

# MIRANDA

## more than words

The Supreme Court case of *Miranda v. Arizona* was a consolidation of four different cases in which each defendant confessed guilt, three of them in writing, after being isolated and interrogated by law enforcement officials. None were given full and effective warning of their rights before or during interrogation.

The Court was asked to rule not on the defendants' guilt or innocence but rather on the fairness of the way the accused were treated. According to the Constitution, no person “**shall be compelled in any criminal case to be a witness against himself**” and everyone has the right to “**assistance of counsel**” in his or her criminal defense. These and other procedural rights of the accused are part of our constitutional protections against an overreaching government. But how do you assert these rights if you don't know about them in the first place?

Citing the coercive nature of custodial interrogation by police, Chief Justice Warren, writing for the Court's 5-4 majority in the *Miranda v. Arizona* decision, essentially established the Miranda warning. Over the past 50 years, it has been ingrained in law enforcement and popularized through constant inclusion in movies and television shows. We've all heard it and currently accept it as the standard.

But in 1966, the controversial Miranda decision was immediately disputed by police, prosecutors, politicians, and media. Law enforcement claimed Miranda would handcuff their investigative abilities. Congress attempted to legislate new laws to counter Miranda while newspaper editorials and political cartoons accused the Warren Court of coddling criminals and poked fun at the illogic of the resulting warning. After all, how can you “remain silent” when asked if you understand your rights or when requesting representation by an attorney?

Yes, we've all heard the Miranda warning but how much do we really understand? Join us over the next several days (weeks) as we dig deeper into the background, meaning, constitutional principles, rights and protections associated with this year's Law Day theme, **Miranda: More than Words.**

*Next installment: **You Have the Right to Remain Silent***

## ***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***

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

A Miranda warning informing an individual of his or her right against unwittingly incriminating oneself under the Fifth Amendment is only required to be given to a suspect if the person is *both* in custody and under interrogation.

Therefore, law enforcement can use anything you say *until* those two requirements are fulfilled as evidence against you. Additionally, the Fifth Amendment right against self-incrimination applies only to communication and does not prohibit the police from collecting physical bodily evidence from an individual, including but not limited to - fingerprints, saliva and hair samples - without permission.

It should be noted there is an exception to Miranda if immediate "public safety" is an issue which the Court asserted in its 1984 decision of *New York v. Quarles*.

Mr. Quarles, matching the description of an alleged assailant, was stopped and frisked by police in a supermarket. Upon seeing Quarles' empty gun holster, police asked him where the gun was and Quarles responded. He was then arrested and read his Miranda rights. Quarles' appeal was unsuccessful because the Court held that the officer's request for the location of the gun was prompted by an immediate interest for public safety, his failure to read the Miranda warning before asking Quarles about a weapon did not violate the Constitution.

Additionally, images obtained by the use of body cameras, dash cams and surveillance video can be used as evidence of a defendant's actions and general demeanor by the police.

For example: An officer witnesses a driver swerving all over the road. This is recorded on the patrol car's dash camera. When the officer walks up to the car, the police officer's body camera records the slurred speech of the driver's response and the resulting field sobriety test. The driver is clearly impaired. The driver is arrested and driven in the back of the police car with the dash cam, now turned around, recording anything done or said in the back seat. At the police station, the officer gives the driver the option to either take a Breathalyzer test or have his or her license suspended immediately for one year. At no point during this example is Miranda required, and all the evidence is still admissible should this DWI case go to court.

While Miranda has been added to the procedural process to help protect against an overreaching government, it should be noted that the lack of the formal warning is not always a get-out-of-jail free card.

**Look for an example of a court case using surveillance video as evidence in a trial. Do you think use of the video evidence is fair? Why or why not?**

*Next installment: **You Have the Right to an Attorney...***

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## **You Have the Right to an Attorney**

The phrase, 'you have the right to an attorney,' can be found in the Sixth Amendment of the U.S. Constitution and it initially applied only to proceedings in federal courts.

However, its application was extended to the states in capital (death penalty) cases following the Supreme Court's decision in *Powell v. Alabama* (1932) which held that the Fourteenth Amendment Due Process Clause included at least part of the right to counsel referred to in the Sixth Amendment, making that part of the Bill of Rights binding on the states as well as the federal government. The right was further expanded to include non-death penalty cases by the Court's decision in *Gideon v. Wainwright* (1963).

Clarence Earl

Gideon was charged with a felony but was not given an attorney as Florida only provided free counsel in capital cases at that time. Gideon, representing himself, was convicted. He appealed his conviction unsuccessfully in Florida Supreme Court, but the U.S. Supreme Court unanimously held that, "the framers of the Constitution placed a high value on the right of the accused to have the means to put up a proper defense, and the state as well as federal courts must respect that right."

The Miranda warning extends the provision still further by trying to ensure knowledge of a suspect's right to have an attorney present at interrogations and proceedings involving a specific charge. It is important to note, however, that similar to invoking one's Fifth Amendment right against self-incrimination, a person must assert his or her desire to have legal representation in order to ensure its protection.

### **Amendment VI**

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have **the assistance of counsel for his defense.***

**Look for modern examples of an attorney representing someone in a criminal court case. As a class, discuss the likely outcome of the case with and without legal representation for the defendant.**

*Next installment: **If You Cannot Afford an Attorney...***

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## ***If You Cannot Afford an Attorney ...***

In the *Gideon v. Wainwright* decision, the Supreme Court stated that if a defendant is poor, the government must appoint a lawyer to represent him or her. In *Miranda v. Arizona*, the Court found it necessary to mandate notice to defendants of their constitutional right to consult with an attorney.

The Court also instructed law enforcement that if a suspect says he or she wants a lawyer, the police must stop any interrogation until an attorney is present, give the suspect an opportunity to communicate with their attorney, and to have their attorney present during any subsequent questioning.

But where do these public defenders come from, who determines a defendant's financial eligibility and how are public defenders paid?

Across New York, public defenders are provided for under a plan devised by each county in accordance with County Law Article 18-B. This statute gives counties three options for creating a public defender system. Counties may establish county public defender offices, contract with a private legal aid society, or use a panel of private assigned counsel.

New standards for determining the eligibility of individuals seeking public defense for criminal court proceedings in the counties outside of New York City were released by the NYS Indigent Legal Services Office (ILS) on April 4, 2016. The first standard states, "An applicant shall be eligible for assignment of counsel when the applicant's current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for a competent defense, and the reasonable living expenses of the applicant and any dependents." A full report including additional criteria and procedures is available on the ILS's website at [www.ils.ny.gov/content/eligibility-documents](http://www.ils.ny.gov/content/eligibility-documents).

Regardless of the type of public defense system used, the bulk of the funding is currently provided by the county. In 2003, the state created the Indigent Legal Services Fund to financially assist counties in providing legal representation for persons unable to afford it. Despite every effort to create consistent and equal standards statewide, the quality and quantity of public defense across New York State continues to be an issue and varies greatly by location.

**Look for current examples of someone being represented by a public defender in news reports in print or online. Imagine the process without representation as it was for Clarence Earl Gideon. As a class, discuss the difference.**

*Final installment: **Do You Understand Your Rights?***



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## ***Do You Understand These Rights?***

The protection against inadvertent self-incrimination requires that individuals be made aware of their rights and understand them. The use of Miranda warnings goes a long way to ensuring this happens. But what about those who are not proficient in English or who are deaf?

Although nearly all police departments are equipped with Miranda warning cards with English on one side and Spanish on the other, variations in dialect or sloppy recitation of the text can cause a lack of clarity. Further complicating matters, according to the U.S. Census Bureau, there are over 300 languages spoken in this country.

In its July 2013 ruling of *United States v. Botello-Rosales*, the 9th U.S. Circuit Court of Appeals reversed the conviction of a Spanish-speaking defendant in a marijuana case after finding that the detective's translation of the Miranda warning "failed to reasonably convey his rights." The detective used "libre" to mean "free," or without cost, which is not a correct translation. Instead, "libre" translates to "free" as in being able to do something, implying counsel was contingent on the lawyer's availability.

There are several types of language services that police departments may use including interpretation services via telephone, bilingual staff (either from within the department or borrowed from other agencies or jurisdictions), adopting standardized translated documents, or professional translators/interpreters, and trained community volunteers.

Provisions in the Rehabilitation Act of 1973 require police departments which receive any federal funding to provide qualified interpreters for communication with hearing impaired persons who rely on sign language. The vast majority, about 90%, of those born deaf can only read at or below a 5th grade level. So effectively reading and completely understanding Miranda is unlikely. In serious matters, especially when a person's freedom is at stake, it is vitally important to communicate as clearly as possible.

Whether an issue of language or communication with the deaf or hearing impaired, recording the Miranda warning process preserves evidence of whether or not the constitutional rights of the individual were conveyed well and understood. This documentation can then be used in any legal challenge that might arise. The bottom line is that clear communication and understanding of our constitutional procedural due process rights are key for both law enforcement and defendants.

**Look for examples of communication barriers in news reports in print or online. How might an efficient exchange of information change this situation?**

For additional civic education resources available from the NYS Bar Association's Law, Youth and Citizenship Program go to their website at [www.nysba.org/lychome](http://www.nysba.org/lychome).

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