) In the absence of other effective measures the following procedures to safeguard the Fifth Amendment privilege must be observed: The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him.
   (e) If the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present.
   (f) Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his right to counsel.
   (g) Where the individual answers some questions during in custody interrogation he has not waived his privilege and may invoke his right to remain silent thereafter.
   (h) The warnings required and the waiver needed are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement, inculpatory or exculpatory, made by a defendant.

2. The limitations on the interrogation process required for the protection of the individual's constitutional rights should not cause an undue interference with a proper system of law enforcement, as demonstrated by the procedures of the FBI and the safeguards afforded in other jurisdictions.

3. In each of these cases the statements were obtained under circumstances that did not meet constitutional standards for protection of the privilege against self-incrimination.

**Miranda v Arizona.** 384. U.S 436 (1966)

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43 *In Escobedo v. Illinois*, 378 U.S. 478
The case was remanded to the trial court for a retrial and, without the confession evidence, Ernesto Miranda was, once again, convicted.

**The Legal Framework**

This very important case has had a defining impact on the US criminal justice system because it affects the way criminal suspects are handled upon arrest and before a trial. The rule prevents a violation of the Fifth Amendment of the US Constitution by protecting suspects from self-incrimination. The courts always have to deal with the issue of whether or not evidence against a suspect was properly collected. This includes statements or confession made by a suspect before or at the time of his arrest and before questioning by the police. These are important issues that raise questions about when one becomes a prime suspect and in fact, when one becomes a suspect.

**The Legal Point**

The case addressed one fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution?

The Fifth Amendment states that no person "shall be compelled, in any criminal case, to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." The US Supreme Court had made previous attempts to deal with these issues. In *Brown v. Mississippi*, the Court had ruled that the Fifth Amendment protected individuals from being forced to confess. In *Gideon v. Wainwright*, the Court held that persons accused of felonies have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, the Court ruled, in *Escobedo v. Illinois*, that when an accused person is denied the right to consult with his attorney, his Sixth Amendment right to counsel is violated.

The question is whether the police have an obligation to ensure that the accused person is aware of these rights? If there is the obligation, at what point in the criminal justice process must the defendant learn of these rights?

In 1965, the US Supreme Court agreed to hear *Miranda*'s case. At the same time, the Court agreed to hear three similar cases, Vignera v. New York, Westover v. United

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45 *Gideon v. Wainwright* - 372 U.S. 335 (1963)  
46 *Escobedo v. Illinois* 378 U.S 478 (1964)
States, and California v. Stewart. The Court combined the four cases. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. Miranda v. Arizona was decided in 1966.

**Miranda. The Story Board**

Ernesto Miranda lived in Phoenix, Arizona. In 1963, he was arrested after a crime victim identified him in a police lineup. Miranda was subsequently charged with rape and kidnapping and was interrogated for two hours while in police custody. The police officers questioning him failed to inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney. As a result of the interrogation, Miranda confessed, in writing, to the crimes with which he was charged. In his statement, he acknowledged an awareness of his right against self-incrimination. At trial, his statement was admitted in evidence. He was convicted and sentenced to 20 to 30 years in prison on each count.

Miranda’s defense attorney appealed to the Arizona Supreme Court arguing that that his confession should have been excluded from trial because he had not been informed of his rights nor had an attorney been present during his interrogation. The police officers involved admitted their failure to give Miranda any explanation of his rights. They argued, however, that since Miranda had a criminal record, he must have been aware of his rights. Miranda’s appeal was denied by the Arizona Supreme Court who upheld his conviction.

**Miranda Warning and Fifth Amendment provisions**

The Supreme Court, in Miranda, revisited the earlier 1964 case of Escobedo. The Court stated that it was not stating a new case in American legal jurisprudence but was simply applying principles long recognized and applied in other settings. In other words, it was good law to hold that basic rights are enshrined in our Constitution which hold that no person . . . shall be compelled in any criminal case to be a witness against himself and that the accused shall . . . have the assistance of Counsel. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured “for ages to come, and . . . designed to approach immortality as nearly as human institutions can approach it,”

There is an old maxim that no one is bound to accuse himself. This maxim is taken from the Grand Juries Clause and the Due Process Clause from the Magna Carta of 1215

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47 Escobedo v Illinois, 378 U.S. 478 (1964)
48 Cohens v. Virginia, 6 Wheat. 264, 387 (1821).
in England. This provides the premise for the Fifth Amendment which provides the protection against self-incrimination, namely that:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Scope of the Fifth Amendment:

The Fifth Amendment has been held to be capable of breaking down into the following five distinct constitutional rights:

- Grand juries for capital crimes
- A prohibition on double jeopardy
- A prohibition against required self-incrimination
- A guarantee that all criminal defendants will have a fair trial and
- A promise that the government will not seize private property without paying market value.

Prior to Miranda, confessions were only required to meet the voluntariness test (a requirement that all confessions must be voluntary) - an exercise of free-will on the part of a suspect. This requirement was usually met if the suspect's physical, mental, and emotional condition was stable at the time of making a confession.

While the Fifth Amendment originally only applied to federal courts, the U.S. Supreme Court has ruled that its provisions now applied to the states through the Due Process Clause of the Fourteenth Amendment. In other words, the Fifth Amendment protects criminal defendants from having to testify if doing so might expose them to the possibility of self-incrimination. Thus, it is possible for a defendant or witness to “plead the Fifth” and not answer if he believes that answering the question may be self-incriminatory.

In the 1930s, the famous Wickersham Report⁴⁹ indicated that police violence and the “third degree”⁵⁰ were prominent in that period. The police used physical violence - beating,
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hanging, whipping and sustained and protracted questioning *incommunicado* in order to extort confessions. In 1961, the Commission on Civil Rights found much evidence to indicate that “some policemen still resort to physical force to obtain confessions.”

Prior to *Miranda*, the use of physical brutality and violence was not confined to the past or to any part of the country. For instance, in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party.

These were some of the cases that raised sufficient concern. The Supreme Court stated that unless a proper limitation upon custodial interrogation is achieved (such as the *Miranda* decision), there can be no assurance that practices of this nature will be eradicated in the foreseeable future.

Earlier, the Wickersham Commission Report, with regards to the “third degree” observed, in the words of Lord Sankey, that “It is not admissible to do a great right by doing a little wrong. . . . It is not sufficient to do justice by obtaining a proper result by irregular or improper means. “It is a short cut and makes the police lazy and unenterprising.”

The report also commented that “If you use your fists, you are not so likely to use your wits.” The Supreme Court adopted the sentiments of another report that “The third degree

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the Wickersham Commission found that use of the third degree was widespread in the United States. No one knows the origin of the term but there are several hypotheses. The use of the third degree was technically made illegal after the Wickersham report. However, the interrogation method known as the Reid technique, which is now widely used by law enforcement in the U.S., is seen by many as simply a psychological version of the third degree in that it's equally capable of extracting a false confession through coercion when abused by police. The third degree involved a flagrant violation of law by the officers of the law. It also involved the dangers of false confessions and tended to make police and prosecutors less zealous in the search for objective evidence.


52 1961 Commission on Civil Rights Rep., Justice, pt. 5, 17


http://www.parliament.uk/search/results/?q=archives

55 Chief Justice Earl Warren echoing Lord Sankey in delivering the Supreme Court’s opinion in Miranda v. Arizona.

56 384 U.S. 436, 448
brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.”

In 1968, Congress passed the Crime Control and Safe Streets Act. This was widely seen as overruling *Miranda*. Some scholars also felt that Congress constitutionally exercised its power in passing this law because they felt that *Miranda* decision represented a matter of judicial policy rather than an actual manifestation of Fifth Amendment protections. However, in *Dickerson v. United States*, the U.S. Supreme Court rejected this argument and held that the *Miranda* decision was properly derived from the Fifth Amendment.

**Note Point:** Police must prove they read specific *Miranda* warnings and obtained an intelligent waiver. *Miranda* law applies to all criminal offenses where the suspect has been arrested and placed in police custody – felonies or misdemeanors. *Miranda* also represents a "bright line" rule intended to forever extinguish the use of coercion but allowing some pressure. In contrast to the exclusionary rule (to reform the police or improve society), the decision in Miranda was designed to eradicate police coercion of suspects. It was not intended to eliminate interrogation, which is inherently stressful and necessarily involves pressure. The purpose and impact of *Miranda* is to neutralize the distinct psychological disadvantage that suspects are under when dealing with police.

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59 530 U.S. 428 (2000) 166 F.3d 667. This case held that *Miranda* and its progeny...govern the admissibility of statements made during custodial interrogation in both state and federal courts.
Conclusion

At this point, it is important to take an overview of Civil Rights under the Fifth Amendment. The clauses incorporated within the Fifth Amendment outline basic constitutional limits on police procedure. While the Fifth Amendment originally only applied to federal courts, the U.S. Supreme Court has interpreted the Fifth Amendment's provisions as now applying to the states through the Due Process Clause of the Fourteenth Amendment.

Furthermore, the Fifth Amendment ensures that certain safeguards are in place to protect the rights of the accused against the state. This is because it has been argued that without these checks and balances, it is very easy for the state to abuse its position and employ harsh measures to obtain a conviction. Such rights include the following:

**Grand Jurys**: From history, the grand jury originally served to protect the accused from overly-zealous prosecutions by the English monarchy.

A person being charged with a crime that warrants a grand jury has the right to challenge members of the grand juror for partiality or bias. Ultimately, grand juries may make a presentment. During a presentment the grand jury informs the court that they have a reasonable suspicion that the suspect committed a crime.

**Double Jeopardy**: The Double Jeopardy Clause aims to protect against the harassment of an individual through successive prosecutions of the same alleged act, to ensure the significance of an acquittal, and to prevent the state from putting the defendant through the emotional, psychological, physical, and financial troubles that would accompany multiple trials for the same alleged offense. Courts have interpreted the Double Jeopardy Clause as accomplishing these goals by providing the following three distinct rights: a guarantee that a defendant will not face a second prosecution after an acquittal, a guarantee that a defendant will not face a second prosecution after a conviction, and a guarantee that a defendant will not receive multiple punishments for the same offense.

**Self-Incrimination**: The Fifth Amendment protects criminal defendants from having to testify if they may incriminate themselves through the testimony. A witness may “plead

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60 Jeopardy refers to the danger of conviction. Thus, jeopardy does not attach unless a risk of the determination of guilt exists. If some event or circumstance prompts the trial court to declare a mistrial, jeopardy has not attached if the mistrial only results in minimal delay and the government does not receive added opportunity to strengthen its case.
the Fifth” and not answer if the witness believes answering the question may be self-incriminatory.

In *Miranda*, the United States Supreme Court extended the Fifth Amendment protections to encompass any situation outside of the courtroom that involves the curtailment of personal freedom. 61 Therefore, any time that law enforcement takes a suspect into custody, law enforcement must make the suspect aware of all his *Miranda* rights.

**Due Process Clause:** The guarantee of due process for all citizens requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive a person of life, liberty, or property. Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.

**Just Compensation Clause:** While the federal government has a constitutional right to "take" private property for public use, the Fifth Amendment's Just Compensation Clause requires the government to pay just compensation, interpreted as market value, to the owner of the property. The U.S. Supreme Court has defined fair market value as the most probable price that a willing but unpressed buyer, fully knowledgeable of both the property's good and bad attributes, would pay.

Those opposed to the *Miranda* ruling argue that it exemplifies judicial activism which hampers police efforts to fight crime. Those in support counter by claiming that any restrictions on law enforcement are negligible and are constitutionally mandated in any event. Advocates for both sides of this philosophical debate now claim there is statistical proof of their respective positions.

However, the matter does not rest there. Upon a review of Supreme Court Decisions Subsequent to *Miranda*, one finds no middle ground. What is clear is that for as long as there is crime and insistence on civil liberties, the debate over *Miranda* will continue to rage until the matter is dealt with by Congress in one form or another.

It should be noted, however, that the Courts have been reluctant to let confessed criminals hide behind *Miranda* “technicalities.” 62 For instance, in *New York v. Quarles* 63, it was held

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that public safety prevails over court appeasements even where a violation is flagrant.64 “Inevitable discovery”65 and use of suppressed confessions for impeachment66 are other instances. The scope of what can be suppressed because of a *Miranda* violation is not clear either.67

Given our litigious culture, it is conceivable that police will continue to use confessions to clear cases without making any attempts at predicting how some court may ultimately rule on the use of the confession as evidence. Even if when the confession that lead to the arrest may be eventually suppressed, the suspect still gets the ride to the jailhouse after the arrest.68

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65 Nix v Williams 467 US 431 (1984), held that if incriminating evidence found in violation of *Miranda* would have inevitably been found independently of the improperly obtained confession, then the violation doesn't matter and the evidence can be used
66 *Harris v New York* 401 US 222 (1971)
67 For example *Michigan v Tucker* 417 US 433 (1974); *US v Scalf* 708 F2d 1540 (10 CCA, 1983); and *Wilson v Zant* 290 SE2d 442 (Ga. 1982), all question the extent of the "fruit of the poison tree" doctrine to *Miranda* violations.
68 The arresting officer and the law enforcement agency also get an arrest stat. Since officer performance ratings, and agency budgets, may be based on arrest stats, why should police care if some "liberal judge" eventually throws out the confession.
Case study:

Using Confessions – The Floridian Cases

In order to measure if Miranda impacts arrest/clearance rates, it is necessary to determine if police altered their investigative practices out of concern for how Miranda, standing alone, will affect use of confessions as evidence in trials. The realities of criminal prosecutions skew any attempts to isolate Miranda's effect. Following are four examples. Each involved a challenge to the use of the defendant's confession.

The Mock Cases

Mock and a co-defendant were both arrested for two murders. Each confessed to some involvement in events of each death.

In the first case, based on his confession, Mock was arrested then alternatively charged as a principal to first degree murder, and with being an accessory after the fact to that murder. Mock's challenge to the use of his confession, based on Miranda, was denied. The jury heard his confession, and convicted him as an Accessory, but acquitted him of the homicide. The conviction was affirmed.

In the second case, police used the same confession, as the basis for his arrest. Mock was indicted for first degree murder. The State sought to use the confession in trial. Once again, Mock moved to suppress his confession, claiming the same Miranda violation he previously raised unsuccessfully in the first case. The legal issues were the same, and the law had not changed. But the trial Judge in the first case retired, and a new Judge presided over the second case. The suppression motion was granted. The State proceeded to trial without the confession, and Mock was convicted of First degree murder.

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70 Mock, and the co-defendant, each confessed involvement but (no surprise) fingered the other as the actual killer. The co-defendant hung himself in his jail cell while awaiting trial, thus precluding any measurable Miranda impact on that arrest/clearance.

71 Consolidated cases 91-11766 CFB & 92-8228 CFA (Brevard County, Florida)

72 Mock v State 625 So2d 1335 (Fla. 5th Ct. App., 1993).

73 Case 92-11647 CFA (Brevard County, Florida)

74 Mock’s admissions about both murders were included within the same statement given to police.

75 The State took an interlocutory appeal of the suppression order to the same appellate Court which had affirmed Mock’s conviction in the first case. The first trial judge’s denial of Mock’s suppression motion had been an issue in the appeal of the first conviction. Prosecutors assumed that since the suppression issues
 Both murders were cleared by arrest, using the same confession. Two Judges made diametrically opposed rulings on the use of the confession at trial, each of which was affirmed. In the case where the State used the confession, Mock was acquitted of murder. Where the confession was suppressed because of Miranda, and the jury never heard it, he was convicted. The effect of Miranda cannot be determined in either case, so how can it influence future police conduct?

Another obstacle to isolating the impact of Miranda occurs when prosecutors do not use a defendant's confession at trial. Before appellate courts can render opinions that induce police to modify their actions, the prosecution must seek to use a confession as evidence. If a confession is not used, police conduct in obtaining the confession is irrelevant to the outcome and cannot become a judicial vehicle to make law which affects future police conduct.

The Hoskins Case

Hoskins was arrested for a traffic violation while driving a stolen car. On each of the following four days he gave police a different custodial confession regarding the fate of the car's owner, including leading police to the owner’s body. Using the confessions, the case was cleared by Hoskins’ arrest for murder.

Prior to trial, Hoskins raised Miranda challenges to each of his four confessions. The trial Judge suppressed two of these, including the one given in conjunction with location of the body, but determined that evidence taken from the body was admissible under “inevitable discovery”.

The State did not use any of Hoskins' confessions at trial, even the two the Judge refused to suppress. There was overwhelming physical, and circumstantial, evidence against Hoskins. His confessions, though incriminating, were attempts to minimize his own involvement, and shift guilt to others. Prosecutors decided that if the Jury was going to hear Hoskins' version of the crime, he would have to tell it from the witness stand, where he could be cross-examined. Hoskins elected not to testify. He was convicted, and is now on

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were the same in both cases, that the results on appeal would the same. They were wrong. Suppression of the confession was affirmed. State v Mock 626 So2d 704 (Fla. 5th Ct. App., 1993).

Mock's admissions supported both prosecution theories in the first case. The Jury was instructed that if they voted to convict they would have to choose one or the other, but could not convict for both. In the second case, his admissions supported his conviction as either the actual perpetrator, or as a principal to the murder.

Case 92-17795 CFA (Brevard County, Florida).
death row. His confessions, and the police actions that secured them, were not even considered by the Court that affirmed the conviction.\(^78\)

**The Woodward Case**

The defendant does not always want to have a confession suppressed. Woodward was arrested for attempting to murder his girlfriend’s unarmed husband.\(^79\) After his arrest, Woodward confessed to shooting the victim, but said he acted in self-defense. Woodward never moved to suppress his confession. He wanted the State to use it at trial, so the jury could hear how it was self-defense. The victim testified he was unarmed, standing on his own porch, when Woodward shot him from the sidewalk. An eye-witness corroborated the victim’s testimony. The State rested without even mentioning Woodward’s confession to the jury. Having no other way to tell his self-defense story, Woodward testified. The prosecutor’s cross-examination revealed glaring discrepancies between Woodward's trial testimony, and his confession to the police.

Although Woodward never sought to suppress his confession before trial, when the State offered the confession to impeach him, he tried to have it suppressed. The Judge declined to hear the suppression motion, ruling that even if there was a *Miranda* violation, the jury could still hear the confession to impeach the trial testimony. Woodward was convicted of attempted murder.

Clearly, the debate over the impact of *Miranda* will continue. Whether the Supreme Court’s decision is good or bad for law enforcement depends on a number of issues that touch our criminal justice system and to a large extent, a tough balancing act of upholding the criminal law while respecting civil liberties.

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\(^78\) Conviction Affirmed, but remanded for further sentencing proceedings. Hoskins v State 702 So2d 202 (Fla. 1997)

\(^79\) Case #95-28792 CFA (Brevard County, Florida)
Glossary

- **Alibi**: A defense based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. Federal Rules of Criminal Procedure 12.1.2
- **Arrest**: The taking or keeping of a person in custody by legal authority especially in response to a criminal charge.
- **Automatic Reversal Rule**: if a suspect’s involuntary confession is used as evidence at his or her trial, and it can be proved that the defendant was not properly read the Miranda Warning or did not understand the rights explicit in that warning, then the defendant’s constitutional rights have been abused and any conviction will probably be dropped.
- **Booking Procedures**: If standard police procedures are being followed, specifically booking procedures, where a suspect is fingerprinted and photographed, then Miranda is not required
- **Custody**: Custody indicates arrest, when one is not at liberty to leave a place – the suspect is under arrest by the police
- **Derivative Evidence**: Evidence that is discovered as a result of illegally obtained evidence and is therefore, inadmissible because of the primary taint.
- **Edwards Rule**: a suspect who invokes the right to have counsel present during interrogation may not be approached by officers attempting renewed interrogation unless the break-in-custody rule is applied
- **Fifth Amendment**: The fifth amendment to the US Constitution which, amongst other things, provides the privilege against self-incrimination
- **Grand Jury**: A grand jury is a group of people that are selected and sworn in by a court, just like jurors that are chosen to serve on a trial jury
- **Harmless Error Doctrine**: An error made by a trial court but not considered sufficient to set aside a conviction
- **Impeachment**: The removal of an official from office or a statement made by a witness.
- **Interrogation**: Questioning of a suspect by valid legal authority
- **Massiah Doctrine**: Based on the Sixth Amendment right to counsel, this excludes statements deliberately elicited from an accused in the absence of a lawyer or a waiver of the right
- **Mirandize**: To read a suspect in custody his rights and warning before questioning by the police
- **Obligation**: Duty owed to someone or the state
- **Pedestrian**: A person on foot. Ordinary or regular
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- **Precede**: To go before
- **Privilege**: Rights or entitlement
- **Public Safety Exception**: An exception to the Miranda rule that allows the police to questioning a suspect without reading him Miranda rights when the safety of the public is at stake
- **Purged Taint**: A discrepancy on the procedure that has been made right
- **Self-Incrimination**: To make statements that show that one is guilty
- **Spontaneous**: Without prompting
- **Surreptitious Questioning**: The Miranda rule and a suspect's 5th Amendment rights are not violated if undercover police or their informants are used to obtain incriminating testimony from a suspect
- **Unambiguously**: clear and straight-forward.

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Bethel Erastus-Obilo is an author, a non-practicing lawyer and leadership consultant. He writes books and articles on legal issues with constitutional and underpinnings. Bethel is a senior leadership training consultant to the Kuwait National Petroleum Company and heads the Illinois-based Pregen Foundation, a NFP organization dedicated to education and poverty alleviation amongst those without a voice. Bethel’s research interests include contemporary issues of socio-legal jurisprudence (Constitutional Law, Contract Law, Immigration Law, Comparative Law and Constructive Intelligence) and their nascent impact at the crossroads of our socio-legal consciousness. Bethel is a JD/LLB and a PhD in Law and Psychology.