

## ***You Have the Right to Remain Silent***

Law enforcement officials are not required to provide someone a Miranda warning prior to arrest but must do so whenever they interrogate someone who is in custody.

Being “in custody” describes a situation in which a reasonable person in the suspect’s position would not feel free to leave whether that is prior to an arrest or not.

“Interrogation” includes not only direct questioning, but words or actions that are reasonably likely to provoke an incriminating response from the suspect.

As a result of Miranda, officers and investigators may question a suspect after carefully informing him/her that he/she is not under arrest and is free to leave. The prosecution cannot use a suspect’s silence as evidence of guilt.

Silence alone, however, may not be enough. The following is a very brief summary of the 2013 Supreme Court case of *Salinas v. Texas*.

Genovevo Salinas had not yet been placed in custody or received Miranda warnings, and voluntarily responded to some questions by police about a murder. When asked whether the shotgun shells found at the scene would match the gun found in his home, Salinas refused to answer. Prosecutors used his uneasy behavior and silence to this question as a suggestion of his guilt and combined with other evidence won a conviction. Salinas’ objection to the use of his ‘silence as evidence’ led to an appeal which ultimately was heard by the U.S. Supreme Court.

In a divided Court decision, Justice Alito, joined by Chief Justice Roberts and Justice Kennedy, concluded that, “...the Fifth Amendment’s privilege against self-incrimination does not extend to defendants who simply decide to remain mute during questioning. Long-standing judicial precedent has held that any witness who desires protection against self-incrimination must explicitly claim that protection.”

**Research cases recently decided by the Supreme Court. As a class, discuss how these decisions may be establishing a new set of rules or procedures. Write a short news brief about this.**

***Next: Anything You Say May Be Used Against You  
In a Court of Law***

Law Day 2016

**MIRANDA**  
**more than words**

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