

Interrogation and Confessions

We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the “confession” will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.

— Justice Arthur Goldberg, *Escobedo v. Illinois* (1964)

Another important area of criminal procedure comes from the Fifth Amendment to the U.S. Constitution. Part of this amendment says “(no) person . . . shall be compelled in any criminal case to be a witness against himself. . . .” This means that unless you agree to talk to the police, they may not force you to answer questions about a crime they think you committed. Unlike the Fourth Amendment, which balances your right to privacy against the police’s need to act, your Fifth Amendment right not to talk to police is absolute. If you invoke it, the police may not legally make you talk.

The Supreme Court did not apply the Fifth Amendment to the states until 1964. But even before this, it struck down cases where confessions were not made voluntarily. The court determined that these cases violated the due process clause of the 14th Amendment. This clause declares that no “State shall deprive any person of life, liberty, or property, without due process of law. . . .” Due process of law guarantees fair procedures and basic liberties. Among the cases that the court struck down as violating due process were:

- ***Brown v. Mississippi* (1936).** Trying to get a confession, deputies hung the defendant from a tree twice. Then they whipped him. Whipping him a second time, they told him they would not stop until he confessed, which he finally did. Then they took him to jail.
- ***Ward v. Texas* (1942).** So that no friend or attorney could contact the defendant, the police took him out of the county to three different jails in three days. Questioned continuously, the defendant at one point said he would make whatever statement the police wanted even though he claimed not to have committed the crime. Finally, he confessed.
- ***Ashcraft v. Tennessee* (1944).** Police put the defendant in an interrogation room on Saturday night at 7 p.m. and questioned him in relays so they would not get tired. On Monday at 9:30 a.m., the defendant confessed. During the 36-hour interrogation, police had given the defendant only one five-minute break.
- ***Malinski v. New York* (1945).** Instead of taking the defendant to jail, police took him to a hotel room. They told him to remove his clothes. They questioned him for three hours while he was naked. Then, allowing him to put on his underwear, they questioned him for seven more hours until he confessed. Then, after letting him dress, they took him to jail.
- ***Leyra v. Denno* (1954).** After questioning the defendant for days and allowing him little sleep, police brought in a doctor trained in hypnosis. The police had wired the room so they could listen in. During his one-and-one-half hour visit, the doctor repeatedly suggested that the defendant confess. Eventually the defendant did. The doctor then brought officers into the room and had the defendant repeat the confession.
- ***Spano v. New York* (1959).** Although the defendant refused to talk and asked for his lawyer, police continued to question him for eight straight hours. Police sent in a childhood friend, a policeman with four children, who falsely told the defendant he would be fired unless the defendant confessed, which he ultimately did.
- ***Lynum v. Illinois* (1963).** Police told the defendant that if she confessed, nothing would happen to her, but if she did not, her children would be taken away from her. She confessed.

It wasn't until 1964, in *Malloy v. Hogan*, that the Supreme Court ruled that the Fifth Amendment protection against self-incrimination applied to the states. But courts still faced the difficult task of determining on a case-by-case basis whether confessions were coerced or voluntary. So in 1966, in the landmark case of *Miranda v. Arizona*, the Supreme Court laid down clearer guidelines for police and courts to follow.

***Miranda v. Arizona* (1966)**

In this case, Ernesto Miranda was arrested at his home and taken to a police station. A witness identified him, and two detectives took him into a special room. After two hours of interrogation, the officers got Miranda to sign a written confession.

At his trial, Miranda was convicted of kidnapping and rape and was sentenced to 20 to 30 years in prison. But police had never told him of his right not to talk to them. He had never been told of his right to a lawyer. These rights are guaranteed by the Fifth and Sixth amendments. When the Supreme Court heard this case, it decided that any interrogation of suspects in custody is unconstitutional unless the police clearly tell suspects before any questioning begins that:

- They have the right to remain silent.
- Anything they say may be used against them in court.
- They have a right to a lawyer.
- If they want a lawyer but can't afford one, the court will appoint one before any questioning.

Also, after giving these warnings, police may not go on interrogating unless suspects "knowingly and intelligently" waive their rights. That is, suspects must completely understand their rights and waive them. If police fail to do this, nothing that suspects say can be introduced as evidence against them at their trials.

The Supreme Court believed that police questioning of suspects in the station house was inherently coercive. In other words, the court believed that the station house surroundings and police interrogation put tremendous pressure on suspects to say what the police wanted them to say. It felt that the only way to prevent coerced confessions was to make sure suspects knew their rights. Thus police need to tell suspects that they do not have to say anything and that they can have a lawyer with them during questioning. The court concluded that if police do not give a suspect this information, they violate the suspect's Fifth Amendment rights.

For Discussion

1. The article lists six Supreme Court decisions invalidating confessions because they violated due process — *Brown, Ward, Ashcraft, Malinski, Leyra, Spano, and Lynum*. Would you trust the confessions as being reliable in any of these cases? Explain. Would you consider any of the confessions voluntary? Why or why not?
2. What does the quotation (at the beginning of the article) from Supreme Court Justice Arthur J. Goldberg mean? Do you agree? Why or why not?
3. What are the *Miranda* warnings? When do police have to give these warnings? What are the warnings supposed to prevent? Do you agree with the decision in *Miranda*? Explain.

Class Activity: Taking the Fifth

In this activity, students use their knowledge of the Fifth Amendment to argue actual cases that have come before the Supreme Court.

1. Form triads. Each student in each triad should be assigned a number — one, two, or three. All ones will role play a justice of the Supreme Court. All twos will role play defense attorneys. All threes will role play attorneys for the government. Each triad should be assigned one of the cases below — a, b, c, d, e, f, g, or h.
2. The class should regroup so students can consult with one another while preparing for the role play. Students arguing for the government should sit on one side of the room, students arguing for the defendants on the other side, and the student justices in front. Each group should follow its group's instructions, listed below.
3. Regroup into triads and begin the role play. The defense will present its case first. Each side will have two minutes to make its presentation. The justice can interrupt to ask questions. After both sides present, each justice should stand and prepare to present a decision on the case.
4. When every justice is ready, go around the room and have each justice read the facts of the case and present his or her decision and reasons for it.
5. Conclude the activity with a discussion using the debriefing questions below.

Attorneys' Instructions

As attorneys, you are responsible for presenting the court with sound arguments supporting your side.

If you represent the government, you will argue that the incriminating statements should be allowed in evidence at the trial.

If you represent the defendant, you will argue that the incriminating statements should be excluded at trial.

Carefully read your case. Then review the section above on *Miranda* and the cases following it. How do these cases apply to your case?

To prepare your argument, write a clear, brief statement of your position. Include:

- At least one fact from the case that supports your position.
- An explanation of how that fact supports your position.
- One previous court decision that supports your position.
- An explanation of how that decision supports your position.
- One reason why your position is fair to the government or defendant.
- One reason why a court decision in your favor will benefit society.

Make an outline ordering this information so that you can include all of it in a two-minute presentation.

Justices' Instructions

When preparing to hear arguments, Supreme Court justices review the cases and the law with their clerks and develop questions they want to ask the attorneys. Working with other justices, read each case. Take notes while you discuss the following:

- How do *Miranda* and the cases following it apply to your case?
- What questions would you like to ask the attorneys about your case?

Remember: When you decide your case, you must consider the previous Supreme Court cases interpreting the Fifth Amendment, but you are not bound by them.

Cases

The issue in each case is the same: **Can the defendant's confession or incriminating statements be introduced in evidence at the trial?**

- Yarborough v. Alvarado* (2004)**. Police ask 17-year-old Alvarado to come to the police station for an interview with a detective. His parents bring him and wait for him. For two hours, the detective questions him about a shooting. Twice during the interview, the detective asks Alvarado if he needs a break. Alvarado confesses to being involved in the shooting. The detective lets Alvarado go home with his parents.
- Illinois v. Perkins* (1990)**. Police suspect that Perkins, an inmate in jail on another charge, has committed a murder. They put an undercover agent in Perkins' cell. After gaining Perkins' trust, the agent asks him if he has ever killed anyone. Perkins confesses to the murder.
- Duckworth v. Eagan* (1989)**. Duckworth confessed to a crime after receiving *Miranda* warnings from police. Police had deviated from the standard warnings in one way. They had told Duckworth: "You have a right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.* If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you've talked to a lawyer." (Emphasis added.)
- Arizona v. Mauro* (1987)**. Arrested for killing his son, Mauro declined to answer any questions without a lawyer. The police let his wife in to talk with him, but they conspicuously placed a tape recorder on the table between them, which recorded incriminating statements.
- Edwards v. Arizona* (1981)**. Arrested for burglary, robbery, and murder, Edwards was read his rights and said he was willing to answer questions. While being questioned, he said he wanted to make a deal, but first he wanted an attorney. He was returned to his cell. The next day, other officers saw Edwards and got him to waive his *Miranda* rights and confess.

- f. ***Fare v. Michael C. (1979)***. Police gave *Miranda* warnings to Michael, a 16-year-old boy accused of murder. When asked if he wanted a lawyer during the interrogation, Michael asked if instead he could call his probation officer. When the police told him they would not call the probation officer right away, Michael somewhat reluctantly agreed to talk and eventually incriminated himself.
- g. ***Oregon v. Mathiason (1977)***. Weeks after a burglary, police sent Mathiason a note asking him to call. He called and made an appointment at his convenience to come into the station. On his arrival, an officer informed him he was not under arrest, but led him into a conference room. The officer falsely told Mathiason that police had found his fingerprints at the burglary scene. Mathiason confessed to the crime. The officer then let Mathiason leave without arresting him that day.
- h. ***Beckwith v. U.S. (1976)***. Arriving at Beckwith's house at 8 a.m., IRS agents asked Beckwith if they could ask him some questions. He invited them in and they interviewed him for three hours. During the interview, he made incriminating statements. He was later arrested for tax fraud.

Debriefing Questions

1. Which of the justices' decisions expand the *Miranda* decision? Which restrict it? Why?
2. What were some strong arguments presented by the attorneys for the government for each case? What arguments would have improved their cases?
3. What were some strong arguments presented by the attorneys for the defendants? What arguments would have improved their cases?
4. What were some key questions asked by the justices? What other questions should they have asked?
5. Which decisions do you agree with? Why?

Ask an Expert

Invite a prosecutor, defense attorney, or police officer to discuss briefly the *Miranda* decision. Invite your guest to stay and take part in the activity **Taking the Fifth**. The guest can help different groups and debrief the class.