MIRANDA AND THE FIFTH AND SIXTH AMENDMENTS

Imagine you sit down to a table to play cards but the only one who knows the rules is the dealer and they keep changing them without telling anyone. This is the situation most arrestees found themselves in before the landmark case of *Miranda v. Arizona*, 384 U.S. 436, 491, 86 S. Ct. 1602, 1636, 16 L. Ed. 2d 694 (1966).

The foundation for Miranda is in two U.S. constitutional rights found in the Fifth Amendment and Sixth Amendments - the right against self-incrimination and the right to assistance of counsel. The Fifth Amendment states that “no person…shall be compelled in any criminal case to be a witness against himself.”(U.S. Const. amend. V) The Sixth Amendment provides that “in all criminal prosecutions, the accused shall…have the Assistance of Counsel for his defense.”(U.S. Const. amend. VI) While these rights are an essential part of the U.S. Constitution, they were not always put into practice for the simple reason that suspects were not aware of them.

*Miranda* was intended as a way to offset the disadvantage that suspects are under when dealing with police and to hinder the use of coercion in interrogation. Before *Miranda*, confessions were only required to meet the voluntariness test, a requirement that all confessions must be voluntary. Today, the voluntariness test continues to be used, but police must prove they read specific Miranda warnings and obtained “intelligent waiver” of the defendant’s rights.¹

There are three especially important cases that led up to *Miranda*. The first case was *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), where the U.S. Supreme Court held that the Sixth Amendment provided that in all criminal prosecutions the

“accused shall enjoy right to assistance of counsel for his defense is made obligatory on the
states by the Fourteenth Amendment, and that an indigent defendant in a criminal prosecution in
a state court has the right to have counsel appointed for him.”

The second important case was Escobedo v. State of Ill. In Escobedo, the U.S. Supreme
Court held that when,

a defendant has been denied opportunity to consult with his counsel...[and] police have
not effectively warned [suspect] of his absolute constitutional right to remain silent, the
accused has been denied assistance of counsel in violation of Sixth Amendment as made
obligatory upon the states by Fourteenth Amendment, and no statement elicited by police
during interrogation may be used against him at criminal trial.

(Escobedo v. State of Ill., 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964)). This case is
critical to the foundation of Miranda because it specifically addresses a defendant’s right to be
“warned” of their right to remain silent and because it ties the Sixth Amendment right to counsel
with the Fifth Amendment right against self-incrimination.

The third important case was Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d
653 (1964), where the Court held that “the Fifth Amendment's exception from compulsory self-
incrimination is protected by the Fourteenth Amendment against abridgement by the States.”
This case is, of course, critical because it extends what was exclusively a federal right to the
states.

As a result of Gideon, Escobeda, and Malloy, as well as other cases, Miranda
requirements include informing a suspect of a) their right to remain silent; b) that anything can
and will be held against them in a court of law; c) their right to consult with an attorney; and d) if
they cannot afford an attorney, one will be appointed to them. They must also be asked if they
understand and waive their rights. At any point during questioning, if a suspect states their
desire to speak with an attorney or to remain silent before continuing, questioning must
discontinue until that happens.

A violation of *Miranda* law will result in suppression of evidence, making whatever
statements the suspect made to the police and anything the police obtained as a result of those
statements inadmissible. A violation of Miranda law does not guarantee an automatic acquittal or
dismissal. Two rules in this regard have been established-a) The Harmless Error Doctrine-if an
involuntary confession is admitted at trial, but it did not have a detrimental impact because there
was other overwhelming evidence, the conviction must be upheld; and b) The Automatic
Reversal Rule-if a confession is admitted, and the constitutional violation is such that the suspect
never understood their right to a lawyer, the conviction must be reversed.  

There has been much case law since *Miranda* narrowing down the scope of the warning,
when and how it needs to be waived and when it applies to a custodial interrogation. Many cases
have determined that a suspect under a custodial interrogation, when no formal charges have
been filed, is actually under the protection of only the Fifth Amendment rather than the Sixth.
This is because the right to counsel under the Sixth Amendment is “in all criminal prosecutions”
which, under *Miranda*, occurs as soon as formal charges have been filed against a defendant.
Since this does not include interrogations, the *Miranda* right to counsel is actually a combination
of the two Amendments, as found in *Escobeda*. The reason a suspect is entitled to the right to
counsel is in *order* to protect their Fifth Amendment right not to self-incriminate. (Construction
and Application of Constitutional Rule of Miranda—Supreme Court Cases, 17 A.L.R. Fed. 2d
465 (2007)).

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*Miranda* warnings apply and have to be read, if there is a “custodial interrogation”. An objective test is used to determine if custody occurs-objectively, would a reasonable person be under the impression that the suspect was not free to leave? It also does not matter why the suspect is in custody. The general rule is that custody occurs whenever a suspect is placed in "unfamiliar and hostile surroundings".3

Interrogation includes any type of questions about motive, alibi, ability, or opportunity to commit a crime. Interrogation inherently involves pressure and persuasion. The ultimate goal of interrogation is to obtain a confession or an admission. One would assume that nobody would voluntarily implicate themselves to police, but interrogation essentially involves persuading or convincing a person that it would be in their best interests to do so.

The U.S. Supreme Court has treated interrogation as spoken or written words or its equivalent. Anything like 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 or deception designed to get an incriminating response from the suspect. Falsely telling a suspect that an eyewitness has implicated them in a crime is the functional equivalent of questioning, not interrogation, but if it is designed to obtain an incriminating response, it *is* interrogation. 4

There are also some exceptions to the Miranda rule. Some examples:

- 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 advise his client not to talk, the police are under no obligation to inform the suspect of

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- 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. *Oregon v. Elstad*, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985)

- The Court held that an undercover law enforcement officer posing as a fellow inmate was not required to give Miranda warnings to an incarcerated suspect before asking questions that could elicit an incriminating response. *Illinois v. Perkins*, 496 U.S. 292, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990).

The story of *Miranda* is a complicated and ongoing one. As the Supreme Court stated in *Miranda*:

> The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. Judicial solutions to problems of constitutional dimension have evolved decade by decade.

Miranda still remains an extremely important safeguard of constitutional rights. It continues to be a hotly debated one almost fifty years later and will continue to be debated for years to come.