

MIRANDA WARNINGS

Hardly any case is as famous and well known among legal scholars and laymen alike as *Miranda v Arizona*. It was a landmark case that would forever re-write the criminal procedure textbooks and permanently change police interrogation techniques. The Supreme Court recognized that criminal suspects were entitled to be advised of certain rights if a particular set of criteria existed. Perhaps no other case has caused quite as much confusion among the general public as to when the “rights” kick in and what the consequences are if not properly administered. With all the post-*Miranda* cases, it would literally take volumes as thick as any encyclopedia set to explain all the nuances of the warnings. What this article is about is providing the public with a general overview as to when the “warnings” are required and when they may not be.

In order for a suspect to be entitled to receive the Miranda Warnings, three prongs of criteria must be met. There must be: 1) Police 2) Custodial 3) Interrogation. Sounds simple enough doesn't it? The amount of confusion, controversy, and legal debates that remain to this day say otherwise. Let's take them step by step.

1. Police

The person doing the questioning must either be a police officer or a known agent of the police. What about confessions made to undercover police officers or paid informants? That requires a different analysis since they are not “known” to be agents to the suspect at the time of the questioning. Under those situations, the confession has to be “voluntary” and not “coerced.” In other words, as long as the undercover officer didn't force you, threaten you, or otherwise make you give an incriminating statement that was not made of your own free will, the statement will be allowed in as evidence.

Caveat: Be mindful of confessions made to “bunkies” or cellmates in jail. They are not agents of the police and any confessions or incriminating statements made to them can be used against you!

2. Custodial

For Miranda to kick in, you need to be in police “custody.” But what does that mean exactly? The test that generally seems to be used is: would a reasonable person under the circumstances feel free to leave? A lot of this will depend on where the interrogation is taking place. If it is taking place in the suspect's home, place of business, public place, etc. the courts usually lean towards concluding that is not police custody (although certain factors could indicate otherwise). In these incidents, it is the suspect and not the police that have the home field advantage. The theory goes that the suspect would feel comfortable either refusing to answer questions or to just tell the police to “get lost.” After all, it's your home, your castle and you make the rules right? Not necessarily true, but the courts will often see it that way.

On the other hand, if the interrogation is taking place at the police station, then clearly it is the police that have the upper hand. Other factors include: was the suspect told that he could not leave or was he told that he had to answer the questions? If so, the custody argument is now easier to make since the suspect would not feel free to not answer the questions or leave, even if it is in the suspect's home. A lot of it just depends on the surrounding factors of the situation. This is what the law refers to as the "totality of the circumstances."

3. Interrogation

The police actually have to be questioning you or otherwise trying to illicit potentially incriminating statements from you. Routine booking questions such as your name, address, etc. are not considered to be incriminating and therefore Miranda does not apply. The courts have held that statements have to be "testimonial" in order for Miranda to be activated.

What does "testimonial" mean? Perhaps it's easier to discuss what *isn't* testimonial: fingerprints, DNA samples, statements given in police lineups, voice exemplars. The suspect must intend to communicate either a fact or belief in order to be testimonial. Usually it only applies to audible statements, but sometimes non-verbal communication can be testimonial, such as nodding the head.

Public Safety Exception

There is an exception to Miranda known as the Public Safety Exception. It is a narrow, case-by-case determinative exception so there is no bright-line rule other than the police do not have to give you Miranda warnings if there is an ongoing threat to the public's safety.

Voluntary Statements

Miranda does not apply to statements that the suspect gives on his own volition, either before or after the Miranda warnings have been given. Many suspects have operated under the mistaken belief (to their own detriment) that if they give incriminating statements before the officer has had an opportunity to offer the Miranda warnings, the statements will be kicked out. Not true! So don't offer any such statements to the police. Exercise your right to remain silent.

Miranda Myths

The police have to give me Miranda Warnings whenever I'm arrested—Not true! The police can arrest you and not be required to give you Miranda warnings. They would only have to Mirandize you if they wish to interrogate you or ask you incriminating questions. Otherwise, they don't have to Mirandize you.

If the police don't read you your Miranda Warnings, they have to let you go and drop all charges—Not true! Remember, Miranda only applies to *statements*. The police can still have enough evidence to arrest and prosecute you even if they can't use your confession against you.

If the police trick me into giving an incriminating answer, it can't be used against me—Not necessarily. The police cannot force you or “coerce” you into giving confessions or incriminating statements. That doesn't mean that they can't lie or otherwise deceive you into giving incriminating statements. “Strategic trickery” is often employed by the police as an interrogation tactic. Police are not required to be Boy Scouts.

If I ask an undercover agent if he is a police officer he has to tell me the truth—Not true! Police could never effectively operate undercover or perform string operations if that were the case. Yes, police can lie.

How to Invoke Your Right to Remain Silent

You have a constitutional right to remain silent and not incriminate yourself. Exercise it! But make sure that you do it in an unequivocal manner so the police cannot misinterpret it. Avoid wishy-washy phrases like, “I'll think about it,” “Maybe,” “I don't know yet.” Make sure you state something like the following: “I am invoking my right to remain silent. I will not answer anymore questions until I have talked to a lawyer.”

Remember, you always have the right not to talk to the police. The police can never force you to answer any other their questions.