

The case that started it all

The Miranda warnings stem from the case of Ernesto Miranda, who was picked up by Phoenix police in 1963 as a robbery suspect.

While in custody, he confessed to a different crime — the kidnapping and rape of an 18-year-old woman. Miranda was convicted. But the verdict was overturned in 1966 by the U.S. Supreme Court, which ruled that his confession should not have been admitted as evidence because he had not been advised of his Fifth Amendment right not to incriminate himself.

That right was "jeopardized," then-Chief Justice Earl Warren wrote, by the atmosphere of police interrogations. Suspects who are "in custody," he wrote, are entitled to remain silent, to have a lawyer present and to know that what they say can be used against them in court. The court ordered police to issue such a warning to try to deter any mistreatment of prisoners and to ensure that any confessions cops obtain were truthful.

(Miranda was later retried and convicted on other evidence. He was paroled in 1972 and died four years later, at age 34, when he was stabbed in a bar fight.)

Defense lawyers and other advocates of suspects' rights were elated by the high court's 5-4 ruling in the Miranda case. They began to ask judges to suppress statements made when police ignored the Miranda warnings or did not administer them correctly.

But the decision drew an outcry from police and prosecutors. They said that confessions, the key element in many convictions, would disappear once suspects were told of their Miranda rights.

Louis Palumbo, who joined the Nassau County, N.Y., police department in 1973, recalls the "supreme hostility" with which police veterans viewed Miranda.

"The thinking at that time was if you tell a (suspect) formally about all these rights, the message he's going to hear is, 'Don't talk to the cops,'" says Palumbo, who now runs a security company in New York City. Cops "hated that."

From the early 1970s through the mid-1980s, the high court issued rulings that allowed police and courts to use some statements taken in violation of Miranda.

In a New York drug case, the court decided that a defendant's statement made before a Miranda warning was given could be used at trial, if the defendant told a different story on the witness stand. The court went further in an Oregon case, allowing such statements to be used in court even if they were made after a suspect had asked for a lawyer.

The exceptions to Miranda were necessary, the court said, to prevent perjury.

The court continued to face cases in which cops accidentally

must stop until the lawyer is provided.

► **New York vs. Quarles** (1984) — Before they give a Miranda warning, police may ask suspects where they have hidden guns and other dangerous objects that might affect "public safety."

► **Oregon vs. Elstad** (1985) — Police may use a confession obtained after a suspect has waived his Miranda rights even if they obtained an earlier incriminating statement without reading the Miranda warning. The key: The first incriminating statement must have been given voluntarily.

► **Minnick vs. Mississippi** (1990) — Once a suspect has requested a lawyer, the lawyer must be at any further interrogation, regardless of whether the suspect consults with him or her.

► **Dickerson vs. United States** (2000) — The Miranda warning is required by the Constitution's Fifth Amendment and is not merely a rule made by judges to protect suspects.

USA TODAY research by Richard Wilkins

failed to read the Miranda warning, in which suspects blurted out confessions and in which suspects talked voluntarily or were urged by police to talk after requesting a lawyer or asserting a right to silence.

The post-Miranda confession of an Oregon burglar was allowed to stand in 1985, even though the man initially blurted out the confession before police had read him his rights. The key in that case, wrote Justice Sandra Day O'Connor, was that the second statement was made "voluntarily." But the court left open the question now raised by the Seibert case: What happens when police purposely seek such a confession?

Questioning 'outside Miranda'

Most of the court's rulings on Miranda have come in cases in which police made mistakes in issuing the warning. But some police officials saw the court's rulings in such cases as openings for cops to deliberately breach Miranda.

Police trainers began to teach cops how to conduct two-stage interrogations that are designed to get a suspect talking before he considers his right to silence. Hanrahan, the detective in the Seibert case, was trained by an Illinois company, the Police Law Institute, that has instructed hundreds of officers across the USA, the Missouri Attorney General's Office says.

Other trainers noted that statements taken in violation of Miranda can have value to police and to prosecutors who are trying to undermine a defendant's credibility.

said that 38 state courts had reviewed challenges to "outside Miranda" interrogations.

Trial records examined by Sanders and Richard Leo of the University of California at Irvine and Welsh White of the University of Pittsburgh describe dozens of cases in the past 20 years in which cops tried to bully suspects into talking after the suspects invoked their Miranda rights.

In New Mexico, detectives told a murder suspect that "the ballgame is up," and added that he would get a break from authorities only after making a statement. In California, a police investigator told a murder suspect who repeatedly had requested a lawyer that the "system is going to stick it to you as hard as they can" unless he waived his rights and confessed.

But a more common practice these days is for cops to appear to befriend a suspect. Police trainers such as John E. Reid and Associates of Chicago say that a suspect is likely to respond to unexpected kindness from interrogators.

In a 1984 Kentucky case, Sanders says, a sheriff told a prisoner, "I feel like you have something else you want to tell me" as the prisoner was led out of an arraignment. In Alabama in 1987, an officer told a robbery suspect that "it would be helpful" and "save me a lot of trouble" if the suspect described where he had hidden a gun.

And in Michigan in 1996, according to Leo and White, police urged a murder suspect to waive his rights, telling him, "You're not an assassin; you're not a stone-cold killer. Something happened that went wrong that day. ... The reason why can only come from you."

Critics say that such tactics create the kind of intimidation of suspects that the Supreme Court sought to ban in 1966.

"If this isn't Sipowicz beating out a confession, it amounts to the same thing," says Joshua Dressler, law professor at Ohio State University.

But defenders say that interrogations "outside Miranda" have helped police to identify the locations of kidnap victims, determine whether accused rapists were HIV-positive and persuade guilty suspects to confess.

But state courts have begun to come down hard on police who deliberately work around Miranda. This year, courts in Wisconsin and California threw out convictions that were based partly on "outside Miranda" confessions. For the Supreme Court, a key question is whether cops have gone too far.

"The captain of detectives says (to his officers), 'Forget Miranda. We just want witnesses,'" says Yale Kamisar, a law professor at the University of Michigan. "As a justice, the question becomes, 'How does that strike you?'"

"You might say, 'They're making fools of us.'"