

Miranda--The Story of America's Right to Remain Silent

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Preface

Whether innate or acquired early in life, the desire to confess---to take responsibility for a perceived misdeed---is no doubt a deep-seated impulse in us all; perhaps we want, as Sartre suggests, to return the world to a "harmony of minds," an agreement on the principles that bind us to the society in which we live. Why we wish to do this seems visceral, as immutable as physical law, and as basic to our sense of justice as the concept of right and wrong. The act of confession, it would seem, restores the world (and our psyches) to a state of balance: For every action there must be an equal reaction---an eye for an eye, and a tooth for a tooth. Confess, and all will be forgiven---this is what the police interrogator conveys to the suspect. Not in so many words, but the message is there---in the tone of voice, in the proffered kindness of a cigarette or cup of coffee---and in truth the suspect will be forgiven by the cop, whose only real requirement for achieving harmony is the confession. For the higher authority, however, the admission of wrongdoing is not the end. The ancient god of retribution must be served; the wrongdoer must pay for what he did, with his wealth, his liberty, or his life.

Before the United States Supreme Court handed down *Miranda v. Arizona*, our system of justice operated under a different set of assumptions. Prior to *Miranda*, a well-informed citizen might be aware of the constitutional protection against self-incrimination, but few understood that this protection extended beyond the courtroom. In a very real sense, most Americans---certainly most white, middle-class Americans---assumed that a suspect, once in custody, was most likely guilty, and that police interrogation could and should continue, in private, isolated from counsel, until the suspect confessed. In general, police held this conviction as well and saw no wrong in concealing the fact that the suspect's confession would be used to incriminate him, nor did they see any wrong in pandering to the suspect's desire to confess. Scarcely anyone outside the realm of psychology believed a man would confess to something he had not done. And even those who knew better could find comfort in the belief that such false confessions would easily be discovered and never used unscrupulously to convict an innocent man.

I undertook the writing of this book not simply because *Miranda v. Arizona* stands as one of the most important events in the annals of American legal history; I was also drawn to the story because I've spent my career practicing, teaching, and writing about the law in the state where the story began, unfolded, and ultimately concluded. In 1966, when *Miranda* came down, I was a third-year law student at the University of Arizona. Although the case at first received virtually no attention from the media or the legal community, *Miranda's* lawyers, John P. Frank and John J. Flynn, were among the most

prominent in the Arizona bar, and their work soon focused the entire country on the issue of Miranda’s rights. A great many Arizona lawyers followed the story closely, ingesting the daily reading and discussing---arguing vehemently sometimes---the points of the case. Miranda represented a 1966 sea change in that the “totality of the circumstances” test for the admissibility of a confession was eschewed and a new bright-line was established by the now-famous Miranda warnings. The necessity for such a change came about because police interrogation techniques were developed forty years ago that were specifically designed to induce suspects into unknowingly giving up their Fifth and Sixth Amendment rights.

I wanted to write this book because I know many of the principal figures personally. I took advanced constitutional law from John P. Frank in 1966, practiced law with Rex E. Lee, and tried cases before all of the judges involved in Miranda’s many trials. Over the years, I tried cases with other lawyers involved in the case and came to know some of the police officers and other Miranda “insiders.” I knew starting out that I would be accorded a level of access and trust that few others could enjoy. In a final chapter I offer my summation, contemplating the legacy as well as the fate of Miranda in the twenty-first century, now that we face new challenges to our criminal code beyond our national borders.

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