

# Teaching *Miranda v. Arizona* at its 50th Anniversary

Brooks Holland

*“You have the right to remain silent....”*

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 life size cutout of Ernesto Miranda, whose arrest in 1963 led to a landmark Supreme Court case and the establishment of Miranda Rights, can be seen as retired Phoenix Police Capt. Carroll Cooley, who was the arresting officer in the case, demonstrates at the Phoenix Police Museum, on March 13, 2013, the fingerprinting device used on Miranda. (AP Photo/Matt York)

The Supreme Court itself has acknowledged that “*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.”<sup>1</sup> 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.<sup>2</sup> Everybody knew Jenko stumbled with, “*You have the right to remain an attorney.*”

At *Miranda*’s 50th anniversary, however, the decision remains as controversial as it is important, affecting police interrogation practices for the thousands of people arrested every day. And yet, the nation’s cultural understanding of *Miranda* has not always matched *Miranda*’s reality. For example, while *Miranda* does govern how the police interrogate suspects, a violation of *Miranda* rarely requires the police to “drop the charges,” contrary to Deputy Chief Hardy’s lament to Officer Jenko. *Miranda*’s 50th anniversary in 2016 thus presents a valuable opportunity for teachers to invite students to learn the true history, meaning, and impact of this important decision.

## ***Miranda*’s Origins**

The *Miranda* rule is a component of the broader law of interrogation. Police interrogation raises challenging legal questions because of the important but competing interests these practices implicate. On the one hand, confessions by guilty suspects aid the police in solv-

ing crimes and promoting public safety. On the other hand, the motivation to secure a confession can invite abusive police practices, and these practices can undermine valued individual rights, and even prompt innocent persons to confess.

The *Miranda* decision seeks to balance these interests through the Fifth Amendment to the U.S. Constitution. The Fifth Amendment, however, does not contain any word about warning suspects of constitutional rights. Rather, the part of the Fifth Amendment animating the *Miranda* rule is the right against self-incrimination: “No person ... shall be compelled in any criminal case to be a witness against himself.” The Supreme Court’s path to finding *Miranda* rights in this provision took almost 200 years from the time of the nation’s founding.

Several reasons may account for this long judicial path. For example, the police initially were not organized as large, well-trained institutions resembling the contemporary police departments where custodial interrogation practices developed. Furthermore, local courts already had some authority in the common law for judging whether coerced confessions should be excluded from trial.

Another important reason is that prior to the twentieth century, the Supreme Court had not fully developed the “exclusionary rule”—the rule that prohibits the prosecution from admitting evidence at a criminal trial if that evidence was obtained in violation of the Constitution. Whether the exclusionary rule bars admission of a suspect’s confession at trial is the whole point of *Miranda*. The Supreme Court did not fully develop the exclusionary rule until the twentieth century in cases involving the Fourth Amendment right against unreasonable searches and seizures, such as *Weeks v. United States* (1914) and *Mapp v. Ohio* (1961).

The Supreme Court nevertheless did invoke the Constitution in some early cases that limited police interrogation and laid the foundation for *Miranda*. For example, in *Bram v. United States* (1897), the Supreme Court decided whether

the government properly offered Bram’s confession to a police officer as evidence at Bram’s federal trial. The legal question under the Fifth Amendment Self Incrimination Clause, the Supreme Court emphasized, was whether the police *compelled* the confession:

In order to be admissible, [a confession] must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.

Limited to federal prosecutions, however, *Bram* did not govern the police interrogations happening in local police stations all around the country. These interrogation practices included “third degree” methods ranging from psychological coercion to outright torture. The most abusive of these interrogation practices often were applied to African American suspects in the South, especially suspects accused of a crime against a white person.

The Supreme Court began to extend the Constitution to the most abusive of these interrogations conducted by state officers in cases such as *Brown v. Mississippi* (1936). In *Brown*, the police interrogated three African Americans suspected of murdering a white person. The interrogations included brutal whippings, and even efforts to hang one man, to force the suspects to confess. State courts upheld the resulting convictions.

On appeal, the Supreme Court observed, “[t]he rack and torture chamber may not be substituted for the witness stand.” The Court based this conclusion on the Due Process Clause of the Fourteenth Amendment, one of the post-Civil War Amendments directed expressly to the states. Relying on this provision, the Court concluded that “the use of confessions ... obtained [by torture] as the basis for conviction and sentence was a clear denial of due process.”

In the decades following *Brown*, the Supreme Court decided several cases finding that coercive interrogation practices by state officers violated the Constitution. By the mid-twentieth century, therefore, interrogation law inquired whether a confession was voluntary, meaning the product of free will instead of police coercion. This voluntariness test, however, required courts to examine the “totality of circumstances.” The admissibility of every confession thus was judged on its own unique facts, which could be an inefficient process with unpredictable and even inconsistent results.

**MIRANDA WARNING**

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

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During this same time period, the police developed new interrogation methods in response to Supreme Court decisions. These methods relied less on rack-and-screw tactics and more on isolation of a suspect from family and counsel, psychological pressure, and deception. These methods were very successful in obtaining confessions that appeared, in the totality of circumstances, to be “voluntary.” Yet, these methods by design placed a suspect on a very uneven playing field with the police during interrogation.

Modern police interrogation practices thus continued to raise questions about the fairness of these practices and whether the Constitution empowered the judiciary further to regulate these practices. The Supreme Court confronted these questions in *Miranda*.

### The Miranda Decision

The *Miranda* case was comprised of four different cases presenting the same legal question to the Supreme Court: whether custodial interrogation should be judged on a case-by-case basis for evidence of police coercion, or instead should require special procedural protections to ensure that confessions are voluntary. The facts of Ernesto Miranda’s case illustrated the point of this legal question.

In 1963, an 18-year-old woman was kidnapped and raped near Phoenix, Arizona. Ten days later, the police arrested Miranda and took him to the local police station. Miranda was 23 years old, poor, and educated only to the ninth grade. Miranda also suffered from an “emotional illness.” At the station, the victim identified Miranda as her attacker, and the police removed Miranda to another room where two officers interrogated him in isolation.

During this interrogation, the police did not employ physical force, threats, or promises. But neither did the police advise Miranda of his right to have a lawyer present during the interrogation. Miranda at first denied his guilt. But after two hours, the police emerged with a signed written confession. This confes-

sion included a declaration that the confession “was made voluntarily, without threats or promises of immunity and ‘with full knowledge of my legal rights, understanding that any statements I make may be used against me.’” Miranda’s confession was admitted at his trial, and he was convicted and sentenced to prison.

In reviewing Miranda’s conviction, the Supreme Court acknowledged that “we might not find [Miranda’s] statements to have been involuntary in traditional terms.” Yet, the Court emphasized, “[t]he fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of interrogation to insure that the statements were truly the product of free choice.” The four *Miranda* warnings, the Court decided, supply these appropriate safeguards.

The Supreme Court thus pivoted in *Miranda* from a rule that merely prohibits coercive police conduct to a rule that requires the police to dispel coercion by giving a suspect specific legal warnings. This shift reveals the significance of *Miranda*. No longer are confessions admissible solely because the police abstained from bad behavior in securing the confession. Now, the police affirmatively must warn suspects of their right to remain silent and to have a lawyer. If the police do not give these warnings, a court will presume, *solely from the lack of Miranda warnings*, that the statement was involuntary and exclude it from trial.

For a suspect subject to interrogation who has been properly warned, *Miranda* places a fork in the road. If a suspect voluntarily waives *Miranda* rights and talks, the confession almost certainly will be judged admissible. If, by contrast, a suspect invokes the right to remain silent, the police must “scrupulously honor” this right. Further, if a suspect requests a lawyer, no interrogation may occur without a lawyer present.

The Supreme Court based the need for this protective rule in the nature of modern police interrogation. Modern interrogation practices, the Court observed, are “psychologically rather than physi-

cally oriented.” The goal is to isolate a suspect to deprive the suspect of every “psychological advantage” and “to subjugate the individual to the will of the examiner.” Indeed, “the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals,” and “is at odds with one of our nation’s most cherished principles—that the individual cannot be compelled to incriminate himself.” Only *Miranda*’s required warnings, the Court held, can dispel this inherent compulsion and level the playing field.

Importantly, in line with these concerns, *Miranda* applies only during *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.” Accordingly, *Miranda* does not apply to suspects who volunteer statements—i.e., *Miranda* does not require the police to put a sock in the mouth of a talkative suspect. Nor must the police warn suspects who are not in police custody. Of course, in none of these cases may the police actually coerce the confession. But courts will not presume that these confessions are involuntary solely because *Miranda* warnings were not given.

### The Impact of Miranda

The impact that law enforcement feared from *Miranda* is that suspects who confess voluntarily nevertheless would get their confessions excluded from trial on the “technicality” that *Miranda* warnings were not given. Or, after being warned, suspects would invoke their rights instead of confessing. This loss of confession evidence would hamper criminal investigations and even set dangerous criminals free.

Pro-*Miranda* advocates, by contrast, anticipated a world where the police and in-custody suspects would operate on a level playing field, because the police could not so easily lord over a suspect’s free-will through isolation and deception if the suspect was aware that police had to honor his or her right to remain silent

and obtain counsel. *Miranda* proponents thus expected that fewer individuals would confess during the crucible of custodial interrogation. Or, confessions that were obtained more likely would be voluntary.

The post-*Miranda* reality, however, appears to have been more modest between these extremes. For example, one study by an anti-*Miranda* scholar claimed that *Miranda* affected the outcome of less than 8 percent of cases. Other studies argue that the impact on the ability of the police to secure admissible confessions was even less.<sup>3</sup>

At least three explanations may account for *Miranda*'s modest impact. One explanation is that the police have adapted their interrogation practices to *Miranda*'s requirements. *Miranda* still permits the police to interrogate strategically, and the police are well-trained on how to interrogate past *Miranda*. Any experienced prosecutor or defense lawyer will confirm that plenty of suspects in police custody still talk with the police.

Second, *Miranda* supplies a simple and efficient template for prosecutors to demonstrate to courts that a confession was voluntary. Jurors also may look to *Miranda* warnings as evidence that an interrogation was fair and the confession reliable. The police thus know that if they follow *Miranda* and secure a confession, the confession more likely will be stamped with the law's version of a gold star. Indeed, the FBI for years prior to *Miranda* had given similar warnings as best law enforcement practice.

A third explanation for *Miranda*'s modest impact arises from how the Supreme Court itself has limited *Miranda* in the years following the decision. Acknowledging that *Miranda*'s exclusion of some confessions from trial can be a difficult pill to swallow, the Court has peppered the rule with exceptions that limit its impact.

Here are some examples:

- *Exclusionary rule*: The exclusionary rule sometimes can exclude a chain of evidence following a con-

stitutional violation. For example, assume the police beat a murder suspect during interrogation, producing a truly involuntary confession that included the location of the murder weapon. Not only would this confession be excluded from trial as involuntary, but so would the gun, as a product of the coercive interrogation. This rule is often called the “fruit of the poisonous tree” rule. The Supreme Court, however, has ruled that this “poisonous fruit” rule does not apply to *Miranda* violations: if all the suspect can show is a violation of *Miranda*, only that confession is excluded from trial, not other evidence discovered as a result of the improper confession. If that other evidence still can prove the suspect's guilt, the charges would not be dismissed. In this way, the Court does treat *Miranda* violations as more of a

constitutional “technicality” than other constitutional violations.

- *Public safety*: In *New York v. Quarles* (1984), the Supreme Court decided that *Miranda* does not apply during public safety emergencies. The police in *Quarles* interrogated the suspect without *Miranda* warnings when trying to find a firearm he discarded in a crowded grocery store. The Court held that the suspect's admission to the gun's location was admissible at his trial because public safety trumped *Miranda*. More recently, the government has invoked this public safety exception to interrogate apprehended terrorists without *Miranda* warnings. The police cannot actually coerce a statement from a suspect because of a public safety emergency, but the police need not give *Miranda* warnings.

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# Looking at *Miranda*: Your Right to Remain Silent

In this lesson students will learn about their *Miranda* rights and the circumstances of “custody” and “interrogation” that require law enforcement to recite a suspect these rights. After reviewing *Miranda v. Arizona* as a class, students will work in small groups to explore how the U.S. Supreme Court has ruled on *Miranda*-related issues in recent years.

## Time

60–90 minutes

## Procedure

1. Ask students to think about a television show or movie that they have seen that shows a person being arrested or interrogated by police. *What do the officers usually say? What rights are mentioned in this warning?*

2. Share the text of the *Miranda* warning with students:

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?

Provide the story of Ernesto *Miranda*, and the *Miranda* decision, if needed. *Why do you think the Court felt it was important to make *Miranda* aware of these rights? What rights did the Court determine were violated in this case?*

3. If necessary, review two key terms related to *Miranda* warning protocols with students:

• **Custody** means formal arrest or the deprivation of freedom to an extent associated with formal arrest.

• **Interrogation** means explicit questioning or actions that are reasonably likely to elicit an incriminating response. The police do not need to give the *Miranda* warnings before making an arrest, but the warning must be given before interrogating a person while in custody.

4. Explain to students that they will be learning about Supreme Court cases related to the *Miranda* warning that have been decided since the decision was issued in 1966. Emphasize that even though the decision was announced 50 years ago, it remains relevant today.

5. Organize students into six small groups and distribute one case study to each group. Each group should read their case summary, then prepare to answer the following questions as they share it with the rest of the class:

- What are the facts of the case, including the name and year?
- What question(s) did the Court decide? How did the Court rule?
- How does the ruling affect *Miranda* rights?

6. Wrap up discussion by asking students to discuss how applications of the *Miranda* warning have changed over time, and what that might mean for our constitutional rights.

## Case Studies

### ***Greenwald v. Wisconsin* (1968)**

A man was arrested on suspicion of burglary and interrogated at a police station. Over the course of 24 hours, the man was denied medication, sleep, and food. He made no incriminating statements to police, and repeatedly denied guilt, but later provided a written confession. According to his testimony, he confessed because “I knew they weren’t going to leave me alone until I did.” In a 6–3 decision, the U.S. Supreme Court stated that given the “totality of the circumstances” surrounding the petitioner’s confession, it was not voluntary. Petitioner was not given counsel, and was denied food, sleep, and medication; and was not given adequate warnings as to constitutional rights. “Considering the totality of these circumstances, we do not think it credible that petitioner’s statements were the product of his free and rational choice.”

### ***Oregon v. Mathiason* (1977)**

A man was invited to a police station to answer questions about a burglary. The man came freely and was told he was not under arrest. The man confessed to the crime and later claimed it should not be used at trial because he had not been properly *Mirandized*. In a 6–1 decision, the U.S. Supreme Court ruled that since the questioning took place in a context where respondent’s freedom to depart was not restricted in any way, he came voluntarily to the police station, and was informed that he was not under arrest, he was not in police custody at the time of his confession, so *Miranda* rules did not apply.

### ***New York v. Quarles* (1984)**

A rape suspect entered a supermarket, carrying a gun. Police arrested and caught the man, but saw no guns. Police asked the suspect where the gun was, and the suspect gestured, “the gun is over there.” The officer found the gun and read the suspect his *Miranda* warnings. The man argued that his statement must be excluded because it was elicited before the police read him his *Miranda* warnings. In a 5–4 decision, the U.S. Supreme Court held that there is a “public safety” exception to the requirement that officers issue *Miranda* warnings to suspects. Since the police officer’s request for the location of the gun was prompted by an immediate interest in assuring that it did not injure an innocent bystander or fall into the hands of a potential accomplice a failure to read the *Miranda* warning did not violate the Constitution.

### ***Maryland v. Shatzer* (2010)**

Police interviewed a man in 2003 regarding allegations that he had sexually abused his child. At the time, he was incarcerated on an unrelated offense, and during the interview, invoked his

rights to counsel and to remain silent, so the interview was terminated. The investigation was subsequently closed, only to be reopened in 2006. During the 2006 interview, the man confessed to abusing the child, but insisted his *Miranda* rights from three years earlier still applied.

In a unanimous decision, the Court held that because the man experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, the Fifth Amendment does not mandate suppression of his 2006 statements. “That provides plenty of time for the suspect to get re-acclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.”

#### **Howes v. Fields (2011)**

While he was incarcerated, a man was escorted from his cell to a conference room where armed law enforcement officers, who did not work for the prison, questioned him for seven hours regarding activities unrelated to his incarceration. The man was told that he could request to go back to his cell whenever he wanted, and the door to the room was kept open during questioning. He eventually made incriminating statements, which he sought to exclude from trial because he was not read his *Miranda* rights at

the time. In a 6–3 decision, the U.S. Supreme Court stated that investigators don’t have to read *Miranda* rights to inmates during jailhouse interrogations about crimes unrelated to their current incarceration. “Imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*.”

#### **Salinas v. Texas (2013)**

Police officers spoke with a man during a homicide investigation. The man agreed to accompany the officers to the police station, and answered every question until an officer asked whether the shotgun shells found at the scene of the crime would match the gun found in the man’s home. The man remained silent and “demonstrated signs of deception.” The man objected when his silence was used during trial to suggest guilt. In a 5–4 decision, the U.S. Supreme Court held that a witness must expressly invoke the Fifth Amendment privilege against self-incrimination in order to benefit from it. This requirement ensures that the government is put on notice when a defendant intends to claim this privilege and allows the government to either argue that the testimony is not self-incriminating or offer immunity. The Fifth Amendment’s privilege against self-incrimination does not extend to defendants who simply decide to remain mute during questioning. ●

The Supreme Court also has made the *Miranda* warning catechism more accommodating to police stratagems during interrogation. For example, the Court has held that the police may interrogate a suspect before obtaining a waiver of *Miranda* rights, so long as the *Miranda* waiver precedes the confession. The police thus strategically can prime a suspect to confess before the suspect decides whether to waive *Miranda* rights. The warnings also need not be perfect—they just must reasonably convey the rights protected by *Miranda*. For instance, the Court has approved warnings that advised the suspect only that he had a right to counsel *before* interrogation, without mentioning the right to counsel during interrogation.

The Court further has ruled that a suspect does not invoke the right to remain silent simply by remaining silent during interrogation. Instead, a suspect must affirmatively “invoke” the right to remain silent. This rule means that to invoke the right to remain silent, the suspect must start talking. And, a suspect can waive *Miranda* rights simply by confessing. In the Court’s view, the confession alone can prove that the suspect did not want to remain silent.

These rulings all draw a roadmap for strategic police interrogation around the *Miranda* rule. But despite these limitations, *Miranda* nevertheless remains a significant constitutional decision in the world of criminal justice. The *Miranda* rule surely does check the power of the police to coerce their way to a confession. Further, the rule reinforces a fundamental principle: all individuals retain critical rights when in police custody, and the police must work within these rights when interrogating a suspect. This principle in turn reinforces our nation’s commitment to the rule of law, even when the state is pursuing interests as important as criminal justice and public safety.

#### **Conclusion**

At 50, *Miranda* may have a few wrinkles and have lost some of its energy. Yet despite concerted efforts over the years to reverse *Miranda*, the Supreme Court has remained committed to the underlying principle: when the police take a suspect into custody for interrogation, that environment is inherently coercive, and the police must dispel that coercion by ensuring that the suspect understands and waives the right against self incrimination. As Deputy Chief Hardy scolded

Officer Jenko in *21 Jump Street*: “What possible reason is there for not doing the only thing you have to do when arresting someone?” In this light, perhaps *Miranda* has proven itself a win-win for everyone, simply because we all know it as a familiar legal rule that balances public safety with individual rights. ●

#### **Notes**

1. *Dickerson v. United States*, 530 U.S. 428, 443 (2000).
2. See *21 Jump Street*, Channing Tatum *Miranda* rights scene, <http://youtu.be/T45aF1NLMYm>.
3. Paul G. Cassell, “All Benefits, No Costs: The Grand Illusion of *Miranda*’s Defenders,” *Northwestern University Law Review* [90 Nw. U. L. Rev. 1084] (Spring 1996): 1.

**BROOKS HOLLAND** is an associate professor of law at Gonzaga University School of Law. He is a former public defender, and represented clients in the Bronx and Manhattan.

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