

COURT OF CLAIMS: Longest Serving Wrongfully
Imprisoned Man to Receive Additional \$2.65 Million (p. 3)



**New Executive Director
Takes Helm at OCLRE (p. 4)**

CNO REVIEW

May 2016

*No person ... shall be compelled in
any criminal case to be a witness
against himself, nor be deprived of life,
liberty, or property, without due process
of law....*

Fundamental Framework

Decided 50 years ago, the historic ruling *Miranda v. Arizona* defined crucial safeguards to protect an accused's constitutional rights, and it still reverberates through today's criminal justice debates.

A Fundamental Framework

“It’s the damnedest thing I ever heard — we may as well close up shop.”

Time, June 24, 1966

That was the thinking of a police chief in Garland, Texas, a week after the U.S. Supreme Court released its decision in *Miranda v. Arizona*. The landmark ruling, which laid out the constitutional rights criminal suspects have before and during an interrogation, evoked critical dissents and widespread public controversy. Yet, within six months to a year, the police nationwide had widely adopted the directive to explicitly inform those taken into custody of their rights. *Miranda* has now endured for 50 years.

And unlike significant legal decisions that slide past the public consciousness, the *Miranda* warnings have seeped into our popular culture and our understanding of everyday police practices. Most people can recite the warnings. “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 an attorney before and during questioning. If you can’t afford an attorney, one will be appointed for you.”

The U.S. Supreme Court even noted how entrenched the *Miranda* warnings had become in a 2000 decision upholding the seminal case. In *Dickerson v. United States*, the Supreme Court determined a federal law about the admissibility of confessions was unconstitutional because it set forth a different rule than *Miranda*. The law didn’t provide the same or greater protections than the straightforward *Miranda* warnings necessary to protect a suspect’s constitutional right against self-incrimination. The Court concluded an act of Congress cannot overrule a constitutional decision of the country’s highest court.

As we take note of *Miranda*’s golden anniversary on June 13 this year and its designation as this month’s Law Day theme, the decision continues to echo in debates about our present-day criminal justice system.

Lawlessness Didn’t Erupt

Critics of *Miranda* in 1966 – from police officials in scattered jurisdictions including Garland, Texas, to the dissenting justices – were convinced criminals would roam

freely and law enforcement would be horribly hampered. Today some argue the opposite, that the ruling didn’t go far enough to protect the rights of those accused of crimes.

“In practice, *Miranda* has not had as great an impact as most people initially expected,” said **Lawrence Baum**, Ohio State University professor emeritus of political science who has written about U.S. courts. “Suspects who are read the *Miranda* warnings quite often choose to waive their rights and speak with law enforcement officers.”

While these realities diminished conflicts over *Miranda*, they haven’t eliminated them, Baum said.

Current-Day Disputes

One area of contention has been the words a suspect needs to say to clearly waive his or her rights to remain silent and to have an attorney. Another centers on whether courts should exclude evidence found as a result of statements taken by police in violation of *Miranda*.

On the latter issue, Moritz College of Law Professor **Ric Simmons** noted the U.S. Supreme Court has narrowed *Miranda*. The Court has held “*Miranda* is merely a ‘prophylactic’ rule that only applies at trial — that is, its only purpose is to ensure that a defendant’s rights at trial are not violated when non-Mirandized statements are used against him,” Simmons said. “Thus, there is no violation of the defendant’s rights at the time of the interrogation itself.”

Simmons thinks that conclusion makes *Miranda* in some ways less than a full constitutional right.

Dilemma of False Confessions

Scholars also explain that *Miranda* doesn’t solve the quandary of false confessions. According to the Innocence Project, DNA testing and additional investigations have revealed that 341 innocent individuals have been wrongly convicted and imprisoned in the United States. And tens of thousands of others have been erroneously accused of crimes but released before the outcome of a trial because DNA testing cleared them.

“In a shocking number of these cases, incriminating statements or confessions were obtained,” National Law Day Chair **Bryan Stevenson** said. Simmons agrees that false confessions are too prevalent in the justice system and have been a significant reason for false convictions.

Stevenson, who runs the Equal Justice Initiative in Alabama and teaches at NYU School of Law, thinks the pressure sometimes placed on law enforcement to solve crimes can migrate into the interrogation room.

“*Miranda* has been a critically important tool ensuring that the rights of the accused are not overwhelmed when

there is great emotion in a community to obtain a conviction for a crime,” Stevenson said. “But it’s clear that *Miranda* warnings do not by themselves ensure that every statement by an accused person is reliable or accurate.”

The 1966 ruling emerged in a decade of overlapping civil rights violence and progress, of escalating crime rates and notable criminal justice reforms. In that turbulence, the *Miranda* Court didn’t address, or perhaps couldn’t foresee, the complications of interrogations for certain vulnerable populations such as juveniles, people with limited or no English speaking skills, and those who are deaf.

Role of *Miranda* for Juveniles

Stevenson points to the dramatically increasing number of teens and children who are transferred to the adult criminal justice system. It’s a topic being battled at the highest levels of the legal system. In mid-April, the Ohio Supreme Court heard arguments in an appeal contesting the constitutionality of state laws mandating the transfer of certain juveniles to the common pleas court for criminal prosecution.

And on April 28, the Court ruled in *State v. Barker*, which involved the electronically recorded interrogation of 15-year-old Tyshawn Barker. Cincinnati police questioned Barker about two shootings and recorded the interrogation. He was read a list of rights and signed a form stating he understood his rights. After his case was transferred to the common pleas court so he could be tried as an adult, he was sentenced to 25 years to life in prison for murder, robbery, and other crimes.

Under review was a 2010 state law that presumes any statements made during electronically recorded interrogations are voluntary. The Court ruled the statute is unconstitutional when applied to juveniles because it violates their due process rights. The legislature may not lessen the standard that the U.S. Constitution requires, the Court explained. Thus, the burden still rests with the state to prove that Barker had intelligently, knowingly, and voluntarily waived his rights.

Some are questioning whether the *Miranda* warnings are adequate for juveniles accused of crimes, Stevenson said.

“Children are biologically distinct from adults when it comes to problem-solving, complex thinking, and peer pressure. The developmental differences make children vulnerable to coercion and other interrogation tactics that may require more protection than traditional *Miranda* warnings.”

Miranda in 1966



Miranda v. Arizona was the U.S. Supreme Court’s ruling not in one case but in four. Besides Arizona, the cases reached the Supreme Court from California, Missouri, and New York. In each of the appeals, the police had not properly advised the suspect of his constitutional rights to remain silent and to consult with an attorney.

In its decision on June 13, 1966, the Supreme Court split 5 to 4, and the sentiments of the legal profession, press, and public were fractured as well.

Time magazine reported that Maryland’s state attorney was convinced many cases lined up for trial would be tossed. A Pennsylvania common pleas court judge questioned in a bar association publication whether *Miranda* showed a “false compassion’ for the criminal,” and he suggested *Miranda* had broken with precedent and should be overturned. Joining him was a U.S. Senator from North Carolina, who said police were often “hamstrung” in fighting escalating crime rates and who cited a dissenting justice’s view in *Miranda* that the warnings were “a hazardous experimentation.”

However, others noted that a Supreme Court ruling two years earlier had already shifted the mindset and practices of many police departments. Police officials in Atlanta, Denver, and Los Angeles explained they had been following the basic tenets of *Miranda* already and would have to make few or no changes to adapt to the Court’s ruling.

The Detroit police commissioner wrote an article for the *Saturday Evening Post* in September 1967 following summer riots in the city, calls for greater police force, and complaints about the impact of the Court’s recent decisions. The commissioner stressed the equalizing power of *Miranda* for those not familiar with the criminal justice system, given that “affluent ganglord[s]” and “stock manipulator[s]” already knew they didn’t have to talk to police and they could call a lawyer.

“All the Supreme Court has been trying to do, despite all the criticisms of its verdicts and despite the riots, is make sure that police work is done with all the skill, care and efficiency that we all deserve,” he wrote.

June 3

Managing Mentally Ill Youth on ProbationProbation Officers
Akron

June 7

Probation Officer Training Program: Introduction to Offender Behavior ManagementProbation Officers
Dayton**Fundamentals of Adult Guardianship Course BROADCAST**Adult Guardians
(Laypersons)

June 8

Fundamentals of Adult Guardianship Course BROADCASTAdult Guardians
(Professional)**Dispute Resolution Training**sc.ohio.gov/JCS/disputeResolution

May 18

Parenting Coordinators Roundtable**Supreme Court of Ohio**sc.ohio.gov

May 10

Late Application to take the July 2016 bar examination

May 30

Memorial Day

Court Offices Closed

May 31

Oral Arguments

June 1

Oral Arguments**Local Court Roundtables**sc.ohio.gov/JCS/roundtables**NOTE: All meetings are at the Moyer Judicial Center in Columbus**

May 25

Juvenile Court Magistrates
All Counties

June 9

Juvenile Chief Probation Officers
Less than 100K population**Ohio Center for Law-Related Education**ocle.org

May 13

Middle School We The People

May 20

Moot Court**MIRANDA - Continued from p. 7****Guaranteeing Rights When There Are Language Barriers**

Ensuring those with limited or no ability to speak English or those who are deaf are advised of their *Miranda* rights is another growing area of concern.

Bruno Romero, who manages the Ohio Supreme Court's language services efforts, wrote an article highlighting an Ohio case where an interpreter decimated the Spanish translation of the *Miranda* warnings for the accused. For one, the interpreter used a word meaning "right-hand side" rather than "right" in the legal sense. Interpreters must be able to accurately communicate the equivalent meaning of the rights in the other language, Romero said.

"Properly conveying the right to remain silent and to have an attorney to those with limited English skills is difficult because interpreters must have superior language ability," he explained. "The actual warning is not difficult, but there is no room for error. Any distortion may prove to be critical in whether the meaning and intent of the *Miranda* rights has been conveyed so that individuals can exercise their basic constitutional rights."

A shortage of qualified interpreters and the array of languages, let alone the diverse dialects, spoken in this country are only two issues law enforcement currently grapples with. The courts are only beginning to delve into these complex challenges for this population and for other vulnerable groups.

A Lasting Influence

But the legacy of the 50-year-old *Miranda* decision persists, whether it's through the reminder of those fundamental rights on the latest episode of "Law & Order" or through the substantive legal debates about balancing the protection of the public with the rights of the accused.

"It is no exaggeration to say that the entire framework of criminal defendants' rights — which is to say, our rights — was constructed during the time of *Miranda*," Simmons said.