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.

Table of Contents

Part One

Miranda

1 Crimes, Confessions, and Convictions 3
   Ernest Miranda Confesses to Carroll Cooley 3
   Miranda’s Robbery Trial 8
   Miranda’s Rape Trial 15
   The Case File of Coerced Confessions 22
      Sylvester Cassidy and Stanley Johnson 23
      Michael Vignera 24
      Roy Allen Stewart 25
      Carl Calvin Westover 25

2 The Law 27
   Law and Order in ’64 27
   The American Right to Counsel 29
   The American Privilege against Self-Incrimination 33
   Escobedo 35
   Miranda and the Arizona Supreme Court 40
   Robert J. Corcoran—The Birth of the Miranda Warnings 42
   John P. Frank and the Miranda Briefs 45

3 The Oral Arguments 51
   Oral Argument in Miranda v. Arizona 53
      John J. Flynn 53
      Gary K. Nelson 58
      Duane R. Nedrud 60
   Oral Argument in Vignera v. New York 63
      Victor M. Earle III 63
      William I. Siegel 67
Did Miranda Retard Law Enforcement? 152
False Confessions, the Temple Murder Case, and the Tucson Four 155
If Miranda Was a Liberal Decision, Why Was Dickerson a Conservative Decision? 159
Why Did the Court Switch from the Sixth Amendment in Escobedo to the Fifth Amendment in Miranda? 159
Was It Police Methodology or Political Ideology? 162
When Did Miranda Become a “Constitutional” Decision? 167
9 The Future 169
  Gideon’s Legacy 169
  Dickerson’s Legacy 169
  The Evolution of Miranda 170
Acknowledgments 175
Notes 177
Bibliography 195
Primary Sources
Affidavits, Reports, Witness Statements, Photographs and Transcripts 195
Personal Records, Correspondence, and Notes 195
Court Filings and Records 196
Author Interview Notes and Correspondence Files 196
Audio, Video, and Multimedia Materials 197
Secondary Sources
Books 198
  Principal Supreme Court Cases and Federal Statutes 199
  Law Review Articles 200
Selected Print Media 203
Index 205