“You Have The Right To Remain Silent”

The strange story behind the most cited case in American history: THE MIRANDA DECISION

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August/September 2006 | Volume 57, Issue 4

But what if the confession is coerced? A confession induced with a nightstick clearly is suspect. But what about those that are the product of subtle techniques? Those confessions born of 36-hour interrogations? Or in response to lies? Are they trustworthy? Should they be used at trial? No one foresaw that the answer to these old questions would be found in the confession of a 23-year-old man suspected of kidnapping and raping an 18-year-old girl.

The son of a Mexican immigrant, Ernesto Arturo Miranda was born in Mesa, Arizona, in 1940. His mother died when he was six; his father remarried less than a year later. Ernesto fought constantly with his stepmother and became estranged from his father.

As a student at the Queen of Peace Grammar School in Mesa he rarely attended classes and dropped out after the eighth grade. In 1954 he was arrested for his first felony, burglary. Sentenced to probation, he returned to the courthouse less than a year later to face another burglary charge; this one landed him in the Arizona State Industrial School for Boys. Just a few weeks after his release he committed his first sexual offense, attempted rape and assault.

After two more years at the Industrial School the 17-year-old attempted a fresh start in Los Angeles, where he was arrested for lack of supervision, curfew violations, peeping Tom activities, and eventually armed robbery. He served 45 days in the county detention home before being sent back to Arizona. Uneducated, broke, and alone, Miranda decided that the U.S. Army might be a way out. He spent more than a third of his year-and-a-half military career at hard labor for going AWOL and being caught in another peeping Tom act.

With a dishonorable discharge, Miranda drifted to Texas, where he tried his hand at stealing cars. Again arrested, he went to federal prison for a year. In California after his release, Miranda made another attempt at assimilating into society. This time things seemed to be working out. Now 21, he met Twila Hoffman, a woman eight years his senior, who had recently separated from her husband. Two months later Miranda moved in with her and her two children. The next year the couple gave birth to their own child, a daughter. Miranda moved his new family back to Mesa, and they found jobs, Twila at a nursery school, he as a dockworker for a produce facility.

Until this time he had never held a job for more than two weeks. Now he enjoyed a good relationship with his supervisor, who referred to him as “one of the best workers [he had] ever had.”

Jane Doe

She was a heavy girl, a slow girl, a girl whose consciousness of her unfortunate characteristics created an introverted personality. Her stepbrother once said that during the 11 years he knew

her, he doubted if the two had exchanged a total of 30 words. At 18, she lived in Phoenix with her mother, sister, and brother-in-law and worked at a local movie house.

On March 2, 1963, the theater was showing *The Longest Day* , and the picture's length had forced her to stay far later than she was used to. Her bus didn't reach her stop until 12:10 a.m. Under the dark desert sky, she walked up Marlette Street. The next two hours of her life would trigger a series of events that would reshape American criminal procedure.

She was nearly home when a car darted from a driveway in front of her. A man jumped out, grabbed her, put his hand over her mouth, and said, "Don't scream, and you won't get hurt." She pleaded, "Let me go, please let me go," but the attacker dragged her to his car, tied her hands behind her back, and forced her to lie down on the back seat.

After a 20-minute drive the car came to a stop. The man untied his terrified passenger and forced himself upon her. When it was over, he asked her for money, and she gave him the four dollars that she had. He told her to lie down once again on the back seat and started back to the city. During the drive the man said, "Whether you tell your mother what has happened or not is none of my business, but pray for me."

He stopped four blocks from her house and let her out. Her sister remembered her "pound[ing] on the door, her hair was all over like she had been in a fight … and she was crying and carrying on, and I asked her what was the matter, and she would not tell me."

She was in hysterics and incoherent. But 15 minutes later she was able to tell her sister that a man had forced her into his car and taken her out to the desert. Her sister called the police. The police catch a break

In the early hours of March 3, 1963, a policeman was dispatched to a home on Citrus Way to investigate the possible kidnapping and rape of an 18-year-old girl. Jane Doe gave a brief version of the events, and the officer took her to Good Samaritan Hospital to be examined.

The Phoenix Detective Bureau was notified, and two detectives conducted a more thorough interview. There were problems with the ID of the rapist. At the hospital Jane described her attacker as a "Mexican male, twenty-seven or twenty-eight years old, five feet eleven inches, 175 pounds, slender build, medium complexion with black, short-cut, curly hair, wearing Levi's, a white T-shirt, and dark-rim glasses." When asked again later for a description, she was suddenly unsure about his nationality. He had no accent, she explained, and might have been Italian "or similar foreign extraction" or Mexican.

The vague and inconsistent accounts gave little concrete information to justify continuing the investigation. Then, seemingly out of the blue, the police and Jane Doe caught a break.

Since the incident Jane's brother-in-law had begun meeting her after work at her bus stop. A week after the alleged abduction he noticed an old Packard creeping past them along Marlette.

He took note of the license plate, DFL-312, and contacted the police. The four-door 1953 Packard belonged to Twila N. Hoffman.

After a 12-hour graveyard shift, a weary Ernesto Miranda returned home to 2525 West Maricopa at 8:00 a.m. and went to bed. An hour later the detectives arrived. They asked Miranda to accompany them to the police station to discuss a case under investigation. At the station Miranda was placed in a four-man lineup. When Jane Doe stepped into the viewing room, she could not positively identify him.

The officers led the nervous Miranda into a small interrogation room.
"How did I do?" he asked.
"Not too good, Ernie," one of the detectives lied.

Then the questions began. There was no rough stuff. The entire interrogation took two hours. The detectives said they never threatened Miranda or promised him leniency. Miranda told a different story: "… I haven't had any sleep since the day before. I'm tired. I just got off work, and they have me there interrogating me… . They mention first one crime, and then another one, they are certain I am the person… . They start badgering you one way or the other … 'you better tell us … or we're going to throw the book at you' … that is what was told to me. They told me that they would throw the book at me… ."

Whichever version was true, Miranda admitted to the rape and kidnapping.

After his brief confession, the detectives brought Jane Doe into the room. One of them asked Miranda if this was the person he had raped. Miranda looked at her and said, "That's the girl." Following this bizarre reverse lineup, Miranda went on to give a more detailed account, closely corroborating Jane Doe's story.

When asked to formalize his confession in a written statement, he agreed. Across the top of the statement was a typewritten disclaimer saying that the suspect was confessing voluntarily, without threats or promises of immunity, and "with full knowledge of my legal rights, understanding any statement I make may be used against me." He signed the disclaimer. The district attorney filed charges against Ernesto Arturo Miranda for the rape and kidnapping of Jane Doe, and the most cited case in American legal history was born.

A brief history of interrogations

Miranda's interrogation was very different from what it would have been during the first half of the twentieth century. In the years that followed World War II, the methodology of police questioning had begun to soften. Perhaps the most unexpected catalyst for this shift was the Supreme Court of the United States. To appreciate fully the breadth and scope of the Court's eventual decision in Miranda's case, it is important to step back a couple of decades. In 1942 a Northwestern University law professor named Fred Inbau wrote a police manual about station-house interrogations that offered suggestions and recommended restrictions. *Lie Detection and Criminal Interrogation* soon became the unofficial standard for police questioning. By the

time the Inbau manual, as it is commonly known, reached its third edition in 1953, it had already reshaped interrogation practices.

The manual insisted that professionalized interrogation procedures would serve two essential functions: They would minimize abuses, and they would advance law enforcement's credibility, by helping the interrogator obtain trustworthy and admissible confessions.

Officers were instructed to treat all suspects with respect and decency, but at the center of the manual is a distinction between the specific tactics to be employed when dealing with suspects whose guilt is only possible and when questioning those whose guilt is reasonably certain. In the first scenario, interrogators are specifically directed to ask deceptive questions.

In the latter, they are advised to appeal to a suspect's emotions: "sympathize with the suspect by saying anyone else under similar conditions or circumstances might have done the same thing"; "minimize the moral blameworthiness of the offense"; "suggest a more morally acceptable motivation … for the offense."

The manual prefaces these instructions with advice on how to assert psychological dominance over suspects—by conducting the interrogation in private, for instance, and invading the suspect's personal space, by ordering him to remain seated if he tries to stand, and by prohibiting him from smoking or fidgeting.

Given the manual's prominence—even today—the primary issue for policymakers has been to determine if any of these practices encourage police abuse, and for the Supreme Court, the principal question becomes, Do they comply with the requirements of the U.S. Constitution? Some 60 years before the Inbau manual was published, the Supreme Court first considered the effect of police conduct during an interrogation on the validity of the resulting confession. Just as Inbau would, the Court wrestled with the difficulty of balancing the needs of law enforcement with notions of fundamental fairness. After all, ruling a confession inadmissible may destroy the prosecution's case, while admitting one that is the product of coercion runs the risk of encouraging untrustworthy confessions and unwarranted convictions.

The Court acknowledged that this conundrum was far from recent. In the sixteenth century, at the time of England's infamous Star Chamber, the interrogator's job was to obtain a confession by any means, without regard to its trustworthiness. Those who initially refused to confess were beaten and tortured. The Star Chamber was abolished in 1641, but not until the eighteenth century did English courts begin to adopt a "totality of the circumstances" test to determine whether a confession was voluntary. If the confession was found to be the product of coercion, it was deemed untrustworthy and therefore inadmissible.

The U.S. Supreme Court borrowed from the English precedent in adopting a form of this "voluntariness test," holding that confessions were inadmissible "when made in response to threats, promises, or inducements" that may have overcome the suspect's free will.

In *Chambers v. Florida* , a case decided in 1940, the Court excluded confessions resulting from the five-day interrogation of uneducated “young colored tenant farmers” because the method employed was “calculated to break the strongest nerves and the stoutest resistance.”

In the following decade the Court considered cases involving deceptive interrogation tactics.

In *Spano v. New York* (1959), an indicted suspect called a childhood friend, a police officer named Bruno, and said he wanted to hand himself over to the authorities. Before turning himself in, however, Spano sought the counsel of an attorney, who persuaded him not to answer any questions. The frustrated police officers had Bruno tell the defendant two lies: that his initial phone call had gotten Bruno in a lot of trouble and that his failure to confess had placed his old friend’s job in jeopardy. Returning to the voluntariness test, the Court found the eventual confession, elicited as it had been by deceit, involuntary and therefore inadmissible.

Though the holdings in these cases condemned specific instances of police conduct, the Court failed to establish practical guidelines for officers to follow. Determining what happened inside interrogation rooms became a game of “cop said/crook said.” In 1964 the Court, groping for solutions, turned to the Sixth Amendment’s guarantee of the right to counsel.

In *Massiah v. United States* , the Court held that the Sixth Amendment required the exclusion of incriminating statements coaxed from an indicted suspect in the absence of counsel. Essentially, once a suspect was formally charged, any confessions that resulted from police questioning without the suspect’s attorney present could not be used in court. But by narrowing the rule to apply only after indictment the court provided no guidance for the vast majority of interrogations, which take place before formal charges are brought.

The Court first addressed the issue by returning to the Sixth Amendment. In *Escobedo v. Illinois* (1964), the justices looked to extend the right granted in *Massiah* to confessions made before indictment.

Escobedo, a murder suspect being interrogated by the police, asked to speak with his attorney. Not only was the attorney in the station house at the moment, but he had actually requested to see Escobedo. The police continued to question Escobedo for three hours and, in fact, got their confession—all the while denying the lawyer the chance to speak with his client. But this took place before formal charges had been brought, so the right to counsel did not apply.

In its ruling the Court extended the Sixth Amendment right to counsel to pre-indictment interrogations—but only when the criminal investigation had focused on a specific suspect. The decision did little to solve the basic problem. When exactly does a general inquiry become a focused investigation? The Court said nothing to clarify this.

Miranda’s interrogation presented a common occurrence: It fell outside the constitutional protections granted under both the Sixth Amendment’s right to counsel and the Fourteenth Amendment’s due process voluntariness test.

The *Massiah* holding explicitly limited the amendment's protection to post-indictment instances. And though *Escobedo* gave protection to a pre-indictment interrogation, who was to know if Miranda's interrogation had taken place after the investigation had focused specifically on him? Nor did the voluntariness test protect him. There was no evidence of brutality. No use of a third party to extract the confession. No beatings. No spotlights.
The prevailing law made Miranda's confession very much admissible.

"One of the cases I don't like to be involved with"

Alvin Moore was born near the turn of the century into a farming family on the dusty rangeland of the Oklahoma plains. He began his career as a teacher, working in the classroom during the day and studying lawbooks at night. He was admitted to the Oklahoma bar in 1922 and in the years that followed developed a successful criminal-defense practice. During this time Moore defended 35 accused rapists; only one was convicted. After serving as a lieutenant colonel in the infantry during the Second World War, he moved to Phoenix, where he hung his shingle.

Moore was appointed by the court to represent Ernesto Miranda. For the pretrial workup, the trial, and the appeal to the Arizona Supreme Court, he received a grand total of $200. Though he ably defended accused criminals, he didn't always enjoy the work. He told the jury during Miranda's trial: "It is one of the cases that I don't like to be involved with; however, regardless of the type of case it is, the defendant is entitled to the best defense he can have. You know, perhaps a doctor doesn't enjoy operating for locked bowels but he has to."

Miranda on trial
Alvin Moore and his client arrived at the Maricopa County Courthouse on the morning of June 20, 1963. The trial proceeded with a dogged regularity very far from the drama of shows like "Law & Order" and "The Practice." A junior prosecutor trying another typical rape case. A passionless defense attorney. The actors wholly unaware that their mediocre efforts would one day be scrutinized by the highest court in the land.

Deputy Prosecutor Laurence Turoff called four witnesses: the victim, the victim's sister, and the two detectives. He submitted his one exhibit—Miranda's confession.

When Jane Doe took the stand, directly across from Miranda, she spoke quietly. At times her voice became so faint that she was asked to speak up. And at one point the judge took a recess so that she could regain her composure. Her testimony had a powerful effect on the jury.

In what seemed little more than a futile gesture by a defense attorney facing overwhelming facts, Moore questioned one of the arresting detectives, Carroll Cooley, about the interrogation.

moore: Did you warn him of his rights?
cooley: Yes, sir. At the heading of the statement is a paragraph typed out, and I read this paragraph to him out loud.

moore: I don't see in the statement that it says where he is entitled to the advice of an attorney before he made it.
cooley: No, sir.
moore: It is not in that statement?
cooley: No, sir.
moore: It is not your practice to advise people you arrest that they are entitled to the services of an attorney before they make a statement?
cooley: No, sir.

With this less than shocking revelation, Moore brought a formal motion to exclude the confession. Not surprisingly, his motion was denied.

The closing arguments were no more memorable than the rest of the trial. Deputy Prosecutor Turoff restated his case. Alvin Moore stressed reasonable doubt.

And then it was over. Before heading back into the deliberation room, Judge Yale McFate instructed the jury. He offered the legal definitions of *reasonable doubt* , went through the elements of rape—specifically, that the jury would need to determine whether or not Jane had given her attacker the "utmost resistance"—and went on to restate succinctly the current law pertaining to confessions. He said that although he had allowed the confession into evidence, if the jurors found it to be involuntary, they were free to disregard it. The judge now turned his attention to Moore's motion to exclude the confession. "The fact that a defendant was under arrest at the time he made a confession or that he was not at the time represented by counsel or that he was not told that any statement he might make could or would be used against him, in and of themselves, will not render such confession involuntary."

The jury was sent to deliberate. Five hours later the three women and nine men returned with their unanimous verdict: guilty.

The appeal
Half a year later Alvin Moore filed a brief with the Arizona Supreme Court, objecting to his client's trial. He said he believed that he had shown reasonable doubt that Miranda's victim had "resist[ed] to the utmost." Moore believed that this was his best shot at a new trial.

However, he also slipped in two questions that would become the focus of scholarly debate for years to come: "Was [Miranda's] statement made voluntarily?" and "Was [he] afforded all the safeguards to his rights provided by the Constitution of the United States and the law and rules of the courts?"

Just before the Arizona justices began considering these issues, the U.S. Supreme Court handed down *Escobedo v. Illinois* . However, like most state courts, the Arizona Supreme Court had difficulty deciphering the opinion. After rigorous analysis, Justice Ernest W. McFarland, a former Arizona governor and U.S. senator, handed down an opinion that placed the focus of analysis on the fact that Miranda had not requested counsel at the time of his interrogation.

The court went on to find not only that his confession had been given voluntarily but that *Escobedo* did not apply. The confession had been properly admitted.

Ernesto Arturo Miranda seemed destined for a long stretch in the Arizona State Prison. But he refused to give up. In the summer of 1965, acting on his own behalf, Miranda filed a request for review to the United States Supreme Court; his petition was denied. Around the same time, however, Miranda's case caught the attention of Robert J. Corcoran, an attorney with the Phoenix chapter of the American Civil Liberties Union. While sifting through the advance sheets of the *Pacific Reporter* , a digest of recent court activities on the West Coast, he came across an Arizona Supreme Court decision involving the confession of an indigent, uneducated Mexican-American man. Corcoran wrote Miranda's attorney and urged him to assist Miranda before the Supreme Court. Saying he hadn't enough money and energy, Alvin Moore declined.

His role in *Miranda v. Arizona* was over.

Corcoran pressed on. He sought the help of John J. Flynn, a skilled trial lawyer at the highly respected firm of Lewis, Roca, Scoville, Beauchamps & Linton. Lewis, Roca had an arrangement with the ACLU to take two of its cases per year. Flynn accepted the challenge without hesitation, and the case soon became a firm-wide effort. Flynn teamed up with his associate John P. Frank, a specialist in constitutional law, and the pair drew on their younger associates to build their brief. Frank later estimated that the cost of the case hovered around $50,000 in office time alone.

Flynn and Frank proved a formidable partnership. The 40-year-old Flynn, who had completed both his undergraduate and legal studies at the University of Arizona Law School in only three and a half years, was so compelling that law students and lawyers alike would take the day off to listen when he presented closing arguments. Frank, who had received BA, MA, and LLB degrees from the University of Wisconsin before getting his JSD from Yale Law School, had taught at both Indiana University and his alma mater in New Haven, Connecticut. He was a close student of the dynamics and decisions of the United States Supreme Court, and his published writings ranged from a constitutional-law casebook to a biography of Supreme Court Justice Hugo L. Black (for whom he had clerked in 1942). He would bring his scholarly credentials and meticulous writing style to the brief that the charismatic Flynn was to argue before the Supreme Court.

Upon getting word of his good fortune, Miranda sent Cocoran a note of thanks from his prison cell. "To know that someone has taken an interest in my case, has increased my moral [*sic*] enormously… . I would appreciate if you or either Mr. Flynn keep me informed of any and all results. I also want to thank you and Mr. Flynn for all that you are doing for me."

On to the Warren Court

In the previous dozen years the United States Supreme Court, under the leadership of Chief Justice Earl Warren, had handed down a series of cases aimed at protecting constitutional rights. It desegregated the school system. It reapportioned voting districts. It ruled that all

evidence that violated the Fourth Amendment would be inadmissible in court. It prohibited prayer in public schools.

In 1963 the Court began its delineation of the Sixth Amendment in *Gideon v. Wainwright,* the case that guaranteed a poor defendant's right to counsel. This decision had a significant impact on the states: They were immediately forced to find a way to pay the attorneys' fees for every indigent defendant within their borders. Then, in 1964, came *Massiah* and *Escobedo* .

By 1966 the insufficiency of *Escobedo* had reached a near-breaking point. As summer turned into fall, the number of requests for review stemming from differing *Escobedo*interpretations climbed to 150. In October, when the 1966 Supreme Court session began, clerks were instructed to go through the petitions and mark "Escobedo" on all the cases that cited a coerced confession, and then Chief Justice Warren had them go through a complex winnowing process. After careful analysis clerks chose an action arising from the Arizona Supreme Court in which an accused rapist had been interrogated for two hours without being informed of either his right to remain silent or his right to counsel.

For perhaps the first time in his life, Ernesto Miranda was a favorite.

John Frank, in his brief on behalf of Miranda, proclaimed, "The day is here to recognize the full meaning of the Sixth Amendment." He invoked the "right to counsel" decisions of *Massiah* and *Escobedo* to construct his constitutional claim.

The Arizona Attorney General's Office filed an answer within two weeks. The brief, written by an assistant attorney general, Gary Nelson, was a model of fundamental legal reasoning. Nelson distinguished the facts of *Escobedo* from those of *Miranda* : In*Escobedo* , the police made a concerted effort to deter the suspect from seeing his already present lawyer. In *Miranda* , they did not. In *Escobedo* , the police lied to the defendant, saying that someone else had already ratted him out. In *Miranda* , they used no such trickery. In *Escobedo* , the suspect had a completely clean record, indicating that he was unfamiliar with the criminal justice system.

In *Miranda* , the defendant had a laundry list of offenses suggesting a thorough knowledge of the interrogation process.

Where Frank was looking to expand *Escobedo* , Nelson was looking to contain it.

The oral argument

On a cold February morning John Frank and John Flynn, on behalf of Miranda, and Gary Nelson, representing the state of Arizona, made their way up the marble stairs of the United States Supreme Court Building. Months of rigorous preparation had led them to perhaps the most intense hour of their lives. They settled into seats in the audience and listened to the oral arguments on the case ahead of theirs. In that case, the defense counsel, F. Lee Bailey, argued an appeal brought by Dr. Samuel Sheppard, the man whose infamous murder of his wife was the basis for the popular television series and movie *The Fugitive* . Bailey, who would later defend both Patty Hearst and O. J. Simpson, gave a rousing and ultimately successful

performance, as the Court agreed that the massive press coverage of Sheppard had denied him a fair trial. Bailey would be a tough act to follow.

The Chief Justice then called the case of *Ernesto Miranda v. the State of Arizona* .
The oral arguments from *Miranda v. Arizona* summed up an issue that had concerned the American justice system for nearly a century. John Flynn set forth the rights afforded to criminal suspects by the Fifth and Sixth Amendments. Gary Nelson spoke of the necessity of putting an end to the activities of admitted rapists and murderers. How could prosecutors effectively bring criminals to justice if one of their most crucial means of obtaining a conviction was gutted?

It was the battle of constitutional rights versus the possibility of turning dangerous criminals back into the streets. It was the battle of good versus evil. But what was the ultimate good? And which was the worst evil? These questions would lie in the back of the minds of the nine men charged with formulating a workable, balanced, and constitutional standard.

Five to four
On June 13, 1966, the Warren Court handed down its decision. The narrowness of the decision was fairly predictable. The bare liberal majority—Warren, Brennan, Black, Douglas, and Fortas—that had pushed through the *Gideon* and *Escobedo* rulings prevailed. The conservatives —Harlan, Stewart, White, and Clark—filed their dissents.

The Court indicated not only that it was about to rule definitively on the issue of coerced confessions but also that it believed the Sixth Amendment had been exhausted. It was the Fifth Amendment, with its safeguard against self-incrimination, that was to be the backbone of the *Miranda* protections.

Chief Justice Warren, who wrote the opinion, began a thorough discussion of the current status of police interrogation practices with “This Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Warren went on to describe the tactics described in various police handbooks, paying particular attention to the now ubiquitous Inbau manual.

“The officers are told by the manuals that the ‘principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation.’ … The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—he is guilty.

“The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt… . [According to the manual] the police may resort to deceptive stratagems … [and] persuade, trick, or cajole him out of exercising his constitutional rights.”

Warren then placed these tactics into a constitutional framework: “It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner… . Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.”

And then, almost as he was taking dictation during John Flynn’s oral argument, Chief Justice Warren wrote the most famous words in the history of American criminal procedure: “At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that [he] has the right to remain silent … that anything said can and will be used against the individual in court … 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.”

Finally, the Court’s focus turned to the interrogation of Ernesto Miranda: “It is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner.” Without these warnings, the statements were inadmissible.

The United States Supreme Court had finally given the police a clear guideline: From now on, confessions by suspects taken into custody who had not specifically been informed of their constitutional rights would be inadmissible in court. From now on, if an officer simply failed to read the rights laid out in the *Miranda* opinion, the prosecution would lose a crucial piece of evidence, and admitted felons could go free. From now on when a suspect confessed, the case was no longer closed.

Aftermath

Following Miranda, the already considerable public outcry against the Warren Court intensified. How could the Court let a confessed rapist go free? Didn’t it realize that Ernesto Miranda had preyed upon and violated a retarded girl? Didn’t it care?

In 1968 Richard Nixon, preparing for his presidential bid, issued a statement that blamed *Escobedo* and *Miranda* for the nation’s rising crime rate: “The cumulative effect [of] these decisions has been to very nearly rule out the ‘confession’ as an effective and major tool in prosecution and law enforcement.”

But as the years passed, the true effect of the *Miranda* rule began to take shape. Studies conducted in the 1960s and 1970s indicated that contrary to popular belief, *Miranda* had little, if any, effect on detectives’ ability to solve crimes. Even so, by the turn of this century the Supreme Court had become what many claimed was the polar opposite of its 1960s predecessor. The liberals who had once dominated it had been replaced by moderate or conservative appointees, including Justices Sandra Day O’Connor, Clarence Thomas, Antonin Scalia, and Chief Justice William Rehnquist. With the rise of the Rehnquist Court came increasing speculation that *Miranda* might be overturned.

In 2000 the Court gave a definitive answer to years of conjecture. In *Dickerson v. United States* , a man suspected of bank robbery confessed his involvement to FBI agents. However, he had not been given a *Miranda* warning. The District Court of Eastern Virginia granted the defendant's motion to suppress the confession. The government appealed. In overturning the district court's holding, the Fourth Circuit cited the 30-year-old congressional law, 18 U.S.C. § 3501, stating that although the FBI agents had not met the *Miranda* test, they did meet the legislative "voluntariness" standard. The Fourth Circuit further asserted that *Miranda* was a judicial construct and not a constitutional interpretation. Therefore Congress had the explicit power to overrule it.

This faced the Rehnquist Court with a difficult decision: Throw away more than 30 years of precedent or hold a federal law unconstitutional. It was the Court's opportunity to over-rule *Miranda* , and the conservatives had the votes to do it. However, in a surprising move, the conservative Chief Justice headed a majority of six of his colleagues. Rehnquist wrote: "While Congress has ultimate authority to modify or set aside any such rules that are not constitutionally required, it may not supersede this Court's decisions interpreting and applying the Constitution.

"... *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."

Thirty-four years after Earl Warren drafted M *iranda v. Arizona* , the *Mi randa* rights had become so intertwined with the American justice system that most Americans assumed that a reading of these rights was constitutionally required.

In short, *Dickerson* not only made the *Miranda* warnings an explicit constitutional right but seemed to forever shield the doctrine from congressional action.

And what of Ernesto Miranda?
He learned of the Supreme Court's decision while watching television in the Arizona State Prison. Did this mean he was free? Had a panel of nine strangers released the 26-year-old felon from his confinement?

Not exactly. The Warren Court merely ruled that his confession was inadmissible during his trial. Consequently, the Maricopa County District Attorney's Office vowed to retry the case, this time without the confession.

Waiting for his trial, Miranda enjoyed his newfound celebrity. The most popular inmate at the Arizona State Prison, he could frequently be seen telling his story, offering advice, and signing autographs.

Miranda's second trial was originally slated for October 24, 1966, just a few months after the Supreme Court decision. But with the consent of both parties, the trial was postponed for four months so that Jane Doe, who had recently married, could give birth to her first child.

Miranda seemed certain to beat the prosecution this time around. He was represented by his now nationally prominent attorney John Flynn, and the prosecution would be without its most compelling piece of evidence, Miranda's confession, and forced to rely instead upon Jane Doe's contradictory statements.

But the state pressed on; the prosecutor this time would be the District Attorney himself, Robert Corbin. Just before trial, Corbin crossed paths with a confident John Flynn, who asked, "Why are you doing this? You haven't got a case." District Attorney Corbin knew that Flynn was probably right. "At least I'll go down fighting," he answered.

On the eve of trial, Corbin received an unexpected visitor, Twila Hoffman, Miranda's former common-law spouse. She told the prosecutor that only a few days after Miranda's arrest for the rape and kidnapping of Jane Doe, she had gone to visit him in the county jail. During their talk he said he had kidnapped and raped an 18-year-old girl and then asked Twila to pay a visit to Jane Doe's family and convey his promise to marry the victim if she dropped the charges against him. Of course, he added, he'd go back to Twila later; he just needed to do this to stay out of jail.

Twila appeared on the stand, and her testimony, coupled with Jane Doe's account of the attack, proved decisive. After only an hour and 23 minutes of deliberation, the four-man and eight-woman jury once again convicted Miranda of rape and kidnapping. Exactly one year after John Flynn's victorious argument before the United States Supreme Court, Ernesto Miranda was sentenced to remain in the Arizona State Prison for 20 to 30 years.

Epilogue

Earl Warren retired as Chief Justice only three years after the *Miranda* decision, at the age of 79. Today he is remembered as one of the most influential figures in American legal history.

Years after his retirement his precedents remain—for the most part—intact. Although they also remain controversial, it is difficult to discuss modern American law without an allusion to his name.

Ernesto Miranda was paroled in 1975. By the age of 34 he had become the man his juvenile rap sheet predicted. And on a cold desert evening in late January he drifted into La Amapola, a run-down bar in the Deuce section of Phoenix. He had some drinks while playing cards with two Mexicans who were in the country illegally. Soon the three men came to blows over a handful of change that sat atop the bar. One of the Mexicans drew a six-inch knife and told the other, "Finish it with this." This was a battle that Miranda—without the assistance of John Flynn or Earl Warren—would fight on his own. He was stabbed once in the stomach and again in the chest. When the ambulance carrying him to Good Samaritan Hospital pulled into the emergency bay, he was dead.

Miranda's killer fled down a back alley; police caught his accomplice. As the officers placed the man in the back of their cruiser, one of them pulled out a small card with words printed in English on one side and Spanish on the other. He began to read:

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 the presence of an attorney to assist you prior to questioning and to be with you during questioning if you so desire.
If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning.
Do you understand these rights?
Will you voluntarily answer my questions?

Michael S. Lief and H. Mitchell Caldwell are the authors of The Devil's Advocates: Greatest Closing Arguments in Criminal Law *,just published by Simon & Schuster, from which this article is adapted.*